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74 NH PUC 1

Re Woodbound Inn

Additional petitioner: Town of Jaffrey

DS 88-98
Order No. 19,281

New Hampshire Public Utilities Commission

January 5, 1989

ORDER conditionally granting an exemption from public service regulation to a municipal sewer utility that proposed to provide service to customers located outside of its corporate limits.

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1. PUBLIC UTILITIES, § 112 — Sewer companies — Exemptions from regulation.

[N.H.] State statute RSA 362:4, which authorizes the commission to exempt from regulation water utilities that provide service to fewer than 10 customers, does not provide a basis for a grant of the regulatory exemptions to sewer companies that provide service to fewer than 10 customers. p. 2.

2. PUBLIC UTILITIES, § 57 — Municipal utilities — Regulatory status — Operation beyond municipal limits.

[N.H.] State statute RSA 362:2 defines public utilities as including municipal corporations operating outside their corporate boundaries which own, operate or manage plant or equipment for the furnishing of telephone or telegraph messages or for the manufacturing or furnishing of light, heat, sewage disposal, power or water for the public. p. 3.

3. PUBLIC UTILITIES, § 57 — Municipal utilities — Regulatory status — Operation beyond municipal limits.

[N.H.] The legislature, in state statutes RSA 362:2 and RSA 362:4, has specifically exempted municipal utilities from regulation within their municipal boundaries and from certain forms of regulation for utility service outside of their municipal boundaries. p. 3.

4. PUBLIC UTILITIES, § 57 — Municipal utilities — Regulatory status — Operation beyond municipal limits.

[N.H.] The provision by a municipal utility of sewer service to two customers located beyond its corporate limits was exempted from public utility regulation where (1) the municipal utility sought to extend service beyond its corporate limits only for the broader public purpose of

avoiding unnecessary water pollution, (2) the rates to be charged and the service to be rendered to the two customers would be equivalent to the rates charged and services rendered within the corporate limits of the municipality, (3) the service agreements would be voluntary and negotiated at arms-length, and (4) the customers had alternative means of satisfying their sewage disposal needs; however, the commission noted that a change in circumstances, such as substantial increase in the number of customers served beyond the corporate limits of the municipality or a variance in the cost or quality of service from that rendered within the municipality, could result in a determination that the municipal utility should be regulated as a public utility. p. 3.

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i. PUBLIC UTILITIES, § 57 — Municipal utilities — Regulatory status — Operation beyond municipal limits.

[N.H.] Statement, in a dissenting opinion to an order exempting the provision of sewer service by a municipal utility to customers located beyond its municipal limits from public utility regulation, that the commission lacked statutory authority to grant the exemption; the dissenting commissioner argued that rather than exceeding its statutory authority the commission should support legislation that would give municipal sewer companies exemption opportunities. p. 4.

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APPEARANCES: For Woodbound Inn, Jonathan Prew, Esquire; for the N.H. Public Utilities Commission staff, Mary Hain, Esquire.

By the COMMISSION:

REPORT

The Woodbound Inn, joined by the town of Jaffrey, filed a petition on July 5, 1988, requesting commission authorization for the town of Jaffrey to provide sewer services to the Woodbound Inn and to a condominium project abutting the Inn to be developed by the Leeds Group, Ltd. The parties requested at the hearing on the petition that the commission address in this order only the issue of whether the provision of sewer disposal service by the town of Jaffrey in this case would make the town of Jaffrey a public utility under the laws of this state. For reasons cited below, the commission finds that the provision of sewer services by the town of Jaffrey under the specific facts of this case would not make the town of Jaffrey a "public utility" as that term is defined in RSA 362:2.

The petition indicated that an agreement had been reached between the town of Jaffrey, the Woodbound Inn and the Leeds Group, Ltd. regarding the provision of sewer service and the rates to be charged therefore. The petitioners requested exemption from regulation because the town of Jaffrey would be serving only two customers, i.e. the Leeds Group and the Woodbound Inn.

[1] This request was based on the misapprehension that the commission can exempt from regulation a utility that provides sewer service to fewer than ten customers pursuant to RSA 362:4. The original agreement, filed with the petition, indicated that the sole customer of the

sewer system would be the Woodbound Inn, who would in turn collect a prorated share of the expense from the Leeds Group Condominium Development. RSA 362:4, however, applies only to water utilities and not to sewer utilities. Accordingly, said statute does not on its face provide a basis for regulatory exemption in this case.

By order of notice dated July 12, 1988, the commission scheduled a hearing on the merits for August 21, 1988. At said hearing, the petitioners indicated that the "Agreement" submitted with the petition, and marked as Exhibit 1, is only a draft "Conceptual Agreement" that the parties intend to supercede with a more specific agreement at "some point in the future." (Tr. 22)

In response to concerns from the bench that there is not a specific request before the commission that would allow the matter to proceed, the town of Jaffrey responded that they did not want to go through the time and expense of processing the formal agreement (Tr. 61-62) and requested that the commission proceed only on the issue of whether the town of Jaffrey would be regulated as a sewer utility. The town asked that the issue of the acceptability of the final application be deferred to a later date. In fact, the town indicated that if the commission finds that it would be regulated as a sewer utility because it provides sewer service to the Woodbound Inn and to the Leeds Group condominiums, the town of Jaffrey would not participate in the project. Accordingly, the town is reluctant to expend resources on the case before knowing the regulatory status of the proposal. If the town of Jaffrey does not provide sewer service to the Woodbound Inn and to the Leeds Group condominiums, the latter parties would be able to service their own sewage disposal needs through a package sewer system or major sewer beds. (Tr. 20).

The parties, particularly the town of Jaffrey, would prefer to hook the condominiums and the Woodbound Inn into the Jaffrey sewer system for environmental reasons since the alternative septic systems could pollute a nearby lake. (Tr. 21).

Commission Analysis:

In the absence of final agreement and a signed contract between the town of Jaffrey and the Woodbound Inn we are not able to determine the merits of the petition. However, the petitioners state that resolution of whether the Town of Jaffrey will need PUC approval of future rate increases is a prerequisite to final negotiation of a contract. Therefore, this analysis and the resulting commission order will address only that issue.

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[2] The issue of PUC jurisdiction over rates of a public utility is enunciated in RSA Chapters 362 through 378. RSA 362:2 defines public utilities as including municipal corporations operating outside their corporate boundaries which own, operate or manage plant or equipment for the furnishing of telephone or telegraph messages or for the manufacturing or furnishing of light, heat, sewage disposal, power or water for the public. In order to determine the applicability of this definition to the specific characteristics of this case it is also important to examine the legislative intent behind these statutes and their interpretation in the courts.

One factor we must consider is the need for regulation. The legislative intent in establishing the commission was to "find a remedy against the evils of monopoly"... *Appeal of Omni Communications, Inc.* (1982) 122 N.H. 860, 451 A.2d 1289). Public utility regulation was not

intended for situations where competitive forces are adequate to protect the public interest. On a similar vein, in 1987, the legislature specifically excluded cellular telephone service based on the competitive nature of this service.

In the case now before us, the petitioner now has at least two viable alternatives to connection to the Jaffrey sewer system. The first alternative is on-site septic disposal and the second is construction of a private sewage treatment facility. The proposed interconnection with the Jaffrey system is preferred by the parties for cost and environmental reasons. (Tr. 21)

In addition to the fact that the system is the result of an arms-length negotiation among the petitioners in the presence of viable alternatives to service by the town of Jaffrey, the fact that the provider of sewer service is a municipality its also of import.

[3] The legislature has specifically exempted municipal utilities from regulation within their municipal boundaries and from certain forms of regulation for utility service outside of their municipal boundaries. RSA 362:2 and RSA 362:4. See *Blair v. Manchester Water Works*, 103 N.H. 505, 42 PUR3rd 237, 175 A.2d 525 (1961).

Earlier this year, the legislature was confronted with a similar situation in which the city of Concord water system supplied a small number of customers in the town of Bow to accommodate said customers who were not otherwise able to secure adequate supplies of water at reasonable cost. When the commission asserted its jurisdiction over Concord's provision of water service to Bow in docket DR 87-047, the legislature responded by exempting municipal water systems from commission regulation so long as the municipalities served twenty-five (25) or fewer customers outside its municipal boundaries and charged said customers a rate no higher than that charged to its customers within the municipality and which serves those customers quantitatively and qualitatively equivalent service to that served customers within the municipality.[1(1)] This amendment manifests a broader legislative concern that municipalities be encouraged to expand various services beyond their municipal boundaries to meet particular public concerns in surrounding areas.

[4] In this case, the town of Jaffrey seeks to expand beyond its municipal boundaries only for the broader public purpose of avoiding unnecessary water pollution not only within its own corporate limits but beyond. The rates to be charged and the quality of service under the pending agreement will be equivalent to the service rendered by the town within its corporate limits. The pending agreements are voluntary and at arms-length between the town of Jaffrey and the other petitioners, each of which has alternative means of satisfying their sewage disposal needs. The town of Jaffrey is contemplating providing sewer service to, at most, two customers outside of its corporate limits — the Woodbound Inn and the condominium development. There is no evidence that regulation here would benefit the public. The commission views this unique set of circumstances as being beyond the scope of what the legislature intended us to regulate.

Although no one of the cited circumstances on its own would necessarily justify exemption of a utility from regulation, the particular combination of circumstances now before us lead us to the conclusion that the town of Jaffrey will not be a public utility, as that

term is defined in RSA 362:2, by providing the proposed sewer services to the Woodbound Inn and the Leeds Group condominiums.

It is important to note, however, that a change in circumstances could cause us to modify this order pursuant to RSA 365:28. For example, should the number of customers service substantially increase, the cost and quality of service vary substantially from that rendered within the town of Jaffrey or other circumstances cited above substantially change, the commission could reassess its findings in this case and determine that the town of Jaffrey should be regulated as a sewer utility under the pertinent statutes.

The appropriate regulatory treatment of the Woodbound Inn and Leeds Group condominiums, on the other hand, is beyond the scope of this order, and would depend on the particular manner in which the sewer service is provided to inhabitants of the Woodbound Inn and Leeds Group Condominiums in question. These matters will be addressed later in these proceedings after the petitioners have submitted final arrangements for our analysis and review.

In summary, the unique circumstances of this case, as described above, do not fall within the definition of public utility service. On receipt of the final contract, we will also consider the remaining issues of this docket pertaining to the regulatory status of the Woodbound Inn and the condominium project. However, we do not have on file a final contract which documents the agreement. Therefore our decision that Jaffrey is not required to seek PUC approval of rate increases made in accordance with the terms of such a contract, is contingent on final review by this commission of that contract. In reviewing the contract we must satisfy ourselves that its terms conform with our understanding of the facts as cited above.

Our order will issue accordingly.

ORDER

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

ORDERED, that under the unique circumstances of this case as cited in the report accompanying this order, the town of Jaffrey would not be a regulated sewer company pursuant to RSA 362:2 except as conditioned in the accompanying report.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1989.

DISSENTING OPINION OF
COMMISSIONER ELLSWORTH

[i] I cannot join my fellow commissioners in their decision to exempt the town of Jaffrey from public utility status in its petition to provide sewer service to the Woodbound Inn and to the Leeds Group Limited condominium project in Rindge, New Hampshire.

The majority makes its finding on the basis that (1) alternatives exist for sewer service thereby obviating the monopolistic character of Jaffrey's service; and (2) the agreement is the result of an arm's length negotiation among the petitioners. I cannot accept the rationale that either of these findings support the exemption of Jaffrey from utility status.

As defined in RSA 362:2, "The term public utility shall include every corporation ... except municipal corporations and county corporations operating within their corporate limits ...

furnishing ... sewage disposal ... for the public..." Under certain circumstances, (RSA 362:4 Water Companies, When Public Utilities), water systems which supply a less number of consumers than ten, each family, tenement, store or other establishment being considered a single customer, may be exempt from any and all provisions of utility regulation. In those cases the municipality is not considered a public utility for the purpose of accounting, reporting or auditing functions. Additionally, a municipality which serves 25 or fewer water customers outside its municipal boundaries and which charges rates no higher than those charged to customers within the municipality, is not considered a public utility so long as the quantity and quality of water served to customers outside the municipality is the same as that served within the municipality. Under no other circumstances are water companies exempt from utility status.

It is important to note that the above

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exemptions apply only to water utilities. Under no circumstances are any other types of utility companies exempt from utility status. More specifically, under no circumstances are sewer companies exempt from utility status. For that reason, we have no authority to exempt the town of Jaffrey from utility status.

My fellow commissioners contend that, in addition to connection to the Jaffrey municipal system, two alternatives exist for the petitioner to receive sewer service. The first alternative is for each of the two prospective customers to construct its own on-site septic disposal system. The second is for the two customers to join together in the construction of a private sewer treatment facility. Since these alternatives exist, there is an implication that the monopolistic nature of Jaffrey's sewer service is negated.

There is no more logic to the first contention than there would be to say that electric companies are not public utilities because utility customers have an opportunity to generate their own electricity from generators purchased from local hardware stores.

The second contention used in support of the petitioner's exemption is the inference that an arm's length negotiation between the petitioners and the customers removes the regulatory atmosphere of the negotiations and releases the town from its utility status. Again, I cannot agree. It is not the acceptability of rate levels or service standards that determines whether a company has utility status. It is the basic fact that they are serving those customers that makes them public utilities.

My fellow commissioners refer to a situation in which the city of Concord intended to sell water service to a small number of customers in the town of Bow as support for its position in this case. However, prior to an amendment of RSA 362:4 in 1988 the commission was faced with the same dilemma regarding water companies that it now faces with sewer companies. The law changed our opportunities to consider water company exemptions and allowed us to exempt Concord from serving Bow. That law did not apply to sewer companies.

For the above reasons, I cannot support my fellow commissioners in their decision.

Having taken this position, I am compelled to make a distinction between what *has* to be and what *ought* to be. I have dissented in this case only because I find no opportunities in the existing

statutes to take any other position. I am persuaded by the testimony in this case, however, that there should be statutory provisions which would allow municipal sewer companies the same opportunities for exemption in certain cases that now exist for municipal water companies.

Accordingly, I join my fellow commissioners in supporting legislation which will give to municipal sewer companies the same exemption opportunities currently afforded municipal water utilities. Subsequent petitions such as Woodbound/Jaffrey will then be able to be treated in a way which will assure that the public will be served a minimum of regulatory intervention.

FOOTNOTES

[1]RSA 362:4 as amended by 1988 N.H. Laws 134:1, eff. April 20, 1988. Although the majority of the commission opines that the legislative intent behind existing law justifies our opinion in this case, the commission nonetheless recently recommended that the legislature clarify RSA 362:4 by explicitly including the provision of sewer service by municipalities as qualifying for the same exemption afforded municipal water utilities.

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NH.PUC*01/05/89*[51668]*74 NH PUC 5*Fuel Adjustment Clause

[Go to End of 51668]

74 NH PUC 5

Re Fuel Adjustment Clause

Applicants: Concord Electric Company and Exeter and Hampton Electric Company

DR 88-177, DR 88-181
Order No. 19,282

New Hampshire Public Utilities Commission

January 5, 1989

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

Page 5

AUTOMATIC ADJUSTMENT CLAUSES, § 10 — Fuel clause — Direct costs — Fossil fuel — Purchased power — Electric utilities.

[N.H.] The fuel adjustment clause surcharge credits of two electric utilities were revised to reflect increased oil prices, a change in wholesale rates, growth in demand, and a correction to the dispatch of generating units.

APPEARANCES: For Concord Electric and Exeter & Hampton Electric Company, Elias G. Farrah, Esquire.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on December 22, 1988 to review the Fuel Adjustment Clause (FAC) filings of Concord Electric Company and Exeter & Hampton Electric Company.

Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") presented two witnesses, Susan G. Hersey, and Karen M. Asbury.

On December 1, 1988 Concord and Exeter & Hampton filed revised FAC rates for the period January — June, 1989. Updated on December 16, 1988 the two companies filed revised FAC surcharge credits of ($0.00791) and ($0.00811) per KWH for Concord and Exeter & Hampton respectively.

On December 16, 1988 the companies filed testimony and exhibits which supported the proposed revision to their respective FAC surcharge credits.

Concord proposed an FAC increase of $0.00311 per KWH and Exeter & Hampton of $0.00225 per KWH. Both companies attribute the increase primarily to increased oil prices and a correction to the dispatch of the Beaverwood and Highgate units. The companies further state that oil prices have been increased in the production costing to reflect the most recent prices available and to adjust for the slight upward pressure expected from the quotas set during the November OPEC meeting.

The instant filing covers the six month period from January through June, 1989. In testimony a witness for the companies provided the following information. The base energy charge has increased slightly due to the Bangor Hydro contracts regular annual increases which occur in January on their fixed charges. The fuel charge has increased over the last period due to a continued growth in customers demand for both companies, a change in wholesale rates from Unitil Power Corporation, and the load factor characteristics during the winter period.

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

1. wholesale rates from UNITIL Power and to Concord & Exeter;

2. sales forecast;

2. lost and unaccounted for and company use;

3. NYSEG contract negotiations

4. NEPOOL readjustment of capability responsibility;

5. the short term avoided cost rate that will apply to sales from small power producers; and

6. the sale of energy to Unitil Power Corp.

Based on the evidence provided, the Commission finds the FAC rate of FAC surcharge credits of ($0.00791) and ($0.00811) per KWH for Concord and Exeter & Hampton respectively to be just and reasonable and will approve the rate for the six month period beginning January 1989 and ending June, 1989

Our Order will issue accordingly.

ORDER

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

ORDERED, that 12th Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge credit of ($0.00791) per KWH for the

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months of January through June 1989, be, and hereby is, permitted to go into effect for the month of January, 1989; and it is

FURTHER ORDERED, that 38th Revised Page 19A of Exeter Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of ($0.00811) per KWH for the months of January through June 1989, be, and hereby is, permitted to go into effect for the month of January, 1989; and it is

The above noted rates have been adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 16,524.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1989.

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NH.PUC*01/05/89*[51669]*74 NH PUC 7*Purchased Power Adjustment Clause

[Go to End of 51669]

74 NH PUC 7

Re Purchased Power Adjustment Clause

Applicants: Concord Electric Company and Exeter and Hampton Electric Company

DR 88-182, DR 88-183
Order No. 19,283

New Hampshire Public Utilities Commission

January 5, 1989

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

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

[N.H.] The purchased power adjustment clause rates of two electric utilities were revised to reflect a change in wholesale rates charged by the companies' sole energy supplier.

APPEARANCES: Elias G. Farrah, Esquire for Exeter & Hampton Electric Company and Concord Electric.

By the COMMISSION:

REPORT

On December 1, 1988 ("Exeter & Hampton") and Concord Electric Company ("Concord") (collectively the "companies") filed revised PPAC rates for the period January — June, 1989. The Public Utilities Commission held a duly noticed hearing at its office in Concord on December 22, 1988 to review the Purchased Power Adjustment Clause (PPAC) filings of Exeter & Hampton and Concord.

On December 16, 1988 the two companies filed revised PPAC of $0.01638 per KWH for Exeter & Hampton and Concord respectively. The companies also filed testimony and exhibits which supported the proposed revision to their respective PPAC.

The December 22, 1988 hearing on the PPAC was heard along with the companies FAC filings (DR 88-177, DR 88-181). Exeter & Hampton Electric Company and Concord Electric Company presented two witnesses, Susan G. Hersey, and Karen M. Asbury. Testimony by the companies' witness revealed an increase in the companies PPAC rates from their currently effective rates.

The instant filing covers the six month period from January through June, 1989. In testimony a witness for the companies provided the following information, the increase in purchase power is caused by increased wholesale rates from the companies' sole supplier of energy, Unitil Power Corporation (Unitil). Unitil'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.

Based on the evidence provided, the Commission finds the PPAC rate of PPAC of $0.01638 and $0.01638 per KWH (includes Franchise Tax Effect) for Concord and Exeter & Hampton respectively, to be just and reasonable and will approve the rate for the six month period beginning January 1989, and ending June 1989.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 9th Revised Page 18 of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel of $0.01638 per KWH for the months of January through June 1989, be, and hereby is, permitted to go into effect for the month of

January, 1989; and it is

FURTHER ORDERED, that 9th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel of $0.01638 per KWH for the months of January through June 1989, be, and hereby is, permitted to go into effect for the month of January, 1989; and it is

The above noted rates have been adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 16,524.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1989.

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NH.PUC*01/05/89*[51670]*74 NH PUC 8*Fuel Adjustment Clause

[Go to End of 51670]

74 NH PUC 8

Re Fuel Adjustment Clause

Applicant: Granite State Electric Company

DR 88-174
Order No. 19,284

New Hampshire Public Utilities Commission

January 5, 1989

ORDER revising the fuel adjustment clause, oil conservation adjustment, and qualified facility power purchase rates of an electric utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Fuel clause — Electric utility.

[N.H.] An electric utility was authorized to implement a revised fuel adjustment clause rates where record evidence demonstrated that the revised rate was just and reasonable. p. 9.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel clause — Fossil fuel — Oil conservation adjustment.

[N.H.] An electric utility was authorized to implement a revised oil conservation adjustment rate where record evidence demonstrated that the revised rate was just and reasonable. p. 9.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Energy clause — Qualifying facility power purchase rate — Electric utility.

[N.H.] An electric utility was authorized to implement a revised qualifying facility power purchase rate where record evidence demonstrated that the revised rate was just and reasonable. p. 9.

APPEARANCES: For Granite State Electric Co., Philip H.R. Cahill, Esquire and Eugene F. Sullivan, Finance Director and Sarah P. Voll, Chief Economist for Staff.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord, New Hampshire on December 21, 1988 to review the Fuel Adjustment Clause (FAC) filing of Granite State Electric Company for the first half of 1989.

On December 2, 1988 Granite State Electric Company (Granite) filed a Fuel Adjustment Clause (FAC) factor of $.00312 per KWh, an Oil Conservation Adjustment rate (OCA) of $.00023 per KWh assuming the NEP revised OCA is not permitted.

On December 14, 1988 Granite filed a revised Fuel Adjustment Charge requesting

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$.00280 per KWh.

[1-3] The instant filing covers the six month period from January through June 1989. In support of these filings Granite presented two witnesses, Richard G. McLaughry and Nancy H. Sala. In testimony a witness for Granite provided the following information. Granite proposed an OCA increase of $0.00099 per KWh, this was based upon a filing made by New England Power Company (NEP) at the Federal Energy Regulatory Commission (FERC). New England power Company filed to amend its Oil Conversation Adjustment Clause (OCA), the revision would put a floor on NEP's OCA charge of 1.1 mills per KWh. A second alternative calculation was filed assuming that the FERC suspended the change for five months as permitted by law. Specifically, if the NEP revised OCA was not permitted to take effect until June 1, 1989, Granite then proposed a OCA increase of $0.00023 per KWh.

During direct examination, Richard G. McLaughry stated he would notify the commission and provide a copy of the FERC order on NEP's OCA. This was submitted to the commission and it was noted that the FERC Order issued on December 30, 1988 states that NEP's proposed OCA was accepted for filing and suspended, to be made effective May 1, 1989, subject to refund.

Granite also proposed the following energy and capacity rates for qualifying facilities at the sub-transmission, primary and secondary distribution levels to be paid on a per kilowatt hour basis:

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

	Capacity	*Peak*	*Off Peak*	*Average*
Subtransmission	2.228¢	3.027¢	2.232¢	2.228¢
Primary	2.439¢	3.251¢	2.342¢	2.439¢

Secondary	2.551¢	3.365¢	2.397¢	2.551¢

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

1. Qualifying facility power purchase rate, the principal change in the addition of a capacity payment to be paid to qualifying facilities;

2. estimated sales in purchased power;

3. calculation of the interest for period May and June 1989;

4. forecast for oil and coal prices during the six month period of 1989;

5. forecast based on a realization of the OPEC agreement;

Based on the evidence provided, the commission finds the revised FAC rate of $.000280 per KWh for Granite, the OCA surcharge of $.00023 per KWh, and the originally filed QF rates as filed to be just and reasonable and will approve these rates for the six month period beginning January 1989 and ending June 1989.

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 30 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of $0.00280 per KWh for the months of January through June 1989, be, and hereby is, permitted to go into effect for the month of January, 1989; and it is

FURTHER ORDERED, that Twenty-third Revised Page 57 of Granite State Electric Company's tariff, NHPUC No. 10 — Electricity, providing for an Oil Conversation surcharge of $.00023 per KWh for the months of January through June 1989, be, and hereby is, permitted to go into effect for the month of January, 1989; and it is

FURTHER ORDERED, that First Revised Page 2, Second Revised Page 11, First Revised Page 11-A and First Revised Page 11-B of Granite State Electric Company's tariff, NHPUC No. 10 — Electricity, providing for an Qualified Facility Power Purchase Rate, be, and hereby is, permitted to go into effect during January through June, 1989.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1989.

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NH.PUC*01/06/89*[51671]*74 NH PUC 10*Southern New Hampshire Water Company, Inc.

[Go to End of 51671]

Re Southern New Hampshire Water Company, Inc.

DF 88-075
Order No. 19,286

New Hampshire Public Utilities Commission

January 6, 1989

ORDER authorizing a water utility to increase its short-term debt limit.

SECURITY ISSUES, § 98 — Short-term debt limit — Water utility.

[N.H.] A water utility was authorized to increase, on an interim basis, its short-term debt limit to finance construction required to provide adequate service; the utility agreed to decrease its short-term debt limit when it receives additional equity and long-term debt capital.

By the COMMISSION:

ORDER

WHEREAS, the commission has received a petition from Southern New Hampshire Water Company, Inc. (Southern or the Company) requesting that the short term debt borrowing limit be increased to $6,250,000 until March 31, 1989; and

WHEREAS, Southern states that construction in Pelham, for the residents of Stonegate to be able to have water for the holidays as well as this winter, has been moved from 1989 to 1988 and is the major cause of the financial situation the Company now finds itself in; and

WHEREAS, Southern states it needs certain signatures of its Treasurer, who will be starting at the Company on January 15th, for documentation on permanent financing; and

WHEREAS, Southern states that problems are aggravated due to numerous vacations by personnel including the Board of Directors, who might be able to substitute and accelerate the long term equity financing; and

WHEREAS, Southern states that $1.5 million of equity to be received prior to the end of the first quarter of 1989 will be used to lower the short term limit; and

WHEREAS, Southern states that when final determination of DR88-055 is received it will be able to return to the long term debt market for which it anticipates utilizing to place approximately $5 million of long term debt capital; it is

ORDERED, that Southern New Hampshire Water Company, Inc.'s level of short term debt shall be limited on an interim basis to be not in excess of $6,250,000; and it is

FURTHER ORDERED, that the short term debt level will remain in effect through March 31, 1989. At that time a new level of short term debt will be set based upon the additional planned equity infusion and the long term debt financing that is presently being pursued; and it is

FURTHER ORDERED, that on January first and July first of each year Southern New

Hampshire Water Company, Inc. shall file with this Commission a detailed statement, showing the disposition of proceeds of such short term debt until the whole of such proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this sixth day of January, 1989.

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NH.PUC*01/08/89*[51672]*74 NH PUC 11*Southern New Hampshire Water Company, Inc.

[Go to End of 51672]

74 NH PUC 11

Re Southern New Hampshire Water Company, Inc.

DR-88-055
Order No. 19,287

New Hampshire Public Utilities Commission

January 8, 1989

ORDER approving a stipulated increase in rates for water distribution service.

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1. RATES, § 595 — Water rate design — Stipulation — Service to newly-developed area.

[N.H.] The commission adopted a settlement agreement establishing the rate base, cost of capital, rate of return, and rate design for the core and satellite divisions of a water utility; however, the settlement did not establish the rates to be charged in a newly-developed portion of one of the utility's satellite divisions; the utility was directed to file tariff pages with data demonstrating that the calculation of the chosen rates for the new development was consistent with the revenue level approved by the commission. p. 14.

2. RETURN, § 115 — Water — Reasonableness — Stipulation.

[N.H.] An overall rate of return of 11.14% based on a stipulated cost of equity of 11.44%, a stipulated cost of long-term debt of 11.9%, and a stipulated cost of short term debt of 9% was adopted as reasonable in a water rate case. p. 14.

3. APPORTIONMENT, § 41 — Customer accounting costs — Water utility.

[N.H.] The customer accounting costs of a water utility were allocated on the basis of the number of customers served. p. 15.

4. APPORTIONMENT, § 41 — Administrative and general expenses — Water utility — Stipulation.

[N.H.] The administrative and general expenses — i.e., those expenses not directly attributable to core or satellite divisions — of a water utility were allocated to the various system divisions based on a stipulated formula. p. 15.

5. EXPENSES, § 89 — Rate case expense — Water utility — Stipulation.

[N.H.] A stipulated rate case expense of $50,000 was approved in a water rate case; the expense was included as a pro forma adjustment to be amortized over a two-year period and recovered as a part of base rates. p. 15.

6. RATES, § 595 — Water rate design — Minimum charges — Consumption charges — Rate averaging.

[N.H.] The stipulated rate design approved by the commission in a water rate case decreased minimum charges, increased consumption charges, and had the effect of averaging the rates for the divisions within each rate design area. p. 15.

7. MERCHANDISING AND JOBBING. § 1 — Non-tariffed jobbing functions — Charges — Water utility.

[N.H.] A water utility was authorized to charge the following for nontariffed jobbing functions: (1) a $10 charge for customer requested water quality tests; (2) a $250 charge for drafting services; (3) a $75 dollar charge for back flow testing, and (4) a $250 charge for construction site inspections. p. 17.

8. RATES, § 619 — Fire protection charges — Per hydrant fee — Water utility.

[N.H.] A water utility was authorized to charge a per month/per hydrant municipal or private fire protection charge in one of its satellite divisions. p. 19.

9. RATES, § 595 — Water rate design — Service to newly-developed area — Recovery of

revenue deficiency.

[N.H.] A water utility was authorized to increase general service rates and fire protection charges to recover a portion of the revenue deficiency associated with its provision of service to a newly-developed area located within one of its satellite divisions; however, the utility was prohibited from recovering the entire revenue deficiency associated with serving the newly-developed area; it was found that inasmuch as the utility's investment in facilities to serve the new development was speculative, there was no justification for requiring existing ratepayers to support all of the costs of providing the service. p. 19.

10. RATES, § 595 — Water rate design — Elimination of rate subsidy.

[N.H.] The commission overturned a water rate subsidy allowed pursuant to a previously approved stipulation where (1) the utility had not complied with other terms of the stipulation, (2) the utility did not achieve the level of growth necessary to support the subsidy, and (3) circumstances had changed rendering the subsidy unjust and unreasonable. p. 19.

11. RATES, § 619 — Fire protection charges — Water utility.

[N.H.] A water utility was authorized to implement a municipal fire protection tariff in one of its satellite divisions; however, if after exercising due diligence the utility is unable to collect the rate from the municipality, it may charge for the service under a private fire protection tariff. p. 19.

12. RATES, § 645 — Procedure — Scope — Water rate case — Main extension agreements.

[N.H.] The commission declined to consider a main extension agreement in the context of a water rate proceeding and, instead, directed the utility to refile the agreement in another docket established for the purpose of investigating special contracts for water main extensions. p. 21.

APPEARANCES: James C. Hood, Esq. and Steven V. Camerino, Esq. of McLane, Graf, Raulerson & Middleton on behalf of Southern New Hampshire Water Company, Inc.; Joseph Rogers, 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 ON PETITION FOR
PERMANENT RATE INCREASE

This report concerns the petition of Southern New Hampshire Water Company, Inc. (Southern) for permanent rates. The report details the procedural history of the case, provides finding of fact and analysis. It approves the settlement of the parties concerning core and satellite rates. It sets levels of rates for water service, private fire protection and public fire protection in the Amherst service area.

I. *Procedural History*

On December 11, 1987, Southern filed a request for a rate increase, effective January 11, 1988, of 10.33% for its core system and satellite systems except the policy divisions. This filing was purportedly in compliance with commission report and order no. 18,568, in *Re Southern New Hampshire Water Company, Inc.*, 72 NH PUC 58 (1987) (hereinafter order no. 18,568).

In order no. 18,568, the commission approved a settlement agreement between Southern New Hampshire and the staff that allowed Southern to update its cost of capital, rate base, and expenses through the year ending August 31, 1987. This agreement provided that if the commission suspended this filing the staff agreed that existing rates would be made temporary as of the date of the suspension. The parties further agreed that, in one year Southern would reduce by 50% the subsidy from the Hudson and Litchfield divisions to the Amherst division and eliminate the entire subsidy in two years.

Pursuant RSA 378:6 the commission suspended the effective date of the tariff in DR

86-131, supplemental order no. 18,971 (January 8, 1988). The existing rates were made effective as temporary rates.

On April 29, 1988, the commission issued an order of notice scheduling a prehearing conference on May 19, 1988. This order provided that publication would be made no later than May 3, 1988 and that Southern would notify its customers by first class U.S. mail postmarked no later than May 3, 1988. On May 3, 1988, the commission issued a revised order of notice allowing the company to make the publication and notification no later than May 5, 1988. On

June 13, 1988, the commission issued another order of notice scheduling a public hearing at the Underhill School, Martin's Ferry Road, Hooksett, New Hampshire on the June 22, 1988, to facilitate public comments.

In their orders of notice the commission stated that it may consider such issues as whether the rate request should be averaged over Southern's total system (including the policy division) or tailored to each individual system in accordance with current commission practice. Since all of Southern's customers could be affected by the outcome of this docket, the commission required individual notification of each customer (policy and non-policy).

Fay H. Halsband, pro se; the Green Hills Residence Association, Robert Chubbuck, and Wes Lunquist on behalf of the Avery Estates Subdivision filed motions to intervene. The Consumer Advocate notified the commission of his intervention on April 19, 1988.

At the procedural conference on May 19, 1988, the Green Hills Association, Fay Halsband and the Avery Estates Subdivision agreed to participate through the Consumer Advocate's office to the extent possible regarding cross-examination, data requests, pleadings, and other aspects of their participation. Southern did not object to the intervention and the commission granted the interventions upon the above conditions. By its report and order no. 19,134 (July 21, 1988) the commission set a procedural schedule culminating in hearings on October 18-20 and 25-26, 1988.

On July 26, 1988 in *Re Southern New Hampshire Water Company, Inc.*, DR 87-135, Southern and the staff entered into an agreement, portions of which apply in this proceeding. They agreed to a long-term debt of 11.90%, a cost of short-term debt of 9%, and a cost of equity of 11.44%. They agreed to a capital structure of 41.22% long-term debt, 20.51% short-term debt, and 38.27% equity to produce an 11.14% overall rate of return. They stipulated that this rate of return would apply in both DR 87-135 and DR 88-055. The commission approved the entire stipulation in DR 87-135, Report and Order No. 19,153 (Aug. 25, 1988) (73 NH PUC 305). The stipulation also sets certain requirements for the next rate case filed after DR 88-055.

On September 30, 1988, staff advised the commission that the company's data responses were so incomplete that the staff was unable to adequately investigate the reasonableness of the company's proposed rate increase. In order no. 19,191 (September 30, 1988), the commission required the company to provide complete and detailed data responses no later than October 10, 1988, at 8:30 a.m. It further required that any additional testimony be prefiled no later than 8:30 a.m. on October 10, 1988.

On October 14, 1988, the commission issued a notice to all parties that the parties had proposed a revised procedural schedule and that this schedule would be approved. It provided for two prehearing conferences to be held on October 18 and October 26, 1988; it continued the hearing scheduled for October 19, 20, and 25th; and it scheduled a hearing on the merits on November 21, 22, and 23, 1988 at 10:00 a.m.

At the November 21, 1988 hearing the staff requested that the commission continue the hearing on the merits until November 22 and simply open the hearing on November 21, for the purpose of taking public comments. Southern proposed that the commission continue the portion of the proceeding dealing with the Amherst subsidy until November 22, 1988, but opened the hearing on November 21, 1988 for the purpose of presenting the settlement concerning

Southern's core and satellite rates. The commission granted the staff's motion.

The hearing on the merits was held on November 22, and 23, 1988. The staff and Southern filed briefs on November 30, 1988.

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II. *Positions of the Parties*

Southern and the staff entered into an agreement in which they disposed of the rates for the core and satellite divisions. They did not agree as to the rates to be charged in the Bon Terrain portion of Southern's Amherst division. The following positions of the parties is divided between the presentation of the settlement agreement and a presentation of the Bon Terrain rate arguments.

A. The Settlement

[1] The settlement agreement establishes Southern's rate base, cost of capital, rate of return, rate design, as well as other revenue, expense, and rate base issues for the Hudson, Londonderry, Litchfield, Smythe Woods, Avery, Goldenbrook, Hardwood, Pilgrim Hills, Williamsburg, W&E, Sawmill, and East Derry divisions. It also establishes a rate base, cost of capital, and rate of return for the Bon Terrain division. The settlement is based on a test year ending August 31, 1988. The following subsections summarize the terms of the agreement.

1. Rate Base

The parties stipulated to a thirteen month average rate base of $10,020,894 attributable to all of Southern's non-policy divisions including Bon Terrain. The stipulated rate base was calculated by making several changes to the company's original filing.

Southern excluded the lease expense for its former offices in Hudson because it had purchased a new Londonderry office building that was in use by the end of the test year. The rate base includes that portion of the building and land that may be allocated to the non-policy divisions ($703,168). Rate base does not include additional expenditures made to improve this new facility. Southern will address these expenses in the appropriate subsequent proceeding.

Southern added $148,887 to rate base for an eight inch main connecting the Smythe Woods division to Manchester Water Works. Southern installed a sixteen inch main (costing $180,000) connecting Smythe Woods to Manchester Water Works, pursuant to a wholesale water contract. However, Southern agreed for the purpose of this case to include only the portion of that expense attributable to an eight inch main.

Southern diminished the rate base by $7,036 to account for the sale of the Melendy Road property in 1988. Southern also excluded property taxes of $609 on the Melendy Road property and $313 dollars of depreciation expense attributable to the property in 1988. Southern decreased its depreciation expense by $134 for the retirement of plant at Smythe Woods and increased depreciation expense by $1,489 for plant additions at Smythe Woods.

2. Rate of Return

[2] In its original filing Southern used estimated property tax figures because actual property tax bills were not available. Southern used the actual property tax of $441,583 for purposes of

settlement.

The company agreed to reduce, from 8.16% to 8%, the New Hampshire Business Profits Tax Rate used to calculate the tax effect on revenues. The company corrected its filing by adding (rather than subtracting) deferred income taxes for contributions-in-aid-of-construction to the Litchfield division rate base.

The company adjusted its filing to recognize the effect of interest synchronization. In response to the staff's request the company agreed to reduce operating expenses by $2,592 to reflect the flow-back of excess deferred taxes. While the company is in the process of reviewing the deferred tax issue and the actual remaining life of Southern's property, it agreed for purposes of this case to use the excess deferred tax adjustment.

During an internal audit, Southern found that capitalized interest was incorrectly continued on Well Account 314 and Storage Tank Account 341 in 1986 and 1987 after these capital items were placed in service. Therefore, Southern reduced its rate base for the Bon Terrain system by $52,780.

In its filing, Southern requested an overall rate of return of 11.67% Thereafter, Southern

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agreed in DR 87-135 to use an overall rate of return of 11.14% based on a stipulated cost of equity of 11.44%, a stipulated cost of long-term debt of 11.9%, and a stipulated cost of short-term debt of 9%. The commission approved this rate of return in order no. 19,153 (August 25, 1988) (73 NH PUC 305). Therefore, Southern agreed to revise its filing in DR 88-055 to reflect the 11.14% rate of return.

3. Expenses

[3, 4] For purposes of this case the parties agreed that Southern shall allocate customer accounting costs on the basis of the number of customers; and that Southern shall allocate general and administrative expenses and other expenses (expenses not directly attributable to its core, core-Litchfield, or satellite division), to the various divisions based on the following formula:

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

$$\frac{\text{Rate base of subject system}}{\text{Total company rate base}} + \frac{\text{Customers in subject system}}{\text{Total company customers}} \div 2$$

The parties agreed that Southern shall use data as of the end of the prior calendar year.

Beginning July 1, 1989 until December 31,
1989 the company shall use the following formula to allocate these expenses among its core, satellite, and policy divisions.

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


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Revenue of Subject System   + Rate Base of the Subject System +
Total company revenue         Total Company Rate Base

Customers in Subject System
Total Company Customers    ÷ 3
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Prior to December 31, 1988, the company shall submit to the staff a revised allocation formula which shall include a factor for payroll.

4. Revenues

Southern increased its test year revenues by $6,316 to account for the addition of twenty new customers in the Smythe Woods system.

5. Net Utility Operating Income

The parties agreed to a test period net utility operating income of $905,367. This amount is attributable to all non-policy systems including Bon Terrain.

6. Revenue Deficiency

The total revenue deficiency is $243,233 for the non-policy divisions other than Bon Terrain and a revenue deficiency of $104,198 for Bon Terrain. The total non-policy revenue deficiency is $347,431. The parties did not agree what portion, if any, of the Bon Terrain revenue deficiency might be collected through rates charged Bon Terrain customers or other customers.

7. Rate Case Expense

[5] The parties agreed to rate case expenses of $50,000. These expenses shall be included as a pro forma adjustment to be amortized over a two year period and recovered as part of base rates.

8. Rate Design

[6] The parties agreed to three different rate designs: 1) The core rate design to be charged in the Hudson, Londonderry, Sawmill,

Smythe Woods, and Avery divisions; 2) the Litchfield core rate design to be charged in Litchfield; and 3) the satellite rate design to be charged in the Williamsburg, Goldenbrook, W&E, East Derry, Hardwood, and Pilgrim Hills divisions. The core division of Londonderry and Hudson will be expanded to include the Sawmill, Londonderry, and Avery divisions based upon the representation of Southern that these divisions will be permanently connected to the core distribution system by July 1, 1989, August 1, 1989, and November 1, 1989 respectively. Should these connections not occur within this time frame, the staff reserved the right to petition the commission to re-examine the level of rates for such divisions. Each of these rate designs also decreases the minimum charge and increases the consumption charge. This agreement has the effect of averaging the rates for the divisions
within each rate design area.

The stipulated rates include the increase intended to recover $191,079 of the revenue deficiency. The parties did not agree as to the proper rates for Bon Terrain.

The following chart shows the effect of the stipulated rate increase for each division on the average use customer. It does not show the effect on customers at every usage level but rather is provided for illustrative purposes to show the effect on the customer of average usage. It shows:

1) the division
2) the average use in hundred cubic feet
in that division,
3) the existing rate per quarter,
4) the proposed rates per quarter,
5) the difference between these two rates, and
6) the percentage change.

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

Division	*Usage in 100 cu. ft.*	*Existing Rates*	*Proposed Rates*	*Variance*	*Percent Charge*
Hudson	22	$ 70.33	$ 74.14	$ 3.81	5.42%
Litchfield	23	$ 90.50	$ 95.96	$ 5.46	6.03%
Londonderry	23	$ 92.22	$ 76.84	($15.44)	-16.73%
Sawmill	30	$112.23	$ 95.76	($16.47)	-14.67%
Smythe Woods	10	$ 58.95	$ 41.70	($17.25)	-26.26%
Avery	36	$111.67	$111.98	$ 0.31	0.28%
Williamsburg	23	$ 94.26	$109.25	$14.99	15.90%
Goldenbrook	25	$ 86.60	$117.72	$31.12	35.94%
W&E	23	$ 85.26	$109.25	$23.99	28.14%
East Derry	16	$ 83.61	$ 79.60	($ 4.01)	-4.80%
Hardwood Division	9	$ 54.84	$ 49.94	($ 4.90)	- 8.93%
Pilgrim Hills	25	$ 91.39	$117.72	$26.33	28.81%

9. Tariff Pages

Southern agreed to accompany final tariff pages with supporting data calculating the rates. The parties agreed to certain tariff provisions applicable to all of the company's non-policy divisions. These tariffs provisions do not include water rates for Bon Terrain, they do not determine whether Southern is authorized to collect for fire protection services in Bon Terrain nor, the rate for such fire protection services. The parties agreed to present their positions on these issues before the commission for determination.

The revised tariff pages reflect the following increased charges for services: a) An increase of thirty dollars in the fee for reconnecting water service previously disconnected for nonpayment of a bill, b) a charge of nine dollars to new customers to cover the cost of connecting and implementing service, c) a charge of 12% interest per annum, or the maximum rate allowed by law, which ever is less, on overdue accounts; c) the actual cost incurred by the company from damages or loss of water caused by meter or hydrant tampering. These revisions and other revisions listed in subsection 10 are intended to collect $52,154 of the

revenue deficiency.

10. Additional Revenues

[7] Southern intends to recover the remainder of the revenue requirement by charging the

following for non-tariffed jobbing functions. a) A ten dollar charge for customer requested water quality tests. b) A $250 charge for drafting services. c) A seventy-five dollar charge for back flow testing. d) A $250 charge for construction site inspections.

11. Miscellaneous Provisions

The parties agreed to a January 8, 1988 effective date for all tariff changes. The parties agreed to allow the company to recoup the difference between temporary and permanent rates during the eighteen month period beginning with services rendered on the date of the commission order.

The parties agreed to allow Southern to bill core division customers on a monthly or quarterly basis, and to continue to bill all other customers quarterly. After the commission decision on Bon Terrain rates, Southern agreed it will file a report of proposed rates for all non-policy divisions reflecting rates and revenues totalling the aggregate agreed revenue deficiency as adjusted by the commission.

B. Bon Terrain Rates

1. Southern's Position

Southern New Hampshire argued two issues with respect to Bon Terrain. One issue was the level of rates for water service and public and private fire protection for Bon Terrain in the Town of Amherst. The second issue was the applicability of order no. 18,568 in docket DR 86-131 (72 NH PUC 58).

Southern argued that, of the $104,198 revenue deficiency, $59,915 is the cost of providing fire protection service. It allocated 60.4% of gross plant to fire protection ($251,466). It allocated the entire storage tank investment (minus contributions) and 20% of the distribution mains to fire protection. Southern proposed a municipal fire protection rate of $224 per month.

Southern proposed to allocate the remaining $43,085 revenue requirement evenly between Southern's stockholders and its core division. It contended that the core should cover $21,542.5 of the revenue requirement by a $.055 per ccf adder or by $2.89 quarterly bill adder.

It argued that the public policy favoring rate uniformity supports setting Bon Terrain's rates at the same level as those of Southern's other satellites. This argument, it argues, is further supported by the fact that Southern will interconnect Bon Terrain to Pilgrim Hills in 1989.

If the commission does not approve a fire protection tariff, Southern argues that order no. 18,568 (72 NH PUC 58) applies requiring Southern to eat fifty percent ($52,099.) of the subsidy and recover the other fifty percent as either a $.136 ccf adder or $1.18 quarterly bill adder. It argued that the commission should interpret its existing Hudson municipal fire protection tariff to apply to the Town of Amherst. If the Hudson tariff does not apply, Southern is requesting a tariff that states, if the Town of Amherst accepts fire protection service, what the charge is, per hydrant.

In the alternative, Southern requested that the commission allow it to bill private individuals for private fire protection service. It argued that its private fire protection tariff would apply to any service that was not public fire protection. It wants to charge the landowner on which the hydrant is located for the service. It also requested an increase to its current private fire

protection rate.

Southern argued that the Town of Amherst wanted fire protection and that the town supported Southern's original petition to provide service in Amherst. This petition included a plan to provide municipal fire protection.

Southern averred that the town has benefited in many ways from the existence of the fire hydrants. These benefits include increased land values, increased tax revenues, lower insurance premiums, and commercial growth.

Southern contended that the town gave all

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of the necessary permits to allow the fire protection system to be put in place and the fire chief designated the hydrant sites. Southern asserted that the existence of public fire protection was an essential element of the Bon Terrain water service agreement with Nash and Tamposi.

Southern averred that it is illegal to provide free service. Southern contends that, by its language, its Hudson municipal fire protection tariff applies to "all fire protection service, rendered to any city, town, village or other political subdivision for the company's service area for purposes of public safety not served under any other fire protection tariff ...."

Southern also asserted that the commission should uphold its decision in DR 86-131 order no. 18,568 (72 NH PUC 58). It argued that the staff knew at the time it signed the DR 86-131 settlement that Bon Terrain would take time to develop and that its development would be uncertain. It averred that the two step reduction in the Bon Terrain subsidy resulted from extensive negotiations. It contended that the staff has not given a compelling reason to modify the commission's order. Southern argued that a modification would be unjust because it agreed to a lower rate increase in consideration for and in reliance upon the subsidy reduction agreement. It contended that the subsidy was lawful and reasonable. It averred that a decision to overturn the order would deter future utility compromise in rate cases.

Southern argues that the following interpretation should be given to order no. 18,568. It avers that the Amherst subsidy was supposed to be reduced by fifty percent in this rate filing and then be eliminated in the subsequent rate filing.

During the hearing on the merits, Southern filed a water main extension and service agreement between Southern and the Sevearns Group. This agreement concerns the development of a well, pump, and distribution system to serve a proposed 217 unit development in the north-east portion of Southern's service area. Southern submitted the contract as evidence in the Bon Terrain portion of this proceeding.

It alleged that the agreement does not require commission approval because it does not require Southern to spend any capital and because the development is within its franchise. The contract requires the developer to install a distribution system and contribute $150,000 to the development of a well and a pump house. It argues, in the alternative, that if approval is necessary it seeks approval in this docket.

2. Staff's Position

The staff argued that Southern did not show that the town had induced Southern to provide fire protection or that the town understood that it would be obligated to pay for it.

The staff contended that the Bon Terrain revenue requirement should not be subsidized by other divisions. It alleged that Bon Terrain was a speculative venture and that the actual revenues have fallen far short of those projected. It argued that the company has not aggressively exercised its franchise. It asserted that the stockholders should cover any shortfall between just and reasonable rates based on the cost of service and the revenue deficiency.

The staff asserted that by the terms of the approved stipulation, order no. 18,588 should be given the following interpretation. The Amherst subsidy should be reduced by fifty percent in January of 1988 and should be eliminated by 1989.

The staff averred that the staff and the commission were no longer required to comply with order no. 18,568 for several reasons. First, Southern had not complied with various aspects of the agreement so the staff and the commission were no longer bound to comply with the agreement. Second, it contended that it is legally obligated to investigate the provisions of stipulations if they become unjust, unreasonable, or unlawful. The staff averred that the proposed rates would be discriminatory and, therefore, unlawful. Thus, it asserted that it has a legal obligation to investigate. It argued that it would be *ultra vires* for it not to investigate. It took the position that the commission may overturn its own orders as long as it gives notice and an opportunity to be heard and the amendment or rescission is legally correct.

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III. *Findings of Fact*

[8] The company has provided sufficient evidence to support the proposed stipulation agreement. The following findings of fact concern the request for rates in the Bon Terrain division.

Southern has billed the Town of Amherst for fire protection service. However, the town has returned these bills stating its understanding that it is liable to pay only after a hydrant has been used.

The hydrant rates proposed by Southern would provide an over recovery. Southern proposed to charge $220 per month per hydrant, or $2,640 per year. Southern serves twenty-nine hydrants. This would produce revenues of $76,560 when the alleged fire protection revenue deficiency is only $59,915.

Southern received commission authority to operate as a public utility in its Amherst franchise in *Re Southern New Hampshire Water Company*, 68 NH PUC 565 (1983). At the hearing on that petition, Southern represented to the commission that it would have more than 100 customers in the fourth or fifth year of phase I of the project. Phase I was to serve the Bon Terrain development and Phase II was to move outside of the Bon Terrain development into the remainder of the Amherst service area.

In docket *Re Southern New Hampshire Water Company, Inc.*, DE 84-3, Southern filed a main extension application and agreement among Southern and Gerald Q. Nash and Samuel A.

Tamposi, Sr., d/b/a Bon Terrain Industrial Park, in the Town of Amherst. By order no. 16,842, 69 NH PUC 10 (1984), the commission found that no tariff existed, and that the nature of the construction of the system required a special contract and was in the public good. Therefore, it designated the application and agreement "Special Contract No. 15" and allowed it to take effect. The original Bon Terrain system consisted of 12 inch mains, a 900,000 gallon storage tanks, and 22 hydrants. The record shows that the cost of the storage tank should be allocated fifty percent to fire protection and fifty percent to water service. It also supports allocating thirty percent of the Bon Terrain main investment to fire protection and seventy percent to water service.

Southern has a total of ninety meters in its Amherst franchise. Twenty-five of these meters are in the Pilgrim Hills division, and under the terms of the settlement agreement, will take service at the satellite rate. Of the remaining sixty-five meters in the franchise, fifteen are located in the Bon Terrain subdivision and fifty are located outside of the subdivision. Southern estimates that Bon Terrain is about twenty percent developed.

Southern projects that it will have fifty to seventy-five meters in the area (not including Bon Terrain and Pilgrim Hills) by the end of 1988. It also projects that it will add an additional twenty to thirty meters and twenty more sprinkler customers in 1989.

In Amherst, not including Pilgrim Hills, Southern's rate increase request is based on the number of meters that it had in 1987 — seven meters. Southern had two customers in this area in 1986. It has not calculated whether its customer growth in 1988 and 1989 will offset its revenue deficiency.

We find that the Bon Terrain water supply is sufficient to serve existing customers, the projected final number of customers in Bon Terrain and many additional customers.

IV. *Commission Analysis*

[9-11] The commission finds that the revenue requirement developed in the stipulation agreement is supported by the evidence and is just and reasonable. Therefore, we accept it for resolution of that portion of the petition.

Concerning the Bon Terrain revenue deficiency, we will require Southern to set rates and file tariff pages with data supporting the calculation of chosen rates at the revenue level we have determined to be supported by the evidence set forth in this commission analysis. We find that the company has over-estimated the cost of service attributable to water service and fire protection. This finding is based upon our experience in rate making and on various facts in the record.

In establishing the revenue deficiency

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attributable to fire protection we have made the following allocation for net utility plant in service:

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

Structures (storage tank) 50%; $134,083
25% for general service peak
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demands; 25% for fire demands;
the remainder is emergency reserve
equally available for general
service or fire demands

Pumping Equipment 30%           1,723
This equipment is sized for
general service maximum day, plus
a fire demand. The maximum day of
the Amherst Division is unknown but
30% to fire demand is the average
derived in recent cost of service
studies.

Mains 30%                      69,694
Same as pumping equipment

Hydrants 99%                   30,717
Non fire uses i.e., flushing, flow
tests, etc. are about 1% of the
hydrant usage.
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Operating expenses and depreciation have been allocated at 17% which is the average derived in recent cost of service studies and which produces $5,202 total revenue deductions and adjusted utility operating income of $2,035.

From the above calculation, we determine that the net revenue deficiency for fire protection is $31,221. Thus, we will allow Southern to charge a per month/per hydrant municipal or private fire protection charge in Amherst (exclusive of Pilgrim Hills) to recover these costs. The remainder of the revenue deficiency is related to the provision of general service.

The facts indicate that Southern will have an increasingly larger customer base in 1989 over which to allocate its revenue deficiency. Southern did not show how this growth will affect its revenues. Therefore, we will make a *pro forma* adjustment to reflect Southern's customer base twelve months after the test year of 65 in Amherst exclusive of those customers in Pilgrim Hills. The 65 includes 15 customers in Bon Terrain and 50 customers located outside the Bon Terrain subdivision. This number represents 33 percent of the approximately 200 customers for which the plant and equipment were originally intended. We cannot find, however, that the entire revenue deficiency should be recovered by even this greater number of customers. The record shows that the investment at Bon Terrain was a speculative one which, even with the additional customers recently found outside the Bon Terrain area, cannot be justifiably recoverable due to the failure of Bon Terrain to meet its development objectives. We can find no justification for allowing ratepayers to support any costs beyond those in our pro forma adjustment. We will, therefore, allow Southern to collect through its general service rates $24,082 of the revenue deficiency. The remainder of the revenue deficiency -$48,895 (that which is not collected through fire protection and general service rates) shall not be collected from ratepayers.

We do not agree with Southern's analysis that we should not and may not overturn the Amherst subsidy allowed in order no. 18,567. As the staff pointed out, the company has not complied with other terms of the stipulation agreement. In addition, we find that the circumstances have changed rendering the originally approved Amherst subsidy unjust and unreasonable. Southern did not achieve the level of growth necessary in 1988 to support the commission's fifty percent subsidy requirement. In addition, the stipulation specifically provides that the subsidy will go away in January of 1989. Therefore, pursuant to RSA 365:28 and *Meserve v. State*, 119 N.H. 149, 152 (1979) the commission will overturn the Amherst subsidy

allowed in order no. 18,568 (72 NH PUC 58). Henceforth, the Amherst division will be economically self-sufficient. The stockholders will take the loss for the revenue deficiency not covered by the just and reasonable rates determined by this commission.

While we will allow Southern to have an Amherst municipal fire protection tariff, this is no assurance that Southern will be able to collect this rate from the Town of Amherst. If Southern is not able to collect this rate from the Town of Amherst after exercising due diligence,

we will allow Southern to charge this amount under the private fire protection tariff.

We have not made findings of fact concerning whether Southern was induced to provide fire protection service to the Town of Amherst or whether Amherst knew that it would be obligated to pay for fire protection. This appears to be a matter appropriate for the jurisdiction of the courts. In addition, even if it were an appropriate matter for our consideration, Southern did not give the Town of Amherst adequate notice that these issues would be considered in this proceeding.

[12] We will not consider as a part of this docket Southern's main extension agreement with the Sevearns Group. The request for approval on the date of the hearing did not give the commission adequate time to investigate the agreement. The agreement appears to be a special contract requiring investigation under RSA 378:18. It will be more administratively efficient to consider the agreement in *Re Southern New Hampshire Water Co., Inc.*, DR 88-108 (our investigation of certain contracts for water main extension in the Town of Amherst). Therefore, we will order Southern to file the Sevearns Group main extension agreement and request approval in that docket.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed stipulation between Southern New Hampshire Water Company, Inc., the Staff of the Public Utilities Commission, and the Office of the Consumer Advocate is approved; and it is

FURTHER ORDERED, that the proposed water service rates for the Bon Terrain service area and the subsidy adder for all other non-policy divisions are denied; and it is

FURTHER ORDERED, that Southern shall charge water service rates as calculated and set in the foregoing report; and it is

FURTHER ORDERED, that Southern's requested level of rates for public and private fire protection rates are denied; and it is

FURTHER ORDERED, that Southern shall be allowed to provide public fire protection in Amherst under the terms and conditions of its Hudson municipal fire protection tariff except that the monthly hydrant charge shall be as calculated and set in the foregoing report; and it is

FURTHER ORDERED, that Southern shall be allowed to increase its existing private fire protection hydrant charge as calculated and set in the foregoing report and it shall be allowed to collect this rate except where service is furnished to and paid for by the city, town, village or other political subdivision for the purpose of public safety; and it is

FURTHER ORDERED, that no determination has been made as to the Town of Amherst's liability for any hydrant charges to be assessed; and it is

FURTHER ORDERED, that Southern shall file the following:

a) revised tariff pages reflecting the rates ordered and in compliance with our rules bearing an effective date of all bills rendered on or after January 8, 1989, and

b) a report of proposed rates for all non-policy divisions reflected the rates and revenues allowed in the foregoing report, and

c) all other documentation that it has committed to file under the stipulation agreement; and it is

FURTHER ORDERED, that Southern shall refile the Sevearns Group main extension agreement for consideration in *Re Southern New Hampshire Water Co., Inc.*, DR 88-108.

By order of the Public Utilities Commission of New Hampshire this eighth day of January, 1989.

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NH.PUC*01/10/89*[51673]*74 NH PUC 22*Public Service Company of New Hampshire

[Go to End of 51673]

74 NH PUC 22

Re Public Service Company of New Hampshire

DR 88-184
Order No. 19,288

99 PUR4th 543

New Hampshire Public Utilities Commission

January 10, 1989

REQUEST by an electric utility for a change in its energy cost recovery mechanism rate; revised to remove capacity charge costs associated with 12-month purchase power contracts.

AUTOMATIC ADJUSTMENT CLAUSES, § 14 — Energy cost reduction mechanism — Purchased power — Capacity charge costs — "Short-term" contract.

[N.H.] Capacity charges associated with 12-month purchase power agreements were excluded from an electric utility's energy cost recovery rate where the commission found that (1)

the capacity costs were currently accounted for in base rates, (2) the 12-month contract was too long to qualify as a "short-term" purchase, and (3) there was no proof of energy cost savings sufficient to justify the capacity charges.

APPEARANCES: Eaton W. Tarbell, Jr., Esquire, Margaret H. Nelson, 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; 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.; Dom D'Ambruoso, Esquire, for the Granite State Hydropower Association; and Eugene F. Sullivan, Finance Director, Dr. Edward Schmidt, Chief Engineer, Janet Besser and Leszek Stachow, Economics Department for the NHPUC staff.

By the COMMISSION:

REPORT

This docket was initiated on November 23, 1988 when Public Service Company of New Hampshire (PSNH) filed a motion, supported by the New Hampshire Attorney General's Office, to suspend the time requirement for filing its exhibits in support of the Energy Cost Recovery Mechanism (ECRM) component of its rates for the six month period ending June 30, 1989. On November 29, 1988, the commission issued Order No. 19,244 (73 NH PUC 481) delaying the hearing on the upcoming ECRM period from December to January 13, 1989. The delay was authorized based on representations by PSNH and the Attorney General that the delay would assist in negotiations of the PSNH bankruptcy by maintaining the status quo. On December 19, 1988, the Attorney General notified the commission that negotiations between the parties in the bankruptcy proceeding had not been fruitful and they could no longer support the delay requested by PSNH. On December 19, 1988, by Supplemental Order No. 19,271, the commission vacated Order No. 19,244 and rescheduled the ECRM procedural schedule to require PSNH to prefile its direct testimony and exhibits on December 22, 1988 and for petitions for intervention to be filed no later than December 28, 1988. The hearing on the merits of PSNH's ECRM filing was set for hearing on December 28, 1988.

At the duly noticed hearing on December 28, 1988 a motion was made by staff to bifurcate the issue of capacity payments to Northeast Utilities and New Brunswick Power until a later time so that full discovery could be made on that subject. PSNH supported the motion by staff but requested the allowance of the costs subject to adjustment after a full hearing on the issue. The commission denied the staff's request to bifurcate the capacity issue and added December 30, 1988 and January 3, 1989

as additional hearing days.

The ECRM rate filed by PSNH for the period from January 1, 1989 to June 30, 1989 was

$0.02969 per KWH, or $2.969/100 KWH. That rate represents a decrease from the ECRM rate of $3.249/100 KWH which was in effect in the prior period. The Company witness testified that the primary reason for the decreased rate was an overrecovery of $8,986,254 during the second half of 1988. The factors contributing to the overcollection are lower actual fuel prices of oil, lower QF generation than estimated, and better availability than estimated for nuclear units and Merrimack Station. The estimated costs for the upcoming period includes an estimated coal refund of $1,286,599. In addition, the Company included $1,247,999 of short term unit purchases in the November and December 1988 period and $3,593,828 of short term unit purchases for the six month period ending June 30, 1989 from Northeast Utilities and New Brunswick Power. The Company submitted exhibit 28 as a result of a staff data request. That exhibit calculates an ECRM rate of $2.821/100 KWH in the event that the capacity costs related to the Northeast Utilities and New Brunswick Power are excluded from the rate calculation.

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

1. The inclusion of capacity purchases from Northeast Utilities and New Brunswick Power.

2. The calculation of avoided cost rates for short term arrangement with small power producers.

3. The projected prices for oil and coal and the associated inventory levels.

4. The load forecast for the six month period.

5. Coal contract negotiations and associated transportation contracts.

One of these items requires further discussion due to its importance in the instant filing.

I. *Northeast Utilities and New Brunswick Power Capacity Purchases.*

A. *Introduction*

On December 21, 1988, PSNH filed its testimony and exhibits related to the ECRM rate for the first six months of 1989 and the reconciliation of the ECRM for the last six months of 1988. The reconciliation included costs of $1,247,999 for purchases of capacity from Northeast Utilities and New Brunswick Power. These costs were identified as "short term unit purchases". Costs of $3,593,828 for the same purchases were included in the forecasted six month period from January 1, 1989 through June 30, 1989. The inclusion of these costs was a matter of controversy between the parties in this case. The effect of including these costs was to increase the rate being requested from $0.02821 per KWH to $0.02969 per KWH, or $0.00148 per KWH (5.79% higher).

The commission herein finds that the capacity costs which were included in this filing were not appropriately included in the ECRM costs. Therefore, the rate for the January through June 1989 period will be set at $0.02821 per KWH, or $2.821/100 KWH.

B. *Positions of the Parties*

PSNH presented several witnesses related to the subject of the inclusion of capacity costs in ECRM. Witness James T. Rodier explained and described the proposed recovery through ECRM of "energy-related" capacity costs associated with the purchase of short-term capacity and related

energy from Northeast Utilities (NU) (75 megawatts) and New Brunswick Power (60 megawatts). Witness Calvin A. Bowie described the methodology used by PSNH to estimate the energy benefits derived from the capacity purchases. Witness Heidi C. Blais explained the computation of the energy-related capacity costs associated with the NU "slice of system" and New Brunswick short-term purchases. Witness Blais explained the calculation of the non-fuel portion of short-term purchased power costs which are currently recovered through base rates.

Witness Rodier's position is that the proposed recovery of these costs through ECRM is consistent [with] the commission's goal of

Page 23

implementing a least-cost approach to securing energy services for PSNH customers and that the proposed recovery of costs is consistent with the spirit and intent of ECRM, NHPUC precedents, current cost recovery practices under ECRM, and provision of appropriate safeguards to protect the interest of ratepayers. He emphasized that in his opinion the proposal is not a change to the design of ECRM.

Mr. Rodier summarized the stipulation agreement recommended by PSNH and the staff and accepted by the commission in Fifty-Sixth Supplemental Report and Order No. 15,486 (Docket DR 79-187, Phase II) (67 NH PUC 157). One of the features of the stipulation which he uses to justify his position is the "secondary purchase incentive" feature which was included in ECRM. He claims that clause provides for the "full inclusion of the costs to the Company of short term, secondary purchases in order to encourage unit or system purchases which in the aggregate result in lower overall costs to customers". (Exhibit 24, Page 4) The stipulated recommendations on ECRM (Page 3) provide for the following treatment:

> *Secondary Purchase Incentive.*
>
> The parties recommend that the Commission provide an opportunity for the Company to recover the full costs, including capacity and energy costs, of short-term unit or system purchases when it can be proven that such costs are less than the fuel costs avoided by the Company as a result of such purchases. The Company shall propose and demonstrate the methodology offering such proof in its next submittal to the commission under the terms of this Stipulation scheduled for May of 1982.

Mr. Rodier further testified that the intent and objective of ECRM continues to encompass the adequate and timely recovery of fossil fuel costs, as did the fuel adjustment clause (FAC) which preceded ECRM. He claims that the intent of ECRM was to additionally provide customers with stability in electric rates and both the company and its customers are protected against changes in non-fossil energy costs. He states that the company is further provided with incentives to improve efficiency, lower energy costs, and utilize non-traditional energy resources. The witness claims that the proposed inclusion of short-term energy-related capacity costs is consistent with past policies under ECRM and describes those purchases as capacity costs of short-term purchases which have resulted in energy savings to customers. He further defines short-term, secondary purchases as purchases ranging from six months to a year, although they can be for "even shorter periods of time such as hourly, daily, weekly, or even monthly". Witness Rodier describes secondary purchases as "discretionary in nature, displacing

capacity and energy otherwise available to the Company, and are not required in order for the Company to meet peak loads and to provide reliable service".

Mr. Rodier further suggests that the ECRM reconciliation practice be amended at an appropriate time to permit PSNH to recover all costs of short-term secondary transactions which are demonstrated to be cost-effective based upon the economic analysis performed at the time of the purchase decision utilizing estimated data. At the present time, the risk of actual events producing added supply costs is borne by the Company. He suggested that the administration of ECRM by the commission could be improved by considering this proposal.

Finally, Mr. Rodier describes the purchase power agreements with NU and NB as cost-effective capacity additions to PSNH's 1988-89 power supply consistent with the Company's obligation to the Pool. The capacity costs are described as having "both a primary capability responsibility-related component and a secondary economy component". Due to the fact that the Company will be subject to capacity deficiency charges amounting to $75/KW by NEPOOL, the Company has included only the costs in excess of that amount in ECRM, as associated with the NU and NB purchases. PSNH states that it could meet its capacity needs in the most economic manner by incurring the costs imposed by NEPOOL for capacity deficients ($75/KW), but the energy costs associated with the deficiency service must also be considered. A policy has been adopted by

Page 24

the Company to contract for power supplies only when the overall costs of such purchased power is less than the costs it would be expected to incur from NEPOOL if it failed to meet its capability responsibility. It is claimed that the purchases were entered into after determining that they meet both the "least-cost" and "fiduciary responsibility" criteria due to the Company's current financial circumstances.

Witness Blais has calculated that approximately $3.8 million of non-fuel related capacity and transmission costs from short-term unit power purchases were included in base rates in the last rate case, Docket No. DR 86-122. It is the position of PSNH that the proposed recovery is not currently reflected in basic rates and that the cost of short-term capacity related to NEPOOL deficiency service is over $24,000,000, of which $3,800,000 is being recovered in base rates.

Staff Finance Director Sullivan testified that the capacity purchases from NU and NB should not be included in ECRM. His position is that the ECRM mechanism was not designed to recover that type of capacity purchases. The intent of the parties was to include only short-term secondary purchases when it could be shown that it would be cheaper than PSNH own avoided fuel costs. He notes that the short term was never defined by the stipulation agreement for ECRM but claims that the parties intended to include only hourly, daily, weekly or monthly short-term unit or system purchases. Staff witness argues that capacity costs are included in base rates. Base rates include an element of costs not only for the purchased power capacity component which was included in base rates, but also for the capacity component of its own generating plants and transmission lines. Witness Sullivan states that each sale of electricity by the Company includes an element of capacity costs. On exhibit 37, staff elicited data from the Company which estimates that $117,713,000 of capacity costs for PSNH's own generation were

included in base rates in DR 86-122. That equates to $0.02291 per KWH when dividing the costs by the KWH sales in the test year for that case. When transmission capacity costs and purchased capacity costs in that case are considered, the amount per KWH in each sale is even higher.

Mr. Sullivan presented testimony that PSNH is earning an overall rate of return of 16.67% on its non-Seabrook rate base and that the inclusion of the proposed costs would result in double recovery of capacity costs contributing to an even higher rate of return, compared to the 14.94% overall rate of return last allowed by the commission. KWH sales have grown from 5,138,778,000 in the test year for the last rate case to 6,154,299,000 in the twelve months ended September 30, 1988. (A growth of 1,015,521,000 KWH) Staff witness claims that the growth in sales compensates the company for the additional capacity costs required to serve those increased sales. Staff takes the position that it is a primary responsibility of a franchised utility to serve its customers at the lowest price possible and that it should not be necessary for the commission to provide incentives for the Company to provide service at the lowest cost. Finally, Mr. Sullivan states that if the definition of secondary purchases is that they are "discretionary" and "not required to meet peak loads", then they must be purchases made to replace the Company's own generation and do not meet the definition of short-term secondary purchases. He claims that it was not the intent of the ECRM agreement to consider the NEPOOL deficiency service as the Company's own generation.

The Consumer Advocate took no position other than to maintain that the Commission did not have any authority to issue any adjustment for January because the Commission did not comply with RSA 378:3A.

C. *Commission Analysis*

The primary focus in this case has been the matter of the secondary purchases from Northeast Utilities (75 MW) and New Brunswick Power (60 MW). The controversy stems from the issue of whether or not the costs related to those purchases fall within the definition of short-term secondary purchases that was contemplated in the settlement agreement for ECRM in Docket No. DR 79-187. Additionally, there is the issue of the amount of capacity costs that are part of the Company's

base rates. The commission has reviewed the testimony and documentation in this case and concludes that the inclusion of capacity costs in ECRM would result in double counting in that capacity costs would be collected in both base rates and in ECRM if we allowed the subject costs to be collected in ECRM. Exhibits and testimony in this case show that capacity costs were included in base rates in the last rate case, Docket No. DR 86-122. In addition to the test year revenues received by the Company for its test year sales, the Company receives $0.02291 for ever kwh of sales above test year figure. Thus, by September 30, 1988, PSNH receives an additional $23,265,586 ($0.02291 × 1,015,521,000 kwh) to pay for its additional capacity needs.

Staff has presented a calculation of the Company's earned current rate of return 16.67%, compared to the last allowed rate of return of 14.94%. This comparison indicates that the Company's revenues are adequate to cover its ongoing costs. We would further observe that the NEPOOL capability responsibility deficiency charge was included in the actual costs for latest

period measured by witness Sullivan to calculate the rate of return being earned by the Company.

In addition to our concern that capacity costs are included in base rates, we are also concerned with the definition of short-term unit or systems as described in the ECRM settlement agreement in Docket No. DR 79-187, Phase II, dated January 21, 1982. Short-term has never been adequately defined. The history of ECRM proceedings has always identified short-term purchases as hourly, daily, weekly or monthly transactions entered by PSNH. We would not define purchases for a twelve month period as a short-term purchase based upon our previous ECRM experience. A review of past ECRM proceedings reveals that secondary purchases were listed as an element of costs in the reconciliation of the previous period but were not identified as to the length of the purchases. During cross examination of the staff witness, the Company elicited information regarding the definition of short term by defining short term debt in accordance with FERC and commission standards. The standard for defining short term in terms of borrowings is based upon generally accepted accounting principles. We do not accept that definition as proper to define short term for purchasing capacity.

Further, careful examination of the PROSIM runs which constitute PSNH's analysis of the NU and NB purchases casts considerable doubt on the existence of energy savings in the instant docket, in any case. In these runs, PSNH assumed that it would meet both its marginal capacity and energy needs with deficiency service from NEPOOL. However, in testimony, Mr. Bowie indicated that while PSNH would need to purchase capacity deficiency service from NEPOOL to meet its capability responsibility, PSNH did not anticipate the need to purchase NEPOOL energy deficiency service. In fact, PSNH expected to be able to meet all of its energy needs with its own power plants. Overall, although the NU and NB purchases do substitute some energy at a lower cost than PSNH's own units can provide, these energy savings do not appear to be sufficient to justify fully the capacity costs (over $75/KW-YR) of these purchases.

The commission does not accept the NU and NB purchases as short-term secondary purchases for ECRM. As defined in Mr. Rodier's testimony, secondary purchases displace capacity and energy otherwise available to the Company and are not required in order for the Company to meet its peak loads and to provide reliable service. We do not believe that the intent of the ECRM agreement was to replace PSNH's own capacity with a capacity available from NEPOOL as capacity deficiency charges. Evidence in this case leads us to the conclusion that the NU and NB purchases were made for capacity purposes and energy savings are questionable when compared to PSNH's own generation capability. In addition, we are convinced that PSNH is being adequately compensated for its capacity costs in base rates.

The ECRM rate for the January 1 through June 30, 1989 will be set at $0.02821. That is the rate without the NU and NB purchases as calculated in Exhibit 28.

In the event that the Company wishes to resolve the definition of short term secondary purchases, it may petition to open a docket to

fully investigate and define the capacity costs to be included in ECRM. At that time, we would expect that capacity costs would be fully explored to determine the amounts that should

be included in base rates and in ECRM.

II. *Qualifying Facilities.*

PSNH also filed the following energy and capacity rates for Qualifying Facilities.

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

Capacity:   $75/KW
Energy
  On-Peak   2.921¢/KWH
  Off-Peak  2.226¢/KWH
  All hours 2.538¢/KWH
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The Company also submitted a description of its policy with regard to short term purchases, which it intends to make available to developers interested in short term sales arrangements.

Based on the evidence provided we find the proposed QF rates to be reasonable and calculated in accord with the methodology developed in DR 86-41 Phase I and approved by the commission in Order No. 18,829 (72 NH PUC 396). We will therefore approve them, effective January 1, 1989 and direct the Company to file appropriate tariff pages. We do note, however, the discrepancy between the January-June 1989 capacity rate in the short-term rate of $75, which is based on current market conditions, and the 1989 capacity rate of $49.20 in PSNH's long term rate filing. This pricing and planning inconsistency should be addressed in the Company's April least cost filing. At this time we will also accept the Company's description of its short term QF power purchase policies for informational purposes.

Our Order will issue accordingly.

ORDER

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

ORDERED, that PSNH shall filed revised tariff pages setting an ECRM rate of $2.821/100 KWH for January through June 1989; and it is

FURTHER ORDERED, that the rates filed for purchases of energy and capacity purchases from Qualified Facilities be, and hereby are, approved for the months January through June 1989 effective January 1, 1989 and Public Service Company of New Hampshire shall file appropriate tariff pages providing for those rates.

By order of the Public Utilities Commission of New Hampshire this tenth day of January, 1989.

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NH.PUC*01/11/89*[51674]*74 NH PUC 27*Connecticut Valley Electric Company, Inc.

[Go to End of 51674]

74 NH PUC 27

Re Connecticut Valley Electric Company, Inc.

DR 88-175
Order No. 19,289

New Hampshire Public Utilities Commission

January 11, 1989

ORDER authorizing an electric utility to revise its purchased power adjustment clause rate.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Rate revision — Electric utility.

[N.H.] An electric utility was authorized to revise its purchased power adjustment clause rate to reflect (1) a 1988 overcollection, (2) a decrease in 1987 capacity costs expected to result from a settlement in a proceeding before the Federal Energy Regulatory Commission, and (3) the effect of a reduction in the return on common equity on 1989 capacity costs.

APPEARANCES: For Connecticut Valley Electric State Electric Co., Morris Silver, Esq.,; for Staff, Eugene F. Sullivan, Finance Director and Janet Besser, Utility Analyst.

By the COMMISSION:

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REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord, New Hampshire on December 29, 1988 to review the Purchased Power Cost Adjustment (PPCA) filing of Connecticut Valley Electric Company 1989.

On November 30, 1988 Connecticut Valley Electric Company (CVEC) filed a Purchased Power Cost Adjustment with a proposed effective date of January 1, 1989. Said PPCA rate of $0.0143 per Kwh is a decrease of $0.0099 per Kwh over the PPCA rate of $0.0242 per Kwh approved by this commission in DR 87-241 Report and Order No. 18,960 (73 NH PUC 6). CVEC also filed testimony and exhibits which supported the proposed revision to their respective PPAC.

The instant filing covers the twelve month period from January through December 1989. In support of its filings CVEC presented the following witnesses, William J. Deehan testified to the a forecast of 1989 billed sales; Stephen W. Page testified to power costs; Russell D. Spies testified to short term avoided cost rates and C. J. Frankiewicz testified to the calculation of the proposed PPCA for 1989.

In testimony a witness for CVEC stated that there were three primary reasons for the rate decrease. These are: the 1988 PPCA Reconciliation is expected to result in a $480,000 overcollection; the proposed settlement of the FERC investigation into the actual 1987 RS-2 capacity costs is expected to result in a $111,000 decrease in those 1987 costs; all settlement

provisions, and additionally a reduction in the return on common equity, are expected to ultimately be reflected in the 1989 RS-2 capacity costs.

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

1. report of proposed rate changes;
2. 1987-88 and 1989 PPCA Reconciliations;
3. 1988-CVEC loss of its largest customer Temple-Eastex;
4. 1989 costs expected to be higher due to Vermont Yankee's scheduled refueling outage.

Based on the evidence provided, the commission finds the (PPCA) rate of $0.0143 per Kwh for CVEC, as filed to be just and reasonable and will approve these rates for the twelve month period beginning January 1989 and ending December 1989.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 15th Revised Page 17 of Connecticut Valley Electric Company tariff, NHPUC No. 4 — Electricity, providing for a fuel surcharge of $0.0143 per Kwh for the months of January through December 1989, be, and hereby is, permitted to go into effect for all billings on or after January 1, 1989; and it is

By order of the Public Utilities Commission of New Hampshire this eleventh day of January, 1989.

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NH.PUC*01/11/89*[51675]*74 NH PUC 28*Connecticut Valley Electric Company, Inc.

[Go to End of 51675]

74 NH PUC 28

Re Connecticut Valley Electric Company, Inc.

DR 88-176
Order No. 19,290

New Hampshire Public Utilities Commission

January 11, 1989

ORDER authorizing an electric utility to revise its fuel adjustment clause rate and its short-term energy and capacity rates for qualifying facilities.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Fuel adjustment clause rate — Rate revision — Electric utility.

[N.H.] An electric utility was authorized to revise its fuel adjustment clause rate to reflect a prior period undercollection and higher than projected energy charges for purchased power. p. 29.

Page 28

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Fuel adjustment clause rate — Cost elements — Purchased power — QF rates — Electric utility.

[N.H.] An electric utility was directed to refile its fuel adjustment clause rate to incorporate lower short-term avoided capacity and energy cost rates for power purchased from qualifying cogeneration and small power production facilities (QFs). p. 29.

3. COGENERATION, § 24 — Rates — Short-term energy and capacity rates — Revision.

[N.H.] An electric utility was authorized to implement revised short-term energy and capacity rates for qualifying facilities where the rates were calculated in accordance with a methodology approved in a prior docket. p. 29.

4. PROCEDURE, § 20 — Notice — Adequacy — QF rate proceeding.

[N.H.] Actual notice is not required in administrative proceedings so long as the notice provided is reasonably calculated to apprise the interested parties of the pendency of an action; accordingly, the commission denied a joint motion by two qualifying facilities (QFs) for late intervention in a proceeding to revise the short-term energy and capacity rates for QFs where the QFs should have known of the proceeding by virtue of actual notice received in prior dockets, appropriately published notice, and notice served on the power association to which the QFs belonged. p. 30.

APPEARANCES: For Connecticut Valley Electric State Electric Co., Morris Silver, Esq.,; for Staff, Eugene F. Sullivan, Finance Director and Janet Besser, Utility Analyst.

By the COMMISSION:

REPORT

On November 29, 1988 Connecticut Valley Electric Company (CVEC) filed a Fuel Adjustment Clause (FAC) factor of $0.0233 per Kwh. This rate compares to the rate of $0.0153 per Kwh which was in effect in 1988.

On December 5, 1988, CVEC filed by letter its short term energy and capacity rates for qualifying facilities (QFs). CVEC's capacity rate reflects the current market conditions, and is based on the NEPOOL capability adjustment and deficiency charge of $75/kw-year plus avoided transmission costs. The proposed energy rates are as follows, and will also be adjusted by an energy loss calculation for payment to each QF according to the level of its interconnection on the transmission system.

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

Winter			Summer			Annual	
On-Peak	Off-Peak	Avg.	On-Peak	Off-Peak	Avg.	Avg.	
3.62	2.14	2.84	3.24	2.07	2.63	2.74	c/KWH

[1-3] The Public Utilities Commission held a duly noticed hearing at its office in Concord, New Hampshire on December 29, 1988. The instant filing covers the twelve month period from January through December 1989. In support of its filing CVEC presented the following witnesses: William J. Deehan testified to the forecast of 1989 billed sales; Stephen W. Page testified to power costs; Russell D. Spies testified to the QF short term avoided cost rates and C.J. Frankiewicz testified to the fuel adjustment charge calculation.

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

1. sales forecast;
2. 1988 CVEC loss of its largest customer Temple-Eastex;
3. 1989 costs expected to be higher due to Vermont Yankee's scheduled refueling outage;
4. CVPS Power costs;
5. Over/undercollection of the FAC;
6. legal argument about small power producer contract for January 1.

The proposed FAC rates are higher in part because the prior period undercollection of costs were higher than in the previous period and the average monthly RS-2 energy charges from Central Vermont Public Service are projected to be higher than the costs upon which the 1988 rates were based.

Based on the evidence provided we find the proposed QF rates to be reasonable and calculated in accord with the methodology developed in DR 86-72 Phase I and approved by the commission in Order No. 18,829 (72 NH PUC 396). We will therefore approve them, effective January 1, 1989 as specified by our Report and Order No. 19,141 (73 NH PUC 285). We do note, however, that the discrepancy between the 1989 capacity rate in the short-term rate of $75 and the 1989 capacity rate in the long term rate filing is a pricing and planning inconsistency that should be addressed in the Company's April least cost filing.

CVEC has testified that its FAC filing has incorporated the previous short term rate of 7.8¢ per kwh throughout 1989 (Tr. 42-48) and that the updated rate should not become effective until the anniversary date of each contract by which time producers will have had the opportunity to review whatever long term rate may be then available. Tr. 58-59. Such a procedure, however, is contrary to the intent of a short term rate that predictably changes each year and incorporates the

best estimate of avoided capacity and energy costs for the ensuing period. CVEC and the QFs on its system have known the short term rate would change on January 1, 1989 since the commission's Order No. 19,052 in DR 86-072 (73 NH PUC 117). It is something of a disappointment that the Company and QFs have not used the period since April 1988 to negotiate alternative arrangements. Their failure, however, does not entitle the QFs to continue to receive the higher rate or oblige ratepayers to continue to reimburse CVEC for paying it. We will, therefore, require CVEC to refile its FAC to incorporate the lower revised rates.

Motion for Late Intervention

[4] On January 6, 1989, Claremont Hydro Associates (Claremont) and Sunander Hydro Associates (Sunander) filed, by and through their attorney, a joint motion to intervene in this docket.

Claremont, alleges that it had no actual notice of the proceedings herein until December 29, 1988, the day prior to the hearing. Sunander, alleges that it received no actual notice of this proceeding until after the hearing had been held.

Claremont and Sunander further allege in their motion that CVEC filed a petition in this docket seeking authority to reduce the rates paid to small power producers, including Claremont and Sunander resulting in approximately fifty percent (50%) reduction in their respective revenues.

We find that notice of the proceedings to Claremont and Sunander was adequate and we deny their motion to intervene and their accompanying requests for an opportunity to further evaluate CVEC's petition and to present additional testimony in this docket.

Actual notice is not required in administrative proceedings. "`All that is required is that ... the notice involved be reasonably calculated to apprise the interested party of the pendency of the action ....'" *O'Neil v. Public Utilities Commission et al*, 119 N.H. 930, 933 (1979). Also, contrary to the petitioners assertions, the methodology used herein to determine the rates paid to small power producers as well as the decision to calculate said rates in accordance with this methodology was made in a prior docket, DR 86-072 (in conjunction with DR 86-041), of which the attorney for Claremont and Sunander was given actual notice. Notice of this prior docket was also served on Granite State Hydro-Power

Association, Inc., of which Claremont and Sunander are members.

In DR 86-072, the commission issued Order No. 19,052, (73 NH PUC 117), on April 7, 1988, requiring:

> "All utilities ... to file short term rates in conjunction with their fuel adjustment clause/purchased power cost adjustment ... proceedings (presently once a year for ConVal...). The short term energy and capacity rates should be calculated consistent with the methodology adopted in Phase I.[1(2)] "

Also in DR 86-072, the commission provided, in Order No. 19,141 (dated August 10, 1988) (73 NH PUC 285 at 288) "...that the utilities comply with the requirements regarding short term

avoided cost calculations as of its winter 1988/89 Fuel Adjustment Clause/Purchased Power Cost Adjustment ... proceeding."

Claremont and Sunander therefore knew or should have known, as a result of DR 86-072, that the short term avoided cost rates which affect them would be addressed in this proceeding.

In addition to the notice afforded the movants in DR 86-072, these proceedings were adequately noticed in that the standard FAC and PPCA order of notice was issued by the commission on November 28, 1988, and was appropriately published by CVEC. *O'Neil v. PUC, op. cit.*, at 933. The FAC and PPCA hearings were held as usual, in December. Furthermore, Claremont admits to having been notified by CVEC of these proceedings the day before the hearing took place yet Claremont did not contact the commission by telephone or otherwise, did not appear at the hearing to express its concern regarding notice and did not otherwise advise the commission of its concerns until January 5, 1989, a week after the hearing.

Additional hearings at this late time will serve no useful purpose for a delay of the rate reduction addressed herein would result in complex reconciliation of rates paid by ratepayers and to affected small power producers at a later time. We do not believe that ratepayers should be prejudiced for Claremont and Sunander's failure to diligently protect whatever interest they may have in this matter. In fact, the interests asserted by Claremont and Sunander in their motion were addressed previously in DR 86-072 with this docket now before us being limited to a calculation of the appropriate rate based on the previously established methodology. Thus, the movants' interest herein is limited to whether or not the calculation was correctly performed and does not extend to whether the methodology previously established should be maintained.

For the various reasons cited above, we deny the movants' motion for intervention and for additional proceedings in this matter.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the rates filed on December 5, 1988 for purchases of energy and capacity purchases from Qualified Facilities be, and hereby are, approved for the months January through December 1989 effective January 1, 1989 and Connecticut Valley Electric Company shall file tariff pages providing for those rates; and it is

FURTHER ORDERED, that 112th Revised Page 18 of Connecticut Valley Electric Company tariff, NHPUC No. 4 — Electricity, providing for a fuel surcharge of $0.0233 per Kwh for the months of January through December 1989, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company shall file Revised Page 18 of Connecticut Valley Electric Company Tariff NHPUC No. 4 — Electricity providing for a fuel surcharge that incorporates the approved rate for short term energy and capacity purchases from Qualified Facilities.

By order of the Public Utilities Commission of New Hampshire this eleventh day of January, 1989.

FOOTNOTES

[1]*Re Connecticut Valley Electric Company*, 73 NH PUC 117 at 130 (1988).

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[Go to End of 51676]

74 NH PUC 32

Re Sacoridge Water, Inc.

DR 87-204
Supplemental Order No. 19,292

New Hampshire Public Utilities Commission

January 13, 1989

ORDER conditionally approving a petition to establish a water utility and setting rates to be charged for water service.

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1. CERTIFICATES, § 72 — Grant or refusal — Public good — Fitness of applicant.

[N.H.] A application to provide public utility service shall be granted if the provision of such service would be in the public good as determined based on the need for the service and the ability of the applicant to provide the service; determinations as to the ability of the applicant to provide the service includes such criteria as (1) financial backing, (2) management and administrative expertise, (3) technical resources, and (4) general fitness. p. 37.

2. CERTIFICATES, § 125 — Water — Public need — Fitness of applicant.

[N.H.] The commission conditionally approved an application to establish a water utility where the record showed a need for the service and the applicant demonstrated that it was financially, managerially, and technically able to provide the service; final authorization was conditioned on the applicant filing proof that it had obtained property rights to the water system that it proposed to operate. p. 37.

3. CERTIFICATES, § 125 — Water — Supply and pollution control requirements.

[N.H.] State statute 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. p. 37.

4. CERTIFICATES, § 139 — Transfer — Commission authorization — Public good.

[N.H.] State statute RSA 374:30 provides that any public utility that wishes to transfer a public utility system must obtain commission approval that such transfer is in the public interest; any such transfer made without commission approval shall be void. p. 37.

5. RATES, § 124 — Reasonableness — Statutory considerations.

[N.H.] State statute RSA 378:27 requires that the commission determine temporary or permanent rates for utility service based on the standard that the rates 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. 38.

6. PUBLIC UTILITIES, § 121 — Water — Utility status — Statutory requirements.

[N.H.] State statute RSA 362:4 requires that every water corporation shall be deemed a public utility by reason of the ownership or operation of a water system; however, the statute permits the commission to exempt water systems that supply less than ten customers, if it finds that an exemption is in the public good. p. 38.

7. RATES, § 86 — Commission powers — Retroactive rates.

[N.H.] The commission does not have authority to establish retroactive rates. p. 38.

8. EXPENSES, § 19 — Past operating expenses — Undercollections — Water utility.

[N.H.] A utility may not legally charge current customers for undercollections in earlier years; accordingly, the commission denied a

proposal by a water utility to recover the cost of an operating loan where the loan proceeds had been used to pay past operating expenses that had not been recovered through rates. p. 38.

9. VALUATION, § 250 — Contributions in aid of construction — Water utility — Land development water system.

[N.H.] A land development water system was valued at zero for rate-making purposes where the utility had not met its burden of proving that it had not already recovered its investment in the system through lot sales; the original system investment was treated for accounting purposes as a contribution in aid of construction. p. 39.

10. VALUATION, § 69.1 — Ascertainment of costs — Payments to related companies — Well property — Water utility.

[N.H.] Where a water utility was unable to perform as a financially independent corporation due to its inadequate capitalization and dependence on its corporate parent for loan money, the utility was precluded from recovering the market value of new well property transferred to it by its corporate parent; the utility was instead authorized to recover the parent's historical cost of the property. p. 39.

11. VALUATION, § 27 — Measures of value — Historical cost — Replacement cost.

[N.H.] Utility rates are set based on the historical cost of property, not on the replacement cost. p. 39.

12. RATES, § 304 — Connection charges — Work performed by unregulated parent — Water utility.

[N.H.] The unregulated parent of a water utility was not permitted to impose a connection charge on customers connecting to the utility system; instead, the utility may recover actual construction costs necessary to connect customers and the parent may perform the construction work for the utility on a contract basis, subject to commission approval. p. 40.

13. SERVICE, § 117 — Duty to serve — Generally.

[N.H.] Once a corporation is authorized to provide service as a public utility, it must serve all customers within its service area. p. 40.

14. EXPENSES, § 69 — Maintenance — Water utility.

[N.H.] The proposed maintenance expense of a water utility was adjusted downward to reflect the level of expense incurred by similarly sized water utilities. p. 40.

15. RETURN, § 26.1 — Capital structure — Water utility.

[N.H.] A proposal by a water utility to capitalize its entire investment through short-term debt was rejected as inconsistent with the public good. p. 40.

16. RETURN, § 26.1 — Capital structure — Hypothetical structure.

[N.H.] The commission can legally determine a rate of return based upon a capital structure different from that actually existing. p. 40.

17. RETURN, § 115 — Reasonableness — Water utility.

[N.H.] A water utility was authorized to recover an overall rate of return of 10%, which represented the rate of return allowed for other small water utilities of similar risk; the rate of return was set at 10% notwithstanding the utility's characterization of its entire capital investment as short-term debt repayable at 14% interest. p. 40.

APPEARANCES: Edward H. McBurney, Jr., Esquire for Sacoridge Water; William D.

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Paine, II, Esquire for Joseph and Margaret Kerins, ratepayers of Sacoridge Water; and Mary C.M. Hain, Esquire for the Staff of the New Hampshire Public Utilities Commission. The Consumer Advocate did not appear.

By the COMMISSION:

REPORT

The following report concerns the hearing on the merits of the captioned proceeding. It sets forth the procedural history, the positions of the parties and our findings of fact. It conditionally approves the petition to establish a water utility and sets the rates to be charged for service.

I. *Procedural History*

On December 21, 1987, Sacoridge Water, Inc. petitioned to establish a water utility in a limited area in the Town of Bartlett pursuant to RSA 374:22; and to establish rates for service pursuant to RSA 378:1. By an order of notice issued January 11, 1988, the commission scheduled a prehearing conference for February 24, 1988. On May 5, 1988, the Consumer Advocate filed a notice of intervention.

At the prehearing conference, the parties presented a procedural schedule that included a hearing on May 26, 1988. By report and order No. 19,031 (March 11, 1988), the commission adopted the procedural schedule. This schedule included a hearing on the merits on May 26, 1988.

On May 19, 1988, the staff filed a motion for a continuance of the hearing on the merits. On May 24, 1988, the commission granted the motion and continued the hearing to July 13, 1988.

At the July 13, 1988 hearing, Sacoridge Water was unable to answer many of the questions and concerns raised by the staff. Pursuant to report and order no. 19,148 (August 22, 1988), the commission scheduled a hearing on September 30, 1988 to address outstanding issues. Among others, the commission listed the following issues to be addressed:

1. Whether the company's books of accounts are or will be maintained in accordance with the commission's system of accounts for water utilities.

2. Whether the company employs a water system operator, certified by the state of New Hampshire.

3. Whether the company has developed adequate customer contact procedures to effectively address system problems.

4. That the company provide a plan of the distribution system.

5. That the company provide pump test logs demonstrating the safe yield of the wells now serving the system.

6. That the company provide documentation that these wells have been approved by the New Hampshire Department of Environmental Services pursuant to RSA 374:22 III.

On December 12, 1988, Sacoridge Water filed its approval from the Water Supply and Pollution Control Division of the Department of Environmental Services.

II. *Background*

Sacoridge Water has requested permission to supply water service in the part of the Town of Bartlett described as:

> Beginning at a stone post on the south side of the West Side Road and on the west side of Spring Avenue in the Saco Ridge Village Development; thence, along the south side of the West Side Road 800´ to a stake; thence S71 32´E 651´ to a stone post; thence S01 52´E 1982´ to an iron pipe; thence N73 30”W 470´ to Forest Service Corner #4-574 (1963); thence S03 24´W 1450´ to Forest Service Corner #3-57H (1963); thence S70 50´E 1130.5´ to Forest Service Corner #2-57H (1963); thence S06 07´W to the point of beginning.

Sacoridge Water has proposed rates that are made up of two elements. The first element is an

annual rate of $314.92 per customer. This rate was proposed to recover the company's test year expenses and existing rate base. Sacoridge

Water has also proposed an annual special assessment of $472.60 per customer. The special assessment is intended to recover the cost of new equipment required by the Water Supply and Pollution Control Division of the State of New Hampshire Department of Environmental Services (Water Supply and Pollution Control). These rates would total $787.52 per customer per year.

The company did not propose rates to cover the costs of connecting customers to the system. It proposed to have Sacoridge Corporation connect customers and to recover the cost of that connection through the price of the property sold to the customer.

III. *Positions of the Parties*

Sacoridge Water supported its original petition. The staff did not support or oppose the petition. It asked questions to develop a more complete record. It noted that the commission could not issue the franchise approval until Sacoridge Water filed approvals from Water Supply and Pollution Control. The Kerins argued in favor of lower rates.

IV. *Findings of Fact*

A. Petition to Provide Service as a Water Utility

Sacoridge Water is incorporated in the State of New Hampshire. It is a wholly-owned subsidiary of Sacoridge Corporation.

The original water system was built and paid for by the developer Sacoridge Corporation to serve the Saco Ridge Village Development. The original system cost $33,805.53 for pump houses, pumps, controls, and mains and consisted of two collection wells, one — 3/4 horsepower pump, one — 1 horsepower pump, two storage tanks, and a distribution system. The land on which these wells are located was "committed" by Sacoridge Corporation to provide water.

In Sacoridge Corporation's articles of agreement, $50,000 of capital stock is authorized. In the minutes of the organization meeting (attached to Sacoridge Corporation's articles of agreement), the corporation voted to issue 66 shares of common stock at $100 each. This $6,600 was used to finance the purchase of 70 acres of land to be developed in Bartlett. The record does not show that any more stock was issued by Sacoridge Corporation. Alan Eliason, and the estate of Martin Carey, own, in an equal number, all the outstanding shares of Sacoridge Corporation.

On August 6, 1985, the Water Supply and Pollution Control Division advised Allan Eliason that the Sacoridge Village water system would have to abandon its present wells and construct new wells. On May 14, 1987, it required the Sacoridge Village water system to, within sixty days, relocate the wells to a site that was not susceptible to flooding or contamination. The Division also required the Sacoridge Village water system to make certain other improvements to the system.

On January 2, 1987, Sacoridge Corporation conveyed the water system to Sacoridge Water for $8,112.22. As a condition of the sale Sacoridge Corporation reserved the right to

> connect to and extend or otherwise modify the water supply and distribution system, at VENDOR'S own expense and at its own convenience, and further that VENDEE shall accept such connections and/or extensions at no cost to VENDOR and shall thereafter provide water to VENDOR and/or any other persons purchasing from VENDOR at rates to be determined by the Public Utilities Commission, FAILING WHICH CONDITION THIS SALE SHALL BE NULL AND VOID ... and any and all property herein purported to be conveyed shall revert to the
> VENDOR.

The land on which the wells, tanks, and pump houses are located was never conveyed and no easements were granted for the distribution system.

Sacoridge Corporation drilled two new wells, installed three pumps, a 5,000 gallon tank, mains, two pump houses, two water meters, and controls. This new equipment was placed in service on January 1, 1988. The investment in the new system for wells, tanks,

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and mains totalled $37,256.13 and the investment for controls totalled $9,503.36. The bill was paid for out of the personal funds of Alan Eliason. Sacoridge Corporation intends to sell these assets to Sacoridge Water to be used to provide water service in the service territory. Sacoridge Water has not yet retired the replaced wells and equipment.

Sacoridge Corporation also owns the land on which the new wells are located. The land is approximately five acres and its present market value is $30,000. By locating the wells with a 200 foot radius, the equivalent of two to three building sites were utilized. Sacoridge Corporation intends to convey the land to Sacoridge Water to ensure the ability to provide water service.

David Eliason is in charge of Sacoridge Water's billing and general accounting. Francis Lyons will be performing system maintenance and answering customer service complaints. He is available through two telephone numbers and a beeper on a 24 hour basis. Lyons is licensed by the Department of Environmental Services, Water Supply and Pollution Control Division as a water distribution system operator, grade 2, and a water treatment plant operator, grade 2. Sacoridge Water agreed to maintain its books of accounts in accordance with the commission's system of accounts for water utilities.

According to the pump test logs, the two wells now serving the system have a safe yield sufficient to serve the system's twenty-seven customers. The company's distribution system plan is now on file with the commission's engineering department. The company has filed documentation showing that the two new wells produce a safe source of water under current Department of Environmental Services standards.

Sacoridge Water stated that it will serve any customer requesting service.

B. Rate Request

Sacoridge Corporation has been recovering its water system investments and operating expenses in several different ways. First, it was able to sell its subdivided property for more money because its property value was enhanced by the existence of the water system. Second,

the developer included the cost of the system in the price of the lots. Third, it has been charging a connection charge. Fourth, it has been charging an annual water rate.

The deeds for the subdivided property from Sacoridge Corporation to buyers contain various connection charges. Some deeds do not contain a separately denoted connection fee. Some deeds contain a $400 connection fee; some deeds contain a $500 connection fee; some deeds contain a connection fee of the "cost of all labor, equipment, material, and supervision." Not all of the deeds were submitted as evidence.

Sacoridge Water has been charging customers an annual water rate for service since 1970. The following schedule shows the rate charged and the number of customers served.

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

Year	*Water Hookups*	*Annual Water Rate*
1970	5	$ 28.00
1971	5	$ 28.00
1972	7	$ 28.00
1973	7	$ 50.00
1974	7	$ 50.00
1975	10	$ 50.00
1976	10	$ 50.00
1977	15	$ 60.00
1978	18	$ 60.00
1979	20	$ 70.00
1980	21	$ 75.00
1981	22	$ 80.00
1982	24	$ 80.00
1983	24	$110.00
1984	24	$125.00
1985	24	$150.00
1986	26	$160.00

From 1970 until 1986, Sacoridge Water charged annual water rates that allowed it to recover only its expenses related to repairs, supervision, accounting, and insurance. In its rate proposal, it calculated and sought to recover through rates, amounts that would have been attributable to depreciation and interest expense from 1970 until 1986.

Sacoridge Corporation testified that it was not possible to sort out the cost of the

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connection equipment from the cost of the entire project. The Sacoridge Corporation alleged that it recovered $15,247.07, in total, toward the cost of the system. This allegation was not supported by evidence.

Sacoridge Corporation admitted that the customers paid for the original system when they purchased their land. Sacoridge Corporation has not produced any evidence to indicate how much of the cost of the system was recovered in the purchase price of each lot.

The developers bought the 70 acres of property for the Sacoridge Village development for $6,090. They sold it to Sacoridge Corporation for $6,600. Sacoridge Corporation subdivided it, made improvements and has sold 42 lots for a total of $278,340 to date. It still owns four undivided pieces of land; one piece with approximately six acres, one piece with approximately

seven acres, and two pieces with about five acres. The developers originally believed they would be able to develop 60 lots.

The record shows that Sacoridge Corporation has experienced $10,446.24 worth of depreciation on the original water system. Sacoridge Corporation and Sacoridge Water set the purchase price of $8,112.22 based on the difference between the original investment ($33,805.53) and the amount it alleged was offset by connection charges ($15,247.07) and depreciation ($10,446.24).

C. Expenses

Sacoridge Water had a leak in the water system that caused a pump to run more than normal. This caused a higher than normal electricity usage and expense in the test period. Based on this abnormal usage, Sacoridge Water projected an estimated expense of $3,424 in 1988. Sacoridge testified that $2,200 would be a more appropriate average electricity expense.

Because of the leak in the water system, the test period maintenance expense of $3,962.70 was higher than average. Based on the average of its past seven years of expense, Sacoridge Water estimated that the 1988 maintenance expense would be $1,100.

D. Rate of Return and Capitalization

Sacoridge Water issued 100 shares of equity at a cost of $.01 per share. The remainder of Sacoridge Water's investments are financed by debt. The company has proposed a fourteen percent return on debt.

Sacoridge Water has two issues of debt. On January 2, 1987, Sacoridge Corporation loaned Sacoridge Water $8,122.22, payable upon demand on or before December 31, 1987, with a simple annual interest rate of 14.00%, due semi-annually. The $8,122.22 loan financed the purchase of the original water system. The promissory note provides that the parties may renegotiate a one year extension. No principal payment has been made. Interest was paid in 1987 but not in 1988. No mortgage exists to enforce payment. There is no written memorialization of a renegotiation.

On July 1, 1987, Sacoridge Corporation loaned Sacoridge Water $3,563.95, for operating expenses. This loan was payable upon demand, on or before December 31, 1987, with a simple annual interest rate of 14.00%. The principal and interest on this loan has not been paid and there is no written memorialization of a renegotiation. No mortgage exists to enforce payment of principal.

V. *Commission Analysis*

A. Petition to Provide Service as a Water Utility

[1-4] We find that the petition to provide public utility service is supported by the evidence and should be granted conditional upon the filing of certain documents. 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 Corporation*, 70 NH PUC 563, 566 (1985), we stated our criteria for determining the pubic 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., 67 NH PUC 478, 484 (1982).

The record shows a need for the service. The record shows that Sacoridge Water is financially, managerially, and technically able to provide service. Sacoridge Water does not yet own the new water system, the land on which any of the wells are located, or have easements for the distribution system. Thus, it is not generally fit to provide service. Sacoridge Water is authorized to operate as a public utility as soon as it files proof that it has obtained these property rights.

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. Sacoridge Water has fulfilled these requirements.

Under RSA 374:30 any public utility that wishes to transfer a public utility system must obtain commission approval that such transfer is in the public good. Under 374:31 any such transfer that shall not have been approved by the commission shall be void. We will approve the transfer of assets in this case; however, we do so subject to the condition that the assets listed above be transferred.

B. Rate Request

[5, 6] Based on the following analysis, we deny Sacoridge Water's proposed rates. We determine that it is just and reasonable to set the rates provided below. Sacoridge may begin charging these rates as soon as it is authorized to operate as a public utility.

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.

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

When Sacoridge Corporation sold its first lot in 1964 it was exempt from public utility regulation. Under RSA 362:4 (effective May 15, 1957) no water corporation was deemed a public utility if it served less than thirty customers.

Effective July 3, 1973, the legislature amended RSA 362:4 to read that every water corporation shall be deemed a public utility by reason of the ownership or operation of a water system. Under this law, the commission could exempt water systems that supplied less than ten

customers if it found that an exemption was in the public good. Sacoridge Corporation has been subject to our regulation since 1973, although we were not aware of is existence until 1987.

We have decided to disallow the recovery of several investments and expenses. The following sections detail these disallowances and the reasons therefore.

1. The Operating Loan

[7, 8] The commission does not have the authority to establish retroactive rates. The New Hampshire constitution states that "[R]etrospective laws are highly injurious, oppressive and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses." N.H. Const. pt. 1, art. 23. In *Geldhof v. Penwood Associates*, 119 N.H. 754, 755, 407 A.2d 822, 823 (1979), the Supreme Court determined that the State may not create "a new obligation in respect to a transaction already past." In light of this precedent, the Supreme Court found in *Appeal of Pennichuck Water Works*, 120 N.H. 562, 566, — A.2d —, (1980), that

> [i]f the PUC were to allow a rate increase to take effect applicable to services rendered at any time prior to the date the petition for the rate increase was filed, it would be

> retroactively altering the law and the established contractual agreement between the parties. In essence, such action would be creating a new obligation in respect to a past transaction, in violation of part 1, article 23 of our State Constitution and, due to the retroactive application, would raise serious questions under the Contract Clause of the Federal Constitution, U.S. Const. art. I, § 10, cl. 1; see *Geldhof v. Penwood Associates*, 119 N.H. 754, 755, 407 A.2d 822, 823 (1979). Moreover, "it is a basic legal principle that a rate is made to operate in the future and cannot be made to apply retroactively ...." *South-West Gas Corp. v. Pub. Serv. Comm'n.*, 86 Nev. 662, 669, 474 P.2d 379, 383 (1970).

The court also found that

> [o]ur decision today merely requires that public utilities, like other businesses, monitor their costs of doing business and employ sound business judgment in determining when they should seek a rate increase for future services. We see no constitutional requirement that mandates the PUC to correct, retrospectively, past errors in judgment made by the utility. *Id.* at 567.

The rates proposed in this proceeding are retroactive because they seek to recover the return on a debt of $3,563.95 — money that was essentially used to pay past operating expenses that should have been covered by rates. Even though the developer may have found it appropriate to understate common costs in the initial stage of the development to attract willing buyers, it is not legal to charge later customers for under-collections in earlier years. If the commission had been regulating the petitioner, the commission would have set the rates at just and reasonable levels and prevented under-collections.

Sacoridge Corporation admitted on the record that it had not charged rates that would allow it to establish a depreciation reserve. It also stated that it took the balance over its capital in the sale of each lot as profit. RSA 374:12 requires as follows:

> No public utility shall declare or pay any dividend except out of net corporate income, and except after setting aside such depreciation reserve, if any, as it may carry in compliance with the provisions of RSA 374:10.

Thus, Sacoridge Corporation was not in compliance with RSA 374:12.

There is no documentary evidence of any loans existing before January 2, 1987. Therefore, there is no basis to "extrapolate" interest from 1970 to 1986 (as the petitioner did in Exhibit 25). Any recovery of past interest would be retroactive ratemaking. The petitioner did not provide any evidence on its cost of money, or its parent company's cost of money before January 2, 1987. Therefore, it is inappropriate to construct rates that would allow the petitioner to recover the "extrapolated" interest from the period of 1970 through 1986. For all of the above stated reasons we deny authority to recover the operating loan.

2. The Original System Investment

[9] Sacoridge Water has not met its burden of proving that it did not already recover its investment in the original system. RSA 378:8. It did not establish that any profits taken out of the business should not have gone toward paying off these assets and establishing a depreciation reserve. In addition, it did not show how much of the system investment had been recovered in the price of each lot. Therefore, we find that the price of the Sacoridge Village water system, for ratemaking purposes, will be zero. It will be treated, for accounting purposes, as a contribution in aid of construction.

Sacoridge Water shall retire the old wells and pump houses because they no longer meet state environmental specifications. They should disconnect electrical service to the pumps used on these wells. Sacoridge Water should sell the old well property, if possible, to help defray its costs of service.

3. Land

[10, 11] The circumstances suggest that

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Mr. Alan Eliason has set up Sacoridge Water to convert some of his high risk stock interest in Sacoridge Corporation into a low risk debt interest in a utility. Mr. Eliason, as a developer, has to assume the risk for the development. He has run the water system for years to enhance the value of his properties. He had not sought to convert the water system into a separate subsidiary until he saw that he might have to pay for some of the risks of development.

It was foreseeable that water pollution regulations would change after Mr. Eliason invested in the original system. By holding the system for 20 years, and experiencing the benefit of the existence of the system on the entire development, Mr. Eliason also assumed the risk that he would have to replace the system.

In corporate law, to determine whether an affiliated corporation is liable on corporate obligations one looks, among other things, to the separateness of the subsidiary. While there is no case on point in New Hampshire, it is generally held that in the parent-subsidiary case, the

subsidiary's capital must be sufficient to permit it to achieve financial independence. Sacoridge Water is inadequately capitalized and is dependent on Sacoridge Corporation for loan money. Thus, Sacoridge may not perform as a financially independent corporation.

We will not allow Sacoridge water to recover for the market value of the new well property. In New Hampshire, rates are set based on the historical cost of property, not on the replacement cost. Sacoridge Corporation is conveying the well property to essentially the same corporation for a large guaranteed profit in not an arms-length transaction.

For the above stated reasons, we will not allow Sacoridge Water to base rates on a land value of $30,000. We will set rates based on the historical value of $471.42. This value is calculated by taking a 5 acre portion of the original cost of the 70 acres.

We will allow Sacoridge Water to begin charging the rates that we have set in this case only after it files all documents that are necessary to show that Sacoridge Corporation has transferred to Sacoridge Water all personal property and all interests in real property that are necessary to conduct the business, including but not limited to the new wells purchased by Sacoridge Corporation, the real estate upon which the system is located, pump sites and buildings, well sites, and protective radii, and easements for distribution mains.

[12, 13] We will not allow Sacoridge Corporation — an unregulated company — to charge for connecting customers to the system. First, Sacoridge Corporation proposes to recover, through its connection charge, the cost of equipment that will be the property of Sacoridge Water. We will allow Sacoridge Water to recover actual construction costs necessary to connect the customer. Sacoridge Corporation may perform the construction work for Sacoridge Water on a contract basis, subject to our approval, but Sacoridge Corporation can not be allowed to control the distribution system or the charges to be assessed for connection to the system. We must be able to require connection and regulate the charges for connection. We are able to perform these duties only if Sacoridge Water controls the system.

Sacoridge Corporation does not have to be concerned that giving up control over this equipment will endanger its ability to have customers purchasing property connected to the system. Once a corporation is given permission to provide service as a public utility, it must serve all customers within its service area.

C. Expenses

[14] We will not allow the proposed electricity expense of $3,300. Rather, we find that the record supports $2,200 electricity expense.

We will not approve the proposed maintenance expense of $3,962.70. We have found that $500 is sufficient maintenance expense for similarly sized water companies. Thus, $500 will be approved for maintenance expense.

D. Rate of Return and Capitalization

[15-17] Sacoridge Water currently has only $1.00 in capitalization provided by its parent corporation. It proposes to capitalize the remainder of its investment through short-term debt. We do not find this capital structure is consistent with the public good.

In *New Eng. Tel. & Tel. Co. v. State*, 98 NH 211, 220, — A.2d —, (1953), the Supreme Court held that

> because the debt ratio substantially affects the cost of obtaining new capital, the commission can legally determine a rate of return upon a capital structure different from that actually existing ... [citations omitted]. What proportion of the earnings should be paid out and how much should be retained and its effect on the cost of capital, as well as the proper allowance for pressure, are all matters to be considered by the commission in exercising its judgment in determining the cost of capital and its discretion in fixing the rate of return.

Sacoridge Water has established a debt ratio that will not allow the company to retain earnings. In addition, Mr. Eliason has converted his more risky 100% stock investment into a very stable debt investment. Since his investment is 100% debt he is guaranteed a return on 100% of his investment. Thus, he is not entitled to a 14% rate of return. In addition, Sacoridge Water did not prove this high cost of debt. We will allow Mr. Eliason to call his investment debt if he wishes, but we will only allow him to recover an overall rate of return of 10.0%. This is the rate of return that we have allowed for other small water companies of similar risk. See e.g., *Woodland Pond Water Co.*, 73 NH PUC 26 (1988).

E. Filing Requirements

The record was very difficult to construct in this case. The petitioner did not file the accounting records that it was required to file under our rules. Since the company did not file the required accounting records, the commission had to take the additional commission staff time that was required to construct rates to assure that just and reasonable rates would be presented. In the future, the company will be required to meet all filing requirements. If petitions are received that do not meet these requirements they will be rejected.

F. Conclusion

As a result of the findings set forth herein, we allow the following elements to be included in Sacoridge Water's revenue requirement.

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

Operation and Maintenance Costs

Electric	$2,200.00
Maintenance & Repairs	500.00
Supervision (Lyons)	600.00
Water Tests	200.00
Clerical	250.00
Supplies — Water	70.00
Supplies — Office	30.00
Bank Service Charge	30.00
Total Operation and Maintenance	$3,880.00

Total Costs and Expenses

R/E Tax	$ 300.00
Depreciation	1,744.00
Amortization	40.00
Total Costs & Expenses	$5,964.00

Rate Base

New Well	$46,759.00
Less Depreciation	1,744.00
	45,015.00
Land (historical cost)	471.42
Organization Expense	671.00
Net Plant	$46,157.42
Operations & Maintenance	808.00
Rate Base	$45,349.42

*70 acres $6,600
5 acres = $471.42

Tax Effect

Income	1.00
Less Business Profits Tax-NH	.08
Federal Taxable Income	.92
Federal Income Tax Rate	.15
Federal Income Tax — Tax	.138
Add Business Profits Tax-NH	.08
Effective Rate	.218
Inc. — Prior Tax	1.00
Effective Rate	.218
Divisor for Revenue Requirement	.782

Revenue Requirement

Rate Base $45,349.42 @ 10%	4,534.94
Costs & Expenses	5,964.00
	10,498.94
Tax effect (.782)	2,927.75
Revenue Required	13,426.69
28 customers/annual charge	$479.52

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the petition of Sacoridge Water to establish a water utility is granted; and it is

FURTHER ORDERED, that the petition of Sacoridge Water for permanent rates is denied, and rates are set at the level specified in the foregoing report; and it is

FURTHER ORDERED, that Sacoridge Water shall file revised tariff pages reflecting the revenue increase and bearing an effective date of all bills rendered on or after the date upon

which the company files a verification that all property interests specified in the foregoing report have been conveyed and bearing the following annotation: "Authorized by commission order no. 19,292 in docket DR 87-204 issued 1/13/89."

By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1989.

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NH.PUC*01/16/89*[51677]*74 NH PUC 42*Thomas F. Moran Inc. for Tilton Motel Associates Inc.

[Go to End of 51677]

74 NH PUC 42

Re Thomas F. Moran Inc. for Tilton Motel Associates Inc.

DE 88-199
Order No. 19,298

New Hampshire Public Utilities Commission

January 16, 1989

ORDER nisi granting a license to construct and maintain sanitary sewer lines across state-owned railroad property.

CERTIFICATES, § 125 — Sewer construction — License to cross state-owned property — Authorization.

[N.H.] The commission conditionally granted a petition for a license to construct and maintain sanitary sewer lines across state-owned railroad property where (1) the appropriate state agencies had approved the plan, (2) the license was necessary to fulfill health and safety requirements, and (3) the crossing would not substantially affect public rights in the land; grant of the license was conditioned on the public being afforded an opportunity to respond in support of, or in opposition to the petition.

By the COMMISSION:

ORDER

WHEREAS, on December 19, 1988, Thomas F. Moran Inc. filed with this commission a petition on behalf of Tilton Motel Associates, Inc. seeking license to construct, use, maintain, repair and reconstruct sewer lines under and across State-owned railroad property in Tilton, New Hampshire; and

WHEREAS, such sewer lines are to connect sewer service from the property of Tilton Motel Associates directly to the Winnepesauke Interceptor Sewer which is owned by the State

of New Hampshire; and

WHEREAS, such license is necessary for said companies to fulfill health and safety requirements of said property; and

WHEREAS, the petitioner has received approval of the Town of Tilton and the New Hampshire Department of Environmental Services for the sewer connection; and

WHEREAS, the petitioner has negotiated the required license with the New Hampshire Bureau of Railroads pending the crossing license which is the subject of this order; and

WHEREAS, the commission finds such crossing will not substantially affect public rights in said land; and

WHEREAS, the commission also finds that the public should be given an opportunity to respond in support of, or in opposition to said petition; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for hearing on the matter before this commission no later than January 31, 1989; and it is

FURTHER ORDERED, that Tilton Motel Associates Inc. provide said notice by one-time publication of a copy of this order in a newspaper generally circulated in the affected area, such publication to be no later than January 24, 1989 and documented by affidavit to be filed with this commission on or before February 6, 1989; and it is

FURTHER ORDERED, *NISI*, that Tilton Motel Associates Inc. be, granted license under RSA 371:17 *et seq.* to construct and maintain sanitary sewer lines across State-owned railroad property in Tilton, New Hampshire as depicted in drawings on file with this commission and further identified as being in the vicinity of Railroad Valuation Station 1037 + 88, Map 21/55; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads, Department of Transportation; and it is

FURTHER ORDERED, that such authority shall be effective 20 days from the date of this order, unless a hearing is requested as provided herein or the commission otherwise directs prior to the effective date; and it is

FURTHER ORDERED, that the decision in this order relates solely to the crossing of State owned railroad property and does not in any way exempt Tilton Motel Associates from sewer utility status should such be determined by this commission in the future.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1989.

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74 NH PUC 43

Re Petrolane-Southern New Hampshire Gas Company, Inc.

Additional petitioner: Northern Utilities, Inc.

DE 88-109
Order No. 19,299

New Hampshire Public Utilities Commission

January 17, 1989

ORDER approving a settlement agreement providing for the transfer of the assets of a propane gas distribution company to a natural gas local distribution company.

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1. CONSOLIDATION, MERGER, AND SALE, § 7 — Commission powers and duties — Transfer of utility franchise — Statutory considerations.

[N.H.] State statute RSA 374:30 provides that a public utility may transfer its franchise and works only after the commission finds the transfer in the public good. p. 44.

2. CONSOLIDATION, MERGER, AND SALE, § 19 — Grounds for approval — Public benefit — Transfer of utility franchise.

[N.H.] The commission approved a settlement agreement providing for the transfer of the franchise of a propane gas distribution company to a natural gas local distribution company; it was found that the transfer of the franchise under the terms of the settlement was in the public good and would benefit customers and

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the local economy. p. 44.

APPEARANCES: Attorney Dom S. D'Ambruoso for Petrolane-Southern New Hampshire Gas Company, Inc.; Attorney Paul K. Connolly, Jr. for Northern Utilities, Inc.; and Attorney Mary C.M. Hain for the commission staff.

By the COMMISSION:

REPORT

I. *Procedural History*

This docket was opened on July 29, 1988 on petition of Petrolane-Southern New Hampshire Gas Company, Inc. (Southern) and Northern Utilities, Inc. (Northern), a wholly owned subsidiary of Bay State Gas Company, for approval of the transfer to Northern of the assets of Southern including its franchise in Salem and Pelham, New Hampshire. The petition (Exhibit 4)

alleges that the transfer is in the public good because Northern will provide safe, reliable, dependable, low-cost natural gas to Southern's customers. On August 24, 1988, the commission issued an order of notice scheduling a prehearing conference for October 4, 1988 and a hearing on the merits for November 7, 1988.

On September 1, 1988 Attorney Jacqueline Fitzpatrick of EnergyNorth, Inc. filed a joint motion to intervene on behalf of three EnergyNorth subsidiaries: Concord Natural Gas Corporation, Gas Service, Inc. and Manchester Gas Company. On October 19, 1988 the commission issued Order No. 19,200 granting EnergyNorth's motion. The commission's order also accepted a new procedural schedule agreed by the parties at the October 4, 1988 prehearing conference. This schedule set a new hearing date for December 13, 1988.

On November 4, 1988, Southern and Northern filed with the commission a draft copy of the proposed purchase and sale agreement (Exhibit 6). An executed copy of the agreement was received January 11, 1989.

On November 9, 1988 staff filed a motion to compel and, in the alternative, to continue the proceeding if the contract between Bay State Gas Company and Petrolane for Petrolane's non-utility propane business was not produced by November 16, 1988.

On November 16, 1988 Southern and Northern filed a joint response agreeing to provide the requested contract, to the commission and the commission staff, in an in camera proceeding with a non-disclosure agreement. On November 21, 1988 the commission issued Order No. 19,235 (73 NH PUC 473 [1988]) granting the request for proprietary treatment with respect to the contract.

The parties held a settlement meeting on December 8, 1988. On December 13, 1988, the parties filed a settlement agreement (Exhibit 7) intended to resolve all issues in the case.

II. *Settlement Agreement*

The settlement agreement filed with the commission on December 13, 1988 (Exhibit 7) states that Southern, Northern and staff agree that the proposed transfer is in the public good. On the matter of rates to be charged, Northern agrees to use Southern's existing rate until natural gas is made available, at which time Northern will file a rate petition to charge customers according to Northern rate schedules.

In addition, Northern will record as salvage, on its books and records, the then fair market value, as determined by the commission, of any propane tanks transferred to Petrolane pursuant to the purchase and sales agreement (Exhibit 6).

Northern will also reduce its rate base by $75,000 representing a portion of the fair market value of the land transferred to Bay State pursuant to the purchase and sales agreement.

III. *Commission Analysis*

[1, 2] Under RSA 374:30, a public utility may transfer its franchise and works only after the commission finds the transfer in the public good. The question of a natural gas supply to the Salem-Pelham area of New Hampshire has been of interest to this commission for almost two decades. A three (3) acre parcel of land in the town of Salem, close to the Tennessee Gas Company pipeline, was purchased in the late

sixties by the old Southern New Hampshire Gas Company for the sole purpose of obtaining a gas supply from that supplier. No such supply was ever obtained. In 1979, in its case to obtain the assets of Southern New Hampshire Gas Company, Petrolane-Southern New Hampshire Gas Company outlined its desire to obtain Tennessee Gas Pipeline Company allocations to enable it to provide natural gas to this southern portion of the state. *Re Southern New Hampshire Gas Company, Inc.*, 65 NH PUC 101, 103 (1980). Again, no supply was provided. In support of the current petition, Northern asserts that commission approval of the transaction would speed the supply of natural gas to the area.

Notwithstanding the history of gas supply to the Salem-Pelham area the commission finds that Northern has demonstrated that it has the necessary supplies and expertise to make good its intention to deliver natural gas. Such an outcome will benefit not only existing customers of Southern but also new customers and in the process benefit the local economy. The commission, therefore, finds that the settlement agreement between the parties is in the public good.

We also find the agreement reasonable since it provides for utility ratepayers to be compensated for the market value of storage tanks that may be transferred to Petrolane. In response to staff data requests (Exhibit 5) Northern has indicated that these tanks, two of 30,000 gallons capacity and two of 19,000 gallons capacity, have an estimated combined value of $54,000.

In addition, the agreement provides for a reduction in Northern's rate base of $75,000 representing a portion of the fair market value of the three (3) acre parcel of land to be transferred to Bay State Gas Company pursuant to the transaction. Based on a purchase price of $137,970 for Southern's fixed assets (Exhibit 5 — response to staff data request #1) this results in a net rate base (including storage tanks) of $62,970.

Finally, we find, based on prefiled staff testimony (Exhibit 3), the provision requiring Northern to use Southern's existing rate until natural gas is received 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 proposed settlement agreement between the staff, Northern Utilities and Petrolane-Southern New Hampshire Gas Company is approved; and it is

FURTHER ORDERED, that Northern Utilities, Inc. be, and hereby is, authorized to engage in the business of a gas utility in the Towns of Salem and Pelham; and it is

FURTHER ORDERED, that Northern Utilities file a revised tariff page for the Salem-Pelham area.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of January, 1989.

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NH.PUC*01/24/89*[51679]*74 NH PUC 45*Kearsarge Telephone Company

[Go to End of 51679]

74 NH PUC 45

Re Kearsarge Telephone Company

DR 88-201
Order No. 19,302

Re Chichester Telephone Company

DR 88-202
Order No. 19,302

New Hampshire Public Utilities Commission

January 24, 1989

ORDER authorizing two independent local exchange telephone carriers to enter affiliated agreements for the pooling and borrowing of funds.

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1. SECURITY ISSUES, § 17 — Powers — State commissions — Utility indebtedness.

[N.H.] State statute RSA 369:7 provides that no public utility shall issue any evidence of indebtedness payable less than 12 months after the date thereof unless provided for by specific order of the commission. p. 46.

2. INTERCORPORATE RELATIONS, § 14.2 — Affiliate arrangements — Statutory

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considerations — Reasonableness.

[N.H.] State statute RSA 366:1 requires that all affiliate arrangements involving public utilities be just and reasonable. p. 46.

3. INTERCORPORATE RELATIONS, § 14.2 — Affiliate arrangements — Pooling of funds — Independent LECs.

[N.H.] Two independent local exchange telephone carriers (LECs) were authorized to enter an arrangement with an affiliate for the pooling of funds where it was found that the arrangement was just and reasonable in that it would provide an interest rate for invested funds that would be higher than that provided by most banks. p. 46.

4. INTERCORPORATE RELATIONS, § 19 — Affiliate arrangements — Loans — Independent LEC.

[N.H.] An independent local exchange telephone carrier (LEC) was authorized to enter an arrangement with an affiliate for the borrowing of funds where said borrowing would be limited

to short-term indebtedness of less than 10% of the value of the carrier's assets and the interest rate on borrowed funds would be lower than that charged by most banks. p. 46.

By the COMMISSION:

ORDER

Kearsarge Telephone Company (Kearsarge) and Chichester Telephone Company (Chichester), both subsidiaries of Telephone Data Systems, Inc. (TDS), have petitioned for permission to enter into affiliated agreements with Telecommunications Technologies Fund, Inc. (TTF), also a subsidiary of TDS, said agreements providing for the use by Kearsarge and Chichester of TTF, in lieu of a banking institution, Chichester for the deposit and borrowing of funds, and Kearsarge for the deposit of funds; and

[1-4] WHEREAS, TTF was established to operate as a cash management cooperative fund with pooling by several subsidiaries of TDS of cash temporarily available to said subsidiaries, and to make investments as needed in subsidiary telephone companies' service projects or in other subsidiaries' communication service projects; and

WHEREAS, the interest earned by Kearsarge and Chichester is calculated using a monthly rate equal to the average thirty-day Certificate of Deposit rate (published in the money rate section of *The Wall Street Journal*) for the last five business days of the month, plus fifty basis points (1/2 percent); and

WHEREAS, should Chichester need a source to borrow funds to undertake a telephone construction project they could borrow funds from TTF with no service fees and at a rate of prime plus fifty basis points (1/2 percent); and

WHEREAS, RSA 369:7 provides, in pertinent part, that no public utility shall issue any evidence of indebtedness payable less than twelve (12) months after the date thereof unless provided for by specific order of the commission; and

WHEREAS, RSA 366:1 *et seq.* requires that all affiliate arrangements be just and reasonable; and

WHEREAS, the commission finds that said arrangements are just and reasonable in that they provide an interest rate for invested funds higher than most banks, and interest rates on borrowed funds lower than most banks; it is hereby

ORDERED, that Kearsarge and Chichester may enter into the arrangement with TTF for the pooling of funds; and it is

FURTHER ORDERED, that Chichester may enter into the proposed arrangement with TTF for borrowing of funds provided; however, that said borrowing shall be limited, pursuant to RSA 369:7, to short term indebtedness which is less than ten percent (10%) of the value of the assets of Chichester.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of January, 1989.

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NH.PUC*01/24/89*[51680]*74 NH PUC 47*New England Power Company

[Go to End of 51680]

74 NH PUC 47

Re New England Power Company

DF 88-31
Supplemental Order No. 19,304

New Hampshire Public Utilities Commission

January 24, 1989

ORDER authorizing an electric utility to issue first mortgage bonds.

SECURITY ISSUES, § 58 — Additions and betterments — Pollution control — Electric utility.

[N.H.] An electric utility was authorized to issue first mortgage bonds and enter loan agreements relating to the issuance of pollution control revenue bonds.

By the COMMISSION:

SUPPLEMENTAL ORDER

Upon consideration of the Report and Order issued on May 9, 1988, in Order No. 19,090 (73 NH PUC 216), and based upon the supplemental details and information provided in a sworn affidavit dated December 16, 1988, from Robert H. McLaren, Assistant Treasurer of New England Power Company, all of the aforementioned being made a part hereof; on this day of January, 1989, it is

ORDERED, that the issue by New England Power Company of one or more additional issues of General and Refunding Mortgage Bonds not exceeding $17,100,000 principal amount in conjunction with Order No. 19,090 of this commission, dated May 9, 1988, is hereby authorized. Except as specifically set forth in this Order, each such issue shall be on such terms and conditions as set forth in the Order; and it is

FURTHER ORDERED, that the issue by New England Power Company of one or more additional issues of First Mortgage Bonds not exceeding $17,100,000 principal amount in conjunction with the Order, is hereby authorized. Except as specifically set forth in this order, each such issue shall be on such terms and conditions as set forth in the Order; and it is

FURTHER ORDERED, that the authorization to issue securities contained herein and in the Order, except with regard to First Mortgage Bonds, is hereby extended and shall be exercised on or before December 31, 1989, 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 and in the Order shall expire at such time as there are no longer any publicly held First Mortgage Bonds outstanding; and it is

FURTHER ORDERED, that the issuance of the bonds in the aforementioned, and the execution 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, relating to the issuance of pollution control revenue bonds, is consistent with the public good and this commission approves and authorizes the same.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of January, 1989.

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NH.PUC*01/24/89*[51681]*74 NH PUC 47*Annual Report Form for Telecommunications Companies

[Go to End of 51681]

74 NH PUC 47

Re Annual Report Form for Telecommunications Companies

DA 88-158
Order No. 19,306

New Hampshire Public Utilities Commission

January 24, 1989

ORDER adopting a revised annual report form for telecommunications companies.

REPORTS, § 1 — Annual report form — Revision — Telecommunications companies.

[N.H.] The commission revised the annual report form for telecommunications companies to reflect accounting changes required by its adoption of Part Puc 409, *Uniform System of Account for Telecommunications (USOA).*

By the COMMISSION:

REPORT

In an Order of Notice submitted to all interested parties on October 28, 1988, we proposed to revise the Annual Report for Telecommunications Companies (Annual Report). This report and order sets forth a procedural history, the positions of the parties and the commission analysis.

I. *Procedural History*

On January 29, 1988, the New Hampshire Public Utilities Commission adopted Part Puc 409 *Uniform System of Account for Telecommunications (USOA)*. Because of the extensive changes that were made to the USOA, major revisions were necessary to update and reflect accounting changes; conform each schedule to the accounts prescribed and maintain continuity with regards to account structure and the numbering system of the Annual Report.

Finance staff drafted a revised Annual Report, using as a basis the proposed revised Form M as presented in the FCC order DA 88-1218, the existing FERC Form M and the existing NHPUC annual report. The commission opened the captioned docket to investigate the proposed Annual Report and to invite comments from interested parties within 30 days of the release of the Order.

II. *Positions of the Parties*

As of the date of this Order, no telecommunications company and/or interested parties had submitted any written comments to the Order of Notice issued on October 28, 1988.

The finance staff has further reviewed the Annual Report. Based on this review, no further revisions and or changes were deemed necessary. It is the staff's position that the Annual Report as proposed be accepted and placed into effect.

III. *Commission Analysis*

It was duly noted by this commission that no comments were filed or action initiated by interested parties; this would indicate to this commission that the proposed annual report was acceptable to all interested parties. Our review of the position of the staff reveals that a careful analysis of the needs of industry wide conformity in financial accounting and reporting was of primary concern in developing the revised annual report. As this is crucial to the ratemaking process the commission will approve the revised annual report as presented in the Order of Notice of October 28, 1988.

Our order will issue accordingly.

ORDER

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

ORDERED, the revised Annual Report Form for Telecommunications Companies as set forth in the Order of Notice dated October 28, 1988 be, and hereby is, adopted; and it is;

FURTHER ORDERED, that this docket is closed.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of January, 1989.

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NH.PUC*01/27/89*[51682]*74 NH PUC 49*Municipal Water Department of Woodsville

[Go to End of 51682]

Re Municipal Water Department of Woodsville

DR 88-021
Order No. 19,307

New Hampshire Public Utilities Commission

January 27, 1989

ORDER authorizing a municipal water department to increase its rates for service provided to out-of-town customers.

RATES, § 429 — Municipal water department — Extraterritorial service.

[N.H.] A municipal water department was authorized to increase its rate for services provided to out-of-town customers to recover increased costs associated with a new water storage facility constructed to comply with the Safe Drinking Water Act.

APPEARANCES: Roger Welch, Clerk of the Board of Water Commissioners for the Municipal Water Department of Woodsville; Robert B. Lessels, James C. Nicholson and James L. Lenihan for the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

The following report concerns the hearing on the merits of a petition for an increase in permanent rates for those customers served in certain limited areas outside the Woodsville Fire District in the towns of Bath and Haverhill. The report discusses the procedural history, positions of the parties, commission analysis, and authorizes an increase in permanent rates.

I. *Procedural History*

On January 8, 1988, the Municipal Water Department of Woodsville (Woodsville) requested a 77% increase in rates for effect March 15, 1989 to cover the costs associated with the long term debt the department incurred in the construction and completion of a new water storage reservoir as mandated by the Safe Drinking Water Act. On February 11, 1988, the tariff pages reflecting the increase were suspended by order no. 19,008 pending further investigation.

A prehearing conference was held to establish a procedural schedule which was approved by commission order no. 19,145. A hearing was held in Concord on October 27, 1988.

II. *Positions of the Parties*

At the October hearing a Woodsville representative summarized the basis for the petitioner's request. Originally, the petitioner requested a 77% increase to fund the debt incurred for the construction of a new water storage facility, estimated to cost $500,000. Construction was completed in January 1988 at a final cost of $468,000. Funding for the project was provided by Farmer's Home Administration on a General Obligation Bond at five percent payable over a

thirty year term. The witness further testified that the original petition estimated annual interest on the long term debt to be $25,000 and a principal payment of $7,600 annually. In a letter to the commission dated October 5, 1988, the witness provided the actual completion cost of the reservoir of $468,000. However, the witness also testified that the original budget (and the subsequent petition) inadvertently omitted funds to cover a $20,000 engineering study to assess various alternative water sources for Woodsville. The petitioner proposed to amortize $20,000 engineering study over a five year period in the amount of $4,000 per year.

III. *Commission Analysis*

An increase of $33,573 would provide Woodsville with revenues adequate to meet its increased costs due to the new water storage facility. The Kimball Chase System Study will be amortized over a period of five years, resulting in an increase of $4,000 per year in operating and maintenance expenses. Depreciation expense has been proformed by $15,600 in order to amortized the cost of the new facility over a 30 year period.

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

	Test Year	*Pro forma*	*Total*
Water sales	$56,000	33,573	89,573
Oper & Main Exp.	58,400	4,000	62,400
Depreciation	10,000	15,600	25,600
Total Oper. Exp.	68,400	19,600	88,000
Other Income:			
Interest Income	14,000		14,000
Other Deduc.	2,000	1,483	3,483
Total Oper Income	12,000	<1,483>	110,517
Net Oper. Income	<400>	12,490	12,090

The net operating income of $12,090 is equal to the annual interest payments on the long term debt issued to finance the construction of the new water storage facility.

The increase of $33,573 is representative of the increase that is needed on a systemwide basis, and is a 60 percent increase. As our jurisdiction only applies to out-of-town customers, we will allow the Municipal Water Department of Woodsville to apply a 60 percent increase to its out-of-town customers.

Our order will issue accordingly.

ORDER

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

ORDERED, that NHPUC No. 2 — Water, Municipal Water Department of Woodsville:

3rd Revised Page 9

3rd Revised Page 11

1st Revised Page 13

1st Revised Page 14

be, and hereby are, rejected; and it is

FURTHER ORDERED, that Woodsville Water Department submit revised tariff pages for service rendered on or after the effective date of this order and bearing the commission order number so assigned.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 1989.

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NH.PUC*01/27/89*[51683]*74 NH PUC 50*Meriden Telephone Company

[Go to End of 51683]

74 NH PUC 50

Re Meriden Telephone Company

DF 89-012
Order No. 19,308

New Hampshire Public Utilities Commission

January 27, 1989

ORDER authorizing an independent local exchange telephone carrier to enter an affiliated agreement for the pooling of funds.

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1. INTERCORPORATE RELATIONS, § 14.2 — Affiliate arrangements — Statutory considerations — Reasonableness.

[N.H.] State statute RSA 366:1 requires that all affiliate arrangements involving public utilities be just and reasonable. p. 51.

2. INTERCORPORATE RELATIONS, § 14.2 — Affiliate arrangements — Pooling of funds — Independent LEC.

[N.H.] An independent local exchange telephone carrier (LEC) was authorized to enter an arrangement with an affiliate for the pooling of funds where it was found that the arrangement was just and reasonable in that it would provide an interest rate for invested funds that would be higher than that provided by most banks. p. 51.

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By the COMMISSION:

ORDER

[1, 2] Meriden Telephone Company (Meriden), a subsidiary of Telephone Data Systems, Inc. (TDS), petitioned for permission to enter into an affiliated agreement with Telecommunications Technologies Fund, Inc. (TTF), also a subsidiary of TDS, said agreement providing for the use of TTF by Meriden for the deposit of funds in lieu of a banking institution; and

WHEREAS, TTF was established to operate as a cash management cooperative fund with pooling by several subsidiaries of TDS of cash temporarily available to said subsidiaries, and to make investments as needed in subsidiary telephone companies, service projects or in other subsidiaries, communication service projects; and

WHEREAS, the interest earned by Meriden is calculated using a monthly rate equal to the average thirty-day Certificate of Deposit rate (published in the money rate section of *The Wall Street Journal*) for the last five business days of the month, plus fifty basis points (1/2 percent); and

WHEREAS, RSA 366:1 *et seq.* requires that all affiliate agreements be just and reasonable; and

WHEREAS, the commission finds that said agreement is just and reasonable in that it provides an interest rate for invested funds higher than most banks; and

WHEREAS, an identical agreement has been approved for Kearsarge Telephone Company, another subsidiary of TDS; it is hereby

ORDERED, that Meriden may enter into the affiliate arrangement with TTF for the pooling of funds.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January 1989.

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NH.PUC*01/27/89*[51684]*74 NH PUC 51*Connecticut Valley Electric Company, Inc.

[Go to End of 51684]

74 NH PUC 51

Re Connecticut Valley Electric Company, Inc.

DR 88-121
Order No. 19,309

New Hampshire Public Utilities Commission

January 27, 1989

ORDER establishing a procedural schedule for a retail electric rate case.

RATES, § 649 — Notice — Retail electric rate filing.

[N.H.] In an order establishing a procedural schedule for a retail electric rate filing, the utility agreed to provide additional notice to all parties to its prior major rate case and to all of its special contract customers; additional notice was warranted because the filing may have a substantial impact on the rates paid by special contract customers and other major customers of the utility.

By the COMMISSION:

REPORT

This docket was opened on August 16, 1988 by letter from Connecticut Valley Electric Company, Inc. (CVEC) stating an intention to file a retail rate structure proposal by October 21, 1988. On October 18, 1988, CVEC requested a four week extension in which to file the retail rate proposals. By order number 19,212, dated October 28, 1988, the commission granted CVEC's request for an extension of time to November 18, 1988. The required filing was effected on November 21, 1988.

The rate filing, proposing a rate structure redesign, was filed pursuant to a prior commission directive, order number 18,811 dated September 2, 1987 (72 NH PUC 385). The filing

purports to move the prices customers pay for electricity closer to the actual cost of providing service by adjusting rates in accordance with seasonal, time of day and cost variations.

The commission issued an order of notice on December 1, 1988 setting a prehearing conference for January 5, 1989, at 2:00 pm. The
order of notice was published by CVEC in accordance with its terms as documented by an affidavit filed by CVEC at the prehearing conference.

At the prehearing conference, held on January 5, 1989, the parties stipulated to the following procedural schedule:

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

Data Requests	January 20, 1989
CPY Responses	February 3, 1989
Follow-Up Requests	February 17, 1989
Follow-Up Responses	March 3, 1989
Staff & Intervenor Testimony	March 31, 1989
Data Requests of Staff & Intervenors	April 7, 1989
Data Responses of Staff & Intervenors	April 21, 1989
Prehearing Conference	May 2, 1989; May 4, 1989
Hearings	May 9, 10, 11, 1989

The proposed schedule appears to be reasonable and will be accepted by the commission with two exceptions. Dates scheduled for the last two items conflict with prior commission and staff commitments and thus will be modified slightly. The prehearing conference

date will be May 3 instead of May 2, 1988 and the hearing on the merits will commence on May 10 and will continue, as needed, on May 11, 12, 1989.

Accordingly, the procedural schedule as approved will be:

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

Data Requests	January 20, 1989
CPY Responses	February 3, 1989
Follow-Up Requests	February 17, 1989
Follow-Up Responses	March 3, 1989
Staff & Intervenor Testimony	March 31, 1989
Data Requests of Staff & Intervenors	April 7, 1989
Data Responses of Staff & Intervenors	April 21, 1989
Prehearing Conference	May 3, 1989; May 4, 1989
Hearings	May 10, 11, 12, 1989

Notice

Because of the substantial impact this case may have on CVEC's major customers, and given the lack of customer intervention in the proceeding to date, CVEC, at the suggestion of the hearing examiner, agreed to provide additional notice of these proceedings to all parties in its prior major rate case as well as to all of CVEC's special contract customers. The additional notice would be effected by mailing, via first class U.S. mail, a copy of the original order of notice and a copy of this procedural order to said parties.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is hereby incorporated by reference, the procedural schedule proposed by the parties, as modified in the accompanying report, is approved; and it is further

ORDERED, that Connecticut Valley Electric Company, Inc. provide additional notice to interested parties as provided in the accompanying report.

By Order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 1989.

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NH.PUC*01/30/89*[51685]*74 NH PUC 53*Milford Water Department

[Go to End of 51685]

74 NH PUC 53

Re Milford Water Department

DR 89-007
Order No. 19,310

New Hampshire Public Utilities Commission

January 30, 1989

ORDER nisi authorizing a municipal water department to increase rates for water service provided to out-of-town customers.

RATES, § 429 — Municipal water department — Extraterritorial service.

[N.H.] A municipal water department was authorized to increase its rates for water service provided to out-of-town customers where the increase (1) would be applied equally to customers located within the municipality, and (2) represented a reasonable adjustment to reflect costs associated with an intermunicipal interconnection, repayment of a bond issued for system improvements, and increased operating expenses.

By the COMMISSION:

ORDER

WHEREAS, on January 17, 1989 Milford Water Department filed certain revisions to its tariff seeking authority to increase existing rates by $4 for the first 500 cubic feet, and usage beyond the minimum charge from $.60 to $.95 per hundred cubic feet. This would result in increased annual revenues in the amount of $1,285 from its thirty customers in Amherst; and

WHEREAS, the customers residing in the town of Amherst are under commission jurisdiction; and

WHEREAS, the increase sought in its rate levels will be applied equally to customers in Milford; and

WHEREAS, the increase sought represents a reasonable adjustment to reflect costs associated with the Pennichuck Intermunicipal Connection, repayment of a bond issued for system improvements and increased operating expenses since rate levels were last set in 1981; and

WHEREAS, the customers in Amherst have been provided with individual notice of the proposed increase; 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 22, 1989; and it is

FURTHER ORDERED, that Milford Water Department 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 15, 1989 and designated in an affidavit to be filed with this office on or before March 1, 1989 ; and it is

FURTHER ORDERED, *nisi* that Milford Water Department's request for an increase in annual revenues be, and hereby is, approved; and it is

FURTHER ORDERED, that such authority shall be effective on March 1, 1989 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, the Milford Water Department submit revised tariff pages for effect on or after the above effective date reflecting this commission order number.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1989.

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NH.PUC*01/30/89*[51686]*74 NH PUC 54*Fuel Adjustment Clause

[Go to End of 51686]

74 NH PUC 54

Re Fuel Adjustment Clause

Parties: Municipal Electric Department of Wolfboro, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 89-008
Order No. 19,311

New Hampshire Public Utilities Commission

January 30, 1989

ORDER permitting the monthly fuel adjustment clause surcharges of two municipal electric utilities to become effective for the month of February 1989.

AUTOMATIC ADJUSTMENT CLAUSES, § 60 — Notice and hearing — Fuel adjustment clause surcharges — Municipal electric utilities.

[N.H.] The monthly fuel adjustment clause surcharges of two municipal electric utilities were made effective without hearing where the commission had notified the utilities that hearings would not automatically be scheduled unless requested by the utilities and the utilities had not requested hearings.

By the COMMISSION:

ORDER

WHEREAS, the Commission, in correspondence dated March 2, 1983, notified 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

ORDERED, that 99th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of $1.81 per 100 KWH for the month of February, 1989 be, and hereby is, permitted to become effective February 1, 1989; and it is

FURTHER ORDERED, that 149th Revised Page 10B of the Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of $.10 per 100 KWH for the month of February, 1989, be, and hereby is, permitted to become effective February 1, 1989.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1989.

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NH.PUC*01/30/89*[51687]*74 NH PUC 54*Northern Utilities, Inc.

[Go to End of 51687]

74 NH PUC 54

Re Northern Utilities, Inc.

DR 88-29
Order No. 19,312

New Hampshire Public Utilities Commission

January 30, 1989

ORDER approving a settlement agreement providing for an increase in rates for retail natural gas distribution service.

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1. RETURN, § 92 — Gas — Local distribution company — Stipulation.

[N.H.] A stipulated overall rate of return of 10.82% was adopted for purposes of calculating the revenue deficiency in retail natural gas rate proceeding; the overall rate of return was derived based on a return on equity of 13.75%, a cost of preferred equity of 5.76%, a cost of long-term debt of 9.13%, and a cost of short-term debt of 7.50%. p. 56.

2. VALUATION, § 25 — Average rate base — Natural gas local distribution company — Stipulation.

[N.H.] A stipulated rate base consisting of

a 13-month average 1987 rate base adjusted to include a new operation center that went into service in 1988 was adopted for purposes of calculating the revenue deficiency in retail natural gas rate proceeding. p. 56.

3. RATES, § 384 — Natural gas rate design — Cost allocations — Local distribution company.

[N.H.] Where the embedded cost allocation studies presented by a natural gas local distribution company (LDC) and commission staff produced different results, the parties agreed that the LDC should be permitted to collect its authorized base revenue increase on an across-the-board basis, pending the results of an ongoing rate design investigation; specifically, the LDC was authorized to increase the total revenue from each class in the same proportion as the total increase in revenue was to its total base rate revenue (net of gas costs). p. 56.

4. RATES, § 260 — Surcharges — Recoupment of revenue deficiency — Natural gas local distribution company.

[N.H.] The commission approved a rate settlement authorizing a natural gas local distribution company to recoup, by surcharge, a temporary revenue deficiency representing the difference between the revenue actually billed pursuant to temporary base rates approved by the commission in a prior order and the revenue the LDC would have billed had it charged rates reflecting the permanent rate increase authorized by the settlement. p. 57.

5. REVENUES, § 2 — Forecasts — Weather normalization — Natural gas local distribution company.

[N.H.] The operating income of a natural gas local distribution company was subjected to a stipulated weather normalization adjustment. p. 57.

6. SERVICE, § 337 — Gas — Thermal content — Local distribution company.

[N.H.] A natural gas local distribution company was directed to install a calorimeter to test the heating value of its gas to ensure compliance with commission regulations requiring gas utilities to furnish gas with a daily heating value of at least 545 British thermal units per cubit foot. p. 59.

APPEARANCES: Elias G. Farrah, Esq. and Paul B. Dexter, Esq. for Northern Utilities, Inc., and Mary C.M. Hain, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report addresses a petition by Northern Utilities, 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 April 8, 1988, and pursuant to R.S.A. 378:3, Northern Utilities, Inc. ("Northern") filed revised tariff pages designed to increase gross annual revenues by $1,101,171 net of the cost of

gas. The proposed tariffs were to be effective May 8, 1988.

On April 8, 1988, Northern also filed a petition for temporary rates pursuant to R.S.A. 378:27. The temporary rates proposed were designed to collect an increase in gross annual revenues of $550,000 (net of the cost of gas) effective for service rendered on and after April 8, 1988.

Under R.S.A. 378:6, the commission, suspended the taking effect of the permanent rate tariffs. Order No. 19,087 (May 6, 1988). Pursuant to a May 10, 1988 order of notice, the commission held a hearing on June 3, 1988, to address the temporary rates and a pre-hearing conference on the issue of permanent rates.

The commission approved the temporary

Page 55

rate increase for service rendered on and after June 23, 1988. Report and Order No. 19,105, (June 23, 1988) (73 NH PUC 234). The commission also approved a procedural schedule to govern the permanent rate investigation.

Staff performed discovery including an on-site audit of Northern's books and records. In late December 1988, Staff filed testimony in this proceeding.

The parties held settlement meetings on January 4, and January 12, 1989. On January 20, 1989, the parties filed a settlement agreement intended to resolve all the issues in this case.

II. *Positions of the Parties*

Northern 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 A) revenue deficiency, B) rate design, C) recoupment of the temporary rate deficiency, D) allocation of supplemental gas facilities, E) depreciation, F) weather normalization, G) Btu measurement, and H) combined billing.

A. Revenue Deficiency

The staff's original testimony and exhibits supported an increase of $813,590 which, after adjusting for issues related to the calculation of the deficiency that were agreed to by staff and Northern equaled $857,990. The parties agreed that Northern was experiencing a revenue deficiency. Thus, the parties agreed that Northern should be allowed a $987,389 increase in base revenues, which includes a pro forma adjustment to amortize rate case expenses over two years.

For the purpose of calculating the revenue deficiency in this proceeding, the parties agreed to use the following components:

1. Rate of Return

[1] The allowed return on equity shall be 13.75%, the cost of preferred equity shall be 5.76%, the cost of long-term debt shall be 9.13%, and the cost of short-term debt shall be 7.50%. These rates shall be applied to the Company's capital structure to produce a weighted overall rate of return of 10.82%.

2. Rate Base

[2] The parties agreed that the rate base would be a 13 month average 1987 rate base adjusted to include the Company's new operation center in Portsmouth, which went into service in April 1988. The rate base shall equal $13,345,735.

3. Net Utility Operating Income

The parties stipulated that the net utility operating income shall be $792,332.

Using the above components, the revenue deficiency is calculated as follows:

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

Rate Base	$13,345,735
Rate of Return	10.82%
Income Required	1,444,009
Adjusted Net Operating Income	792,332
Deficiency	651,677
Tax Effect (34%)	335,712
Revenue Deficiency (Deficiency divided by 66%)	987,389

B. Rate Design

[3] Both the Company and the Staff filed embedded cost allocation studies. The studies produced different results. Because of the continuing rate design investigation in docket DE 86-208, and solely for the purpose of settling this proceeding, both parties agree that Northern should collect the base revenue increase by increasing rates across the board. Specifically, Northern would be allowed to increase the total revenue from each class in the same proportion as the total increase in revenue is to Northern's total base rate revenue (net of gas costs). The parties agreed to increase monthly customer charges by one dollar. The remaining increase

for each class shall be recovered by increasing each block of the rate schedule on a uniform percent basis within each class.

These rates shall be effective with meters read on and after February 1, 1989.

C. The Recoupment of Temporary Rate Deficiency

[4] The parties agreed that Northern would be allowed to recoup, by surcharge, the temporary rate revenue deficiency. This deficiency is the difference between a) the revenue actually billed by Northern pursuant to the temporary base rates approved by the commission in Report and Order No. 19,105, dated June 23, 1988, and b) the revenue Northern would have billed had it charged rates reflecting the permanent rate increase. The surcharge shall be equal to $00.0079 per therm and shall be designed to recoup the deficiency over a twelve-month period effective for meters read on and after February 1, 1989. The company will collect this surcharge until it has recovered the actual amount of the deficiency. Northern shall file a calculation of the

actual deficiency as soon as it is known. It shall also file a monthly tracking report showing the amount it has recouped.

D. Allocation of Supplemental Gas Facilities

In its pre-filed testimony and during settlement negotiations, the staff disputed the formula by which Northern allocates the costs of supplemental gas facilities used jointly between Northern's New Hampshire and Maine divisions. Specifically, it had three issues with the methodology used to calculate the allocation of supplemental gas facilities.

1) Northern's filing is based on a single design day or both divisions, and the staff alleged that, due for the more extreme climate in Maine, this should result in Maine having a higher design day and; therefore, receiving a higher share of these facility costs.

2) Northern used effective degree days instead of temperature degree days as the basis of its allocation factor calculations, and the staff averred that, Northern did not substantiate the effective degree-day calculation.

3) In this proceeding, Northern has used a higher standard of reliability on the peak day than in past proceedings.

Solely for the purposes of settling this proceeding, the staff has used Northern's allocation. Northern agreed to provide any additional information requested by the staff in order to review Northern's calculation.

E. Depreciation

Northern agreed to perform a depreciation study for the New Hampshire Division as well as all supplemental gas facilities prior to its next request for an increase in base rates. For informational purposes, the results of the study shall be submitted to the Commission when the study is final.

F. Weather Normalization

[5] The Company submitted a weather normalization adjustment calculated using effective degree-day data. The staff opposed the use of effective degree-day data pending Northern's providing the methodology and the temperature degree data used to calculate effective degree-days. Solely for purposes of arriving at a timely settlement, Northern agreed to increase its weather adjustment by $15,000 to account for perceived differences that may exist between effective and temperature degree-day data. Northern also agreed that, if in its next rate request it seeks to calculate its weather normalization using effective-degree days, it will provide the adjustment calculated using temperature degree-day data and will endeavor to more fully explain the method by which effective degree-day data is calculated.

G. Btu Measurement

In its pre-filed testimony, the staff questioned Northern's method of measuring the Btu content of its gas. After meeting to discuss the issue, Staff and Northern agreed that Northern's current method for measuring the Btu content of

the gas is appropriate. Northern requests a waiver from the requirement in NHPUC Rule 504.01(b)(1) that the Company shall maintain a standard calorimeter outfit for the regular determination of the heating value of the gas sold. At the hearing, Northern agreed to measure the Btu content of its gas if required to do so by the commission.

H. Combined Billing

At the staff's request, Northern identified approximately thirty-five customers with multiple meters whose meter readings Northern combines prior to calculating their bills. Northern agrees that it will no longer combine bills after the effective date of this rate increase.

III. *Commission Analysis*

A. The Settlement

The commission finds that the revenue requirement, and the other elements of the settlement agreement, as developed, are supported by the evidence and are just and reasonable; therefore, we accept them for resolution of this particular petition in accordance with the agreement. We note that the reasonableness of the across-the-board increase proposed by the settlement is in fact supported by the cost study performed by staff. The proposed increase will be effective as of February 1, 1989, pursuant to the settlement agreement. Below we show the impact on typical monthly bills for average-use residential customers for each company.

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

	Non-Heating			Heating		
ResidentialTotal Increase			*Total*	*Increase*		
Rate A	*Bill*	*Percent*		*Bill*		*Percent*
Rates at 4-8-88	$20.95			$87.25		
Increase Under Temporary Rates	22.07	$1.12	5.4%	91.02	$3.77	4.3%
Additional Permanent Rate Increase	23.16	1.09	4.9%	93.70	2.68	2.9%
Additional Recoupment Surcharge	23.40	.24	1.0%	94.89	1.19	1.3%
Total		$2.45	11.3%		$7.64	8.5%

B. Allocation of Supplemental Gas Facilities

Northern owns certain assets, consisting of LP air gas facilities in both Portsmouth, New Hampshire and Portland, Maine and a LPG facility at Lewiston, Maine, known as supplemental gas facilities. These assets are pooled to provide service in both New Hampshire and Maine. When the requirements of the New Hampshire division's firm customers exceed their *pro rata* share of natural gas supplies from Granite State Gas Transmission Company, their *pro rata* share of emergency gas purchases, and the capacity of the Portsmouth LP air gas facility, additional supplemental gas is produced at the Maine division's supplemental gas supply facilities and this gas is delivered to the New Hampshire division by pipeline.

The staff used the company's allocation solely for the purposes of settling this proceeding.

This issue will come up again in Northern's future cost of gas proceedings and rate cases. We find it would be appropriate to determine a consistent methodology to apply to all of these proceedings. We shall await the findings of the staff informal investigation to determine whether it is necessary to open a docket to change Northern's methodology.

Page 58

C. Btu Billing

[6] Our rule specifies that a gas utility shall not furnish less than a daily heating value of 545 British thermal units per cubic foot. NHPUC 504.01(a). The utility must also specify in its tariff its standard heating value. *Id.* Under this rule, the utility must, unless specifically directed otherwise by the commission, maintain a standard calorimeter outfit to test this heating value. NHPUC 504.01(b). The utility must test the heating value of the gas at least once daily, and more often if necessary to obtain an accurate record of the average and fluctuation of the heating value. NHPUC 504.01(c). Monthly heating value reports are also required. *Id*.

In this proceeding the staff and Northern have agreed to a method by which Northern shall calculate the daily thermal factor for billing purposes. However, we must clarify that our rules are intended to establish a minimum heating value so that customers may not only be billed correctly for, but so they may also know the quality of, the product they are getting. They cannot make this determination without some local knowledge of the heating value of the gas received. This function is served by our rule.

In the hearing, Northern agreed to install a calorimeter if the commission so required. In addition, we understand that Northern owns a calorimeter. Thus, we will require Northern to install and operate a calorimeter to provide the E-6 heating value reports required by our rules. Data from this calorimeter shall be used for these reports. Northern shall submit a proposal on the location of the calorimeter and, if the staff agrees to the location, it shall be so installed. Heating values determined according to the procedure described in the stipulation shall be used for billing purposes and shall be available for review by the staff upon request.

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 Settlement Agreement between the staff of the Public Utilities Commission and Northern Utilities, Inc. is approved; and it is

FURTHER ORDERED, that Northern shall file revised tariff pages reflecting the base revenue increase and the temporary rate deficiency surcharge effective for meters read on or after February 1, 1989, bearing the following annotation: "Authorized by Commission Order No. 19,312 in Docket DR 88-029, issued January 30, 1989;" and it is

FURTHER ORDERED, that Northern shall file a calculation of the actual temporary rate deficiency and monthly recoupment tracking reports in compliance with the foregoing report; and it is

FURTHER ORDERED, that Northern shall install a calorimeter in compliance with the

foregoing report.

By Order of the Public Utilities Commission of New Hampshire this 30th day of January, 1989.

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NH.PUC*02/01/89*[51688]*74 NH PUC 59*Northern Utilities, Inc.

[Go to End of 51688]

74 NH PUC 59

Re Northern Utilities, Inc.

DF 88-180
Order No. 19,313

New Hampshire Public Utilities Commission

February 1, 1989

ORDER authorizing a natural gas local distribution company to enter an agreement providing for up to $10 million in revolving credit funds for a four year period.

SECURITY ISSUES, § 44 — Factors affecting authorization — Retirement of existing short-term debt — Additions and betterments — Revolving credit agreement — Natural gas local distribution company.

[N.H.] A natural gas local distribution company was authorized to enter an agreement providing for up to $10 million in revolving credit funds for a four year period, the proceeds from which would be used to reduce outstanding short-term debt and to fund future additions

and betterments to its utility plant and property.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc. ("Northern" or "the Company"), a New Hampshire corporation having its principal place of business in Portsmouth, Rockingham County, having filed, on November 22, 1988, a petition for authority pursuant to R.S.A. 369: 1, 4 and 7 to enter into a Revolving Credit Agreement ("the Agreement") not to exceed $10,000,000 and respecify short-term debt limits pursuant to the Commission's Supplemental Order No. 7446; and

WHEREAS, Northern Utilities, Inc. states that the purpose of the proposed Agreement is to reduce the level of the outstanding short-term debt and to fund future additions, extensions and

betterments to its utility plant, property and equipment; and

WHEREAS, Northern states that the Agreement will be with the First National Bank of Boston and will provide up to $10,000,000 of revolving credit funds for a four-year period; and

WHEREAS, Northern Utilities, Inc. estimates capital expenditures totalling $5,461,800 for its 1989 fiscal year commencing October 1, 1988; and

WHEREAS, Northern Utilities, Inc. states that the current heating season necessitates the financing of seasonal fuel purchases and customer accounts receivable, as well as other on-going working capital needs; and

WHEREAS, Northern Utilities, Inc. also states that its total outstanding short-term notes payable was $9,300,000 on October 31, 1988; and

WHEREAS, Northern Utilities, Inc. currently is authorized to issue short-term notes in an aggregate principal amount not to exceed $10,000,000, by Order No. 19,178 issued September 15, 1988 (73 NH PUC 371), such authorization expiring on February 28, 1989; and

WHEREAS, as of February 28, 1989, Northern's authorized short-term debt level limitation will revert to the limitation described in the Commission's Supplemental Order No. 7,446 restricting short-term debt to an amount not to exceed 10 percent of fixed capital; and

WHEREAS, Northern states that its net fixed capital as of September 30, 1988, was $33,901,926 against which the Company would have been entitled under Supplemental Order No. 7,446 to maintain no more than $3,390,000 of short-term debt outstanding; and

WHEREAS, Northern Utilities, Inc. requests authorization to re-establish its short-term debt level at $5,000,000; and

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

ORDERED, that Northern Utilities, Inc. is hereby authorized, pursuant to R.S.A. 369:1 and 4 to enter into the Agreement which provides for up to $10,000,000 in revolving credit funds for a four-year period, the proceeds of which will be used to reduce outstanding short-term debt and to fund future additions, extensions and betterments to its utility plant, property and equipment; and it is

FURTHER ORDERED, that Northern within 10 days of the closing will submit a copy of the Revolving Credit Agreement as well as a statement as to the interest rate on the initial borrowing; and it is

FURTHER ORDERED, that if at any time during the term of the Agreement Northern reduces the balance outstanding under the Agreement, and any portion of the revolving credit fund shall be considered short-term debt in accordance with generally accepted accounting principles, Northern shall notify the commission; and it is

FURTHER ORDERED, that Northern is authorized to take all steps and delivery and execute all documents necessary or desirable to implement and carry out the terms of the Agreement; and it is

FURTHER ORDERED, that on or before January 1 and July 1 of each year Northern shall

file with this commission a detailed statement, duly sworn to by its treasurer or assistant treasurer, showing the proceeds of the notes or

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notes payable herein authorized, until the whole of said proceeds of the notes or notes payable herein authorized, until the whole of said proceeds have been fully accounted for; and it is

FURTHER ORDERED, that Northern is hereby authorized pursuant to R.S.A. 369:7 to issue short-term debt at a level not to exceed $5,000,000, such authorization to expire on October 31, 1989.

By order of the Public Utilities Commission of New Hampshire this first day of February, 1989.

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NH.PUC*02/02/89*[51689]*74 NH PUC 61*New England Alternate Fuels-Swanzey

[Go to End of 51689]

74 NH PUC 61

Re New England Alternate Fuels-Swanzey

DR 86-152
Order No. 19,315

New Hampshire Public Utilities Commission

February 2, 1989

ORDER nisi rescinding the long-term rate contract of a small power producer.

COGENERATION, § 19 — Long-term rate contract — Small power production project — Recision.

[N.H.] The long-term rate contract between an electric utility and a small power production project was rescinded where the project developer had declared that the project had been abandoned.

By the COMMISSION:

ORDER

WHEREAS, on August 21, 1986 by order no. 18,376 (71 NH PUC 498), the commission granted New England Alternate Fuels (NEAF) a 20 year long-term rate contract which stated an on-line date of power year 1988 pursuant to *Re Small Energy Producers and Cogenerators*, 69

NH PUC 352, 61 PUR4th 132 (1984) and 70 NH PUC 753, 69 PUR4th 365 (1985); and

WHEREAS, the commission has been notified by Public Service Company of New Hampshire (PSNH) that NEAF in response to a survey done by PSNH on project status, has declared that the project has been abandoned; it is therefore

ORDERED, *nisi* that NEAF's 20 year long-term contract granted in order no. 18,376 be, and hereby is, rescinded; and it is

FURTHER ORDERED, that this order *nisi* shall be effective 20 days from the date of this order.

By order of the Public Utilities Commission of New Hampshire this second day of February, 1989.

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NH.PUC*02/02/89*[51690]*74 NH PUC 61*Remedial Resource Recovery

[Go to End of 51690]

74 NH PUC 61

Re Remedial Resource Recovery

DR 85-342
Order No. 19,316

New Hampshire Public Utilities Commission

February 2, 1989

ORDER directing the developer of a small power production project to appear and show cause why its long-term rate filing and interconnection agreement should not be rescinded.

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1. COGENERATION, § 24 — Rates — Recision of approval — Small power producer.

[N.H.] The failure by the developer of a small power production project to reasonably fulfill obligations under its rate order, including on-line date obligations, are grounds for recision of the rate order. p. 62.

2. COGENERATION, § 24 — Rates — Recision of approval — Small power producer.

Page 61

[N.H.] The developer of a small power production project was directed to appear and show cause why its long-term rate filing and interconnection agreement should not be rescinded where the developer had not begun construction of its project and did not respond to staff inquiries regarding the project. p. 62.

By the COMMISSION:

ORDER

WHEREAS, on November 12, 1985, the commission granted Remedial Resource Recovery (RRR) a 20 year long-term rate by order no. 17,944 (70 NH PUC 925) pursuant to *Re Small Energy Producers and Cogenerators*, 69 NH PUC 352, 61 PUR4th 132 (1984) and 70 NH PUC 753, 69 PUR4th 365 (1985); and

[1, 2] WHEREAS, order no. 17,944 specified an on-line date for the project of power year 1987, which ended August 31, 1987; and

WHEREAS, independent investigation by the commission staff has revealed that RRR has not begun construction of its project and RRR did not respond to a letter by staff dated October 21, 1988 requesting information concerning RRR's intention regarding the development of its project; and

WHEREAS, the latest on-line date available pursuant to DR 85-215 is August 31, 1989; 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 recision of the developer's rate order [*Re D.J. Pitman*, 72 NH PUC 166 (1987) and 72 NH PUC 232 (1987) (Pitman) and *Re HDI-Hinsdale*, 72 NH PUC 169 (1987) and 72 NH PUC 230 (1987) (HDI-Hinsdale)]; 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 mature filing from HDI. Report and order no. 18,718 at 3 (72 NH PUC 232); and

WHEREAS, the same rationale appears to apply to RRR such that it may no longer be eligible for its commission approved long term rates pursuant to order no. 17,944; it is therefore

ORDERED, that RRR appear before the commission at its offices at 8 Old Suncook Road, Building #1, Concord, New Hampshire at 10:00 a.m. on March 23, 1989 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 prefiled with the commission on or before Mar. 16, 1989.

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

1989.

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[Go to End of 51692]

74 NH PUC 66

Re Burley J. Hammond

DE 88-204
Order No. 19,319

New Hampshire Public Utilities Commission

February 9, 1989

ORDER granting a license to construct, use, maintain, repair and reconstruct an underground sewer connector beneath state-owned railroad property.

CERTIFICATES, § 125 — Sewer construction — License to cross state-owned property.

[N.H.] The commission granted a petition of a license to construct, use, maintain, repair and reconstruct an underground sewer connector beneath state-owned railroad property where the crossing would fulfill the health and safety needs of the petitioner without affecting substantially public rights in state-owned property and where the only abutting private property owner affected by the crossing had consented to the petition.

By the COMMISSION:

ORDER

WHEREAS, on December 21, 1988, Burley J. Hammond filed with this commission a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct an underground sewer connector beneath State-owned railroad property in the Town of Colebrook, New Hampshire; and

WHEREAS, said facility is proposed to serve the petitioner's property in Colebrook, New Hampshire; and

WHEREAS, the commission finds this crossing fulfills the health and safety needs of the petitioner without affecting substantially public rights on State-owned property of the North Stratford to Beecher Falls Railroad; and

WHEREAS, the one abutting private property landowner to be affected by said proposal, Marjorie P. Gifford, has consented to the petition, which written consent is on file at the commission; and

WHEREAS, the commission finds such evidence justifies waiver of public hearing according to RSA 371:20; and

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

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the commission no later than February 24, 1989 ; 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 Colebrook region. Such publication to be no later than February 17, 1989 and documented by affidavit to be filed with this office on or before March 2, 1989 and it is

FURTHER ORDERED, *NISI* that license be, and hereby is, granted, pursuant to RSA 371:17 *et seq* to Burley J. Hammond, Colebrook, New Hampshire 03576 for the construction, use, maintenance, repair and reconstruction of sewer plant beneath and across public railroad property in Colebrook, New Hampshire identified at approximate Valuation Station 2369 + 31, Map V 21/19; 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 above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this ninth day of February, 1989.

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NH.PUC*02/10/89*[51693]*74 NH PUC 67*New Hampshire Electric Cooperative, Inc.

[Go to End of 51693]

74 NH PUC 67

Re New Hampshire Electric Cooperative, Inc.

DE 89-011
Order No. 19,320

New Hampshire Public Utilities Commission

February 10, 1989

ORDER authorizing an electric cooperative to place and maintain submarine electric cable under public waters.

ELECTRICITY, § 7 — Authorization for lines — Submarine cable — Placement beneath public waters — Cooperative utility.

[N.H.] An electric cooperative was authorized to place and maintain submarine electric cable under public waters where it was found that placement of the cable was necessary to enable the cooperative to meet its public service obligation; the cooperative was directed to ensure that all construction meet the requirements of the National Electrical Safety Code, the Wetlands Board, and the Department of Environmental Services.

By the COMMISSION:

ORDER

WHEREAS, on January 17, 1989, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with this commission a petition seeking license pursuant to RSA 371:17 to place and maintain electric submarine cable under the waters of Squam Lake in Holderness, New Hampshire; and

WHEREAS, electric service has been requested for Great Island on Squam Lake, and

WHEREAS, the necessary right-of-way easements have been obtained; and

WHEREAS, Permit No. 88-1872 has been issued by the Wetlands Board, Department of Environmental Services, for the submarine cable crossing; and

WHEREAS, the cable crossing will consist of approximately 2000 feet of one 1/0, 15 KV submarine electric cable to be operated at standard distribution voltages; and

WHEREAS, the commission finds such crossing necessary for the Cooperative to meet its obligation to serve customers within its franchise area, thus it is in the public 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 written request for a hearing on the matter before this commission no later than February 27, 1989; and it is

FURTHER ORDERED, that NHEC effect such notification by publication of this order once in the Laconia *Evening Citizen*, and once in the *Plymouth Record* no later than February 20, 1989 and documented by affidavit to be filed with this office on or before March 2, 1989; and it is

FURTHER ORDERED, *NISI* that NHEC be, and hereby is, authorized pursuant to RSA 371:17 *et seq* to place and maintain submarine electric cable beneath Squam Lake as well as associated aerial plant as depicted in NHEC Staking Sheets for Work Order No. 522639 and other documentation on file with this commission; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code as well as requirements of the Wetlands Board, Department of Environmental Services; and it is

FURTHER ORDERED, that such authority shall be effective 20 days from the date of this order, unless a hearing is requested as provided herein or the commission so directs prior to the

effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1989.

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NH.PUC*02/10/89*[51694]*74 NH PUC 68*New England Telephone and Telegraph Company

[Go to End of 51694]

74 NH PUC 68

Re New England Telephone and Telegraph Company

DR 85-182
Order No. 19,321

New Hampshire Public Utilities Commission

February 10, 1989

ORDER directing the dominant local exchange telephone carrier to comply with a prior order requiring it to file a usage study.

PROCEDURE, § 17 — Production of evidence — Usage study — Local exchange telephone carrier.

[N.H.] The dominant local exchange telephone carrier was directed to comply with a prior order requiring it file a usage study in support of its embedded cost of service studies or to produce a motion stating good and adequate reasons why the usage study should not be required; the commission warned that failure to follow the directive could result in the imposition of a fine pursuant to state statute RSA 374:17.

By the COMMISSION:

ORDER

WHEREAS, in commission report and order no. 18,977 (January 18, 1988) we approved the parties' agreement (filed November 2, 1987), thereby, approving the procedure outlined therein; and

WHEREAS, in this agreement New England Telephone and Telegraph Company agreed to perform several cost of service studies based on a usage study; and

WHEREAS, according to the agreement New England Telephone and Telegraph Company would complete the usage study by December 31, 1987; and

WHEREAS, on June 1, 1988, New England Telephone and Telegraph Company filed its embedded cost of service studies but did not file the supporting usage study; and

WHEREAS, on two different dates (December 1, 1988 and January 12, 1989) the staff requested a complete copy of the usage study; and

WHEREAS, such usage study was requested to be provided in the same level of detail and format as that provided by Merrimack County Telephone Company and that said usage study should be provided in both paper and computer diskette form; and

WHEREAS, New England Telephone and Telegraph Company has not produced the usage study or an adequate reason why this study has not been filed; it is hereby

ORDERED, that New England Telephone and Telegraph Company shall file said usage study by February 17, 1989, and it is

FURTHER ORDERED, that such usage study shall be filed in the same level of detail and format as the usage study provided by Merrimack County Telephone Company in this proceeding; and it is

FURTHER ORDERED, that New England Telephone and Telegraph Company shall provide two (2) paper copies as well as two (2) Lotus 2.1 version IBM microcomputer-compatible diskettes of said usage study; and it is

FURTHER ORDERED, that if New England Telephone and Telegraph Company does not produce the study, they should produce a motion stating good and adequate reasons why this order should be set aside; and it is

FURTHER ORDERED, that if New England Telephone and Telegraph Company does not file said usage study as required the staff may file a motion asking that the commission fine New England Telephone and Telegraph Company, pursuant to RSA 374:17.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1989.

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NH.PUC*02/15/89*[51695]*74 NH PUC 69*Connecticut Valley Electric Company, Inc.

[Go to End of 51695]

74 NH PUC 69

Re Connecticut Valley Electric Company, Inc.

Movants: Claremont Hydro Associates and Sunander Hydro Associates

DR 88-176
Order No. 19,322

New Hampshire Public Utilities Commission

February 15, 1989

ORDER scheduling hearing on a motion for rehearing or stay of a prior order authorizing an electric utility to implement revised short-term energy and capacity rates for qualifying cogeneration and small power production facilities. For prior order see, 74 NH PUC 28.

COGENERATION, § 24 — Rates — Short-term energy and capacity rates — Motion for rehearing.

[N.H.] The commission scheduled a hearing on a motion for rehearing or stay of a prior order authorizing an electric utility to implement revised short-term energy and capacity rates for qualifying cogeneration and small power production facilities.

By the COMMISSION:

ORDER

Claremont Hydro Associates and Sunander Hydro Associates (movants) having filed on January 31, 1989, a motion for rehearing or stay of order regarding Order No. 19,290 dated January 11, 1989, in DR 88-176 (74 NH PUC 28); and

WHEREAS, said motion alleges that Order No. 19,290 contains factual errors and that the implementation of said order results in an unfair burden and hardship on the small power producers who have in good faith attempted to negotiate with Connecticut Valley Electric Company, Inc.; and

WHEREAS, the motion further alleges that implementation of said order seriously harms the small power producers because of the neglect of any mechanism to arrive at long term contracts or to formulate a reasonable avoided cost rate after a proper hearing; it is hereby

ORDERED, that a hearing on the motion be held at the commission offices at ten o'clock in the forenoon on February 24, 1989, at which time interested parties may speak to the issue as to whether or not the motion should be granted.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1989.

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NH.PUC*02/16/89*[51696]*74 NH PUC 69*Merrimack County Telephone Company

[Go to End of 51696]

74 NH PUC 69

Re Merrimack County Telephone Company

DF 89-005
Order No. 19,323

New Hampshire Public Utilities Commission

February 16, 1989

ORDER authorizing a telephone public utility to issue its mortgage notes in the principal amount

of $2,020,200 to the United States of America, acting by and through the Rural Electrification Administration and the Rural Telephone Bank.

SECURITY ISSUES, § 44 — Authorization — Construction financing — Telephone public utility.

[N.H.] A telephone public utility was authorized to issue its mortgage notes in the principal amount of $2,020,200 to the United States of America (acting by and through the Rural Electrification Administration and the Rural Telephone Bank) for the purpose of financing construction programs.

APPEARANCES: Douglas S. Hatfield, Jr., Esquire for the petitioner; Eugene F. Sullivan, Finance Director and Merwin Sands, Economist for the staff.

By the COMMISSION:

REPORT

By this unopposed petition filed January 6, 1989, Merrimack County Telephone Company (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire, and operating therein as a telephone public utility under the jurisdiction of this commission, seeks authority pursuant to the provisions of RSA 369 to issue its mortgage note in the principal amount of $2,020,200 to the United States of America, acting by and through the Rural Electrification Administration and the Rural Telephone Bank, and to mortgage its property in connection therewith. Prefiled testimony of John LaBonte, Financial Manager of the Company, and the exhibits accompanying the petition, are part of the record. By order of the commission, public hearing was held on February 1, 1989, having been properly advertised.

Mr. LaBonte testified that the proceeds of the issuance of the mortgage note will be used (a) to finance the acquisition of facilities and equipment necessary to serve present and future customers in all exchanges; (b) to finance the purchase of new equal access software and related equipment for the Contoocook Central office; (c) upgrade Bradford and Warner offices to Class 5 and Contoocook office to Class 5 Host; (d) to finance related system improvements; (e) to reimburse the Company's treasury for expenditures made for the foregoing purposes; and (f) to purchase $96,200 of Class B stock of the Rural Telephone Bank, which is required as a condition to the loan. The Company submitted evidence regarding its construction program for the years 1989-1993, which is proposed to be financed through (i) this mortgage loan, (ii) internally generated Company funds.

The Company submitted exhibits of actual and budgeted balance sheets, income statements, cash flow statements and capital additions for the five years 1989 through 1993. Certified copies of authorizing votes of the Company's stockholders and board of directors were put in evidence.

Mr. LaBonte testified that the proposed loan is required for the Company to construct

facilities necessary to meet the needs of its customers in its growing service area.

Testimony and exhibits were introduced demonstrating the ability of the Company to meet the financial commitments of the proposed financing and proposed operations expense.

Based upon all the evidence, the Commission finds that the proceeds from the proposed financing will be expended to finance the Company's construction program, to reimburse the Company's treasury for expenditures in connection therewith and to purchase $96,200 of Class B stock of the Rural Telephone Bank, and further finds that the proposed financing will be consistent with the public good.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Merrimack County Telephone Company be, and hereby is, authorized to issue its mortgage note or notes in the aggregate principal amount of $2,020,200 to the United States of America, acting by and through the Rural Electrification Administration and/or the Rural Telephone Bank, in accordance with the foregoing Report; and it is

FURTHER ORDERED, that Merrimack County Telephone Company be, and hereby is, authorized to mortgage its present and future property, tangible and intangible, including franchises, as security for such mortgage note or notes as further security for its loans from the United States of America; and it is

FURTHER ORDERED, that the proceeds from this proposed financing shall be used to finance the Company's construction program, to reimburse the Company's treasury for expenditures in connection therewith and to purchase $96,200 of Class B stock of the Rural Telephone Bank; and it is

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FURTHER ORDERED, that on January 1st and July 1st of each year, Merrimack County Telephone Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds of said proposed 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 February, 1989.

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NH.PUC*02/16/89*[51697]*74 NH PUC 71*Town of Whitefield

[Go to End of 51697]

74 NH PUC 71

Re Town of Whitefield

DE 88-173
Order No. 19,325

New Hampshire Public Utilities Commission

February 16, 1989

ORDER ruling that a municipal sewer corporation would not be a regulated public utility by virtue of its provision of extraterritorial service to two commercial customers.

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1. PUBLIC UTILITIES, § 57 — Municipal corporations — Operation beyond municipal limits — Regulatory exemptions.

[N.H.] State statute RSA 362:4, which authorizes the commission to exempt from regulation a municipal corporation that provides service to fewer than 25 customers outside its municipal boundaries, applies only to water utilities and provides no basis for exempting a sewer utility from regulation. p. 72.

2. PUBLIC UTILITIES, § 57 — Municipal corporations — Operation beyond municipal limits — Regulatory exemption — Sewer service.

[N.H.] State statute RSA 362:2 defines public utilities as including municipal corporations that operate, own, or manage sewage disposal plant or equipment for the public outside their municipal boundaries; nevertheless the commission exempted a municipal sewer corporation that provided extraterritorial service from public utility status where the extraterritorial service was rendered for the broad public purpose of avoiding unnecessary water pollution, only two extraterritorial customers were served, and the rates charged and quality of service were equivalent to that provided within the municipality. p. 72.

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i. PUBLIC UTILITIES, § 57 — Municipal corporations — Operation beyond municipal limits — Regulatory exemption — Sewer service.

[N.H.] Statement, in dissenting opinion, that existing law does not allow the commission to exempt a municipal sewer corporation that provides extraterritorial service from public utility status. p. 73.

APPEARANCES: For the Town of Whitefield, Tom Richardson, Selectman and Bill Robinson, Sewer Department Superintendent for the N.H. Public Utilities Commission Economics Staff, James Lenihan.

By the COMMISSION:

REPORT

The town of Whitefield filed a petition on November 1, 1988, requesting commission authorization for the town of Whitefield to continue providing sewer services to two users in the Town of Dalton and that they be exempted from PUC rules which govern the rates for these

services. For reasons cited below, the commission finds that the provision of sewer services by the town of Whitefield under the specific facts of this case would not make the town of Whitefield a "public utility" as that term is defined in RSA 362:2, and therefore no exemption is required in order for sewer service to be

Page 71

continued.

The petitioners requested exemption from regulation because the town of Whitefield would be serving only two customers in Dalton, but a more fundamental issue is whether the service being provided causes the town of Whitefield to fall within the definition of a public utility.

This request was based on the understanding that the commission can exempt from regulation a municipal corporation that provides sewer service to fewer than 25 customers outside its municipal boundaries pursuant to RSA 362:4. RSA 362:4, however, applies only to water utilities and not to sewer utilities. Accordingly, said statute does not on its face provide a basis for regulatory exemption in this case.

By order of notice dated December 2, 1988, the commission scheduled a hearing on the merits for January 20, 1989. An affidavit of publication in the Coos County Democrat was received on December 28, 1988. The hearing was held as scheduled and no one appeared in opposition to the petition.

I. *Position of the Petitioner*

The petitioner described the service being provided as follows. Two commercial customers in Dalton have been discharging wastes to a collection system in Whitefield and in turn to the Johns River, without treatment. In 1987 the town of Whitefield completed construction of a treatment plant and began charging all users for sewage disposal services.

The two customers in Dalton are both multi-unit mobile home parks. One presently includes 2 or 3 trailers and is expected to expand in the future. The other includes about 25 or 30 trailers and is believed to be fully developed. Whitefield expects that there will be no further development in the area and the maximum number of units in the two parks will be approximately 50.

Each mobile home park is billed on a metered rate identical to the rate charged to similar commercial customers within Whitefield. The petitioner is unaware of how the mobile home park operator recovers the cost of sewer service but assumes that it is included in the park's rental fees.

The petitioner stated that all users; both those in Whitefield and those in Dalton; are charged rates based on operating costs only. Debt service is covered through the town of Whitefield municipal budget. The sewer department budget and actual expenditures are shown in exhibit 1.

It is the petitioner's position that the service being provided to users in Dalton is in the best interests of the public because it prevents continued degradation of the Johns River. Furthermore, it is their belief that having received financial support from the Federal Environmental Protection Agency for construction of the treatment plant, they are obligated to

provide service to other users who are unable to provide adequate treatment by other means.

II. *Commission Analysis*

[1, 2] PUC jurisdiction over rates of a public utility is governed by, *inter alia*, RSA Chapters 362 through 378. RSA 362:2, in pertinent part, defines public utilities as including municipal corporations operating outside their corporate boundaries which own, operate or manage plant or equipment for sewage disposal for the public. In order to determine the applicability of this definition to the specific characteristics of this case it is also important to examine the legislative intent behind these statutes and their interpretation in the courts.

The legislature has specifically exempted municipal utilities from regulation within their municipal boundaries and from certain forms of regulation for utility service outside of their municipal boundaries. RSA 362:2 and RSA 362:4. See, *Blair v. Manchester Water Works*, 103 N.H.505, 42 PUR3d 237, 175 A.2d 525 (1961).

In 1988, the legislature was confronted with a similar situation in which the city of Concord water system supplied a small number of customers in the town of Bow to accommodate said customers who were not otherwise able to secure adequate supplies of water at reasonable cost. When the commission asserted its jurisdiction over Concord's provision of water service to Bow in docket DR 87-047, the legislature

responded by exempting municipal water systems from commission regulation so long as the municipalities served twenty-five (25) or fewer customers outside its municipal boundaries and charged said customers a rate no higher than that charged to its customers within the municipality and which serves those customers quantitatively and qualitatively equivalent service to that served customers within the municipality.[1(3)] This amendment manifests a broader legislative concern that municipalities be encouraged to expand various services beyond their municipal boundaries to meet particular public concerns in surrounding areas.

Subsequent to passage of that amendment, in docket DS 88-098, the commission found that provision of sewage disposal service by the town of Jaffrey to an inn and condominium development in Rindge did not constitute public utility service.

In this case, the town of Whitefield has expanded beyond its municipal boundaries only for the broader public purpose of avoiding unnecessary water pollution not only within its own corporate limits but beyond. The rates charged and the quality of service to the Dalton users is equivalent to the service rendered by the town within its corporate limits. The town of Whitefield is contemplating providing sewer service to only two commercial customers outside of its corporate limits — the two mobile home parks. There is no evidence that regulation here would benefit the public. The commission views this unique set of circumstances as being beyond the scope of what the legislature intended us to regulate.

Although no one of the cited circumstances on its own would necessarily justify exemption of a utility from regulation, the particular combination of circumstances now before us lead us to the conclusion that the town of Whitefield will not be a public utility, as that term is defined in RSA 362:2, by providing the proposed sewer services to the two mobile home parks in Dalton.

It is important to note, however, that a change in circumstances could cause us to modify this order pursuant to RSA 365:28. For example, if the number of customers in Dalton increases beyond protected levels, if the cost and quality of service in Dalton vary substantially from that rendered within the town of Whitefield, or if other circumstances cited above substantially change, the commission could reassess its findings in this case and determine that the town of Whitefield should be regulated as a sewer utility under the pertinent statutes.

The appropriate regulatory treatment of the mobile home parks themselves, on the other hand, is beyond the scope of this order, and would depend on the particular manner in which the sewer service is provided to inhabitants of the mobile home parks in question. These matters may be addressed subsequently if it appears that sewer service is being provided in the mobile home parks without proper authorization. In summary, the unique circumstances of this case, as described above, do not fall within the definition of public utility service.

Our order will issue accordingly.

ORDER

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

ORDERED, that under the unique circumstances of this case as cited in the report accompanying this order, the town of Whitefield would not be a regulated sewer company pursuant to RSA 362:2 except as conditioned in the accompanying report.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of February, 1989.

DISSENTING OPINION OF
COMMISSIONER ELLSWORTH

[i] I cannot join my fellow commissioners in their decision to exempt the town of Whitefield from public utility status in its petition to provide sewer service to two mobile home parks in Dalton, New Hampshire.

The majority makes its finding on the basis that (1) it was the intent of the legislature for municipal corporations to be exempted under conditions such as those described in the report (2) the situation in previous docket DS 88-098

was comparable to the situation in Whitefield. I cannot find support in present law that allows the exemption of Whitefield from utility status.

As defined in RSA 362:2, "The term public utility shall include every corporation... except municipal corporations and county corporations operating within their corporate limits... furnishing... sewage disposal... for the public... " Under certain circumstances, (RSA 362:4 Water Companies, When Public Utilities), water systems which supply a less number of consumers than ten, each family, tenement, store or other establishment being considered a single customer, may be exempt from any and all provisions of utility regulation. In those cases the municipality is not considered a public utility for the purpose of accounting, reporting or auditing functions. Additionally, a municipality which serves 25 or fewer water customers

outside its municipal boundaries and which charges rates no higher than those charged to customers within the municipality, is not considered a public utility so long as the quantity and quality of water served to customers outside the municipality is the same as that served within the municipality. Under no other circumstances are water companies exempt from utility status.

It is important to note that the above exemptions apply only to water utilities. Under no circumstances are any other types of utility companies exempt from utility status. More specifically, under no circumstances are sewer companies exempt from utility status. For that reason, we have no authority to exempt the town of Whitefield from utility status.

The second contention used in support of the petitioner's exemption is that the precedent in docket DS 88-098 should apply here. Not only did I dissent from the majority opinion in that docket but I find that conditions in this case are different. In that case, the provision of service is subject to the terms of a contract to be reviewed by this commission. Furthermore, in the case of condominium residents, they have greater control over the financial matters of the Condominium Association which is the sewer customer, than the mobile home residents in this proceeding have over the owner of the park.

My fellow commissioners refer to a situation in which the city of Concord intended to sell water service to a small number of customers in the town of Bow as support for its position in this case. However, prior to an amendment of RSA 362:4 in 1988 the commission was faced with the same dilemma regarding water companies that it now faces with sewer companies. That amendment changed our opportunities to consider water company exemptions and allowed us to exempt Concord from serving Bow. That law did not apply to sewer companies.

For the above reasons, I cannot support my fellow commissioners in their decision.

Having taken this position, I am compelled to make a distinction between what *has* to be and what *ought* to be. I have dissented in this case only because I find no opportunities in the existing statutes to take any other position. I am persuaded by the testimony in this case, however, that there should be statutory provisions which would allow municipal sewer companies the same opportunities for exemption in certain cases that now exist for municipal water companies.

Accordingly, I join my fellow commissioners in supporting legislation which will give to municipal sewer companies the same exemption opportunities currently afforded municipal water utilities. Subsequent petitions such as that of Whitefield will then be able to be treated in a way which will assure that the public will be served with a minimum of regulatory intervention.

FOOTNOTES

[1]RSA 362:4 as amended by 1988 N.H. Laws 134:1, eff. April 20, 1988. Although the majority of the commission opines that the legislative intent behind existing law justifies our opinion in this case, the commission nonetheless recently recommended that the legislature clarify RSA 362:4 by explicitly including the provision of sewer service by municipalities as qualifying for the same exemption afforded municipal water utilities.

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74 NH PUC 75

Re Chichester Telephone Company

DF 89-022
Order No. 19,328

New Hampshire Public Utilities Commission

February 17, 1989

ORDER authorizing a telephone public utility to issue short-term debt.

SECURITY ISSUES, § 44 — Authorization — Construction financing — Telephone public utility.

[N.H.] A telephone public utility was authorized to borrow funds to be used as interim financing of construction costs associated with service improvements.

By the COMMISSION:

ORDER

WHEREAS, Chichester Telephone Company ("Chichester Telephone"), a New Hampshire public telephone utility, having filed, on February 3, 1989, a petition for authority pursuant to R.S.A. 369:7 to issue short term debt; and

WHEREAS, Chichester Telephone requests approval to borrow short term funds not to exceed $600,000; and

WHEREAS, Chichester Telephone proposes to borrow approximately $200,000 from New Hampshire Savings Bank at the prime rate, currently at 10.5%; and

WHEREAS, Chichester Telephone proposes to supplement these funds with short term borrowings from Telecommunications Technologies Fund, Inc. to the extent necessary; and

WHEREAS, Chichester Telephone states that these funds will be used as interim financing of construction costs associated with service improvements; and

WHEREAS, Chichester Telephone has pending with the REA Loan Program a loan application; and

WHEREAS, Chichester Telephone will file with this commission a loan approval application requesting authority to borrow under the REA Loan Program as soon as a loan characteristics letter is received; and

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

ORDERED, that Chichester Telephone is hereby authorized, pursuant to R.S.A. 369:1 and 4 to enter into an Agreement with the New Hampshire Savings Bank to borrow funds up to $200,000, such borrowing to be in accordance with terms and conditions set forth in the petition; and it is

FURTHER ORDERED, that Chichester Telephone shall supplement these funds with short term borrowings from Telecommunications Technologies Fund, Inc. to the extent necessary; and it is

FURTHER ORDERED, that the proceeds from said borrowing shall be used as interim financing of construction costs associated with service improvements of Chichester Telephone Company; and it is

FURTHER ORDERED, that Chichester Telephone within 10 days of the closing will submit a copy of the Loan Agreement as well as a statement as to the interest rate on the initial borrowing; and it is

FURTHER ORDERED, that on or before January 1 and July 1 of each year Chichester Telephone shall file with this commission a detailed statement, duly sworn to by its treasurer or assistant treasurer, showing the disposition of the proceeds of the notes or notes payable herein authorized, until the whole of said proceeds of the notes or notes payable shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of February, 1989.

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NH.PUC*02/22/89*[51701]*74 NH PUC 78*New England Telephone and Telegraph Company

[Go to End of 51701]

74 NH PUC 78

Re New England Telephone and Telegraph Company

DE 88-198
Order No. 19,332

New Hampshire Public Utilities Commission

February 22, 1989

ORDER denying a petition requesting extended local service between two exchanges of a local exchange telephone carrier.

SERVICE, § 445 — Exchange areas — Extended area service — Local exchange carrier.

[N.H.] The commission denied a petition requesting extended local service between two exchanges of a local exchange telephone carrier where the petitioners failed to demonstrate a

strong community of interest in service between the exchanges.

By the COMMISSION:

ORDER

WHEREAS, the Commission received a petition dated November 14, 1988 signed by 31 telephone service subscribers which requested extended local service between the 744 (Bristol) exchange and the 279 (Meredith) exchange (two way calling); and

WHEREAS, in supplemental order no. 15,752 dated July 9, 1982, (67 NH PUC 469), the Commission adopted procedures for resolution of whether extended local service should be provided between two exchanges; and

WHEREAS, these procedures were found to demonstrate concern for all customers and yet appeared to give the Commission valid tests to use in making these decisions; and

WHEREAS, the application of extended local service results in a redistribution of costs such that all customers share the cost of the extended local calling service; and

WHEREAS, not all of these customers are alike; some may wish to have such service and others may not; and

WHEREAS, the Company has available optional services which can allow individual customers to control their cost of calls between these exchanges; and

WHEREAS, New England Telephone Company has conducted a community of interest usage study between the Bristol and Meredith exchanges in accordance with the adopted procedures as required by the Commission; and

WHEREAS, the study showed that the average number of calls per customer between these exchanges is less than 3 per month and fewer than 40% of the customers place 2 or more calls per month between these exchanges; and

WHEREAS, the observed call volume does not demonstrate a strong community of

interest in service between these exchanges and does not meet the criteria established in order no. 15,752; it is

ORDERED, that the petition be rejected based on a lack of a demonstrated community of interest; and it is

FURTHER ORDERED, that New England Telephone Company notify each of the petitioning customers of the Commission decision and the availability of optional services; and it is

FURTHER ORDERED, that the notification take the form of a certified letter to each petitioner containing a copy of this order and the description of the available optional services; and it is

FURTHER ORDERED, that the Company verify to the Commission that all required notification has been sent.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1989.

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NH.PUC*02/23/89*[51699]*74 NH PUC 76*New Hampshire Electric Cooperative, Inc.

[Go to End of 51699]

74 NH PUC 76

Re New Hampshire Electric Cooperative, Inc.

DE 89-013
Order No. 19,330

Re Public Service Company of New Hampshire

DE 89-013
Order No. 19,330

New Hampshire Public Utilities Commission

February 23, 1989

ORDER authorizing two electric utilities to revise their service boundaries.

SERVICE, § 198 — Extensions — Electric service boundaries — Service to new development.

[N.H.] The territorial boundaries of an electric utility and an electric cooperative were revised to allow the utility to provide service to a new development located within the service territory of the cooperative; the boundary revisions were deemed to be in the public good and consistent with orderly development inasmuch as the cooperative would have had to obtain easements and overcome geographical obstacles to provide the service and all parties, including the cooperative, agreed that the utility should be permitted to provide the service.

By the COMMISSION:

ORDER

WHEREAS, the New Hampshire Electric Cooperative, Inc. (COOP) and the Public Service Company of New Hampshire (PSNH), electric utilities operating under the jurisdiction of this commission, having filed a joint petition on January 20, 1989 seeking authority under NH RSA 374:22-a to change service territory in a limited portion of Thornton, New Hampshire; and

WHEREAS, the COOP has received a request for service for a proposed 18 unit subdivision

called Haartz Intervale to be developed by Exit 29 Associates within the Town of Thornton; and

WHEREAS, the COOP has endeavored to fulfill its service obligation to the proposed development in its franchise area; and

WHEREAS, the choice of possible line extension routes to serve the development have presented either easement or geographic obstacles with the resulting potential for substantial delay; and

WHEREAS, PSNH has existing distribution facilities approximately 2000 feet from the development, which plant can be extended to provide service to the entire subdivision; and

WHEREAS, both companies and the developer have agreed that PSNH should provide service; and

WHEREAS, the commission finds that the voluntary agreement is consistent with the orderly development of the region; and

WHEREAS, the commission's investigation finds the requested 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 on this matter before the commission no later than March 20, 1989; 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. Such publication to be no later than March 9, 1989 and documented by affidavit to be filed with this office on or before March 27, 1989; and it is

FURTHER ORDERED, that COOP 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 New Hampshire Electric Cooperative, Inc. and Public Service Company of New Hampshire to revise the service boundaries as prescribed in the subject petition in the Town of Thornton, 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 twenty-third day of February, 1989.

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NH.PUC*02/28/89*[51700]*74 NH PUC 77*AT&T Communications of New Hampshire, Inc.

[Go to End of 51700]

74 NH PUC 77

Re AT&T Communications of New Hampshire, Inc.

DE 89-017
Order No. 19,331

New Hampshire Public Utilities Commission

February 28, 1989, Revised March 28, 1989

ORDER suspending, pending further investigation, a petition by an interexchange telephone carrier for authority to provide Federal Telecommunications System 2000 service.

SERVICE, § 449 — Telephone — Information transmission — Federal Telecommunications System 2000 — Interexchange carrier.

[N.H.] A petition by an interexchange telephone carrier for authority to provide Federal Telecommunications System 2000 service was suspended pending further investigation of the effect of the service on intrastate telephone revenues; the service would offer intrastate switched voice, switched data, switched digital integrated, packaged switched, video transmission and dedicated transmission applications for interstate and international calling among locations within the state of New Hampshire.

By the COMMISSION:

ORDER

WHEREAS, AT&T Communications of New Hampshire, Inc., (AT&T, NH) having filed on January 24, 1989 a petition for authority to provide Federal Telecommunications System (FTS) 2000 under its proposed Tariff Puc No. 3, in the State of New Hampshire, effective as of February 23, 1989; and

WHEREAS, said filing seeks to offer incidental intrastate switched voice, switched data, switched digital integrated, packet switched, video transmission and dedicated transmission applications for interstate and international calling among locations within the State of New Hampshire; and

WHEREAS, more information is required to assess the implications of such tariff on intrastate telephone revenues and with which to set appropriate intrastate access charges; it is therefore

ORDERED, that AT&T Communications of New Hampshire, Inc., Puc No. 3, Federal Telecommunications Systems (FTS) 2000 as it applies in the State of New Hampshire be suspended in its entirety pending investigation; and it is

FURTHER ORDERED, that a prehearing conference, pursuant to N.H. Rev. Stat. Ann. Chapters 362, 374 and 378, be held 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 eighteenth day of April, 1989; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard to appear at said prehearing conference, when and where they may be heard on the question of whether the requested petition is in the public good by

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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 March 31, 1989, said publication to be documented by affidavit filed with this office on or before April 18, 1989; and it is

FURTHER ORDERED, that pursuant to N.H. Rev. Stat. Ann. 541-A:17 and N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the proceeding shall submit a motion to intervene at least three (3) days prior to the hearing; and it is

FURTHER ORDERED, that all prepared testimony and exhibits must be filed with the commission with copies to other parties of record, at least fourteen days (14) days prior to the hearing pursuant to N.H. Admin. Rules Puc 202.08.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1989.

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NH.PUC*02/28/89*[51702]*74 NH PUC 79*Gas Rate Design Investigation

[Go to End of 51702]

74 NH PUC 79

Re Gas Rate Design Investigation

Movant: Northern Utilities, Inc.

DE 86-208
Order No. 19,335

New Hampshire Public Utilities Commission

February 28, 1989

ORDER denying motion for rehearing of a prior order establishing a theoretical framework for the calculation of the marginal cost of providing natural gas service. For prior order see, 73 NH

PUC 492.

RATES, § 373 — Natural gas rate design — Cost of service — Marginal versus embedded costs.

[N.H.] In denying a motion for rehearing of a prior order establishing a theoretical framework for the calculation of the marginal cost of providing natural gas service, the commission reaffirmed its rejection of a proposal by a natural gas utility to determine class revenues by a fully allocated embedded cost of service study.

By the COMMISSION:

REPORT OF MOTION FOR REHEARING

On December 29, 1988 Northern Utilities, Inc. (Northern) moved for rehearing or clarification of report and order no. 19,255 (73 NH PUC 492, 98 PUR4th 138 [1988]), in the above captioned matter pursuant to RSA 541:3 and 4. Upon consideration of said motion, this report and attached order reaffirms and clarifies the decision of the commission and denies Northern's motion for rehearing.

On December 1988 a hearing was held to review the report of the Gas Rate Design Investigation and to address three issues on which the parties could not agree. One such issue concerned the method to be used when reconciling class marginal costs to a utility's overall revenue requirement. In the report of the parties three alternatives were proposed:

1) use the class revenues determined from an embedded cost of service study;

2) adjust each class' marginal costs equiproportionally;

3) leave the method undetermined until cost of service results are available.

In its report and order no. 19,255 the commission rejected the proposal to leave the method temporarily undetermined and the proposal to use class revenues derived from embedded studies. The commission favored the equiproportional approach but added that it would not preclude consideration of other methodologies.

Northern has moved for a rehearing or clarification of this issue. The company in its motion states that the report and order is unclear as to whether the methodology which Northern

favors (i.e. reconciling marginal cost based rates to the embedded cost based revenue requirements) is among the "other methodologies" that the commission will consider in future rate case proceedings. Rather than preclude consideration of embedded cost based class revenues Northern argues that the commission should leave its options open until the results of both the embedded and marginal studies are presented in future cases.

Furthermore, Northern states that rejection of the company's methodology is inconsistent

with other portions of the commission's report and order. The company contends that when ruling on the other issues in this case the commission expanded rather than narrowed the amount of information that can be presented in future proceedings when rate designs will be determined. Northern argues therefore that this open approach should also be applied to the issue of revenue reconciliation.

The commission's findings on the issue of the reconciliation of the marginal cost results includes the unambiguous rejection of the company's proposal to determine class revenues by means of the embedded study:

> "We also reject Northern's argument that class revenues should be determined by a fully allocated embedded cost of service study". p.23

Our acceptance of the equiproportional approach is prefaced by the words "Of the remaining reconciliation methods", *i.e.*, remaining after excluding embedded cost based class revenue requirements. Our decision not to preclude consideration of "other methodologies" recognizes that the inverse elasticity method, to which staff made reference in Attachment 5 of the Report of the Parties, is an acknowledged alternative to equiproportional adjustments. This method also figured prominently in our decision in Public Service Company of New Hampshire NHPUC Report and Order No. 18,726, (72 NH PUC 237 [1987]).

We would also include in the "other methodologies" category a variant of the inverse elasticity method, namely the "differential adjustment to marginal cost components method" (see Attachment 5 to the Report of the Parties). This method, like the inverse elasticity method, largely maintains the marginal cost signals and hence enhances economic efficiency. Embedded cost class revenues on the other hand are constructed without recourse to marginal costs (transcript at 30) and as such provide no guarantee that the resulting class rates will bear a consistent relationship to marginal cost. Accordingly, we reaffirm that the embedded cost class revenue method is not an option open to utilities when reconciling marginal cost based class revenues to the overall revenue requirement.

We also reject Northern's assertion that rejection of the company's methodology is inconsistent with other parts of the order. By rejecting the company's methodology the commission has expanded rather than narrowed the amount of information that could be available to support rate design decisions. On page 22 of our report we directed Energy North and Northern to file marginal cost of service studies and allowed them to file embedded cost of service studies if they wished whenever rate relief is requested. Because the class revenues in the embedded studies will be constructed using fully allocated embedded techniques this information will be part of any record on which rate design decisions are based. However, by also requiring that the reconciliation of marginal costs to a utility's revenue requirement not be colored by embedded cost methods the commission has ensured that the record will also include rate design proposals that rest largely on economic efficiency grounds.

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 February, 1989.

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NH.PUC*02/28/89*[51703]*74 NH PUC 81*Resort Waste Services Corporation

[Go to End of 51703]

74 NH PUC 81

Re Resort Waste Services Corporation

DR 88-164
Order No. 19,336

New Hampshire Public Utilities Commission

February 28, 1989

ORDER authorizing a sewer utility to collect temporary rates at proposed permanent rate levels and setting procedural schedule for a permanent rate investigation.

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1. RATES, § 630 — Temporary rates — Authorization — Notice and hearing requirements.

[N.H.] The commission has authority, after reasonable notice and hearing, to fix reasonable temporary rates for the duration of a permanent rate investigation when, in its discretion, the public interest so requires; temporary rates are to be established with expedition and without such investigation as is required to determine permanent rates. p. 83.

2. RATES, § 630 — Temporary rates — Authorization — Sewer utility.

[N.H.] A sewer utility was authorized to collect temporary rates at proposed permanent rate levels where the evidence demonstrated that the rates complied with statutory requirements governing temporary rates. p. 83.

3. RATES, § 630 — Temporary rates — Effective date.

[N.H.] Although it has been the practice of the commission to allow temporary rates to become effective on the date of the temporary rate order, an earlier effective date was deemed justified where the utility had been providing service at no charge. p. 83.

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

By the COMMISSION:

REPORT

This report addresses the petitions of Resort Waste Services Corporation for temporary and permanent rates. It sets forth a procedural history, and approves the agreements of the parties on temporary rates, and the procedural schedule for the permanent rate investigation.

I. *Procedural History*

On December 28, 1988, Resort Waste Services Corporation (RWSC) filed a proposed tariff (NHPUC No. 1 — Sewer, Resort Waste Services Corporation) and a petition to establish permanent rates, pursuant to RSA 378:28. The proposed rates are intended to allow RWSC to earn gross annual revenues of $104,297. The proposed rates allocate the revenue requirement as follows:

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

Residential	$93,815
Commercial	10,492
Annual Gross Revenue	$104,297

On December 28, 1988, the petitioner also requested temporary rates at permanent rate levels, pursuant to RSA 378:27.

By order no. 19,296, the commission suspended the proposed tariff. It scheduled a hearing for February 17, 1989, on the merits of the temporary rate request and a prehearing conference to address procedural matters in the permanent rate investigation.

On February 23, 1989, the staff notified the commission that the parties had agreed to the following consensual procedural schedule:

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

Staff Data Requests Due	March 10, 1989
RWSC Data Responses Due	March 31, 1989
Staff Testimony Due	April 21, 1989
RWSC Data Requests Due	May 5, 1989
Staff Data Responses Due	May 19, 1989
Off-the-record Prehearing Conference	May 15, 1989
Hearing on the Merits	May 31, 1989

II. *Positions of the Parties*

A. Resort Waste Services Corporation

RWSC supported its petition for temporary rates. It requested temporary rates effective for service rendered on or after the date of filing (January 1, 1989). It argued that the commission was authorized to grant this request under RSA 378:27. *Appeal Pennichuck Water Works,* 120 N.H. 562, 419 A.2d 1080 (1980). In the alternative, it requested temporary rates effective for service rendered on or after the date of customer notification (January 5, 1989). This effective date was allowed in *Re Pennichuck Water Works,* 66 NH PUC 30 (1981). RWSC argued that its case is different than the *Pennichuck* case because RWSC does not currently charge customers for service.

In the hearing, the staff expressed concern about provisions of RWSC's articles of agreement which could be interpreted to give RWSC the authority to make certain high risk investments or to make investments unrelated to the provision of utility service. RWSC agreed to work with the staff to clarify the intent of these provisions.

The proposed tariff, Original Page 13 provides that "[b]ills not paid within thirty (30) days of their date shall bear interest at the rate of one and one-half (1-1/2) percent per month until payment is received by the Company." In response to a request from the staff, RWSC agreed to amend this provision to read as follows: "[b]ills not paid within thirty days from the postmark date shall bear interest at the rate of one percent per month until payment is received by the Company."

RWSC asked us to approve the terms and conditions of the proposed tariff without prejudice to the sewer rules to be promulgated by the commission. It agreed that, should a customer complaint arise concerning a tariff provision, the commission could review that provision on a case-by-case basis until the commission has had an opportunity to investigate and approve the tariff in the permanent rate proceeding.

RWSC supported its request for authority to impose a lien for unpaid charges. It argued that such liens would be analogous to those that are available to municipalities to ensure the payment for sewer service and those available to condominium associations to ensure the payment of common expenses.

RWSC intends to record its investment in land at zero. It intends to record the sewer plant at cost. It accounts for this cost as paid-in-capital. It proposes to charge rates that include depreciation on the sewer plant. RWSC argued that this accounting treatment of paid-in-capital is appropriate and supported by the standards of the Financial Accounting Standards Board.

Because the utility plant will only be used to provide service to user members, (and not capacity control members) RWSC avers that recovering depreciation only from user members is appropriate. It argues that this cost allocation is consistent with what depreciation represents, the cost of using up an asset. In addition, RWSC argues that recovery of depreciation will provide it with the needed cash to make future plant replacements. It contends that this will result in a lower cost of service. RWSC also intends to flow the interest income earned on depreciation back to the customer.

B. Staff

The staff did not object to the request for temporary rates at the proposed level. It noted that, even if further investigation shows that the temporary rates are too high, the customers are protected because the interest on overcollections will be used to offset rates.

The staff raised many issues concerning the permanent rates to notify RWSC of its

possible objections and to inform the commission of issues for investigation. The staff asked, through cross-examination, whether tariff provisions allowing a lien for unpaid charges were appropriate. It questioned what other means were available to insure payments. The commission

questioned whether it has the power to authorize liens.

The staff asked whether amounts accounted for by RWSC as paid-in-capital were actually contributions-in-aid of construction and, if so, whether RWSC should be able to depreciate these amounts. The staff questioned whether it was appropriate to allocate the depreciation expense only to the user member rates and not to the capacity control members rates.

The staff also noted that it would be reviewing the terms and conditions of the operating service contract between YWC, Inc. and RWSC.

III. *Findings of Fact*

RWSC is providing service free of charge to sixty-eight residential units and one commercial unit. RWSC projects the following numbers of residential customers:

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

Customer Class	*1989*	*1990*
Residential units — user members	60	120
Residential units — capacity control		
Commercial Service — members	240	180

RWSC projects the following amounts of usage in number of gallons per day:

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

Customer Class	*1989*	*1990*
Commercial Service — user members	2,700	2,700
Commercial Service — capacity control		
Commercial Service — members	5,800	5,800

RWSC's cash flow requirements are currently being met through voluntary contributions from Satter Companies of New England. The initial capitalization will be provided by the capacity control members. The sewer system and the land for the system has been donated by the Satter Companies of New England.

RWSC has proposed the following rate structure:

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

Customer Class	*Rate*
Residential service — user member	$404.00/year
Residential service — capacity control member	$275.00/year
Commercial Service — user member	$1.59 times gallons/day of design capacity
Commercial Service — capacity control member	$1.07 times gallons/day of design capacity

The revenue requirement is based on an average of the projected cost of service for the first two years.

IV. *Commission Analysis*

[1-3] Based on the following analysis we approve the temporary rates effective for service rendered on or after January 5, 1989.

In *Re Resort Waste Services Corporation, Inc.*, 73 NH PUC 68 (1988), we franchised RWSC, contingent upon our approval of rates for service. By order no. 19,278 (Dec. 30, 1988) (73 NH PUC 529) we approved the operating

Page 83

services of YWC, Inc., but deferred, until this proceeding, a review of the terms and conditions of the service contract.

The commission has authority, after reasonable notice and hearing, to fix reasonable temporary rates for the duration of a permanent rate investigation when, in its discretion, the public interest so requires. RSA 378:27. Temporary rates are to be established with expedition and without such investigation as is required to determine permanent rates. *New England Telephone & Telegraph Co. v. State*, 95 N.H. 515, 82 PUR NS 296, 68 A.2d 114 (1949).

Based on our review of the filing, and the evidence produced, we approve the temporary rates at the proposed level. We find that these rates comply with the statutory requirements of RSA 378:27. The issues raised by the staff will be reserved for the permanent rate investigation.

In *Re Pennichuck Water Works*, we considered, on remand, the question of the effective date of temporary rates. We noted that the Supreme Court had established the following three principles in the *Appeal of Pennichuck Water Works.*

> First, no utility can collect increased rates for service rendered prior to the filing of a permanent rate request. Second... rates are a contrac[t] obligation as well as a legal obligation between the consumer and the utility and as such notice is important if either is attempting an alteration of that relationship. Third, the effective date for the temporary rates shall be the same for all customers and shall not depend upon the vagaries of a utility's billing procedure.

Re Pennichuck, at 31. The Supreme Court advised us to balance the requirements of customer notice and the constitutional rights; to be compensated for property used in the public service (*See Public Service Co. v. State*, 102 N.H. 66, 150 A.2d 810 (1959)) and to recoup rate differentials lost due to regulatory delay. See *Oklahoma Gas Co. v. Russel*, 261 U.S. 290, 293 (1922).

It has been our practice to allow temporary rates to become effective the date of the temporary rate order. *E.g., Re Concord Natural Gas Corp.*, 73 NH PUC 179 (1988). However, in this case, we find it appropriate to differ from past practice because service is currently being provided at no charge. We will allow the temporary rates to become effective for services rendered on or after January 5, 1989.

We find the recommended schedule reasonable and will order the investigation to proceed accordingly. RWSC's tariff pages generally appear reasonable after an abbreviated review but require more detailed investigation prior to becoming the permanent terms and conditions of

service. Thus, the tariff pages shall govern the provision of service pending the outcome of the permanent rate investigation and customer complaints concerning the terms and conditions therein shall be addressed on a case-by-case basis. We will order RWSC to amend its tariff as agreed in the hearing on temporary 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 (RWSC) shall be authorized to collect temporary rates at the proposed permanent rate levels effective for services rendered on or after January, 5, 1989; 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; and it is

FURTHER ORDERED, that RWSC's tariff pages shall govern the provision of service pending the outcome of the permanent rate investigation and customer complaints concerning the terms and conditions therein shall be addressed on a case-by-case basis; and it is

FURTHER ORDERED, that RWSC shall amend its tariff in accordance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1989.

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NH.PUC*03/09/89*[51704]*74 NH PUC 85*Raymond Historical Society v. New England Telephone and Telegraph Company

[Go to End of 51704]

74 NH PUC 85

Raymond Historical Society
v.
New England Telephone and Telegraph Company

DC 88-153
Order No. 19,338

New Hampshire Public Utilities Commission

March 9, 1989

ORDER denying motion for rehearing of a prior order that required a local exchange telephone carrier to submit tariffs that provide a cost-based rate for alarm service. For prior order see 74 NH PUC 63.

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1. RATES, § 32 — Jurisdiction and powers — State commission — Investigations.

[N.H.] Pursuant to RSA 365:5, the commission has the discretion to investigate any rate charged. p. 85.

2. RATES, § 553 — Telephone — Alarm service — Local exchange carrier.

[N.H.] In denying a motion for rehearing of a prior order that required a local exchange telephone carrier to submit tariffs that provide a cost-based rate for alarm service, the commission clarified that its requirement made no findings as to whether the tariffs would be approved and rejected the contention that the tariff filing requirement was based on a mistake of fact. p. 85.

By the COMMISSION:

REPORT

I. *New England Telephone and Telegraph Company's Motion for Rehearing*

On February 27, 1989, New England Telephone & Telegraph Company (NET) filed a motion for partial rehearing and amendment of the commission order no. 19,317 in the captioned docket (74 NH PUC 63). NET states several bases for its motion. First, NET states that it was not given notice that the commission sought information concerning whether it should have a separate tariff for alarm services and whether an alarm service rate should be cost based. It argues that if it had known that the commission would investigate alarm system rates it would have submitted evidence regarding this issue and addressed the issue in its brief.

As the second basis for its motion NET argues that the commission's order is based on a mistake of fact. It contends that the commission's order is based on a finding that the Raymond Historical Society (Historical Society) took service under the flat business rate ($36.43). However, the Historical Society has measured business service ($19.36 per month). NET avers further that the commission's order was based on the mistaken assumption that a customer with an alarm system cannot take service under a usage sensitive rate.

As its third argument, NET asserts that the commission's order is insufficient because it does not include language which was included in the report. This language requires NET to revise its tariff to reflect that residential service must be provided only to residences and not to business locations.

II. *Commission Analysis*

[1, 2] NET's motion for rehearing and amendment of the commission's order is hereby denied. The motion does not state a good reason to rehear the issues, pursuant to RSA 541:3.

First, NET has received all the legal notice necessary under the circumstances. NET was ordered to submit tariffs that provided a cost-based rate for alarm services. The commission did not make a finding that the rate included in these tariffs would be appropriate or would be approved. That will be determined subsequent to the filing.

Pursuant to RSA 365:5, the commission has the discretion to investigate any rate charged. Pursuant to N.H. Admin. Code Puc 202.12, such inquiry or investigation shall be commenced by appropriate notification.

The commission will be investigating whether the rates charged to alarm services are just and reasonable and nondiscriminatory. The commission's order gives notice that such rates will be investigated and initiates the investigation by requiring that a cost-based tariff be filed.

In the investigation, NET will have an opportunity to make the arguments it made in its motion for rehearing concerning whether
there should be a separate alarm rate and whether it should be cost-based. NET may ask that the commission suspend the tariff and hold a hearing. Thus, NET has been given all of the notice required by law.

Concerning NET's second issue, the commission's order was not based on any mistakes of fact. We are aware that measured business rates are available under NET's tariffs. We determined, based on our technical expertise and our knowledge, at least on a preliminary basis, that alarm systems may have lower usage rates than residential service. The facts in this case show a very low usage. The bills submitted show the following usage.

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

Billing Period	*Number of Calls*	*Minutes of Use*
May 16 — June 3, 1988	3	3
Jun. 4 — Jul. 3, 1988	4	4
Jul. 4 — Aug. 3, 1988	0	0
Aug. 4 — Sep. 3, 1988	0	0
Sep. 4 — Oct. 3, 1988	0	0
Oct. 4 — Nov. 3, 1988	4	4

Under the measured business service rate the Raymond Historical Society pays a six dollar ($6.00) monthly usage allowance but exhibits near zero usage. Thus, even under a measured business service rate, the Historical Society would pay more than a residential customer but may well receive less service. These facts provide us with a sufficient basis, given our discretion under RSA 365:5, to investigate the rates for alarm service.

Concerning NET's third basis for a rehearing, our order specifically states that it is entered upon consideration of the foregoing report and that the report is made a part of the order. Therefore, the provision of our report requiring NET to amend the definition of residential service in its tariff is included in the order by reference.

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 and amendment of the commission order no. 19,317 (74 NH PUC 63) filed by New England Telephone and Telegraph Company (NET) is denied.

By order of the Public Utilities Commission of New Hampshire this ninth day of March, 1989.

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NH.PUC*03/14/89*[51705]*74 NH PUC 86*Gas Rate Design Investigation

[Go to End of 51705]

74 NH PUC 86

Re Gas Rate Design Investigation

DE 86-208
Order No. 19,339

New Hampshire Public Utilities Commission

March 14, 1989

ORDER directing two natural gas utilities to file completed marginal cost studies by July 28, 1989, and opening a docket for the receipt of monthly progress reports detailing work performed on the studies. For prior order requiring the preparation of the studies see, 73 NH PUC 492.

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RATES, § 373 — Natural gas rate design — Cost of service — Marginal cost studies.

[N.H.] Two natural gas utilities were directed to file completed marginal cost studies by July 28, 1989; the utilities, which had been required by prior order (73 NH PUC 492, 98 PUR4th 138 [1988]), to begin developing the studies, were ordered to submit monthly progress reports detailing work performed on the studies.

By the COMMISSION:

ORDER

WHEREAS, in report and order no. 19,255 (73 NH PUC 492, 98 PUR4th 138 [1988]) in the above captioned proceeding the commission accepted the agreement between the parties on a framework for a marginal cost of gas methodology; and

WHEREAS, the commission ordered that Northern Utilities and EnergyNorth begin work on developing marginal cost of service studies; and

WHEREAS, the commission further ordered that the parties continue discussions on class cost assignment and rate design procedures; and

WHEREAS, progress to date on class cost assignment procedures has been such that the

companies can proceed with the work of developing the marginal costs of serving their different customer classes; it is hereby

ORDERED, the Northern Utilities and EnergyNorth file with the commission, no later than July 28, 1989, completed marginal cost studies; and it is

FURTHER ORDERED, that each company provide, starting May 1989, end of month progress reports detailing work done and outstanding problems; and it is

FURTHER ORDERED, that following the March 17, 1989 meeting of the Gas Investigation the current docket (DE 86-208) be closed; and it is

FURTHER ORDERED, that docket number DE 89-041 be, and hereby is, opened to receive the monitoring reports and completed marginal cost studies, and that the staff and the companies continue their discussions on rate design under the aegis of said docket.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of March, 1989.

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NH.PUC*03/15/89*[51706]*74 NH PUC 87*Manchester Water Works

[Go to End of 51706]

74 NH PUC 87

Re Manchester Water Works

DR 88-020
Order No. 19,340

New Hampshire Public Utilities Commission

March 15, 1989

ORDER approving a stipulation authorizing an increase in rates for retail water service.

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1. EXPENSES, § 89 — Rate case expense — Water utility.

[N.H.] In a water rate case, the commission adopted a stipulation authorizing the utility to treat its rate case expense as a pro forma adjustment to expenses to be recovered over two years. p. 89.

2. VALUATION, § 248 — Contributions in aid of construction — Water utility.

[N.H.] In a water rate case, the commission adopted a stipulated change in the utility's reporting of contributions in aid of construction (CIAC) so that it would be clear that the utility did not include CIAC in rate base, recover a return on CIAC, or collect depreciation on CIAC. p. 89.

3. RETURN, § 26.4 — Cost of equity — Water utility — Rate settlement.

[N.H.] The commission adopted a water rate settlement providing for a stipulated rate of return on equity of 10.1%. p. 90.

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4. RATES, § 595 — Water rate design — Rate settlement.

[N.H.] The commission adopted a water rate settlement providing for a stipulated rate structure providing for a service charge plus a single uniform rate block. p. 90.

5. RATES, § 621 — Water rate design — Public fire protection — Method of charging — Rate settlement.

[N.H.] The commission adopted a water rate settlement providing for per hydrant municipal fire protection charges. p. 90.

6. RATES, § 595 — Water rate design — Rate settlement.

[N.H.] Where the parties to a water rate case were unable to agree on the allocation of costs to out-of-town customers or the treatment of equipment expenses, the parties instead stipulated to a revenue deficiency representing the middle ground between the parties' positions. p. 90.

APPEARANCES: Robert A. Wells, Esq. of McLane, Graff and Raulerson, on behalf of Manchester Water Works; and Mary C.M. Hain, Esq. on behalf of the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

This report and order addresses Manchester Water Works' (Water Works) request for permanent rates. It presents a procedural history, the stipulation of the parties, and the commission analysis, and it approves a proposed stipulation.

I. *Procedural History*

On February 5, 1988, the Water Works filed, pursuant to N.H. Admin. Code Puc 1603.02, a notice of intent to file a rate case to increase revenues from its retail out-of-town customers by $575,082 or 72.4%. The Water Works also requested a waiver of certain filing requirements, to wit: N.H. Admin. Code Puc 1603.03(b)(2)-(6), (b)(10), (b)(12), (b)(13), (b)(15), (b)(17)-(24). By order no. 19,033 (March 11, 1988) the commission granted the waiver for all requested provisions with the exception of N.H. Admin. Code Puc 1603.03 (b)(15) (concerning the allocation of assets and costs to non-utility operations).

On April 27, 1988, the Water Works filed, pursuant to RSA 378:3, Tariff No. 3, Seventh Revised Page 23, Sixth Revised Page 24, Seventh Revised Page 25, and Eighth Revised Page 26 proposed for effect May 22, 1988. These tariff pages contained rates intending to recover increased revenues of $442,946 (or 55.7%) from its out-of-town customers in the towns of Auburn, Bedford, Goffstown, Hooksett and Londonderry.

On May 17, 1988, the Consumer Advocate filed a notice of intervention in this proceeding.

By order no. 19,097, dated May 24, 1988, the commission rejected the revised tariff pages and ordered compliance with the filing requirements of N.H. Admin. Code Puc 1603.03(a)(2), 1603.05(b), and 1603.03(b)(15) and ordered the filing of revised tariff pages.

On June 24, 1988, the towns of Londonderry, Bedford, Goffstown, Hooksett and Auburn (the five towns) requested intervenor status. On June 27, 1988, the Water Works complied with the order and on July 26, 1988, the Water Works filed Tariff No. 3; Eighth Revision — Page 23, Seventh Revision — Page 24, Eighth Revision — Page 25, and Ninth Revision — Page 26 containing rates intending to yield a revenue increase of $359,407, (an increase of 52.3%) for all classes of service effective May 22, 1988.

The July 26, 1988 filing, was based on a 1987 test year and the Water Works 1988 budget. The Water Works added a five percent allowance to estimate 1989 expenses, the year the new rates would go into effect. The Water Works' last general rate increase became effective in 1982.

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By order no. 19,140 (Aug. 9, 1988) the commission suspended the effective date of the proposed tariff, pursuant to RSA 378:6. It also scheduled a prehearing conference on August 26, 1988.

At the prehearing conference, the Central Hooksett Water Precinct requested intervenor status. The five towns appeared and supported their intervention. By its report on prehearing conference and order no. 19,176, (Sept. 9, 1988) the commission approved a proposed procedural schedule, and, implicitly, granted the interventions.

Pursuant to order no. 19,176 the parties conducted discovery. The staff and the five towns filed testimony on December 19, 1988. The staff's testimony alleged that the Water Works' revenue deficiency was $113,218. In addition, the staff, in its testimony, took the position that the Water Works should update its test year.

On January 5, 1989, the parties met in an off-the-record conference. The Water Works agreed to file data reflecting a test year ending December 31, 1988, and to file supporting testimony. The Water Works agreed to limit *pro forma* adjustments to known and measurable charges. The parties agreed to continue the procedural schedule. By order no. 19,297 (Jan. 16, 1989) the commission approved these agreements, continuing the hearing on the merits to February 21, 22, 23, and 24, 1989.

The parties negotiated, off-the-record, on January 11 and 17, 1989. On January 18, 1989, the Central Hooksett Water Precinct withdrew from the case.

On February 1, 1989, the Water Works filed updated data based on a test year ending December 31, 1988. The data incorporated a series of stipulations reached between the parties at the off-the-record conferences. The Water Works filed testimony and exhibits on February 1, 1989 allegedly supporting an increase of $164,131 in revenues, representing a 21.4% increase in revenues. However, at the time of the February 1, 1989 filing some issues remained in dispute.

On February 7, 1989, the five town water study committee withdrew from the case. The staff attorney contacted the Consumer Advocate on February 16, 1989, via telephone and he indicated that he would no longer be involved in the case.

The parties met again on February 13, 1989 to attempt to further narrow the issues. As a result of this conference, the parties reached an agreement on all the issues in the case.

II. *Positions of the Parties*

At the hearing on the merits, the Water Works and the staff presented an agreement on all the issues in the case. The provisions of this agreement are summarized below.

At the prehearing conferences held in January, stipulations were made on cash working capital, rate structure, rate of return, treatment of rate case expenses and treatment and presentation of CIAC depreciation, CIAC property and CIAC contributions. All the stipulations are included in and supported by the February 1, 1989 updated filing.

[1, 2] In its amended testimony, the Water Works treated rate case expense as a proforma adjustment to expenses to be recovered over two years. The Water Works also changed its reporting of contributions in aid of construction (CIAC) so that it would be clear that the Water Works does not include CIAC rate base, recover a return on CIAC, or collect depreciation on CIAC, and so that the reporting is done in the same form recommended by the staff.

The parties filed a stipulation on February 20, 1989, addressing three outstanding issues: 1) allocation of the expenses of services provided to the Water Works by the City of Manchester, 2) the four percent additional allocation of capital expenses to the out-of-town customers, and 3) capitalization of equipment expense. As described below, the parties reached a stipulation without expressly resolving these individual issues.

The stipulation contained certain exhibits submitted on February 1, 1989 which incorporate the settlement reached on February 13, 1989. As revised, the February exhibits, together with the stipulation, reflect the agreement in respect to all issues.

The stipulated revenue deficiency is $125,005. This will provide an overall revenue

increase of 16.3%. The total rate base of the Water Works rate of return is $22,982,498. The rate base allocated to out-of-town customers is $3,048,051.

The Water Works had originally sought 120 days of working capital on all accounts. The staff and five towns felt seventy-five days was appropriate for quarterly accounts and forty-five days for monthly accounts. The Water Works produced data showing ten percent of revenues have still not been collected after ninety-four days. However, it did not perform a complete lead/lag study to support its proposal. The staff felt the amount of revenues this item would produce and the amount of work involved in performing the study did not justify a full lead/lag study. Based on discussions, and for the sole purpose of settling the issues, the parties agreed on eighty-five days for quarterly accounts, eighty days overall.

[3] Initially, the Water Works sought an eleven point five (11.5) percent return on equity; the staff felt eight (8) percent was reasonable. The parties agreed that, solely for the purpose of settlement, ten point one (10.1) percent return on equity should be allowed. As of December 31, 1988, the cost of debt was six point nine (6.9) percent. Based on these returns, and on the Water Works capital structure, the parties agreed that the Water Works should be allowed to charge

rates intending to produce an overall rate of return of nine point zero four (9.04) percent.

[4] Presently, the Water Works charges customers a minimum charge which entitles the customer to consume 600 cubic feet per quarter of water whether or not the water is actually consumed. For 100 cubic feet increments over the minimum 600 cubic feet, the Water Works charges a single block rate.

The Water Works proposed to replace the minimum charge with a service charge which does not entitle the customer to consume any water, nor does it include the cost of any water. The Water Works proposed a two step declining block rate for water consumption. The staff did not object to the service charge concept but sought a single block rate. The parties agreed that a service charge plus a single uniform block will compose the rate structure.

[5] Presently, the Water Works charges for municipal fire protection on a combination inch/foot and per hydrant method. The Water Works sought to change this to a hydrant-only charge for administrative convenience. The staff did not take a position on this issue. The parties agreed that the hydrant-only method should be utilized.

[6] The following three issues were issues upon which the parties could not agree.

The first issue involved the treatment of the so-called city services. In its original and updated filings, the Water Works proposed to charge out-of-town customers a portion of the expenses the City of Manchester incurs providing services without charge to the Water Works. The portion allocated was to be based on the cost of service study. In several cases the value of these services is arrived at by each department of the City by estimating the time spent on Water Works matters and then determining, based on each City department's budget, a reasonable charge. In some instances, the actual cost of the services is charged. Because of concerns originally raised by the five towns, the parties discussed these charges. The parties discussed whether it was fair for the five towns to be charged any expenses for services from the City of Manchester to the Water Works and discussed the charges themselves, because they were not actually billed to the Water Works and in turn a check tendered. The Water Works felt its method of arriving at the charges was entirely reasonable because only 10.41664% of the $585,360 cost of service are allocated to out-of-town users as an expense, or a total of $60,975. The Water Works deemed it inefficient to engage a consultant to determine the actual value of each of the services.

The second issue upon which the parties could not agree was whether the Water Works should capitalize a portion of the equipment expense which will occur beyond the test year. The staff maintained, based on historical data, that a certain portion of the equipment expenses should be capitalized. The Water Works had not done so because the amount was not known and measurable and was not specifically provided for in its budget.

The third issue upon which the parties

could not agree was the extra four percent allocation of capital costs which Manchester Water Works sought to apply to out-of-town customers. The Water Works maintained that much of its plant is reasonably sized to serve the growth in its out-of-town franchise and, therefore,

allocating a portion of capital costs to the out-of-town customers is fair.

The staff rejected this position, believing the only fair method of allocation is based on the cost of service study without the four percent factor. The staff took the position that utility rates are set to recover the average cost of maintaining the total system, with no consideration of the growth differential in any given area.

The parties were unable to reach agreement on the above three issues and instead decided to stipulate to a revenue deficiency between the parties' respective positions. The parties stipulated to a revenue deficiency of $125,005. If none of the four percent allocation was allowed, the revenue deficiency would have been approximately $68,977.00. If the full four percent were allowed, as had occurred in two previous rate proceedings, approximately $164,131.00 would be the revenue deficiency. The parties aver that this middle ground is just and reasonable under the circumstances.

III. *Commission Analysis*

We find that the revenue requirement developed in the stipulation agreement is supported by the evidence and is just and reasonable. Therefore, we accept it for resolution of this case.

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 Manchester Water Works and the staff of the Public Utilities Commission is approved; and it is

FURTHER ORDERED, that the Manchester Water Works shall file compliance tariff pages with rates reflecting the annual revenue approved in the foregoing report, for effect March 1, 1989, and bearing the following annotation: Authorized by NHPUC Order No. 19,340 in Docket No. DR 88-020, dated March 15, 1989.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 1989.

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NH.PUC*03/15/89*[51707]*74 NH PUC 91*Granite State Electric Company

[Go to End of 51707]

74 NH PUC 91

Re Granite State Electric Company

DR 88-007
Order No. 19,341

New Hampshire Public Utilities Commission

March 15, 1989

ORDER approving changes in the cooperative interruptible service (CIS) program of a retail

electric utility and requiring previously entered CIS special contract rates to be adjusted to reflect a new avoided cost approved by the commission.

RATES, § 327 — Electric rate design — Cooperative interruptible service — Program revisions.

[N.H.] A retail electric utility was authorized to implement the following changes to its cooperative interruptible service (CIS) program: (1) increase the credits per kilowatt of interruptible load to reflect a new avoided cost of capacity figure approved by the commission; (2) reduce the number of options available under CIS programs from 10 to eight; (3) eliminate three year contracts; (4) eliminate monthly interruption limitations; (5) change the minimum interruptible load requirement for participation to the larger of 200 kilowatts or 20% of nominal peak period load; (6) eliminate the 60% peak period load factor minimum requirement; (7) alter the payment schedule to eliminate the withholding of a reserve against

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noncompliance charges; (8) change the method of calculating noncompliance charges; (9) redefine the CIS program year to correspond with the power year designated by the New England Power Pool; and (10) add provisions for seasonal contracts.

APPEARANCES: Philip H.R. Cahill, Esq., General Counsel of New England Electric on behalf of Granite State Electric; 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 Granite State Electric Company's (GSE) September 30, 1988 filing changing certain terms and conditions of its cooperative interruptible service (CIS) program. The report sets forth a procedural history, discusses the proposed changes, states the positions of the parties, and states our findings of fact and conclusions of law. The report and order approves the changes as filed.

I. *Procedural History*

In *Re Granite State Electric Company*, 73 NH PUC 247 (1988), the commission approved Granite State Electric Company's Cooperative Interruptible Service program. GSE uses the cost of capacity avoided by New England Power (NEP) (GSE's parent company) to calculate the credit per kilowatt (kW) available under the program.

The program, as approved, includes a number of different special contract options to provide a wide array of choices to the potential interrupter. However, the commission found certain requirements necessary, because the program was not offered on a tariffed basis, to ensure that the program was implemented in a fair and nondiscriminatory manner. *Inter alia,* the commission ordered GSE to update its estimate of NEP's avoided cost of capacity by September

30, 1988. The commission ruled that any special contracts signed prior to the update would be adjusted upward to reflect the new estimate approved by the commission.

On September 30, 1988, GSE filed changes to the terms and conditions of its standard interruptible contracts. The filing included, *inter alia*, an updated calculation of NEP's avoided cost of capacity. It also included proposed changes to the options available under the program.

The company met with the staff of the commission (staff) to review and discuss the filing. In response to staff data requests, GSE filed on October 31, 1988, a revised credit calculation. The staff and GSE were unable to reach agreement on the proper level of compensation for interruptible customers. On December 9, 1988, the commission issued an order of notice scheduling a hearing for February 7, 1989 on the filing.

II. *Definitions*

The following definitions shall apply throughout the report and order.

The service agreement specifies a "firm power level" (FPL) that the customer can not exceed for the duration of the interruption period on each day that an interruption is called. The proxy for the load that would have been recorded during the interruption period is the "nominal peak period load" (NPPL). NPPL is determined once before each program year.

The "nominal interruptible load" is defined as the nominal peak period load minus the firm power level. The customer's peak period load factor is defined as the average load factor during the peak periods of the same seven months used to define NPPL. Any days with called interruptions are excluded from these calculations.

The customer is not in compliance with the terms and conditions of CIS if the actual load, averaged over all of the fifteen minute intervals during the interruption period, exceeds the firm power level. "Noncompliance load" for each called interruption is defined as the difference between the customer's average, fifteen minute, recorded load during the interruption period and the firm power level. If this difference is

positive, the customer will be charged for each kW of noncompliance load. Although nominal interruptible load is fixed throughout the program year, noncompliance load is separately calculated for each interruption.

III. *Positions of the Parties*

A. Granite State Electric

The following are the five dimensions to customer participation in CIS:

1. frequency of interruptions
2. duration of interruptions
3. amount of notification prior to

interruption
4. fraction of the total load which must be

made interruptible
5. commitment of years to the rate.

The current CIS program contains three programs, the CIS-1, the CIS-2, and the CIS-3. There are a total of ten options currently available across all three CIS programs. Both CIS-1 and CIS-2 require the customer to make at least a three year commitment to interrupt following an initial one year trial period. Both CIS-1 and CIS-2 require a sixty (60) percent peak load factor minimum for all CIS programs.

The current CIS-1 program has the following dimensions:

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

Option	Notification	Interruptions and Duration Per Year	Per Month	Per Day
CIS-1	1 hour	300 hours	40 hours	8 hours
Nominal Interruptible Load:		200 kW or the product of a) 1.00 minus peak period load factor; and b) nominal peak period load		
Commitment of Years:		Three years with a one year trial		

The current CIS-2 program offers four options. It requires less of a commitment in terms of the frequency and duration of possible
interruptions than the CIS-1 and, therefore, provides commensurately lower credits. The following options are available under the CIS-2 program.

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

Option	Notification	Interruptions and Duration Per Year	Per Month	Per Day
2.1	1 hour	180 hours	30 hours	6 hours
2.2	1 hour	60 hours	30 hours	6 hours

Options 2.1 and 2.2 are also available with sixteen (16) hours notification.

The current CIS-3 program is available to all customers designating 200 kW of interruptible load for one year. The CIS-3 program has five options. These options reflect the options available under the CIS-1 and the CIS-2 programs.

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

Option	Notification	Interruptions 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 hours	60 hours	18	6
3.5	16 hours	60 hours	18	6

The monetary credit from interruptible load is determined as the product of:

1. nominal interruptible load;

2. customer's peak period load factor; and

3. credit per kW of load.

GSE's proposal includes the following list of changes to the CIS program:

1) The credits per kW of interruptible load have been increased.

2) The ten options available under the approved CIS programs have been reduced to eight.

3) The three year contracts have been eliminated.

4) The monthly interruption limitations have been eliminated.

5) The minimum interruptible load requirement for participation is now the larger of 200 kW or twenty (20) percent of the nominal peak period load.

6) The sixty (60) percent peak period load factor minimum requirement has been eliminated.

7) The payment schedule under CIS-1 and CIS-2 has been altered to eliminate the withholding of a reserve against noncompliance charges.

8) The calculation of the noncompliance charge has been changed.

9) The CIS program year has been redefined to correspond with the power year designated by the New England Power Pool (NEPOOL).

10) Provisions for seasonal contracts have been added.

GSE proposes to reduce the number of total options available to eight by adding one option under the CIS-1 and eliminating two options under the CIS-2. GSE proposes to eliminate the sixty (60) percent peak load factor minimum from all CIS programs. It argues that its experience has shown that this requirement is a substantial barrier to marketing CIS. However, it proposes to monitor participants with peak period load factors of less than sixty (60) percent to assess the load relief they actually provide.

GSE proposes to redefine the CIS program year to correspond with the power year designated by the New England Power Pool (NEPOOL). The NEPOOL power year lasts from November 1 until October 31 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.

GSE proposes to offer one new option under the CIS-1 program. The proposal eliminates the

monthly interruption limitations from the CIS-1 program. It also changes the nominal interruptible load requirement to simplify the program and encourage participation. Thus the options available under the CIS-1 would be as follows:

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

Option	Interruptions and Duration Notification	Per Year	Per Day
3.1	1 hour	74	10 hours
3.2	1 hour	37	8 hours

Nominal Interruptible Load: 200 kW or twenty (20) percent of its nominal peak period load

The proposal eliminates the monthly interruption limitations from the CIS-1 and the CIS-2 programs.

The company proposes to change the CIS-2 program to include only the following. First, the program will only be available to customers who have greater than 200 kW of nominal interruptible load. Second, GSE proposes to eliminate the two CIS-2 options requiring the smallest commitment by customers (60 hours per year). It alleges that program experience shows there is a small demand for these options which may be better served with seasonal contracts. Third, it proposes to eliminate the monthly interruption limitation. Only one duration and frequency option are proposed. Two notification options are proposed to address the minimum amount of time a customer requires to prepare for an interruption. Thus, the interruption and notification alternatives available under the CIS-2 program would be as follows.

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

Alternative	Interruptions and Duration Notification	Per Year	Per Day
Alt. N1	1 hour	30	6 hours
Alt. N2	Previous business day	30	6 hours

GSE also proposes to adapt the CIS-1 and the CIS-2 programs to permit participation by seasonal customers who must limit the months of their interruptions because of operational constraints.

GSE also proposes to change the credit applicable to interruptible customers. GSE proposes to calculate the credit in the following manner. First, it determines NEP's short-run marginal cost of capacity. At the time of its September filing, it increased this cost by a factor of one point one zero (1.10) to account for the distribution system capacity related losses that are avoided when load is interrupted. In response to comments from the staff, GSE increased this factor to one point three five (1.35) to reflect the avoided capacity-related costs associated with the need to hold capacity in reserve.

Second, it translates the avoided capacity cost into the value per kW-year of interruptible

load. In this step, GSE includes a value for a factor that generates additional savings and subtracts values for factors that generate additional costs and reduce the likelihood of avoiding the need for new peaking capacity.

GSE uses a reduction factor to account for the uncertainties such as consistent, full customer compliance with interruptions, and effective notification. GSE reduces the avoided capacity cost in the CIS-1, option two because of the reduced commitment of thirty-seven interruptions per year and eight hours daily duration. It reduces the avoided capacity costs for the CIS-2 options because the required thirty interruptions per year at six hours duration per day are less than the interruptions required by NEPOOL and reflected in CIS-1. Since NEP is dispatching the load, it alleges that there are additional costs incurred. GSE also reduces the avoided cost for the options that allow previous business day notification. It argues that since this notification is based on a forecast it is more risky and, therefore, less valuable.

Third, GSE accounts for the cost that are specific to each customer, including: metering systems, and communication systems. These costs are calculated as an annual customer charge and divided by the number of months to be billed monthly. GSE recovers these costs and risks by multiplying the avoided cost of capacity by a discount factor.

GSE supports the credits arguing that they

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are intended to meet New England Power's capacity requirements at the lowest possible cost while compensating interrupters with a substantial credit. At the time of the September filing the avoided cost of capacity was $108.92 per/kW. Since the filing, GSE alleges that the short-term market price for capacity has dropped to a range of $75.00 per kW.

In spite of this drop in the cost, GSE intends to use the $108.92 avoided capacity cost estimate. It contends that it has built in a margin between the full avoided cost and the level of credit to ensure credit stability for participating customers from an uncertain source of supply.

In its September filing, GSE proposed a discount factor of point eight zero (.80) to represent the costs and risks in the calculation of the CIS-1 and CIS-2 credit. GSE derived this number from its proposed Federal Energy Regulatory Commission (FERC) wholesale rate case (W-10). In the W-10, $66,500 is allocated for interruptible rates, system-wide in 1988. This figure includes $45,000 for expenses and $21,500 for promotion. GSE projects a total contracted credited interruptible load of 15,656 in 1986. Therefore, the expected expense per kW of CIL in 1989 is $4.25. This is four percent of the adjusted value of a kW of interruptible load, $119.81 and about one-fifth of the point eight zero (.80) ($23.96) discount. The balance of the point eight zero (.80) discount ($19.71) adjusts the customer's interruptible credit for company risk.

In its updated filing, GSE applied a point six eight (.68) discount factor to its avoided cost to determine the CIS-1 and CIS-2 credit. This discount is made up of three factors: noncompliance risks, program overhead costs, and an adjustment to ensure continuity. It is applied in calculating the CIS-1 and CIS-2 credit.

The noncompliance factor is based on the performance of CIS participants from December 1987 through September 1988. System-wide the noncompliance rate was nine point seven (9.7)

percent. Therefore, GSE uses a noncompliance factor of point nine zero three (.903). In determining this factor, GSE did not take into account revenues received from the noncompliance charges.

The program overhead costs are made up of manpower expenses and program costs. GSE allocated $3,424,300, (or fourteen point one (14.1) percent of its 1989 conservation and load management program budget) for manpower. Since GSE has not determined the manpower costs applicable only to CIS, GSE uses a proxy discount factor of point eight five nine (.859).

GSE determined program costs to be comprised of promotion costs and expenses. The expenses are for communication equipment at the company's site and load flexibility assessments. According to GSE, these costs are not included in the customer charge. They are the same program costs as those used in the September filing and they total $2.50 per kW-year and are reflected in a discount factor of point nine seven eight (.978).

GSE did not use the same method to calculate the dollar per kW cost for manpower as the dollar per kW cost for non-manpower related program costs. To calculate the interruptible program manpower cost, GSE applied the point eight five three (.853) conservation and load management manpower factor to the avoided cost. To calculate the non-manpower related program costs, it determined the costs applicable only to the CIS program.

GSE applies a continuity factor of point nine zero (.90) to insure the long-term stability of the program. GSE argues in favor of this factor for the following reasons. It argues that, with the reserve margin added, the short-term marginal cost of capacity currently exceeds the long-term cost of capacity by approximately thirty (30) percent. It contends that this gap will disappear in the next few years. This factor is designed

> to smooth the increase in CIS credit rate to avoid the need for sudden reduction[s] in CIS credits in future years and the attrition they may cause. Record at 23.

GSE intends to use the continuity factor to insure the stability and integrity of the program. This factor helps to create a margin between the full avoided cost and the credit to protect nonparticipating customers from the risks and costs of the program and the volatility of the short-

term market.

GSE alleges that this factor will also keep the credit lower, and, therefore, prevent attrition from the program when the avoided cost falls in the future.

GSE argues that the noncompliance charges are not designed to make GSE whole for a noncompliance. Rather, it avers, noncompliance charges are an incentive for customers to comply when called. It contends that if a noncompliance charge were sufficient to compensate GSE for noncompliance, it would prevent successful marketing of the rate. It takes the position that it is appropriate to include an incentive in the noncompliance charge as well as the interruptible credit because of the risk of the program to GSE and its customers. In addition, whether or not customers are asked to interrupt, GSE pays a monthly credit to participants in the program.

B. Staff

The staff argued that, in its original filing, GSE greatly underestimated the avoided cost of capacity, thereby, underestimating the credit per kW to be paid to customers for interrupting their load. It argues that, in response to a staff data request, Granite State revised its avoided cost upwards, from $119.81 per kW to $147.04 per kW to reflect the avoided capacity related cost associated with the need to hold capacity in reserve. In addition, the staff argued that GSE omitted the capacity-related losses of New England Power Company's transmission system that are avoided when load is interrupted even though New England Power Company's Federal Energy Regulatory Commission W-10 filing identifies this factor. In the W-10 filing, NEPCO uses a four point five (4.5) percent factor to reflect the transmission losses in its long-run marginal cost of capacity calculation. Staff contends that these losses are instantaneous, and therefore, short-run avoided costs as well.

The staff contended that GSE also overestimated the programs costs and risks. It averred that GSE has overestimated or failed to meet its burden of proof concerning the noncompliance risk, program cost, and continuity discount factors built into its program costs and risk factor. It averred that in its October filing, although GSE increased the credit by the reserve margin in its avoided cost, GSE negated the effect of this increase by including additional adjustments to its discount factors.

The staff supported an avoided cost of capacity of $154 per kW per year. The staff argued that other costs would also be avoided but did not propose that these costs should be included in the avoided cost calculation. It asserted that transmission investments and some distribution investments are also avoided, because, even though the interruptible contracts are nominally only for one year, the program is intended for the long-term. In addition, it avers, when NEPCO avoids generating at the margin, it avoids high energy rates that are incurred in using peaking plant.

With regard to the determination of an appropriate noncompliance risk factor, the staff contended that GSE did not take into account the revenue it receives from noncompliance charges. The staff argued that noncompliance revenues could conceivably fully offset the risk of a customer failing to interrupt.

In the W-10 filing, NEPCO gives a five year estimate of short-run market prices, starting at $100 in 1989 and rising to $128 per kW in 1994. In late January, NEPCO responded to data requests in that proceeding indicating that it still believes those figures can be supported. The staff uses this information to support its argument that the W-10 evidence shows that over the medium term the short-run market price will rise, and not fall. Consequently staff argues that the point zero nine (.09) discount for continuity is unsupportable.

The staff contends that the W-10 filing supports a manpower expense of $5.22 per kW. This number is calculated using the prorated $63,500 payroll expense (see NEPCO response to Rhode Island CS 89 FERC Docket ER 88-631) for interruptible rates for three states in 1988 and dividing the number by the total credited interruptible load in that year, thus:

[Equation below may extend beyond size of screen or contain distortions.]
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~~~~~~~~~~~~~~~~~~~~~{$63,000} over {12,156~kW}~=~$5.22

This number compares to GSE calculation of $21.56 per kW. This is calculated by applying the fourteen (14) percent manpower factor to GSE's avoided cost:

$154.00/kW × 14% = $21.56

The staff avers that its estimate is supported by the manpower costs estimates being made by PSNH, which are between three and four dollars per kW.

Further, the staff asserts that, even if $21.00 kW is the current cost, many of these costs are nonrecurring start-up costs. It also argues that these costs are not incremental.

It proposed zero point nine (0.9) as a reasonable discount factor for program costs and risks.

IV. *Findings of Fact*

System-wide fifteen megawatts of interruptible load operated in 1988. Five hundred kW, three percent of the total interruptible load, is provided by a single Granite State customer. Granite State represents about three percent of the New England Electric System.

GSE has been buying short-term power in the range of $65.00 to $90.00. However, the company still supports the $109.00 figure. The proposed credit options and other terms and conditions are the same as those proposed and in effect for customers of the Massachusetts Electric Company in Massachusetts and the Narragansett Electric Company in Rhode Island.

V. *Commission Analysis*

The commission finds the proposed terms and conditions to the cooperative interruptible service (CIS) program just and reasonable and in the public good. Therefore, we will approve the proposed terms and conditions for resolution of this particular petition.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed changes to Granite State Electric's Cooperative Interruptible Service Program, as proposed on September 30, 1988 and amended on October 31, 1988, are approved; and it is

FURTHER ORDERED, that any CIS special contracts signed prior to the date of this order shall be adjusted upward to reflect the new avoided cost approved by the commission.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 1989.

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NH.PUC*03/15/89*[51708]*74 NH PUC 98*Manchester Water Works

[Go to End of 51708]

74 NH PUC 98

Re Manchester Water Works

DR 88-134
Order No. 19,345

New Hampshire Public Utilities Commission

March 15, 1989

ORDER approving a wholesale water rate agreement.

RATES, § 625 — Water rate design — Wholesale to distributors — Rate agreement.

[N.H.] A wholesale water rate agreement between the Manchester Water Works and the Grasmere Water Precinct was approved where it was found that special circumstances existed that rendered the terms and conditions just and reasonable and consistent with the public interest.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction

of this commission, filed on September 8, 1988, a proposed wholesale water agreement

between Manchester and the Grasmere Water Precinct, pursuant to RSA 378:18; and

WHEREAS, after investigation and consideration, the commission is of the opinion that special circumstances exist which render the terms and conditions just and reasonable and consistent with the public good; it is hereby

ORDERED, that the wholesale water agreement between the Manchester Water Works and the Grasmere Water Precinct shall become effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 1989.

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NH.PUC*03/20/89*[51709]*74 NH PUC 99*Unicord Power Associates

[Go to End of 51709]

74 NH PUC 99

Re Unicord Power Associates

DE 89-039
Order No. 19,347

New Hampshire Public Utilities Commission

March 20, 1989

ORDER nisi granting a license to cross public waters with electrical transmission lines.

ELECTRICITY, § 7 — Authorization for transmission lines — License to cross public waters.

[N.H.] A license to cross public waters with electrical transmission lines was conditionally granted where the crossing was necessary for interconnection with existing transmission and all construction would meet with the requirements of the National Electrical Safety Code; final approval was conditioned on the public having an opportunity to submit comments in support of or opposition to the license.

By the COMMISSION:

ORDER

WHEREAS, on March 8, 1989, Unicord Power Associates filed with this Commission its petition under RSA 371:17 seeking license to cross public waters of the Soucook River between the Town of Pembroke and the City of Concord, New Hampshire; and

WHEREAS, on March 10, 1989, the Petitioner filed an amendment to its Petition reflecting an agreement with the Town of Pembroke, New Hampshire; and

WHEREAS, such crossing will be comprised of an aerial, four (4) wire, three (3) phase, 34.5 KV transmission line, essential to the interconnection of a proposed 16 MW wood-to-energy facility located in Pembroke, New Hampshire, to the existing transmission lines of Concord Electric Company; and

WHEREAS, the proposed transmission line to be erected across the Soucook River will be attached to wood poles which will be erected approximately fifty (50) feet away from the edge of river as shown in Exhibit A; and

WHEREAS, the transmission line will have a minimum vertical clearance above the normal water level of the Soucook River of forty-four (44) feet; and

WHEREAS, the Petitioner has submitted evidence of consent of the parties as identified and listed in Exhibit D-1; and

WHEREAS, the Soucook River is defined as "public water" for the purposes of RSA 371:17; and

WHEREAS, the transmission line will cross over the Soucook River and at the center line of the river, at the Concord city line, the transmission line will enter into the right of way of the State of New Hampshire for Route 106, as shown on Exhibit A; and

WHEREAS, the Commission finds such crossing necessary for the interconnection with existing transmission, thus it is 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 written request for a hearing on the matter before this commission no later than March 31, 1989; and

it is

FURTHER ORDERED, that Unicord Power Associates effect such notification by

publication of this order once in *The Union Leader* no later than March 23, 1989; and it is

FURTHER ORDERED, *NISI* that Unicord Power Associates be, and hereby is, granted license pursuant to RSA 371:17 *et seq.* to place, operate and maintain a 34.5 KV transmission line as depicted in the exhibit of the petition on file with this commission; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that said authority shall become effective April 4, 1989, unless a hearing is requested as provided herein or the commission so directs prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1989.

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NH.PUC*03/20/89*[51710]*74 NH PUC 100*Pennichuck Water Works, Inc.

[Go to End of 51710]

74 NH PUC 100

Re Pennichuck Water Works, Inc.

DE 88-125
Order No. 19,348

New Hampshire Public Utilities Commission

March 20, 1989

ORDER approving a special contract rate for water utility service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] Pursuant to state statute, RSA 371:18, a public utility may make a contract for service at rates other than those fixed by tariff if special circumstances exist which render such a departure just and consistent with the public interest. p. 101.

2. RATES, § 625 — Water rate design — Wholesale to distributors — Special contract rate.

[N.H.] A water utility was authorized to provide water to a municipal district on a wholesale basis pursuant to a one-year special contract where the district's urgent need for the water and the fact that the utility would be obligated to supply only excess capacity were found to be special circumstances justifying a departure from its tariffed rates; however, the utility was put on notice

that it would bear the burden of any stranded investment that might result from the short-term nature of the contract. p. 101.

APPEARANCES: Mary Ellen Kiley, Esq. on behalf of Pennichuck Water Works, Inc.; Eugene F. Sullivan, III, Esq. on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. *Procedural History*

On August 26, 1988, Pennichuck Water Works, Inc. (Pennichuck or Company) filed with this commission a petition for permission to engage in business as a public utility in a limited area of the Town of Merrimack, New Hampshire, to wit, the Merrimack Village District (District). Said business to consist of providing water to the District pursuant to a special contract on a wholesale basis. A report and order were issued on November 28, 1988, setting a hearing for December 8, 1988, at which the company offered the testimony of Stephen J. Densberger. The commission staff did not present any witnesses.

II. *Findings of Fact*

The company proposes to provide water to the District on a wholesale basis pursuant to a

twelve (12) month renewable contract. The contract calls for a relatively substantial investment by the company ($15,000) which could be stranded should the District choose not to renew the contract.

Testimony revealed that the water supplied by the company to the District would be excess capacity during the months of May through September, the traditional period of peak demand for water companies. However, the contract limits the amount of water to be supplied to approximately one million gallons per day, and the company may reduce this amount to nothing upon twenty-four (24) hours notice to the District. Thus, the company has protected itself against overdrawing from its system.

The District has a questionable supply of water in that one of the key supply wells previously used in the District is contaminated, and accordingly, cannot be used. It was this sense of urgency that motivated the company to propose this short-term agreement. The District is

currently studying its long range water plans and has accordingly entered into a short-term agreement with Pennichuck.

The contract between Pennichuck and the District provides that Pennichuck shall install thirty-five (35) feet of twelve (12) inch main, twenty (20) feet of eight (8) inch main and a meter vault at its expense to accomplish the connection between Pennichuck's main and the District's main.

III. *Commission Analysis*

In regard to the meter vault and main extensions, the commission finds that the provision of these terms to the District at the company's expense is a deviation from its general tariff provisions. See NHPUC No. 4-Water § 5d and § 20,b,1 respectively.

[1] Pursuant to RSA 371:18, a public utility may make a contract for service at rates other than those fixed by their tariff if special circumstances exist which render such a departure just and consistent with the public interest.

[2] In light of the fact that Pennichuck is only obligated to supply excess capacity, and due to the urgency in providing the District with water, the commission finds that the proposed deviation from the general rates of the company is just and consistent with the public interest.

However, the commission is concerned that the contract, due to its short-term nature, may result in stranded investment. The company has indicated that operating expenses for the contract will be $300 per year, and that the break even point in terms of consumption when considering upstream costs is approximately 5.7 million gallons. The commission notes that should the District choose not to renew the contract after one year the company would have an average stranded investment of $14,750. The average stranded investment would be reduced proportionately over the thirty year life of the investment should the District choose at any time not to renew the contract. However, the company has indicated that it would realize a profit of $20,875 in the first year of the contract.

Thus, the commission puts the company on notice that its managerial decision to service this contract will also involve the risk of incurring the burden of any stranded investment.

Our order will issue accordingly.

ORDER

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

ORDERED, that the special contract between Pennichuck Water Works, Inc. and the Merrimack Village District is approved subject to the conditions of the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1989.

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[Go to End of 51711]

74 NH PUC 102

Re Pennichuck Water Works, Inc.

DE 88-104
Order No. 19,350

New Hampshire Public Utilities Commission

March 20, 1989

ORDER granting a franchise to provide water service and approving proposed rates.

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1. SERVICE, § 210 — Extensions — Water — New franchise areas.

[N.H.] A water utility was granted a franchise to provide water service to two new developments where the record demonstrated a need for the service and the utility had the requisite legal, technical, financial, and business ability to provide the service. p. 103.

2. SERVICE, § 210 — Extensions — Water — New franchise areas.

[N.H.] The commission granted a petition by a water utility for a franchise to provide service between and among its existing franchises despite the fact that there was no current need for service in the areas between its existing franchises; it was found that the grant of the franchise was in the public interest because it would allow the utility to interconnect its existing systems and, thereby, facilitate long range planning and dependability for the utility or any alternate supplier. p. 103.

3. RATES, § 122 — Reasonableness — Less than reasonable rate — Water service.

[N.H.] A water utility was authorized to implement a proposed rate for service to new franchise areas notwithstanding the fact that the rate was expected to yield substantially less than a reasonable rate of return; it was found that the economical and managerial benefits of the rate, the fact that the commission would be reviewing the rate within one year, and the fact that the utility would bear the risk of any losses, justified approval of the rate. p. 103.

APPEARANCES: Mary Ellen Kiley, Esq. and John B. Pendleton, Esq. of Gallagher, Callahan, and Gartrell, P.A., on behalf of Pennichuck Water Works, Inc.; 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 July 18, 1988, Pennichuck Water Works Company, Inc. (Pennichuck or Company) filed a petition, pursuant to RSA 374:22, to provide water service to a limited area of the Town of Derry, New Hampshire. Said areas are developments known as "Birchfields" and "BBI." In addition, the company has petitioned for franchise areas between and among all its existing franchises in Derry including the proposed franchises at "Birchfields" and "BBI." The company also seeks to set rates in the proposed franchise areas, pursuant to RSA 378:5.

An order of notice was issued on August 15, 1988, scheduling a prehearing conference for November 16, 1988. At said prehearing conference a schedule was set to govern the procedure of the case.

On August 30, 1988, the Town of Derry filed a motion to intervene. The motion was granted over the objection of the company at the hearing on the merits held on January 19, 1989. At the hearing on the merits the company presented testimony in support of its petition.

II. *Findings of Fact*

The company has requested a franchise for "Birchfields" and "BBI" due to the present need

to provide service to customers. The company has also, however, requested additional franchise areas between and among its present franchises in the Town of Derry including "Birchfields" and "BBI" where no service is presently required but is anticipated in the near future due to the building trends of the area. Furthermore, the company intends to use these areas between and among its franchises for the interconnection of its independent systems in the Town of Derry.

The company has proposed an estimated annual revenue per customer of one hundred ninety-two dollars ($192) for serving the entire proposed franchise area even though the estimated annual cost per customer for "Birchfields" and "BBI" is three hundred eight dollars ($308) as the two developments are interconnected. The company contends that this plan is in the interest of economic efficiency in billing and management and would be the most

advantageous approach for the company to address rates in the proposed franchise area. The company further noted that it would be seeking a review of rates for the entire franchise area within the next year.

The company provided the commission with Department of Environmental Services, Water Supply and Pollution Control approval for thirty-nine (39) customers in "Birchfields" pursuant to RSA 374:22 and is currently serving less than thirty-nine customers in the "Birchfields" and "BBI" interconnected system.

The Town of Derry does not oppose the proposed franchise as it cannot currently provide the service in these areas; however, it does propose to eventually provide service to the entire town.

III. *Commission Analysis*

[1-3] 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 *New Hampshire Yankee Electric Corporation,* 70 NH PUC 563, 566 (1985) the commission stated the criteria for determining the public good as: 1) the need for service, and 2) the ability of the petitioner to provide service.

Furthermore, the commission has laid out standards for fitness in fulfilling the public interest which include:

1) financial backing;

2) management and administrative expertise;

3) technical resources;

4) the general fitness of the applicant. *Re International Generation and Transmission Company,* 67 NH PUC 478, 484 (1982).

The record demonstrates a need for service in "Birchfields" and "BBI" because water service is currently being provided in the proposed service. The commission takes notice of our past decisions indicating the company's legal, technical, financial, and business ability to provide water service to the proposed franchise areas. See dockets DE 87-27, DE 87-22, DE 87-26, and DE 87-132.

There is, however, no current need for service in the areas between and among the franchise areas, but the commission does support the company's plan to interconnect its systems in the Town of Derry. The commission believes that such a plan is in the public interest as it will facilitate long range planning and dependability for the company, or in the alternative, the Town of Derry or Southern New Hampshire Water Company. See dockets DE 87-170 and DE 87-205.

Under RSA 378:28, rates should be sufficient to yield a reasonable return on the cost of the property used and useful less accrued depreciation. The company has proposed a rate which is substantially less than what it contends a reasonable rate of return would yield. However, it has done so in light of the economical and managerial benefits of a consolidated rate and in light of the fact that the commission will be reviewing these rates within the year. Based on the fact that the commission will be reviewing these rates within the year it will approve the estimated annual revenue of one hundred ninety-two dollars ($192) per customer per year. However, in view of

the company's estimated revenue requirements for "Birchfields" and "BBI" of three hundred eight dollars ($308) per customer, per year and its request that estimated annual revenue be set at one hundred ninety-two dollars ($192) per customer, per year, Pennichuck shall bear the risk

of any losses caused by said rate.

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 the combined "Birchfields" and "BBI" developments; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc., shall be granted a franchise between and among its present franchises in the Town of Derry as proposed in its petition for the purpose of interconnecting its independent systems in the Town of Derry; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc., shall file tariff pages reflecting the revenue requirements for service set forth in the previous report effective no sooner than the date of this order.

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1989.

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NH.PUC*03/24/89*[51712]*74 NH PUC 104*Public Service Company of New Hampshire

[Go to End of 51712]

74 NH PUC 104

Re Public Service Company of New Hampshire

DR 88-126
Order No. 19,353

New Hampshire Public Utilities Commission

March 24, 1989

ORDER authorizing a retail electric distribution company to use an alternative method to

compute interrupted demand for interruptible customers.

RATES, § 322 — Electric rate design — Interruptible demand — Credits.

[N.H.] An electric utility was authorized to use, at the customers' option, an alternative method to compute interrupted demand for three interruptible customers; it was found that the alternative method would ensure that customers who have provided interruption receive credit and continue to participate in the interruptible rate schedule.

By the COMMISSION:

ORDER

WHEREAS, on February 24, 1989, Public Service Company of New Hampshire (PSNH) filed with the commission a motion for Limited Supplementation of Tariff Requirements, in which it proposed to use an alternative method to compute the Interrupted Demand for three of its Rate WI customers; and

WHEREAS, for customers with temperature sensitive demands, the standard Rate WI calculation understates the customers' actual response, and deprives them of a potential credit for interruption; and

WHEREAS, the alternative method for estimating customer load would apply only to the following three customers, UNH Durham, Keene State College and GTE Sylvania (Manchester) for the current winter period exclusively; and

WHEREAS, the commission wishes to ensure that customers who have provided interruption receive credit, and continue to participate in Rate WI; it is hereby

ORDERED, that the Motion for Limited Supplementation of Tariff Requirements be, and hereby is, approved and that PSNH is granted permission to use at the customer's option the alternative method detailed in its technical statement attached to the motion; and it is

FURTHER ORDERED, that this alternative method be used in determining Interrupted Load for the University of New Hampshire (Durham), Keene State College, and GTE Sylvania (Manchester) for the months of December 1988 and January and February 1989.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1989.

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NH.PUC*03/27/89*[51713]*74 NH PUC 105*New England Telephone and Telegraph Company

[Go to End of 51713]

74 NH PUC 105

Re New England Telephone and Telegraph Company

DE 89-024
Order No. 19,354

New Hampshire Public Utilities Commission

March 27, 1989

ORDER *nisi* authorizing a local exchange telephone carrier to place, operate, and maintain telephone aerial plant across public waters.

CERTIFICATES, § 123 — Telephone — Aerial crossing — Local exchange telephone carrier.

[N.H.] A local exchange telephone carrier was conditionally authorized to place, operate, and maintain telephone aerial plant across public waters where the crossing was necessary to meet the reasonable requirements for service; final approval was conditioned on the public being provided with an opportunity to respond in support of, or in opposition to, the crossing and on all construction meeting established minimum safety standards.

By the COMMISSION:

ORDER

WHEREAS, on February 10, 1989, the New England Telephone and Telegraph Company (New England Company), filed with this commission a petition seeking a license pursuant to RSA 371:17 to place and maintain telephone aerial plant over the Pemigewasset River in Bristol and New Hampton, New Hampshire; and

WHEREAS, this plant will consist of a 118 pair aerial cable as detailed on submitted Plan No. 28-15; and

WHEREAS, the crossing from Tel. 346/11 (new pole) on property of the State of New Hampshire, Department of Transportation (NHDOT) in Bristol, N.H. to Tel. 346/12 (new pole)

also on property of NHDOT in New Hampton, N.H., is designed to provide additional capacity for the New England Company's Bristol exchange; and

WHEREAS, the commission finds such crossing necessary for the Petitioner to meet the reasonable requirements for service, thus it is 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 written request for a hearing on the matter before this commission no later than April 6, 1989; and it is

FURTHER ORDERED, that the New England Company effect such notification by publication of this order once in *The Union Leader*, no later than March 31, 1989; and it is

FURTHER ORDERED, *NISI* that the New England Company be, and hereby is, granted license pursuant to RSA 371:17 *et seq* to place, operate and maintain telephone aerial plant across the Pemigewasset River as depicted on Plan No. 28-15 on file with this commission; and it is

FURTHER ORDERED, that all construction meet established minimum safety standards, such as, the National Electrical Safety Code; and it is

FURTHER ORDERED, that said authority shall become effective fifteen (15) days from the date of this order, unless a hearing is requested as provided herein or the commission so directs prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of March, 1989.

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NH.PUC*03/29/89*[51714]*74 NH PUC 106*Manchester Water Works

[Go to End of 51714]

74 NH PUC 106

Re Manchester Water Works

DE 89-034
Order No. 19,355

New Hampshire Public Utilities Commission

March 29. 1989

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

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

[N.H.] A water utility was conditionally authorized to extend its mains and service into an area outside its then existing service area where no other utility had franchise rights in the area sought, the town government of the area to be served was in accord with the extension, and the extension appeared to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this commission in areas served outside the City of Manchester, by a petition filed March 14, 1989, 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 franchise rights in the area sought, and the petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Goffstown has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

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

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit a written request for a hearing in this matter no later than April 21, 1989; 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 12, 1989 and designated in an affidavit to be made on copy of this order and filed with this office on or before April 28, 1989. In addition, individual notice shall be given to all known current and prospective customers by serving a copy of this order to each by first class U.S. mail, postage prepaid, and postmarked on or before April 12, 1989; 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:

Beginning at a point on the Goffstown-Bedford town line at the intersection of Route

114, said point being the southwesterly limits of the Manchester Water Works franchise as approved by the New Hampshire Public Utilities Commission Order No. 19,155; thence westerly along said town line to the westerly limits of the town of Goffstown, tax map 3, lot 47-2; thence northerly along the westerly boundary of lots 47-2 through 47-7; thence northerly across lot 53 to the southwesterly corner of lot 57; thence northerly along the westerly boundary of lot 57 to Shirley Hill Road; thence easterly along the southerly boundary of Shirley Hill Road crossing Route 114 to the existing franchise limits; thence southerly along such existing franchise limits to the point of beginning.

and it is

FURTHER ORDERED, that such authority shall be effective on April 28, 1989, 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-ninth day of March, 1989.

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NH.PUC*04/03/89*[51715]*74 NH PUC 107*Connecticut Valley Electric Company

[Go to End of 51715]

74 NH PUC 107

Re Connecticut Valley Electric Company

DR 88-176
Order No. 19,360

New Hampshire Public Utilities Commission

April 3, 1989

ORDER staying the effective date of a change in the short-term energy and capacity rates for qualifying facilities (QFs) and rejecting a proposal to pay hydroelectric QFs a rate in excess of avoided cost. For prior order approving the change in short-term energy rates, see 74 NH PUC 28, supra.

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1. COGENERATION, § 24 — Rates — Short-term energy and capacity — Stay.

[N.H.] The commission stayed the effective date of a change in the short-term energy and capacity rates for qualifying facilities (QFs) from January 1989 to May 1989, where an electric utility had misled QFs into believing that no change would take place in their short-term rates until the fall of 1989, and had failed to finalize long-term contracts with QFs already on its system despite having assured the commission that it would do so; utility shareholders were required to bear any financial costs resulting from the failure to negotiate long-term contracts or give proper notice of the scheduled change in avoided cost rates. p. 109.

2. COGENERATION, § 25 — Rates — Avoided cost — Hydroelectric QFs.

[N.H.] In rejecting a proposal to require an electric utility to pay hydroelectric qualifying facilities a rate in excess of avoided costs, the commission found that such a requirement would be contrary to the regulations of the Federal Energy Regulatory Commission, the Public Utilities Regulatory Policies Act of 1978, and the New Hampshire Limited Electric Energy Producers Act, which specifies that rates set by the commission for QFs shall be based on the purchasing utility's avoided cost. p. 109.

APPEARANCES: Connecticut Valley Electric Company by Morris Silver, Esq; Orr & Reno for Claremont Hydro Associates & Sunander Hydro Associates by Howard Moffett, Esq.; Woodsville/Rochester Hydro, by William Lowth; Bath Electric Company by Charles Diamond; Staff of the New Hampshire Public Utilities Commission by Dr. Sarah P. Voll and Janet Besser, Economics Department, and Eugene F. Sullivan and ChristiAne Mason, Finance Department.

By the COMMISSION:

REPORT

I. *Procedural History*

On November 29, 1989 Connecticut Valley Electric Company (CVEC or company) filed its Fuel Adjustment Clause (FAC) and on December 5, 1988 its short term energy and capacity rates for qualifying facilities (QFs). The New Hampshire Public Utilities Commission (commission) held a duly noticed hearing on December 29, 1988. On January 6, 1989, Claremont Hydro Associates (Claremont) and Sunander Hydro Associates (Sunander) filed a joint motion to intervene, alleging that they had had insufficient notice of the proceedings and that they were adversely affected in that CVEC's petition sought authority to reduce the

rates paid to small power producers resulting in an approximately fifty percent (50%) reduction in their revenues.

On January 11, 1989 by order no. 19,290 (74 NH PUC 28) the commission, *inter alia,* approved the short term energy and capacity rates and denied the motion for late intervention. The commission found that adequate notice of the revision of the short term rates during the FAC hearing had been provided through order nos. 19,052 (April 7, 1988) (73 NH PUC 117) and 19,141 (August 10, 1988) (73 NH PUC 285) in docket DR 86-072 and that the FAC hearing itself had been duly noticed. On January 31, 1989 Claremont and Sunander filed a motion for a rehearing of order no. 19,290 or, in the alternative, a stay of said order pending the good faith negotiation by CVEC of a long-term contract or the determination by the commission of long-term avoided cost rates to be paid by CVEC to QFs. On February 15, 1989, by order no. 19,322 (74 NH PUC 69) the commission ordered a hearing for February 24, 1989 on the issue of whether or not the motion should be granted. In addition to CVEC, Sunander and Claremont, appearances were entered by Woodsville/Rochester Hydro (Woodsville) by William Lowth and by Bath Electric Company (Bath) by Charles Diamond. Messrs. Lowth and Diamond testified on behalf of their respective companies and shall be considered full parties to the proceeding.

II. *Positions of the Parties*

Qualifying Facilities

Sunander and Claremont argued that they had only received notice of the impending reduction in the rate paid by CVEC on December 29 and December 28, 1988 respectively. They argued that neither had been involved in DR 86-072 and that neither CVEC nor the commission had directly informed them of CVEC's October 1, 1988 long-term avoided cost filing or of its description of its solicitation procedures for QFs. They requested that the commission defer the effective date of order no. 19,290 until April 30, 1989 to allow the QFs and CVEC to negotiate a long-term rate.

Woodsville testified that it had received notification of DR 86-072 and had received copies of the material filed in the docket. However, it had not understood the significance of the proceeding and had been told by CVEC that existing facilities would not be adversely affected. Woodsville requested that the order be set aside for some reasonable period, three to five months or however long it takes to reach a reasonable conclusion with the company.

Bath testified that it was not notified of the change in the short-term rate until receipt of order no. 19,290 on January 14, 1989. It testified that it had contacted CVEC after April 1988 and was told that no long-term contracts were being offered. Bath argued that given the unique character of hydroelectric production, the payment to such facilities should not be based on avoided cost. It proposed that the minimum rate of 7.8¢ be established, that the capacity rate of $75.00 found in order no. 19,290 be added and periodically adjusted for inflation and that these figures be adjusted proportionally upward if the cost of oil rises above $30 a barrel.

Connecticut Valley Electric Company

CVEC testified that it had filed its long-term avoided cost calculation and description of Central Vermont Public Service Company's (CVPSC) bidding program in compliance with the requirements of DR 86-072. An invitation to participate in the bidding program, a 50 MW all-source solicitation, was sent to all small power producers in Vermont and New Hampshire on CVPSC's system. CVPSC made a corporate decision that it would not simultaneously negotiate and solicit bids, and therefore halted its negotiations with both utilities offering traditional sources of supply and QFs. Of the already operating New Hampshire projects, only Woodsville participated in the bidding program. The company generally described the types of contracts it would be willing to sign including the limitations imposed by the avoided cost calculations and restrictions on levelization. However, the company believes that as long as the short-term rate was 7.8 cents and the initial years of a long-term contract were below 7.8 cents, the QFs had no incentive

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to negotiate or participate in the bidding program.

The company does not favor a change in its FAC or any provision by which the FAC would remain unchanged while the company was required to pay QFs 7.8 cents. It would object if such a provision either required ratepayers to subsequently reconcile the cost/revenue differential or required stockholders to pay the difference.

Staff

Staff argued that the QFs on the CVEC's system had adequate notice that the short-term rate would change on January 1, 1989. The QF's were duly noticed of the earlier related proceedings in DR 86-072. The order of notice for DR 86-072 issued in February 1986 stated that the commission would reconsider the short term rate. Subsequent commission orders in April and August 1988 clearly stated that the short-term rates would be revised at the winter 88/89 fuel adjustment clause proceeding. Staff further asserted that the developers' decision not to participate in DR 86-072 or their failure to assess the rather straightforward effect of the conclusions reached in that docket does not constitute lack of adequate notice.

However, staff also noted that the commission's findings in DR 86-072 were in part predicated on a broad consensus among the parties, both utilities and QFs, that private negotiations would provide a more flexible vehicle for arrangements between QFs and utilities than commission established standard offers. Staff argued that the commission had every right to expect that all parties would use the period from April through December 1988 to proceed with those negotiations. It noted that the commission had chosen January 1, 1989 rather than July 1, 1988 as the effective date for a change in the short-term rate to allow sufficient time for those negotiations to be concluded prior to a change in the rate. Neither CVEC nor the QFs complained to the commission that the other had refused to negotiate.

Staff does not believe that the CVEC ratepayers should be expected to pay QFs in excess of

avoided cost beyond January 1, 1989. It stated that the interests of ratepayers should not be prejudiced because of the failure of small power producers to diligently protect their interests by finalizing long-term contracts, or the failure of CVEC to fulfill the assurances given staff and the commission in April 1988 that they would negotiate with the QFs in a timely manner.

III. *Commission Analysis*

[1, 2] Having reviewed the record, the commission finds that adequate notice of the change in the short-term rate was provided to the QFs by the commission. However, we also find that this notice was nullified by the actions of the company. Therefore, the commission will stay the effective date of the change in the short-term rate from January 1, 1989 to May 1, 1989. We will not stay order no. 19,290 in regard to the FAC. We also reject Bath's ratemaking proposal.

In reviewing the record, we find that proper legal notice was given of the December 29, 1988 FAC hearing through publication in the appropriate newspapers. *O'Neil v. PUC,* 119 N.H. 930, 933 (1979). However, it would appear that, absent an understanding that the short-term rate would be adjusted in the FAC hearings, the legal notice would not have alerted the QFs that their interests would be affected by the FAC hearing.

In Docket DR 86-072, the commission gave notice in February 1986 to all participants in the independent power market, both QFs and utilities, that the methodology for the short-term rates for all utilities in the state would be reconsidered. At the conclusion of those dockets, the commission issued two orders (no. 19,052 in April [73 NH PUC 117] and no. 19,141 [73 NH PUC 285] in August of 1988) that specified the new methodology and the timing of its implementation.

Claremont and Sunander aver that they neither participated in, nor knew about, the DR 86-072 proceeding. They both testified that while they kept track of the market value of their product in the paper company side of their businesses, neither kept abreast of changing values for the product from their hydroelectric

site. Nor did they maintain any contact with CVEC in order to keep themselves informed of changes that could affect their interests. Tr. 18-19, 91, 95. Woodsville and Bath were parties to DR 86-072. However, Woodsville claims not to have followed the case with sufficient expertise to understand the significance of order no. 19,052, which specified both that the short-term rate would change in the January 1989 FAC proceeding and that future relations between the utilities and QFs would be governed by private negotiations.

We do not find that the ignorance of Sunander, Claremont and Woodsville regarding the effect of the commission's orders on their interest renders our notice defective. The QFs failed to act in a prudent manner to keep themselves informed of the changing energy market and regulatory environment and protect their own interests. Had they made any reasonable effort to

monitor that market for their electric production, and had they maintained contacts with either the company or the commission, they would have known as early as February 1986 that the short-term rate would be revised, and in April 1988 the timing of that revision.

While we find that our notice was legally adequate, we also find that the effectiveness of this notice was nullified by misleading company actions. QFs who had monitored and participated in DR 86-072 and who understood that the short-term rate was scheduled for revision contacted the company to arrange for a long-term rates. They were told by CVEC that the company was not negotiating contracts while they were in the midst of the bidding program. CVEC laid out a schedule that indicated that the effective date of the new short-term rate would be in the fall of 1989 rather than January 1989. It informed concerned QFs that the appropriate time to begin negotiations was after the results of the bidding program were known (March or April 1989). Tr. 206-208. The company provided this information regardless of our DR 86-072 orders, and despite the assurances given this commission that it would use the period April through December 1988 to finalize long-term contracts with the QFs already on its system.

Therefore, we will stay the effective date of the short-term rate approved in order no. 19,290 from January 1, 1989 to May 1, 1989. We will require the company and the QFs to report to the commission the progress of negotiations towards long-term contracts on April 21, 1989. If progress has not been made, we will at that time consider establishing a long-term standard offer based on the avoided costs filed by CVEC. We put the parties on notice, however, that that standard offer may be subject to the constraints delineated in order no. 19,052 regarding the limits to levelization and no party should assume that a commission standard offer would provide a more attractive option to any party than a private contract resulting from good faith negotiations.

We reject Bath's proposals that the unique characteristics of hydroelectric power entitles it to rates above avoided costs. Such a concept is contrary to the regulations of the Federal Energy Regulatory Commission (FERC) promulgated pursuant to the Public Utilities Regulatory Policies Act of 1978, especially as recently expressed in FERC's April 14, 1988 decision regarding Orange and Rockland Utilities, Inc. and the New York State statute providing for a minimum 6¢ QF rate. 43 FERC p. 61, 067. It is also contrary to the New Hampshire Limited Electric Energy Producers Act, RSA Chapter 362-A:4, which specifies that rates set by the commission for QFs "shall be based on the purchasing utility's avoided cost", and the decision of the New Hampshire Supreme Court that the commission has no authority to set an unalterable minimum rate and is rather required "to consider a rate change when conditions so warrant". 121 N.H. 787, 435 A.2d 119.

Finally, we shall address who will bear the financial costs that resulted from the failure to negotiate long-term contracts or give notice that the avoided cost rate would change on January 1, 1989. The commission finds that the ratepayers of ConVal are innocent of any actions for which fairness and equity would assess additional costs against them. The QF's had a responsibility to protect their own interest. Had more direct notice been given to them that their rates would be affected if long term contracts were not negotiated, they would bear a heavier burden than we have assessed against

them. We cannot ignore that ConVal's representations to the QF's clearly gave them an understanding that their rates were stable until ConVal was ready to address the long-term contracts sometime in the fall of 1989. The record clearly sets forth that the company participated in all of our proceedings and had actual notice of our orders and was fully aware of the development of the QF's in New Hampshire.

Any departure from the terms of Order No. 19,290 (74 NH PUC 28) is a direct result of the company ignoring the order and misleading the QF's into believing that no change would take place in their short-term rates until the fall of 1989 or until the parties could work out the terms of a long-term contract. Under these circumstances, the commission finds that all of the financial costs in excess of the company's avoided cost should and shall be borne by the company's stock holders. In the future, we shall expect the company to implement the commission's order timely and efficiently.

Our order will issue accordingly.

ORDER

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

ORDERED, that the effective date in the change in the short-term rate approved in order no. 19,290 (74 NH PUC 28) be stayed from January 1, 1989 until May 1, 1989 to allow additional time for negotiations between Connecticut Valley Electric Company (CVEC) and the New Hampshire Qualifying Facilities (QFs) currently operating on the CVEC system; and it is

FURTHER ORDERED, that the Fuel Adjustment Clause rates approved in order no. 19,290 remain in effect; and it is

FURTHER ORDERED, that the proposal by Bath Electric Company that hydroelectric QFs be paid in excess of avoided cost be, and hereby is, rejected.

By order of the Public Utilities Commission of New Hampshire this third day of April, 1989.

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NH.PUC*04/05/89*[51716]*74 NH PUC 111*New England Telephone and Telegraph Company

[Go to End of 51716]

74 NH PUC 111

Re New England Telephone and Telegraph Company

DE 88-172
Order No. 19,363

New Hampshire Public Utilities Commission

April 5, 1989

ORDER granting a request for a protective order preventing public disclosure of confidential information filed in support of a proposed special contract for the provision of Centrex telephone service.

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1. PROCEDURE, § 16 — Discovery and inspection — Right to Know law — Protective order.

[N.H.] The New Hampshire Right to Know Law, RSA 91-A:5, IV, exempts from public disclosure confidential commercial or financial information. p. 112.

2. PROCEDURE, § 16 — Discovery and inspection — Confidential information — Protective order.

[N.H.] The commission issued a protective order preventing public disclosure of confidential information filed by a local exchange telephone carrier in support of a proposed special contract for the provision of Centrex service where it was found that the carrier would be exposed to a competitive disadvantage if the information were released. p. 112.

By the COMMISSION:

ORDER

On November 17, 1988, New England Telephone (NET) filed a special contract,

pursuant to RSA 378:18, between NET and the State of New Hampshire (State) for the provision of Centrex service by NET to the State; and

WHEREAS, NET has requested that the special contract and supporting materials filed with the contract be placed under a protective order to avoid the material becoming a matter of public record generally available to persons not a party to this docket; and

[1, 2] WHEREAS, the Right to Know Law, RSA 91-A:5,IV exempts from public disclosure "confidential, commercial or financial information... "; and

WHEREAS, said supporting materials consist of confidential commercial and financial information which if released to the public would expose NET to a competitive disadvantage; it

is hereby

ORDERED, that the request by NET for a protective order for the supporting materials to said special contract is hereby granted pursuant to RSA 91 A:5,IV, unless or until otherwise ordered, however, the special contract itself shall not be granted proprietary treatment in light of RSA 378:19; and it is

FURTHER ORDERED, that the above cited documents shall not be copied or reproduced in any manner, nor shall said documents become part of the public records of the commission unless and until further ordered.

By order of the Public Utilities Commission of New Hampshire this fifth day of April, 1989.

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NH.PUC*04/06/89*[51717]*74 NH PUC 112*City of Portsmouth Water and Sewer Department

[Go to End of 51717]

74 NH PUC 112

Re City of Portsmouth Water and Sewer Department

DR 88-106
Order No. 19,364

New Hampshire Public Utilities Commission

April 6, 1989

ORDER establishing temporary rates for a water utility at the level of its proposed permanent rates.

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1. RATES, § 630 — Emergency or temporary rates — Proposed permanent rates — Water utility.

[N.H.] A municipal water utility was authorized to set temporary rates at the level of its proposed permanent rates, where the utility had increased its rates within city limits based on revenue deficiencies, and an increase in temporary rates for jurisdictional customers outside the city limits would merely result in parity between city customers and jurisdictional customers — a fact which indicated that temporary rates at the level of permanent rates would be in the public interest; the temporary rates were subject to recoupment by jurisdictional customers, if permanent rates were ultimately fixed at a level lower than proposed. p. 113.

2. RATES, § 635 — Emergency or temporary rates — Scope of emergency proceeding —

Investigation and analysis.

[N.H.] By statute, the commission was required to establish temporary rates with expedition and without such investigation as required for a determination of permanent rates; thus, the commission held that an objection to setting a water utility's temporary rates at the proposed level of permanent rates, without a complete analysis of the utility's permanent rate request, was more appropriate for a permanent rate investigation in light of minor problems with the proposed rates brought to light in a hearing on the merits. p. 113.

APPEARANCES: Sharan A. Cuddy, Esq. on behalf of the City of Portsmouth; Joseph Rogers, Esq. on behalf of the Consumer Advocate's Office; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

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REPORT

I. *Procedural History*

On July 19, 1988, the City of Portsmouth Water and Sewer Department (Portsmouth) submitted revisions to NHPUC No. 2 which would increase water rates for its customers in the towns of Greenland, Newington, Rye, New Castle, Durham and Madbury (jurisdictional customers). Portsmouth also requested temporary rates pursuant to RSA 378:27. By order no. 19,177, dated September 14, 1988, the commission suspended the proposed tariff revisions and set November 9, 1988, for a prehearing conference and a hearing on the merits of the temporary rate requests. After an informal meeting with the staff and the consumer advocate, Portsmouth chose to postpone the scheduled hearing in order to amend its rate request and tariff revisions.

On January 30, 1989, Portsmouth submitted an amended petition for permanent rates resulting in an increase in revenues of $172,696 and again requested a hearing on the issue of temporary rates. By supplemental order no. 19,324, dated February 16, 1989, the commission set a prehearing conference and a hearing on the merits of the temporary rate request for March 30, 1989.

II. *Position of the Parties*

At the hearing held on March 30, 1989, Portsmouth clarified its petition for temporary rates indicating that it wished to have temporary rates set at the proposed level of permanent rates. Portsmouth made this proposal based on the fact that it had increased rates within the City of

Portsmouth effective November 1, 1989, based on revenue deficiencies, and that an increase in temporary rates for the jurisdictional customers would merely result in parity between its city customers and jurisdictional customers.

Both staff and the consumer advocate objected to the setting of temporary rates at the level of permanent rates without a complete analysis of Portsmouth's permanent rate request. Staff and the consumer advocate based this objection on the problems with Portsmouth's previous filings which included CWIP and resulted in the filing of an amended petition. This concern was further exacerbated by the fact that the amended petition contained the same level of revenue increases as the first petition, which had included CWIP.

Staff and Portsmouth agreed that temporary rates should be effective as of November 1, 1988. The consumer advocate, however, took the position that temporary rates should not be effective until January 30, 1989, the date the amended petition was filed.

All parties agreed to a proposed procedural schedule. Neither staff nor the consumer advocate objected to setting temporary rates at existing rates.

III. *Commission Analysis*

[1, 2] Pursuant to RSA 378:27;

> [i]n any proceeding involving the rates of a public utility... , the commission may, after reasonable notice and hearing if it be of the opinion that public interest so requires, immediately fix, determine, and prescribe for the duration of said proceeding reasonable temporary rates; ...

In *New England Telephone and Telegraph Co. v. State,* 95 N.H. 515, 82 PUR NS 296, 68 A.2d 114 (1949), the New Hampshire Supreme Court interpreted this statutory provision for temporary rates as requiring that temporary rates be established with expedition and without such investigation as is required for a determination of permanent rates.

Both staff and the consumer advocate's position would be more appropriate for a permanent rate investigation in light of the minor problems with the proposed rates brought to light in the hearing on the merits. Furthermore, the fact that Portsmouth has raised its rates within the city to that level which it proposes to raise rates outside of the city limits is indicative of the fact that temporary rates at the level of permanent rates would be in the public interest. Of course, said rates would be subject to recoupment by Portsmouth's jurisdictional

customers should permanent rates be fixed lower than Portsmouth has proposed.

Pursuant to *Appeal of Pennichuck Water Works,* 120 N.H. 562 (1980) "... the earliest date on

which the PUC can order temporary rates to take effect is the date on which the utility filed its underlying request for a change in permanent rates." *Pennichuck*, 120 N.H. at 567. In the case at hand the underlying petition was
filed in July of 1988 and Portsmouth has requested temporary rates effective November 1, 1988 to coincide with revenue increases made inside the city. This is well within the time period allowed in *Pennichuck* and, therefore, is granted.

The parties proposed the following procedural schedule to govern the duration of the proceeding:

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

April 14, 1989	Portsmouth testimony is due.
May 4, 1989	Staff and intervenor data requests are due.
May 18, 1989	Portsmouth responses to data requests are due.
June 1, 1989	Staff and intervenor testimony are due.
June 15, 1989	Company data requests are due.
June 29, 1989	Staff and intervenor responses are due.
July 6, 1989	Settlement conference.
July 13-14, 1989	Hearing on the merits.

The procedural schedule appears to be in the public interest. Therefore, it shall govern the duration of this proceeding unless otherwise ordered.

Our order will issue accordingly.

ORDER

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

ORDERED, that temporary rates be set at the level of permanent rates effective November 1, 1988; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report is approved.

By order of the Public Utilities Commission of New Hampshire this sixth day of April, 1989.

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NH.PUC*04/10/89*[51718]*74 NH PUC 115*Stewartstown Steam Company

[Go to End of 51718]

74 NH PUC 115

Re Stewartstown Steam Company

DR 86-098
Order No. 19,366

New Hampshire Public Utilities Commission

April 10, 1989

MOTION to toll the commercial operation date in a long-term small power producer rate order following bankruptcy of the purchasing utility; denied.

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1. COGENERATION, § 19 — Contracts — Commercial operation date — Allocation of risk.

[N.H.] Citing the facts of the case and overwhelming legal precedence, the commission denied a motion by a steam company to toll the commercial operation date in a long-term small power producer (SPP) rate order following the bankruptcy of the purchasing electric utility; commission policy placed on SPP projects developers the risk of development and construction of projects on time and as proposed, based on the rationale that a developer would gain the most from successful completion of an SPP project. p. 118.

2. COGENERATION, § 25 — Rates — Eligibility for established avoided cost rate — Commercial operation date — Waiver.

[N.H.] In reaffirming its policy to place on developers of small power production (SPP) projects the risk of development and construction on time and as proposed, based on the rationale that a developer would gain the most from successful completion of an SPP project, the commission also noted its previous findings that waiver of the commercial operation date (1) would give preferential treatment compared to projects beginning production at the same time, whose purchase power arrangements were based on lower estimations of avoided costs, and (2) would require ratepayers to pay rates not based on current avoided cost estimates. p. 118.

3. COGENERATION, § 19 — Contracts — Waiver of commercial operation date — Suspension — Bankruptcy.

[N.H.] The commission denied a motion by a steam company to toll the commercial operation date set forth in its long-term small power producer (SPP) rate order following the bankruptcy of the purchasing electric utility, on the grounds that the utility's bankruptcy filing should be deemed a *force majeure* event, where the commission found that the steam company could reasonably have anticipated the bankruptcy, because the electric utility's declining financial condition was a known business risk; reallocation of risk from the SPP project developer to ratepayers would be unjust and unreasonable, and waiver of the commercial operation date would give preferential treatment for the steam company's project compared to SPPs beginning production at the same time, and would require ratepayers to pay rates not based on current avoided cost estimates. p. 119.

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i. COGENERATION, § 19 — Contracts — Waiver of commercial operation date — Temporary suspension.

[N.H.] Statement, in an opinion dissenting to the commission's refusal to waive the commercial operation date for a small power production (SPP) project following the bankruptcy of the purchasing utility, that an alternative request for a two-year suspension of the on-line date should have been granted, to yield an 18-year, rather than 20-year, SPP rate order. p. 120.

APPEARANCES: Angus S. King, Jr., Esq., of Swift River/Hafslund Company for Stewartstown Steam Company; Thomas B.

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Getz, Esq., for Public Service Company of New Hampshire; Mary C.M. Hain, Esq., for the Staff of the State of New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

The following report concerns Stewartstown Steam Company's motion to toll the commercial operation date in its long-term small power producer rate order because of Public Service Company of New Hampshire's bankruptcy. Based on the following analysis, we deny the motion. We also rescind the rate order unless Stewartstown files reasons other than those set forth in this case that justify continuation thereof.

I. *Procedural History*

Stewartstown Steam Company (Stewartstown) has a long term small power producer and cogenerator (SPP) rate for its West Stewartstown, New Hampshire 13.8 MW wood-fired electrical generating plant. *Re Stewartstown Steam Company,* 72 NH PUC 62 (1987), *aff'd,* 72 NH PUC 97 (1987). On June 27, 1988 it filed two motions. One motion requested formal arbitration pursuant to *Re Small Energy Producers and Cogenerators,* 66 NH PUC 83 (1981). The second motion requested tolling of the commercial operation date of its rate order and a hearing on the issue. On July 7, 1988, Public Service Company of New Hampshire (PSNH) filed a reply to these motions.

By report and order no. 19,170 (September 9, 1988) (73 NH PUC 364), the commission denied the first motion because Stewartstown had failed to request informal arbitration before requesting formal arbitration. We scheduled a hearing for November 17, 1988 on the second motion. The November 17th hearing was continued on December 1, 1988. Stewartstown and PSNH timely filed briefs.

II. *Background*

On March 28, 1986, Stewartstown filed a long term rate petition for a proposed 13.8 MW wood-fired small power production facility to be located in West Stewartstown, New Hampshire, pursuant to *Re Small Energy Producers and Cogenerators,* 69 NH PUC 352, 61 PUR4th 132

(1984); and 70 NH PUC 753, 69 PUR4th 365 (1985). The petition, as amended on August 25, 1986, requested a twenty (20) year rate order and a 1989 on-line year. In *Re Stewartstown Steam Co.,* 72 NH PUC 62 (1987), *aff'd, Re Stewartstown Steam Co.,* 72 NH PUC 97 (1987), the commission approved the petition. In lieu of an appeal of the order to the Supreme Court, the parties executed a settlement agreement on April 8, 1987.

III. *Positions of the Parties*

A. Stewartstown Steam

Stewartstown moves that the commission deem PSNH's January 29, 1988 bankruptcy filing a *force majeure* event that will suspend the commercial operation date required in the rate order (September 1, 1989). Stewartstown claims that the PSNH bankruptcy, prior to the closing of project financing on its small power production facility, has made conventional financing impossible to obtain. It contends that conventional financing for wood-fired small power production projects is non-recourse. Stewartstown argues that lending institutions are withholding financing until the bankruptcy court determines the viability of SPP rate orders.

Under commission precedent, Stewartstown avers, rate orders should not be extended past proposed commercial operation dates where developers have failed to perform obligations within their control. Stewartstown contends that this case differs from that precedent in that it did not have any control over PSNH's bankruptcy and that, but for the bankruptcy, Stewartstown would have been able to obtain financing.

Stewartstown also avers that the interconnection agreement (allegedly approved by the commission as a part of the rate order filing) includes a *force majeure* provision that states

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circumstances which excuse performance of rate order obligations. It contends that pursuant to this provision, the bankruptcy constitutes a *force majeure.* Further, it argues that the contract doctrines of impossibility of performance and commercial frustration excuse performance under these circumstances.

In light of the above, Stewartstown asks that the commission suspend the on-line date of the project until the revenue source is assured by either an interim decision or a final reorganization in the bankruptcy proceeding. In the alternative, it requests a two year suspension of the on-line date. It does not request an extension of the rate order. It alleges that neither the rate orders currently available or a wholesale contract would yield sufficient revenue to allow the project to go forward.

B. PSNH

PSNH argues that Stewartstown may not be excused from the 1989 commercial operation date because Stewartstown should reasonably have contemplated the bankruptcy. It avers that the *force majeure* clause and the contract doctrines of impossibility of performance and commercial frustration only apply to circumstances that were not reasonably contemplated by the petitioner and that were not in their control.

PSNH asserts that the risk of bankruptcy was not only recognized but that it was

acknowledged and that Stewartstown made a conscious decision to development the project in spite of this risk. It argues that choice of the type of financing was within Stewartstown's control and that other types of financing were available (e.g., contingent financing). It claims that if Stewartstown had obtained a contingent financing commitment immediately after the rate order became final, the project would have moved faster and Stewartstown would have met the on-line date. It also contends that the *force majeure* clause does not take effect until Stewartstown is in commercial operation.

C. Staff

The staff noted that the project does not have financing or a construction agreement. To the extent that the rate order is based on assertions of project maturity made at the time of the petition, lack of maturity does not rationalize extending the time Stewartstown has to fulfill its obligations under the rate order. Thus, the staff argued that commission precedent should apply.

IV. *Findings of Fact*

On March 24, 1987, the commission granted the long-term rate. At that time, Stewartstown submitted a letter from a lending institution expressing interest in the project and testified to its experience financing small power production facilities throughout New England. No lending institution had committed debt financing. Stewartstown was aware that bankruptcy was a possibility for PSNH. Specifically, at the July 10, 1986 hearing on the rate petition, Stewartstown's witness testified that

> reorganization within the bankruptcy court would result in a new organization that might or might not honor the rate order, but I believe it is their understanding that since the rate order is not an encumbrance on the company's ability to do business because it is a pass through from the ratepayers that it would not necessarily be abrogated. Record at 2-50 through 2-51.

As a further indication of PSNH's financial condition, in Moody's bond record in January of 1986 and December of 1986, PSNH had a bond rating in a range of B-1 to Caa.

At that time, Stewartstown had an option to buy the necessary real estate, it was reasonably assured that the necessary environmental permits could be obtained, it had a reasonable expectation that water availability and waste water disposal would not pose a problem, and it had secured a portion of its fuel supply.

In lieu of an appeal of the rate order to the Supreme Court, the parties executed a settlement agreement on April 8, 1987. All fuel sources were obtained before the fall of 1987.

Stewartstown negotiated with the National Energy Production Corporation (NEPCO). NEPCO learned of the project, and contacted

Stewartstown in May of 1987. Stewartstown prepared detailed specifications and sent them to NEPCO with a request for a quote in late August of 1987. Bids were due on October 1, 1987. At that time, NEPCO proposed a 14 month construction schedule based on the assumption that it could obtain a boiler in 7 months and a turbine in 11-12 months.

In October of 1987, Stewartstown thought that the project was at a stage where financing could be sought. It determined this because it had obtained a revenue source, (the rate order), it had obtained fuel sources, and it was sure that a lender would be convinced that the project was viable. Stewartstown believed that the project would be viable for two reasons: 1) it had completed a very similar project in Greenville, Maine, and 2) it was "well into" negotiating with a contractor with a reputation for building viable projects.

In the fall of 1987, Stewartstown made a request for financing proposals (RFPs) from several banks. At that time, the developer promised to provide six million dollars of equity investment assuming a non-recourse debt.

Three banks submitted commitment letters. Each commitment was contingent upon a one hundred percent guarantee of the debt. The banks required this guarantee because they feared alteration or invalidation of the rate order by the Public Utilities Commission or a bankruptcy court proceeding. One bank would not even consider the project for financing because it feared that the bankruptcy court would overturn the rate order.

Since the developers could not guarantee the debt, they sought insurance and additional equity contributions. They hoped that the additional equity could be used to either fund the construction or guarantee the debt. They could not find willing equity contributors or insurance.

In January of 1988, NEPCO continued to negotiate with Stewartstown. NEPCO indicated that the waiting period for boilers and for turbines had been extended and that it would now take 10 to 11 months and 16 to 18 1/2 months, respectively to order this equipment. ZURN, NEPCO's parent company offered to provide equity but withdrew its offer after it had an opportunity to consider the effects of the bankruptcy. Stewartstown does not have a signed construction contract.

Stewartstown asked UNITIL, James River Paper Co., and three cooperatives in New Hampshire and Vermont if they would contract to take the power. The coops indicated that they did not need and could not absorb the power. UNITIL and James River said they were not looking for that amount of power at the offered rate.

Stewartstown sought a post-bankruptcy petition wholesale contract with PSNH. PSNH was not interested.

Stewartstown admitted that it might have obtained a financing commitment letter after obtaining the rate order and before the fall of 1987. However, that commitment would have been contingent upon obtaining a fuel source and the bank's subjective determination that the project was viable.

On June 27, 1988, Stewartstown filed the outstanding motion.

V. *Commission Analysis*

[1, 2] In light of the facts of this case and the overwhelming legal precedence, we deny Stewartstown's motion.

Commission policy places on SPP project developers the risk that they will be able to develop and construct their projects on time and as proposed. Our rationale is that the developer will gain the most from a successfully completed project. We have consistently been unwilling to

shift this risk to the ratepayer.[1(4)] As Stewartstown points out in its brief, the key point for consideration in this case is, has the SPP failed to meet its obligation under DR 83-62 order no. 16,619 to "sell its entire output to PSNH at the specified rates over the entire applicable time period?" See also *Pitman, HDI-Hinsdale.*

We have also found that waiving the commercial operation date: 1) would give preferential treatment compared to projects beginning production at the same time because the purchase power arrangements of those projects are based on lower estimations of avoided costs, and 2) would require ratepayers to pay rates

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which are not based on the current avoided cost estimates.

In *Appeal of Vicon Recovery Systems, Inc.*, No. 87-364 (Slip Op. N.H. Sup.Ct. Aug. 8, 1988), (*Vicon*) the Supreme Court decided many of the issues presented in this case. *Vicon* was the appeal of the commission's order in *Re Vicon Recovery Systems, Inc.*, 72 NH PUC 298 (1987), rescinding a long-term rate order to Vicon Recovery Systems, Inc., (Vicon). Vicon was planning to provide service to certain municipalities. In its appeal, Vicon argued that PSNH's appeal of its rate order prevented it from executing municipal service agreements and financing agreements. *Vicon*, at 3. PSNH countered by arguing and testifying that Vicon was aware of the appeal and the difficulties created thereby, as early as August and that it failed to notify the commission until December 31, 1986. *Id.*

Vicon argued that under its interconnection agreement, a party shall not be considered in default for any cause beyond the reasonable control of either party. It also contended that the on-line date should not apply because the doctrines of impossibility of performance and commercial frustration. *Vicon*, at 4.

The court held that neither the interconnection agreement nor the doctrines of impossibility of performance and commercial frustration apply to the commission's orders. *Id.* The rates set by the commission are not contractual obligations, they are the law. *Id.* Thus, in Stewartstown's case, neither the provisions of the interconnection agreement nor these contract doctrines have any effect on the in-service date required by the rate order.

[3] We find that Stewartstown could reasonably have anticipated the bankruptcy. The facts show that the declining financial condition of PSNH was a business risk that Stewartstown knew about and grappled with throughout the development to date. Since Stewartstown assumed this risk, it would be unjust and unreasonable to reallocate this risk to the ratepayer. In addition, a decision to waive the commercial operation date would give preferential treatment compared to projects which would begin production at the same time, and would require ratepayers to pay rates which are not based on the current avoided cost estimates.

In making our long-term rate order decision, we relied on Stewartstown's allegations that financing was available. We approve rate orders for projects that we believe will be a reliable source of electricity for New Hampshire. If we had known that Stewartstown would not pursue contingent financing or that it would not be able to achieve financing without non-recourse financing, we may not have initially granted the rate order. We may have found that another

project was a more reliable source of energy.

We recognize the diligence the petitioner has exercised in trying to comply with the rate order. We also recognize that the financial difficulties of PSNH may have contributed to Stewartstown's inability to comply with the commission's rate order. However, we think that PSNH's financial difficulties were reasonably foreseeable, and that Stewartstown assumed the risk that they would materialize.

We believe that this project would be beneficial for New Hampshire customers and we encourage Stewartstown to seek a wholesale rate contract or a long-term rate with an achievable on-line date.

Even if the bankruptcy court upholds the rate order, Stewartstown will not be able to construct the project in time for the 1989 on-line date. Therefore, the rate order is rescinded.

Our order will issue accordingly.

ORDER

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

ORDERED, that Stewartstown Steam Company's motion to toll the commercial operation date of its long-term small power producer rate order because of Public Service Company of New Hampshire's bankruptcy is denied; and it is

FURTHER ORDERED, *Nisi* that Stewartstown's long-term rate is rescinded unless it files reasons, other than those alleged in this case, that justify continuation thereof.

By order of the Public Utilities Commission of New Hampshire this tenth day of April, 1989.

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Dissenting Opinion of Commissioner
Linda G. Bisson

[i] I respectfully must dissent from the decision of my colleagues in this matter. I would grant the alternative request for a two-year suspension of the on-line date to yield an 18-year, rather than a 20-year, rate order. Although I was not a member of the commission that issued order no. 18,573 (72 NH PUC 62 [1987]) and order no. 18,613 (72 NH PUC 97 [1987]), I have reviewed the record.

FOOTNOTES

[1]See *e.g., Re New England Alternate Fuels, Inc.-Swanzey*, 71 NH PUC 423 (1986) (*NEAF-Swanzey*); *Re Pinetree Power-North*, 71 NH PUC 638 (1986) (*Pinetree-North*); *Re TDEnergy, Inc.*, 72 NH PUC 85 (1987) (*TDE*); *Re HDI-Hinsdale, Inc. — Upper Robertson Dam*, 72 NH PUC 169 (1987), *aff'd*, 72 NH PUC 230 (1987) (*HDI-Hinsdale*); *Re D.J. Pitman International Corp.*, 72 NH PUC 166 (1987), *aff'd*, 72 NH PUC 232 (1987) (*Pitman*); *Re Vicon Recovery Systems, Inc.*, 72 NH PUC 298 (1987), *aff'd*, 72 NH PUC 366 (1987) (*Vicon*); and *Re Northeast Hydrodevelopment Corp.*, 73 NH PUC 292 (1988) (*Northeast Hydro.*)

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NH.PUC*04/11/89*[51719]*74 NH PUC 120*New England Telephone and Telegraph Company, Inc.

[Go to End of 51719]

74 NH PUC 120

Re New England Telephone and Telegraph Company, Inc.

DE 89-016
Order No. 19,367

New Hampshire Public Utilities Commission

April 11, 1989

ORDER authorizing a local exchange telephone company to withdraw its tariff regarding manual mobile telephone service, and to transfer the service to a cellular mobile radio communications company.

SERVICE, § 275 — Abandonment, discontinuance, and substitution — Telephone — Mobile telephone service.

[N.H.] A local exchange telephone carrier was authorized to withdraw its tariff regarding manual mobile telephone service, and to transfer the service, conditioned in part on federal approval of associated radio licenses, to a cellular mobile radio communications company, which was not a public utility subject to commission regulation; the commission noted that mobile radio competed against cellular mobile radio, and that by statute, the development of cellular mobile radio should be encouraged through free competition.

By the COMMISSION:

ORDER

WHEREAS, on November 1, 1988, New England Telephone and Telegraph Company, Inc. (NET) informed the commission of its intention to withdraw its Tariff NHPUC No. 76 regarding Manual Mobile Telephone Service (MMTS) in its entirety and to revise NHPUC No. 75, Part A, Section 9, First Revision Table of Contents Page 1, Third Revision of Page 1, First Revision of Page 10, and First Revision of Page 11 to reflect that fact; and

WHEREAS, NET proposes to transfer such service to Radio Telephone Systems, Inc. (RTS) contingent upon first, the Federal Communications Commission's (FCC) approval of the associated radio licenses and second, upon the terms of NET's and RTS' agreement that no closing take place prior to approval of the remainder of the paging/cellular/MMTS transfer in Massachusetts by that state's Department of Public Utility Commission; and

WHEREAS, on January 20, 1989 RTS filed a petition with the commission requesting a ruling exempting it from regulation by the commission, or in the alternative, for authority to

operate MMTS within the State of New Hampshire by its proposed Tariff NHPUC No. 1 — Mobile Telephone Service Regulations and Schedules of Charges, and

WHEREAS, under RSA 362:6, cellular

mobile radio communications companies are not public utilities subject to our regulation; and

WHEREAS, the purpose of RSA 362:6 was to encourage the development of cellular mobile radio through free competition; and

WHEREAS, mobile radio competes against cellular mobile radio; and

WHEREAS, statutes should be interpreted within the reason, spirit and public policy which govern them, 73 Am. Jur. 2d, Statutes, § 373, and we, therefore, find that mobile radio is not a "public utility" under 362:6; it is hereby

ORDERED, that NET's proposed withdrawal of its Tariff NHPUC No. 76 regarding Manual Mobile Telephone Service (MMTS) in its entirety and its proposed revision of NHPUC No. 75, Part A, Section 9 — First Revision Table of Contents Page 1, Third Revision of Page 1, First Revision of Page 10, and First Revision of Page 11 is approved; and it is

FURTHER ORDERED, that RTS is exempt from regulation.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1989.

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NH.PUC*04/17/89*[51720]*74 NH PUC 121*Gas Rate Design Investigation

[Go to End of 51720]

74 NH PUC 121

Re Gas Rate Design Investigation

DE 86-208
Order No. 19,370

New Hampshire Public Utilities Commission

April 17, 1989

REPORT and order granting an extension for the development of marginal cost studies.

REPORTS, § 1 — Filing deadlines — Grounds for extension — Marginal cost studies.

[N.H.] The commission granted a three-month extension for the development of marginal cost studies by two utilities, in view of their lack of progress in starting the studies and notwithstanding their apparent disregard for prior commission orders; the utilities were directed

to file work plans detailing their intended efforts to meet the newly established completion date.

By the COMMISSION:

REPORT

On April 3, 1989 Northern Utilities, Inc. (Northern) and EnergyNorth Natural Gas, Inc. (ENGI) (companies) moved for rehearing of Order No. 19,339 (74 NH PUC 86) in the above captioned proceeding pursuant to RSA 541:3 and N.H. Admin. Rule, Puc 203.14.

Northern's motion requests a rehearing to: a) eliminate the requirement that it complete a marginal cost study by July 28, 1989; and b) schedule a prehearing conference to allow all parties to consider the appropriateness of using a proxy in place of a Northern study, or to develop a different schedule for completion of a company specific study within a reasonable period of time. ENGI's motion requests a prehearing conference to develop an extended schedule. In addition, it requests a rehearing to: a) reinstate the requirements of Order No. 19,255 (73 NH PUC 492) that ENGI file a marginal cost study with its next rate case and eliminate the newly-imposed marginal cost study completion date of July 28, 1989; b) schedule a hearing before the full commission to permit ENGI to offer evidence in support of its contention that the requirements of Order No. 19,255 should not have been altered by the commission's subsequent order. By this report and order we will reconsider the requirement of the completion date of July 28, 1989 in Order No. 19,339 to the extent that we will extend the completion date by three months. We deny Northern's request for a prehearing conference to consider using a proxy study or develop a new schedule, and ENGI's request to argue the alleged reinstatement of Order No. 19,255.

In Report and Order No. 19,255, issued December 9, 1988, we accepted, after negotiations lasting almost three years and a hearing before the full commission, the marginal cost

framework agreed by the parties. Consistent with this decision, we ordered ENGI and Northern to begin work "immediately" on developing company specific cost studies using the agreed methodology. The commission further ordered that ENGI and Northern file marginal cost studies whenever rate relief is requested. ENGI's contention that it would not be required to file a marginal cost study other than in its next rate case is unfounded. Reinstatement of Order No. 19,255 would merely reimpose our requirement that the companies begin implementing the development of the marginal cost framework last December.

In Order No. 19,339 issued March 14, 1989, we reiterated our previous order to begin development work on the application of the agreed framework and set a date of July 28, 1989 for the completion of this work. The presently scheduled July 28, 1989 completion date would have given the companies almost eight months to develop the cost studies if work had begun as originally ordered on December 9, 1988 and almost five months if work started March 14, 1989. We do not find eight months an unreasonable period of time for either company, nor do we find five months burdensome for Northern given its professed in-house expertise in this area.

However, in view of the lack of progress in starting these studies and notwithstanding the apparent disregard being shown by both companies for the orders of this commission, we will grant an extension of three months over the July 28, 1989 date given in Order No. 19,339. Furthermore, to assure this commission that its orders are being executed we will require each company to file not later than May 1, 1989 a work plan detailing how it intends to meet the newly established completion date. The work plan shall include at a minimum the date work is to begin on data assembly, the date a consultant will be appointed (if appropriate), and the expected completion dates for each of the five components of the marginal cost framework, including class revenue reconciliation. This work plan is in addition to the requirement to file monthly progress reports as set out in Order No. 19,339.

We deny Northern's request for a prehearing conference to consider the appropriateness of using a proxy rather than the stipulated framework. Use of the proxy would nullify the three year effort spent in developing a marginal cost framework acceptable in this jurisdiction.

We deny the requests for a prehearing conference on an extended schedule. We find that our three month extension provides a reasonable time frame to complete the cost studies.

Our order will issue accordingly.

ORDER

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

ORDERED, that Northern Utilities and EnergyNorth file with the commission, no later than November 1, 1989, completed marginal cost studies; and it is

FURTHER ORDERED, that each company file no later than May 1, 1989 its work plan detailing how it intends to meet the newly established completion date.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1989.

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NH.PUC*04/19/89*[51721]*74 NH PUC 122*Concord Electric Company

[Go to End of 51721]

74 NH PUC 122

Re Concord Electric Company

DE 89-043
Order No. 19,371

New Hampshire Public Utilities Commission

April 19, 1989

ORDER authorizing an electric utility to provide standby service for a customer for an initial period of six months, followed by a onetime extension for an additional six-month period.

SERVICE, § 320 — Electric — Standby service — Temporary authorization.

[N.H.] An electric utility that did not presently offer a standby service rate was

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authorized to provide standby service for a customer for an initial period of six months, followed by a onetime extension for an additional six-month period, and was directed to file a report with the commission every six months detailing all requests by the customer for standby service, and the timing of such requests with respect to the utility's monthly system peak.

By the COMMISSION:

ORDER

WHEREAS, on March 20, 1989 UNITIL Service Corporation filed with the commission a copy of a proposed Interim Standby Service Agreement between Concord Electric Company and SES Concord Company, L.P. of Penacook, New Hampshire (SES); and

WHEREAS, Concord Electric presently does not offer a Standby Service rate for its customers under NHPUC Tariff No. 10; and

WHEREAS, SES expects to resolve whether it will continue to request Standby Service or seek Station Service within the next six months; it is therefore

ORDERED, that the request for an Interim Standby Service Agreement be, and hereby is, approved for an initial period of six months followed by a onetime extension for an additional six month period; and it is

FURTHER ORDERED, that Concord Electric file a report with the commission every six months detailing all SES requests for Standby Service and their timing with respect to Concord Electric's monthly system peak; and it is

FURTHER ORDERED, that Concord Electric file a Standby Service rate to accompany its rate redesign submission in 1990.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1989.

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NH.PUC*04/19/89*[51722]*74 NH PUC 123*Remedial Resource Recovery

[Go to End of 51722]

74 NH PUC 123

Re Remedial Resource Recovery

DR 85-342
Order No. 19,372

New Hampshire Public Utilities Commission

April 19, 1989

ORDER rescinding approval of a 20-year long-term rate filing, including an interconnection agreement and rates set forth on a long-term worksheet, previously granted to a small power producer.

COGENERATION, § 19 — Long-term contract — Recision.

[N.H.] Approval of a 20-year long-term rate filing, including an interconnection agreement and rates set forth on a long-term worksheet, was rescinded where the small power producer for which the rate was approved had not begun construction of its project, did not respond to requests for information regarding its development, and failed to appear at a hearing to show cause why approval of the rate filing should not be rescinded.

APPEARANCES: Office of the Consumer Advocate by Joseph Rogers, Esq; Public Service Company of New Hampshire by Thomas B. Getz, Esq; Staff of the New Hampshire Public Utilities Commission by Dr. Sarah P. Voll, Janet Besser and Dianne Brown, Economics Department.

By the COMMISSION:

REPORT

On November 12, 1985, the commission granted Remedial Resource Recovery (RRR) a 20 year long-term rate by order no. 17,944 (70 NH PUC 925) pursuant to *Re Small Energy*

Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), and 70 NH PUC 753, 69 PUR4th 365 (1985). RRR's long-term rate order specified an on-line date for the project of power year 1987 (which ended August 31, 1987). The latest on-line date available pursuant to DR 85-215 is power year 1989, which ends August 31, 1989.

Investigation by the commission staff in the fall of 1988 revealed that RRR had not yet begun construction, and RRR did not respond to a letter sent by staff on October 20, 1988 requesting information regarding the development of its project.

On February 2, 1989, the commission ordered by order no. 19,316 (74 NH PUC 61) that RRR appear before it on March 23, 1989 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. The hearing was duly held in accordance with order no. 19,316 but RRR did not appear. Therefore, we will rescind the approval of RRR's long-term rate

filing originally approved by order no. 17,944.

Our order will issue accordingly.

ORDER

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

ORDERED, that approval of the long-term rate filing of Remedial Resource Recovery granted by order no. 17,944, including the interconnection agreement and the rates set forth on the long-term worksheet be, and hereby is, rescinded.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1989.

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NH.PUC*04/19/89*[51723]*74 NH PUC 124*Lakes Region Water Company, Inc.

[Go to End of 51723]

74 NH PUC 124

Re Lakes Region Water Company, Inc.

DR 88-188
Order No. 19,376

New Hampshire Public Utilities Commission

April 19, 1989

ORDER setting temporary rates for a water utility at existing levels for the duration of a rate proceeding.

RATES, § 630 — Emergency rates — Temporary rates for duration of proceeding — Level of existing rates.

[N.H.] Consistent with its statutory authority to set temporary rates for the duration of any rate proceeding, the commission found that temporary rates for a water utility were in the public interest and should be set at existing levels for service rendered as of the date of the instant order.

APPEARANCES: Dom S. D'Ambruoso, Esq. on behalf of Lakes Region Water Company, Inc.; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 3, 1989, Lakes Region Water Company, Inc. (Lakes Region) filed a petition to establish permanent rates and temporary rates pursuant to RSA 378:28 and RSA 378:27 respectively. By an order of notice dated January 23, 1989, a hearing on the merits of the temporary rate request and a prehearing conference

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to address procedural matters was scheduled for March 14, 1989. Said hearing was continued to March 31, 1989.

II. *Positions of the Parties*

On the issue of temporary rates Lakes Region proposed that they be set at the level of existing rates effective on bills rendered as of the date of the order. Staff took the position that temporary rates should be set at existing rates effective for service rendered as of the date of the order. The parties also proposed a proce-
dural schedule to govern the duration of the proceeding.

III. *Commission Analysis*

Pursuant to RSA 378:27, the commission may set temporary rates for the duration of any rate proceeding. The commission finds that temporary rates are in the public interest and shall be set at existing levels for service rendered as of the date of this order.

The parties propose the following procedural schedule:

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

April 14, 1989	Staff and intervenor data requests are due.
April 28, 1989	Company responses to staff and intervenor data requests are due.
May 5, 1989	Staff's and intervenor's second set of data requests are due.
May 12, 1989	Company responses to staff's and intervenor's second set of data requests are due.
May 25, 1989	Staff and intervenor testimony is due.
June 9, 1989	Company data requests are due.
June 23, 1989	Staff and intervenor responses to company data requests are due.
July 10 - 11, 1989	Settlement conference
August 1 - 2, 1989	Hearing on the merits.

The procedural schedule appears to be in the public interest. Therefore, this agreement is approved and shall govern this proceeding, unless otherwise ordered.

Our order will issue accordingly.

ORDER

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

ORDERED, that temporary rates be set at existing levels for the duration of this proceeding effective as of the date of this order; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report is approved.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1989.

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NH.PUC*04/20/89*[51724]*74 NH PUC 126*Link-Up New Hampshire

[Go to End of 51724]

74 NH PUC 126

Re Link-Up New Hampshire

DE 88-012
Order No. 19,377

New Hampshire Public Utilities Commission

April 20, 1989

ORDER eliminating two non-income eligibility criteria for Link-Up New Hampshire, a program promoting universal telephone service.

RATES, § 309 — Installation, connection, and disconnection charges — Telephone connections, moves, and changes — Link-Up New Hampshire — Eligibility criteria — Non-income criteria.

[N.H.] In keeping with the goal of universal telephone service, the commission eliminated two non-income eligibility criteria for the Link-Up New Hampshire program, which was designed to qualify for funds under a federal program (known as Link-Up America) that offered connection fee subsidies, after the Federal Communications Commission also ordered elimination of the non-income criteria: that (1) a customer must have lived at an address at least three months prior to the date assistance was requested; and (2) a customer must not have received Link-Up assistance within the last two years.

By the COMMISSION:

ORDER

WHEREAS, on October 3, 1988 in Docket No. DE 88-012, Order No. 19,192 (73 NH PUC 395) the New Hampshire Public Utilities Commission (NHPUC) approved the program Link-Up New Hampshire designed to qualify for funds under the connection fee subsidy program known as Link-Up America, outlined in Federal Communications Commission (FCC) Docket No. 87-133; and

WHEREAS, Link-Up New Hampshire program eligibility was conditional on satisfying federal criteria; and

WHEREAS, on July 18, 1988, the FCC issued a Notice of Proposed Rule Making inviting comments on whether to eliminate certain provisions relating to the non-income eligibility requirements for the program in states which verify the income eligibility of applicants; and

WHEREAS, on February 27, 1989, in Docket No. 88-341, Order No. 89-78-37610, the FCC ordered the elimination of the following two non-income criteria:

(1) Customer must have lived at an address at least three months prior to the date assistance is requested,

(2) Customer must not have received Link-Up assistance within the last two years.

Where the telephone company or the state verifies the applicants income; and

WHEREAS, the New Hampshire Public Utilities Commission wishes to maintain the goal of universal telephone service within New Hampshire; it is hereby

ORDERED, that the two above-mentioned non-income eligibility criteria be eliminated from the Link-Up New Hampshire program.

By order of the Public Utilities Commission of New Hampshire this twentieth day of April, 1989.

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NH.PUC*05/01/89*[51725]*74 NH PUC 126*Manchester Water Works

[Go to End of 51725]

74 NH PUC 126

Re Manchester Water Works

DE 89-040
Order No. 19,378

New Hampshire Public Utilities Commission

May 1, 1989

PETITION by a water utility for authority to extend mains and service; granted.

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SERVICE, § 210 — Extensions — Water utility.

[N.H.] A water utility was authorized to extend its mains and service to a specified area where no other water utility had franchise rights, because the commission was satisfied that the grant of authority was in the public interest; the utility was directed to provide notice of its petition to extend its mains and service, so as to offer the public an opportunity to respond in support or opposition to the extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this commission in areas served outside the City of Manchester, by a petition filed March 14, 1989, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Londonderry; and

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

WHEREAS, the Board of Selectmen, Town of Londonderry has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this commission is satisfied that the granting of the petition will 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 24, 1989; 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 15, 1989 and designated in an affidavit to be made on copy of this order and filed with this office on or before May 31, 1989. In addition, individual notice shall be given to all known current and prospective customers by serving a copy of this order to each by first class U. S. mail, postage prepaid and postmarked on or before May 15, 1989; and it is

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

> Beginning at a point along Rockingham Road, Route 28, the Town of Londonderry, at the intersection of Auburn Road; thence southeasterly along the existing franchise limits as approved in New Hampshire Public Utilities Commission order #18,177 to the southwesterly corner of lot 81 as shown on the town assessor maps; thence southeasterly

along the easterly boundary of the former B & M Railroad right of way to a point at the northwesterly corner of lot 102; thence easterly along the northerly boundaries of lots 102, 105, 106-1, 108 and 109 to the Derry town line; thence southerly along the town line to the southerly corner of lot 96B; thence westerly along the southerly boundaries of lots 96B, 97A, 97-2 and 97; thence continuing along the westerly boundaries of lots 97 and 98 to a point opposite the southeasterly boundary of lot 74; thence crossing the railroad right of way and proceeding along the southerly boundary of lot 74; thence northeasterly along the westerly boundary of said lot to its intersection with the southerly limits of Route 28; thence westerly along Route 28 to the southerly limits of the Public Service Company right of way to the easterly line of Route 93; thence northerly along the easterly line of Route 93 to the southwesterly corner of lot 66; thence easterly and northerly along the existing franchise limits to the point of

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beginning;

and it is

FURTHER ORDERED, that such authority shall be effective on May 31, 1989 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 first day of May, 1989.

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NH.PUC*05/01/89*[51726]*74 NH PUC 128*Long Distance North of New Hampshire, Inc.

[Go to End of 51726]

74 NH PUC 128

Re Long Distance North of New Hampshire, Inc.

DE 87-249
Order No. 19,379

New Hampshire Public Utilities Commission

May 1, 1989

ORDER limiting the scope of a proceeding to a petition for authority to resell non-facility based message toll service.

PROCEDURE, § 13 — Scope of proceedings — Limitation of scope — Factors considered — Competition in market place.

[N.H.] A proceeding was limited in scope to a petition by a telephone carrier for authority to resell non-facility based message toll service, where the commission determined that a full

analysis of competition was not in the public interest, in the absence of a demonstration that competition existed in the market place to an extent that a formal docket should be opened.

By the COMMISSION:

REPORT

This report follows our Report and Order No. 19,114 of June 28, 1988 (73 NH PUC 255). In that report the commission reviewed the procedural history, position of the parties and set forth the commission's analysis.

At that time, the commission determined that it could not determine the appropriate scope of the proceeding. It was concerned that staff did not have the opportunity of reviewing New England Telephone's embedded cost studies and deferred the proceeding until such time as that could be accomplished. Underlining the concerns of staff, there appears to be the issue of whether the proceeding should go beyond Long Distance North's petition and request for authority to resell non-facility based message toll service (MTS), later averred to include the resale of wide area telecommunications services (WATS) as well; or whether to include a full analysis on competition.

The commission has reviewed in detail all of the filings, memoranda and documents in the proceeding and finds that it is not in the public interest to hold a full competition docket. There has been no demonstration that competition exists in the market place to the extent that a formal docket be opened. Such a docket would require considerable discovery, analysis and hearing schedules. Such demands would severely tax staff while a major rate case is being conducted. The finding that a full competition docket is not appropriate at this time is supported by a majority of the parties who have participated in this proceeding.

Under the circumstances, we shall proceed with Docket No. DE 87-249 within the narrow scope of the petition filed by Long Distance North. The commission shall by separate order of notice schedule a prehearing conference to finalize any future discovery and to set a tentative hearing schedule.

Our order will issue accordingly.

ORDER

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

ORDERED, that Docket No. DE 87-249 be limited in scope to the requests made in Long Distance North's petition for authority to resell non-facility based message toll service

(MTS); and it is

FURTHER ORDERED, that Long Distance North shall amend its petition if it wants to include resale of wide area telecommunications services (WATS) by June 1, 1989. Any objection to Long Distance North's amended petition shall be filed within ten (10) days after receipt of the petition; and it is

FURTHER ORDERED, that the Executive Director fix a date for a prehearing conference to determine what further discovery, if any, is necessary and to fix tentative hearing dates.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1989.

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NH.PUC*05/01/89*[51727]*74 NH PUC 129*Petrolane Southern New Hampshire Gas Company, Inc.

[Go to End of 51727]

74 NH PUC 129

Re Petrolane Southern New Hampshire Gas Company, Inc.

DR 89-054
Order No. 19,380

New Hampshire Public Utilities Commission

May 1, 1989

ORDER revising the cost of gas adjustment rate of a propane distribution company.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Propane distributor.

[N.H.] The cost of gas adjustment rate of a propane distribution company was revised to reflect an updated unit cost of propane based on the lowest bid received from suppliers. p. 129.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 59 — Procedure — Filing formalities — Name change.

[N.H.] A propane distributor was directed to refile its cost of gas adjustment clause rate tariff using the name of the entity scheduled to purchase it. p. 129.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Over/undercollections — Interest — Propane distributor.

[N.H.] A propane distribution company was directed to file monthly cost of gas data showing actual over/undercollections and to accrue interest on any such over/undercollections at the prime rate. p. 129.

APPEARANCES: Ransmeier and Spellman by Dom D'Ambruoso, Esquire on behalf of Petrolane Southern New Hampshire Gas Company, Inc.; LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire on behalf of Northern Utilities, Inc.; Eugene F. Sullivan, Finance Director and Mary Jean Newell, PUC Examiner on behalf of the commission staff.

By the COMMISSION:

REPORT

[1-3] On April 5, 1989 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 141 Revision Page 15, Superseding 140 Page 15, N.H.P.U.C., issued April 3, 1989, providing for the 1989 Summer Cost of Gas Adjustment (CGA) effective May 1, 1989. The revised filing requested a CGA rate of $0.062 per therm excluding the franchise tax.

On April 7, 1989 the commission issued an Order of Notice setting the hearing date of April 24, 1989 at the commission offices in Concord.

On April 24, 1989 the Company submitted 141 Revision page 15, Superseding 140 Page 15, issued April 24, 1989, providing for a CGA rate of $0.0450 per therm excluding the state franchise tax. This revision corrected the calculation of the interest on the over/under collection and updated the cost of propane. This tariff sheet has Petrolane as the Company and has the signature of Mr. Joseph A. Raffaele, Vice

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President of Northern Utilities, Inc. (Northern).

Areas covered through direct testimony and cross examination of the two witnesses, Joseph A. Ferro and Joseph A. Raffaele of Northern Utilities, Inc., included the relationship of Northern and Petrolane, an explanation of the revision, the cost of propane, monthly reports and prior period reconciliation.

Witness, Joseph A. Ferro, explained that the closing date for the purchase of Petrolane was scheduled for May 1, 1989. On completion of the closing, the first day of the Summer CGA period, Northern would send compliance filings with the new Company name, which may be known as Northern Utilities, Inc., Salem Division.

The April 24 revised CGA filing corrected the calculation of interest on the over/under collection. The Company had not calculated the average balance correctly and had applied 10% to each average monthly balance. The revision used the quarterly interest rate based on the Prime Rate posted in *The Wall Street Journal* on the 1st business day of the month prior to that quarter, i.e., March first prime rate to be applied to the April, May, June quarter.

The revision also updated the unit cost of propane which was based on a projected $0.34 per gallon. Bids had been received by Northern, since the April 5 CGA filing and a new projected price per gallon of $0.319 was applied to the revised CGA based on the lowest bid submitted by Gas Supply, Inc. This amount included transportation costs of $0.048 per gallon via pipeline from Mount Bellevue to Selkirk and $0.0644 via truck from Selkirk to Salem, N.H. By utilizing a bid process the Company is attempting to arrive at the lowest price of propane.

Petrolane has not been supplying monthly (over)/under collection reports as required by this commission. The Company did not file its prior period reconciliation until this CGA.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the 141 Revision Page 15, issued April 3, 1989, of Petrolane Southern New Hampshire Gas Company, Inc., tariff N.H.P.U.C., bearing the signature of Kenneth J. DePrinzio, Vice President providing for a cost of gas adjustment of $0.062 per therm for the summer period, May 1 through October 31, 1989 be, and hereby is, rejected, and it is

FURTHER ORDERED, that the 141 Revision Page 15, issued April 24, 1989 of Petrolane Southern New Hampshire Gas Company, Inc., tariff N.H.P.U.C. bearing the signature of Joseph A. Raffaele, Vice President of Northern Utilities, Inc. for a cost of gas adjustment of $0.0450 per therm for the summer period, May 1 through October 31, 1989 be, and hereby is, rejected, and it is

FURTHER ORDERED, that due to the scheduled purchase of Petrolane Southern New Hampshire Gas Company, Inc. by Northern Utilities, Inc. on May 1, 1989 that a revised tariff page, having the new entity's name, a proper signature and reflecting a cost of gas adjustment of $0.0450 per therm for the summer period, May 1 through October 31, 1989, be filed with this commission, to become effective with all billings issued on or after May 1, 1989, and it is

FURTHER ORDERED, that the over/under collection will accrue interest at the Prime Rate reported in *The Wall Street Journal* on the first business day of the month preceding the first month of a quarter. This rate is to be adjusted quarterly, and it is

FURTHER ORDERED, that monthly cost of gas data showing the actual over/under collection be filed with this commission, and it is

FURTHER ORDERED, that reconciliations of the cost of gas adjustment period be filed within two months following the close of the cost of gas adjustment period, and it is

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by onetime publication in the 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 83-205, Order No. 16,524 (68 NH PUC 461 [1983]).

By order of the Public Utilities

Commission of New Hampshire this first day of May, 1989.

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NH.PUC*05/01/89*[51728]*74 NH PUC 131*Keene Gas Corporation

[Go to End of 51728]

74 NH PUC 131

Re Keene Gas Corporation

DR 89-046
Order No. 19,381

New Hampshire Public Utilities Commission

May 1, 1989

ORDER revising the cost of gas adjustment rate of a natural gas distribution company.

AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Rate revision — Natural gas distributor.

[N.H.] A summer cost of gas adjustment rate was approved for a natural gas company in the amount of $0.1118 per therm, with any over or undercollection accruing interest at the prime rate.

APPEARANCES: Robert F. Egan, General Manager, John F. DiBernardo, Plant Operations Manager for Keene Gas Corporation and James C. Nicholson, PUC Examiner for the commission staff.

By the COMMISSION:

REPORT

On March 31, 1989, 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 which provided for a 1989 Summer Cost of Gas Adjustment (CGA) for effect May 1, 1989. The filing requests a rate of $(0.1118)/therm, excluding the N.H. State Franchise Tax, a decrease from the rate of $0.0496/therm approved by the commission for the 1988 summer period. The proposed CGA is a reduction from the base rate of $0.4335/therm making a total of $0.3217/therm Cost of Gas, excluding N.H. Franchise Tax, for the 1989 summer period.

A duly noticed public hearing was held at the commission's office in Concord, N.H. on April 24, 1989.

Areas covered through direct testimony of company witness, Mr. John F. DiBernardo, Plant Manager, included projected sales forecasts, product procurement, company use and unaccounted for gas.

Sales estimates were projected on actual sales for the summer 1988 period which remained fairly constant compared to prior years. Weather conditions are expected to be normal for the period, therefore, the company does not feel an adjustment to sales volumes is required or necessary.

Product procurement continues to be the responsibility of Mr. Harry B. Sheldon, President of the Company. Mr. DiBernardo testified that Mr. Sheldon purchases through direct telephone contact with suppliers to obtain the best available cost. Chairman Iacopino noted that Mr.

Sheldon has not been present at the past few CGA hearings and requested he attend future hearings or provide written descriptions of his purchasing procedure.

In response to Commission Ellsworth's inquiry on company use and unaccounted the witness testified gas is used to run the propane-air plant for city gas distribution and also to run other company equipment. Company use is recorded separately and calculates to approximately 2% of the 8% total unaccounted and company use. The company has a continuing policy of surveillance for leaks, malfunctions, and the phase out and replacement of meters with non-temperature compensated meters to keep their unaccounted gas to a minimum.

Mr. Robert F. Egan, General Manager was called to update the commission on the progress of 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. He explained that engineers of both companies are in constant contact, tentative routes and plans are being reviewed and at present

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Champlain is in contact with federal authorities to obtain authorization. It is his belief natural gas will be available to the Keene area within two years if plans continue to develop as planned.

The projected sales, costs 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 $(0.1118)/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 27, Superseding 9th Revised Page 27, of Keene Gas Corporation, Tariff, N.H.P.U.C. No. 1 — Gas, providing for a Cost of Gas Adjustment of $(0.1118) therm for the period May 1, 1989 through October 31, 1989 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff pages approved by this become effective with all billings issued on or after May 1, 1989; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by onetime 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. 16,524 (68 NH PUC 461 [1983]); 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.* The rate is to be adjusted each quarter using the rate reported on the first business day of the month preceding the first month of a quarter.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1989.

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NH.PUC*05/01/89*[51729]*74 NH PUC 132*EnergyNorth Natural Gas, Inc.

[Go to End of 51729]

74 NH PUC 132

Re EnergyNorth Natural Gas, Inc.

DR 89-045
Order No. 19,382

New Hampshire Public Utilities Commission

May 1, 1989

ORDER revising the cost of gas adjustment rate of a natural gas supply company.

AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Rate revision — Surcharge credit.

[N.H.] The commission approved a summer cost of gas adjustment for a natural gas supply company effective May 1, 1989, that provided for a surcharge credit in the amount of $0.1437 per therm, net of franchise tax.

APPEARANCES: For EnergyNorth Natural Gas, Inc., James P. Bassett, Esquire of Orr & Reno, P.A.; for commission staff, Eugene F. Sullivan, Finance Director and Mary Jean Newell, PUC Examiner.

By the COMMISSION:

REPORT

On March 31, 1989, 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, Third Revised Page 1, Superseding Second Revised Page 1, N.H.P.U.C. No. 1 — Gas. Said tariff provided for a 1989 Summer Cost of Gas Adjustment (CGA) for effect May 1, 1989, that cost of gas adjustment to be a surcharge credit of $(0.1437) per therm, net of the franchise tax.

An Order of Notice was issued setting

hearings for April 24, 1989 at the commission offices in Concord.

During the hearing, April 24, 1989, the following issues were addressed: a) third party gas, b) explanation of the intercompany adjustment variance shown on the Gas Service Inc. and

Manchester Gas Company prior period reconciliation included in the filing and c) what is included in the propane gas cost.

ENNG stated that the third party gas was the spot gas purchases, which are lower prices than the regular purchases made, that the company obtains whenever possible and in the quantities that it is able to get without spoiling other contract demands or agreements.

Staff was concerned about the various items included in the cost of the propane gas. ENNG had not provided a breakdown of the cost as it had in prior filings. The Company stated that the price provided did not have that information, therefore could not supply that information.

Our order will issue accordingly.

ORDER

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

ORDERED, that Third Revised Page 1, Superseding Second Revised Page 1, N.H.P.U.C. No. 1 — Gas, providing for a 1989 Summer Cost of Gas Adjustment for effect May 1, 1989 providing for a surcharge credit of $(0.1437) per therm net of the franchise tax be, and hereby is, approved; and it is

FURTHER ORDERED, that public notice of the Cost of Gas Adjustment be given by onetime 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. 16,524, (68 NH PUC 461 [1983]).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1989.

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NH.PUC*05/01/89*[51730]*74 NH PUC 133*Northern Utilities, Inc.

[Go to End of 51730]

74 NH PUC 133

Re Northern Utilities, Inc.

DR 89-050
Order No. 19,383

New Hampshire Public Utilities Commission

May 1, 1989

ORDER revising the cost of gas adjustment rate of a natural gas supply company.

AUTOMATIC ADJUSTMENT CLAUSES, § 28 — Credits — Summer cost of gas — Surcharge credit.

[N.H.] The commission rejected a requested summer cost of gas adjustment for a natural gas supply company in the amount of $0.2019 per therm, and approved instead a summer cost of gas adjustment in the amount of $0.1983 per therm.

APPEARANCES: LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; Eugene F. Sullivan, Finance Director, and Mary Jean Newell, PUC Examiner for the commission staff.

By the COMMISSION:

REPORT

On April 3, 1989, 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, 1989. This cost of gas adjustment was to be a surcharge credit of $(0.2019) per therm.

An Order of Notice was issued setting the date of the hearing as of April 24, 1989 at the commission offices in Concord, New

Hampshire.

On April 24, 1989, during the hearing, the Company submitted Fourteenth Revised Page 24, Superseding Thirteenth Revised page 24, N.H.P.U.C. No. 7-Gas for effect May 1, 1989. This cost of gas adjustment is a surcharge credit of $(0.1983) per therm.

The following issues were discussed: a) exclusion of September and October demand costs, b) the reason for varying dates for the commodity costs, c) the remaining time involved for the Order 94 charges and d) Take or Pay charges.

The Company explained that the September and October demand charges were considered to be more related to the winter customers and that the Company's profile was one third summer and two thirds winter.

Northern stated that the commodity charge time frames are based on the quarterly Purchased Gas Adjustments filed with the Federal Energy Regulatory Commission.

Northern explained that the Order 94 charges may continue on for a short while but that these charge were very small now and would be smaller as the time passed.

Our order will issue accordingly.

ORDER

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

ORDERED, that Thirteenth Revised Page 24, Superseding Twelfth Revised Page 24, N.H.P.U.C. No. 7-Gas, issued March 31, 1989, providing for a cost of gas adjustment of

$(0.2019) per therm be, and hereby is, rejected; and it is

FURTHER ORDERED, that Fourteenth Revised Page 24, Superseding Thirteenth Revised Page 24, N.H.P.U.C. No. 7-Gas, issued April 24, 1989, providing for a cost of gas adjustment of $(0.1983) per therm be, and hereby is, approved; and it is

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by onetime publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that 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. 16,524, (68 NH PUC 461 [1983]).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1989.

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NH.PUC*05/01/89*[51731]*74 NH PUC 134*Granite State Electric Company

[Go to End of 51731]

74 NH PUC 134

Re Granite State Electric Company

DR 88-171
Order No. 19,384

New Hampshire Public Utilities Commission

May 1, 1989

ORDER revising the purchase power cost adjustment rate of an electric utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Direct costs — Purchased power — Increase in wholesale power rates.

[N.H.] The purchased power adjustment cost rate of an electric utility was revised to reflect an increase in the purchase power wholesale rate charged by the utility's wholesale power supplier.

APPEARANCES: For Granite State Electric Company, Philip Cahill, Esquire, Eugene F. Sullivan and Les Stachow for the staff.

By the COMMISSION:

REPORT

On November 15, 1988 Granite State Electric (GSE) Company filed a revision to its Purchase Power Cost Adjustment (PPCA) rate W-10M. By Order of Notice dated November 18,

1988 the commission ordered a hearing on December 21, 1988 along with publication. On December 13, 1988 GSE filed the required notice of publication.

On December 13, 1988 GSE requested that the hearing of December 21, 1988 be postponed and rescheduled, because the Federal Energy Regulatory Commission (FERC) had suspended New England Power Company's (NEP) W-10 rate filing effective date until May 1, 1989. By Order No. 19,314 dated February 2, 1989 the commission rescheduled the hearing in this matter for April 26, 1989. The commission also in Order No. 19,314 suspended GSE's tariff pages. On March 23, 1989 GSE filed its revised testimony and exhibits in this case.

The proposed PPCA is an aggregate rate of $1.694 per 100 KWH and it is an increase of 44.7¢ per 100 KWH from the PPCA rate last approved by this commission (W-9). Said increase reflects an increase in the purchase power wholesale rate charged by GSE's power supplier, New England Power Company.

On April 26, 1989 a duly noticed hearing was held at the commission's office in Concord, New Hampshire.

During the hearing GSE presented one witness in support of its petition. GSE's witness stated that the instant filing is designed to become effective coincident with NEP's proposed W-10 wholesale rate, filed at the Federal Energy Regulatory Commission (FERC) which will go into effect on May 1, 1989 subject to refund. The filing is based on embedded cost of service rates although NEP has proposed the use of marginal cost rates before FERC.

The witness discussed the status of NEP's filing at FERC. There are two, prospective partial settlements of NEP W-10 rate before the FERC. One would, if approved, base NEP's rate design upon marginal cost and in the other would decrease NEP's requested increase by $6,441,000. The remaining issues which are not part of the proposed settlements are to be litigated before an administrative law judge (ALJ) at FERC.

On April 21 the ALJ rejected the settlement as to the use of marginal costs to design rates. On April 25 NEP submitted a letter regarding its intent regarding the partial settlement on rate design. The letter was approved by all parties to the original settlement. The ALJ has indicated that he would expeditiously submit this proposed settlement to the commissioners for their review and approval.

GSE stated that if FERC approved the two settlements the requested PPCA would of necessity change. This would also be the case when FERC makes a decision on the remaining item to be litigated.

GSE stated that there will be a reconciliation of the final NEP rates and rate design for the proposed PPCA.

Based on the evidence provided, we will approve the proposed PPCA W-10 submitted by GSE. We will further require GSE to submit a revised W-10 PPCA filing whenever the FERC approves changes to NEP W-10 rates to be effective as of the same date the change takes effect on NEP's W-10 rate. GSE further states that the rates would be effective for service rendered on

or after May 1, 1989.

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-M be, and hereby is, approved for service rendered on or after May 1, 1989.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1989.

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NH.PUC*05/01/89*[51732]*74 NH PUC 136*Southern New Hampshire Water Company, Inc.

[Go to End of 51732]

74 NH PUC 136

Re Southern New Hampshire Water Company, Inc.

DR 89-048
Order No. 19,385

New Hampshire Public Utilities Commission

May 1, 1989

ORDER authorizing a water company to issue and sell stock to its sole shareholder and receive an advance from its parent company to support a construction and expansion program and provide additional capital.

SECURITY ISSUES, § 44 — Authorization — Stock sale — Water company.

[N.H.] The commission authorized a water company to sell 5000 shares of common stock at $100 par value for $2,000,000 in cash to its sole shareholder, and it further authorized the utility to receive an advance from its parent company in the amount of $1,500,000 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; the proceeds from the sale of the shares were to be used to support the company's 1989 construction and expansion program, to provide general working capital, and to facilitate long-term borrowing efforts.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company ("SNHWC"), an authorized New

Hampshire public water utility, with a principal place of business in Londonderry, Rockingham County, New Hampshire; and

WHEREAS, SNHWC pursuant to RSA 369, filed with this commission on March 31, 1989 a Petition for Authority to Increase Authorized Capital and Issue and Sell Securities, and a Petition to Maintain Short-Term Debt Limits; and

WHEREAS, SNHWC's currently authorized capital consists of 20,000 shares of common capital stock, having a par value of $100 per share, of which 19,400 shares have been issued and are outstanding; and

WHEREAS, SNHWC proposes to increase its authorized capital from 20,000 shares of common capital stock to 25,000 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, SNHWC states that Consumers shall purchase 3,750 shares of stock for $1,500,000 by March 31, 1989; and Consumers shall purchase the balance of such shares (1,250 shares) for $500,000 before June 30, 1989; and

WHEREAS, SNHWC states that the proceeds from the sale of such shares will be used, *inter alia*, to support its 1989 construction and expansion program; to provide an addition to the permanent capital of SNHWC; to provide general working capital; and to facilitate SNHWC's long-term borrowing efforts through the sale of Long Term Bonds under its First Mortgage Indenture; and

WHEREAS, SNHWC's currently authorized short-term debt limit is $6,250,000, authorized by Commission Order No. 19,286 in Docket DF 88-075 (74 NH PUC 10); and

WHEREAS, SNHWC requests that this short-term debt limit be maintained until June 30, 1989 in order for it to have sufficient time to pursue long-term debt financing; and

WHEREAS, the New Hampshire Public Utilities Commission, pursuant to RSA 369:1 and 14, finds that the increase in authorized capital and subsequent issuance of the requested shares and short-term debt limit as set forth and upon the terms proposed in the petition are consistent with the public good; it is hereby

ORDERED, that SNHWC is hereby authorized to issue and sell 5,000 shares of common stock, $100 par value, for $2,000,000.00 in

cash, to its sole shareholder, Consumers Water Company; and it is

FURTHER ORDERED, that SNHWC is authorized to immediately receive from its parent the sum of $1,500,000.00 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 SNHWC's level of short-term debt shall be limited to be not in excess of $6,250,000 through June 30, 1989, at which time a new level of short-term debt will be set based upon the equity infusion, and long-term debt financing that is presently being pursued

and SNHWC's cash requirements; and

FURTHER ORDERED, that SNHWC shall, on January first and July first of each year, file with this commission a detailed statement, duly 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

FURTHER ORDERED, that this Order shall be effective March 31, 1989.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1989.

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NH.PUC*05/02/89*[51733]*74 NH PUC 137*New England Telephone and Telegraph Company, Inc.

[Go to End of 51733]

74 NH PUC 137

Re New England Telephone and Telegraph Company, Inc.

DC 88-090
Order No. 19,386

New Hampshire Public Utilities Commission

May 2, 1989

ORDER approving a settlement agreement concerning the rates and charges associated with coinless collect telephone service at a correctional institution.

RATES, § 565 — Coinless collect telephone service — Inmate calling — Reasonableness of rates.

[N.H.] In response to complaints that the rates and charges associated with coinless collect telephone service provided to inmates at a correctional institution were excessive and unreasonable, the commission approved a settlement agreement that resolved all issues of concern and provided that the revenues foregone and the expenses incurred by the telephone company, estimated to be approximately $154,000, be included as an adjustment in the commission's determination of revenue requirement in a pending revenue requirement proceeding.

By the COMMISSION:

ORDER

WHEREAS, on June 21, 1988 this docket was opened by the commission in response to complaints filed with the commission's Consumer Assistance Department by friends and families of inmates in New Hampshire correctional institutions (complainants); and

WHEREAS, said complainants asserted in their letters to the commission that, *inter alia*, the rates and charges associated with coinless collect telephone service (inmate calling) are excessive and unreasonable; and

WHEREAS, the parties met informally on December 14, 1988 in an attempt to informally resolve the complaints; and

WHEREAS, said initial attempts at informal resolution were not successful and a petition was filed by the complainants on December 21, 1988, for the purpose of requesting a hearing to authorize the use of restricted calling card rates in New Hampshire correctional institutions; and

WHEREAS, subsequent to the filing of the petition, various procedural orders were issued establishing and amending the procedural schedule in this proceeding at the request of the parties, culminating in an off-the-record

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settlement conference at which the parties resolved all outstanding issues in the docket; and

WHEREAS, the parties submitted to the commission a signed stipulation dated April 10, 1989 which is herein incorporated by reference and which is attached hereto as Attachment A; it is therefore

ORDERED, that the proffered stipulation is deemed just and in the public interest and is hereby approved effective the date hereof.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1989.

ATTACHMENT A

BEFORE THE
STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Re: Inmate Calling
Docket No. DC 88-90

AGREEMENT

This Agreement is entered into this tenth day of April, 1989, by and between the petitioner inmates and inmate families ("Petitioners"), the Staff of the Public Utilities Commission, the New Hampshire Department of Corrections, Kearsarge Telephone Company ("Kearsarge") and New England Telephone and Telegraph Company ("NET"), with the intent of resolving all of the issues that were raised in the captioned proceeding.

1. NET and Kearsarge provide Coinless Collect Telephone Service ("Service") where requested by city, state or federal prison officials. The service is furnished for the purpose of originating collect calls only to areas within the North American Dialing Plan.

2. This proceeding was commenced as a result of Petitioners' complaints regarding the

Service, specifically, the rate applied to calls placed by inmates.

3. NET agrees to file tariff pages substantially in the form of Attachment A within 15 working days of the Commission's order approving this agreement. Kearsarge agrees to concur in those pages.

4. The rate, terms, conditions and provisions of Attachment A, as pertaining to the Service, are just and reasonable and in the public interest.

5. The parties recognize that, by virtue of the reduced rate for the Service as set forth in Attachment A, NET will incur a reduction in revenues and an increase in expenses. As an express condition of this Agreement, the parties recommend to the Commission that the revenues foregone and the expenses incurred by NET be expressly included as a specific adjustment in the Commission's determination of NET's revenue requirement in the pending NET revenue requirement proceeding (Docket No. DR 89-010), subject to review by the Commission in the same manner as a normalized adjustment to NET's test period results. The methodology for calculating the adjustment, which is estimated to be approximately $154,000, is set forth in Appendix B.

6. This Agreement represents the full agreement between all parties hereto.

7. Rejection by the Commission of any part of this Agreement constitutes rejection of the whole. In that event, the Agreement shall be void and no part thereof shall be offered or introduced as evidence or otherwise, in this or any other proceeding.

8. NET commits that, as opportunities for network modernization are presented, it will determine and consider, and consult with the Commission with respect to, the corresponding opportunities for deploying technology that would permit a reduction in cost, and thus a lower rate, for the Service.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in their respective names by their agents or attorneys, each being duly authorized to do so on behalf of his or her principal.

PETITIONERS
DEPARTMENT OF CORRECTIONS
KEARSARGE TELEPHONE COMPANY
STAFF OF THE PUBLIC
UTILITIES COMMISSION
NEW ENGLAND TELEPHONE
AND TELEGRAPH COMPANY

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(ATTACHMENT A TO BE SHOT)

Page 139

(Table 2)

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(Table 3)

Page 141

(ATTACHMENT B TO BE SHOT)

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(Table 2)

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NH.PUC*05/02/89*[51734]*74 NH PUC 144*Robert H. Carleton/Carleton Water Supply Company

[Go to End of 51734]

74 NH PUC 144

Re Robert H. Carleton/Carleton Water Supply Company

DE 89-032
Order No. 19,387

New Hampshire Public Utilities Commission

May 2, 1989

OPINION and order finding the operator of a water utility to be in willful violation of commission rules by not requesting and receiving authorization to operate water franchises, and for charging rates not approved by the commission.

FINES AND PENALTIES, § 7 — Grounds for imposition — Unauthorized operation — Water utility.

[N.H.] An agent of a water utility franchise that had a long history of noncompliance with commission orders was determined to be in operation in violation of commission rules and was fined $500 for failure to comply, and the commission reserved the right to levy further fines unrecoverable in rates if noncompliance continued.

APPEARANCES: Robert H. Carleton on behalf of Robert H. Carleton, and Carleton Water Supply Company (Trust); and Eugene F. Sullivan, III, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

By commission letter dated January 4, 1989, Robert H. Carleton was notified that the water systems operating under the name of Carleton Water Supply Company (Trust) were operating without authority and were given thirty (30) days in which to comply with RSA Chapters 362-378. The commission received no communications from either Robert H. Carleton or Carleton Water Supply Company (Trust) within the thirty (30) days. On March 1, 1989, the commission issued an order of notice requiring that Robert H. Carleton appear before this commission to show cause why he and his water utilities should not be subjected to criminal prosecution or civil penalties up to $25,000 pursuant to the provisions of New Hampshire Statues RSA 365:41, RSA 365:42, RSA 374:41 *et seq.*, RSA 374:17 or other sanctions provided by law. A hearing was held on April 10, 1989. Staff took the position that Mr. Carleton was an agent of the water systems and that some fine should be imposed in light of his long history of noncompliance with statute. Mr. Carleton took the position that he was informed through a third party that since he was negotiating the sale of the utilities he need not meet the thirty (30) day filing requirement.

II. *Findings of Fact*

Prior to 1985, Robert H. Carleton owned five (5) water systems. These water systems were known as 175 Estates in Thornton, New Hampshire; Sunrise Estates in Middleton, New Hampshire; Hidden Valley in Tuftonboro, New Hampshire; Birch Hill in Conway, New Hampshire; and Birch Hill West in Conway, New Hampshire. In 1985, Robert H. Carleton deeded over all five (5) water systems to his two children in trust. Said trust left no ownership interest nor trusteeship in Robert H. Carleton himself. However, from the testimony provided at the April 10, 1989 hearing, it is apparent that Robert Carleton is the agent and the *de facto* representative of these five (5) water systems held in trust for his children.

The testimony reveals that Robert Carleton maintains the system, manages the system, and is currently negotiating the sale of the system, thus he is, at the least, an agent of these five (5) water systems held in trust for his children. Testimony further revealed that the commission staff had been in contact with Robert Carleton

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for approximately ten (10) years in an attempt to get him to comply with RSA Chapters 362-378.

III. *Commission Analysis*

Pursuant to RSA 365:42, any agent of a public utility "who shall willfully violate or who procures, aids or abets violation of this title... shall be subject to a civil penalty as determined by the commission, not to exceed $10,000 for each violation or for each day of a continuing violation." Mr. Carleton was informed by the Executive Director & Secretary on January 4, 1989, that he had until February 5, 1989 to file a petition for a franchise and for permission to charge rates pursuant to RSA 374:22 and RSA 378:7 respectively. He has been in willful violation of that request for approximately sixty (60) days. He had no right to rely on the representations of a third party and he made no attempt to contact the commission to verify said

representation. Accordingly, the commission finds that Robert H. Carleton and the water utilities held in trust for his children are in willful violation of RSA 365:42 and shall be fined $500 for failure to comply RSA Chapters 362-378. The commission reserves the right to levy further fines on Mr. Carleton and said water utilities, of which he is an agent, if they do not comply with the order of January 4, 1989, by May 15, 1989. Said fine shall not be recovered from the customers of the water utilities through rates.

Our order will issue accordingly.

ORDER

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

ORDERED, that Carleton Water Supply Company (Trust) and Robert H. Carleton, as agent of said trust, are fined $500 for willful violation of RSA Chapters 362-378; and it is

FURTHER ORDERED, that said fine shall not be recovered from the customers through rates; and it is

FURTHER ORDERED, that Carleton Water Supply Company (Trust) or Robert H. Carleton, as agent of said trust, shall file a franchise petition for all five water systems prior to May 15, 1989 or be subject to further fines.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1989.

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NH.PUC*05/02/89*[51735]*74 NH PUC 145*Matthew J. Bonaccorsi

[Go to End of 51735]

74 NH PUC 145

Re Matthew J. Bonaccorsi

Respondent: Wendell Water Power Project

DR 86-051
Order No. 19,390

New Hampshire Public Utilities Commission

May 2, 1989

ORDER reaffirming, through August 31, 1989, a long-term rate approved for a small power production project, but denying a request to extend the effectiveness of the rate order until the conclusion of a bankruptcy proceeding involving the electric utility with which the small power producer had an interconnection agreement.

COGENERATION, § 19 — Long-term rate contract — Reaffirmation — Extension — Small power production project.

[N.H.] The commission reaffirmed a long-term rate approved for a small power production project; however, it denied a request to extend the commercial operation date until the resolution of a bankruptcy proceeding involving an electric utility with which the project developer had an interconnection agreement.

APPEARANCES: Matthew J. Bonaccorsi *pro se* for Wendell Water Power Project; Thomas Getz, Esq. for Public Service Company of New Hampshire; Dr. Sarah P. Voll, Economics Department for the Staff of the State of New Hampshire Public Utilities Commission.

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By the COMMISSION:

REPORT

The following report concerns the response of Wendell Water Power Project (Wendell) to an order by the State of New Hampshire Public Utilities Commission (commission) to show cause why approval of Wendell's long-term rate filing, including the interconnection agreement and the rate set forth on the long-term worksheet, should not be rescinded. Based on the evidence provided by Wendell and the following analysis we will reaffirm its long-term rate filing through August 31, 1989. However, we deny Wendell's further request to extend the effectiveness of the rate order until after the bankruptcy proceedings of Public Service Company of New Hampshire (PSNH) are concluded.

I. *Procedural History*

On March 12, 1986, the commission approved a petition by Wendell for long-term rates by order no. 18,167 (71 NH PUC 162) pursuant to *Re Small Energy Producers and Cogenerators*, 69 NH PUC 352, 61 PUR4th 132 (1984) and 70 NH PUC 753, 69 PUR4th 365 (1985) on the condition that it grant PSNH a surety bond or junior lien on the project to cover the "buy out" value of the project. On April 11, 1986 by order no. 18,215 (71 NH PUC 239), the commission suspended order no. 18,167 (71 NH PUC 162) until such time as Wendell submitted an amendment to its petition to include a signed interconnection agreement with PSNH. Wendell filed its signed interconnection agreement on April 23, 1986 and the commission by order no. 18,252 vacated order no. 18,215 (71 NH PUC 239) effective April 23, 1986.

On September 22, 1988, the commission was notified by the Federal Regulatory Energy Commission that on September 16, 1988 it had granted Wendell's request for a two-year extension of the deadlines for commencing construction (until August 27, 1990) and for completing project construction (until August 27, 1992).

On October 27, 1988, the New Hampshire Electric Cooperative, Inc. (NHEC) submitted for the information of the commission and staff a copy of its contract for the purchase and sale of electric energy between the NHEC and Wendell.

On November 1, 1988, the commission by order no. 19,222 ordered Wendell to appear on November 29, 1988 and show cause why approval of its long-term rate filing including the

interconnection agreement and the long-term rate worksheet should not be rescinded. Following the November 29, 1988 hearing, PSNH submitted a Memorandum Supporting Recision on December 29, 1988 and Matthew J. Bonaccorsi, sole proprietor of Wendell, responded by letter filed January 11, 1989.

II. *Position of the Parties*

A. Wendell

Wendell states that its failure to achieve commercial operation by the power year designated in its original petition was due to unexpected delays in licensing and the difficulty in obtaining financing given the financial problems of PSNH. Tr. 9-12. It negotiated an alternative power purchase contract with the NHEC and, based on that contract, was able to arrange permanent financing. As of November 1, 1988, it had spent approximately 30% of the total development costs of $180,000 in addition to the licensing costs. Tr. 13-14. The project's anticipated on-line date is currently July 1989. Wendell asks the commission to uphold the rate order and to allow the order to remain in effect until the PSNH bankruptcy is resolved. Wendell would sell to the NHEC on a short-term contract until that resolution, and choose between the NHEC contract and its PSNH long-term rate if the rate is affirmed by the bankruptcy court.

B. PSNH

PSNH opposes the extension of the initially petitioned commercial operation date of 1987. It argues that Wendell's difficulty in arranging financing stems from its delay in seeking financing between the effective date of its rate order (April 1986) and year end 1986,

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and the limited nature of the search in terms of breadth of financial institutions and type of financial instrument rather than from the financial position of PSNH. PSNH views the absence of a FERC license at the time of filing and the inability to obtain financing as indications of project immaturity.

PSNH also opposes Wendell's proposal to resume its rate order at Wendell's option at some unspecific time in the future as improper and as contrary to the commission's policy that PSNH should be able to rely on small power producers to begin operation in a specified year.

C. Staff

Staff contends that, given that Wendell has proceeded with the construction of the project, consistency with prior commission orders argues in favor of upholding the rate order until August 31, 1989 as the last commercial operation date available under DR 85-215. Staff argues that any delay in commercial operation beyond August 1989 should jeopardize continued approval of the rate order, although leniency at that point is at the discretion of the commission. Staff took no position on Wendell's proposal that the rate order be upheld until the PSNH bankruptcy is resolved.

III. *Findings of Fact*

Wendell's petition, as approved by the commission order no. 18,252 pursuant to DE 83-62 and DR 85-215, specified a commercial operation date of power year 1987, which ended August

31, 1987. The last commercial operation date available under DR 85-215 is power year 1989, which ends August 31, 1989.

On September 22, 1988 the FERC notified the commission that it had extended its deadlines for commencement and completion of construction to August 1990 and 1992 respectively, well after both the end of Wendell's rate order power year and the end of the last power year available under DR 85-215. On October 27, 1988 NHEC notified the commission that it had signed a power purchase contract with Wendell. On November 1, 1988, the commission ordered Wendell to appear to justify its continued eligibility for its long-term rate and explain its continued interest in a purchase power arrangement with PSNH.

Wendell's failure to achieve its 1987 commercial operation date stems from delays in licensing by the FERC and in obtaining financing. Wendell anticipates being on-line in July 1989.

IV. *Commission Analysis*

We find that the developers of Wendell were overly optimistic in their selection of a power year in their long-term rate petition, but that the project itself is not premature in reference to the terms and conditions of DR 85-215. Wendell had the option of applying for its rate up to four years in advance of commercial operation. Its choice of the earlier on-line date primarily results in a reduction of the front end loading in the rate order. Upholding the rate order through power year 1989 does not provide Wendell preferential treatment compared to projects that achieve commercial operation at the same time as Wendell based on timely rate petitions specifying a 1989 commercial operation date.

However, we do not find that the financial position of PSNH justifies approval of an extension of the effectiveness of the rate order beyond power year 1989, if Wendell chooses not to exercise its rights under the rate order when it comes on-line. Our rate orders obligate developers to sell the output of their projects to PSNH and provide reliable service over the life of the obligations. Wendell cannot simultaneously be relieved of its obligations to provide service under its rate order and still retain its rights to the rate. Therefore, we will deny Wendell's request to resume its rate order after the PSNH bankruptcy has been resolved.

Our order will issue accordingly.

ORDER

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

ORDERED, that Wendell Water Power Company's (Wendell) long-term rate approved by order no. 18,252 be, and hereby is,

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reaffirmed through August 31, 1989; and it is

FURTHER ORDERED, that Wendell's request to extend the effectiveness of the rate order until the bankruptcy proceedings of Public Service Company of New Hampshire (PSNH) are concluded such that Wendell could sell its power to the New Hampshire Electric Cooperative, Inc. upon achieving commercial operation and subsequently resume its rate order for sale to

PSNH be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1989.

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NH.PUC*05/03/89*[51736]*74 NH PUC 148*Southern New Hampshire Water Company, Inc.

[Go to End of 51736]

74 NH PUC 148

Re Southern New Hampshire Water Company, Inc.

DE 87-170
Order No. 19,392

New Hampshire Public Utilities Commission

May 3, 1989

DISMISSAL of applications to provide water service to a municipality.

CERTIFICATES, § 90 — Competing applications — Water service — Dismissal.

[N.H.] The commission denied two competing applications to provide water service within a municipality where evidence was presented that the municipality was planning to approve a plan to provide water service to the proposed franchised area and where the commission had agreed in a prior order to dismiss the applications upon the municipality approving such a plan.

By the COMMISSION:

ORDER

On September 17, 1987, Southern New Hampshire Water Company (Southern) filed a petition for permission to engage in business as a public utility in a limited area of the Town of Derry. The commission established docket no. DE 87-170 for investigation of this petition. On October 28, 1987, Pennichuck Water Works, Inc. (Pennichuck) filed a petition to engage in business as public utility in the same limited area of the Town of Derry. The commission established docket no. DE 87-205 for the investigation of this petition; and

WHEREAS, both of these petitions sought to provide service in the remaining unfranchised area as of the filing dates of the petitions in the Town of Derry in an order of notice dated December 17, 1987, the commission consolidated the two dockets; and

WHEREAS, at the prehearing conference the Town of Derry made an oral motion to intervene in these dockets; there being no objection the commission granted the motion; and

WHEREAS, at a hearing held on this matter on December 6, 1988 the Town informed the

commission that it had formulated a preliminary plan for providing service to the area sought to be franchised by Pennichuck and Southern; and

WHEREAS, the Town further indicated that it was in the process of finalizing its plans and would formally present the plan to the Town Council for its approval in the near future; and

WHEREAS, in order number 19,334, the commission ordered that "should the proper municipal body or official of the Town of Derry approve a plan to provide water service to the proposed franchise area this matter shall be dismissed"; and

WHEREAS, the Town has notified the commission in a letter dated April 6, 1989, that at a Town Council meeting held on April 4, 1989, the Town approved a plan to provide water service to the proposed franchise areas; it is hereby

ORDERED, that dockets DE 87-170 and DE 87-205 be dismissed as the Town has adopted a plan pursuant to order no. 19,334.

By order of the Public Utilities Commission of New Hampshire this third day of May, 1989.

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NH.PUC*05/03/89*[51737]*74 NH PUC 149*Claremont Gas Corporation

[Go to End of 51737]

74 NH PUC 149

Re Claremont Gas Corporation

DR 89-059
Order No. 19,393

New Hampshire Public Utilities Commission

May 3, 1989

ORDER *nisi* adopting a summer cost of gas adjustment for a propane gas distribution company.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 61 — Procedure — Cost of gas adjustment — Notice — Filing date — Waiver of rules.

[N.H.] Gas distributors are required to file their cost of gas adjustments for the summer period on or before April 1st of each year in order to allow the commission time to issue proper notice before conducting a hearing on the reasonableness of the proposed adjustments; nevertheless, the commission waived the requirement for a gas distributor that missed the filing deadline and instead conducted the hearing subject to a *nisi* order allowing interested parties to comment on or object to the order after it is issued; the company was put on notice that the commission would not waive its rules so readily in the future. p. 149.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Energy cost clauses — Cost of gas adjustment — Conversion factor.

[N.H.] A propane gas distributor was directed to revise its cost of gas adjustment filing to reflect the 0.951 conversion factor required by prior order; the commission stated that it expected that the LDC would adhere to the terms and conditions of its orders and would not deviate without expressed approval by the commission. p. 150.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Energy cost clauses — Cost of gas adjustment — Lost and unaccounted for gas.

[N.H.] Where prior hearings involving all New Hampshire gas companies resulted in a finding that the average lost and unaccounted for gas from total propane gas purchases was between a 5% and 10% factor, a propane gas distributor was directed to reduce its proposed 16.9% factor for lost and unaccounted for gas and to substitute an 8% factor. p. 150.

By the COMMISSION:

REPORT

Claremont Gas Corporation, a public utility engaged in the business of supplying gas in the State of New Hampshire, on April 14, 1989, filed with this commission 125th Revision, Page 12-2, Superseding 124th Revision Page 12-2, NHPUC No. 9-Gas, issued April 11, 1989, providing for the 1989 Summer Cost of Gas Adjustment effective May 1, 1989. The requested Cost of Gas Adjustment rate is $(0.0738) per therm. The following three issues are of concern to the commission.

FILING REQUIREMENTS

[1] The commission's policy requires the cost of gas adjustment for the summer period to be filed on or before April 1st of each year. This date is appropriate for the commission to conduct a proper hearing expeditiously and to fix a fair and reasonable rate in sufficient time to be in effect for the coming period. The company did not file its cost of gas adjustment until April 14, 1989 thereby causing the commission to have inadequate time to issue a proper order of notice to meet the requirements of a public hearing pursuant to the commission's rules and the Administrative Procedures Act. As a result, the commission waived its rules and conducted the hearing subject to a NISI order being issued which will allow interested parties to comment or object to the order of the commission after it is issued. In the future, the commission will not waive its rules so readily and the company is put on notice that the commission will expect the company to meet its requirements.

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CONVERSION

[2] The company used a .9 factor for conversion of gallons to therms. The .9 is a deviation from the commission's Report and Order No. 18,280 which directed that the company use a conversion factor of .915. The commission expects that the company will adhere to the terms and conditions from its orders and will not deviate without expressed approval by the commission.

LOST AND UNACCOUNTED FOR GAS

[3] From the hearings concerning all of the gas companies in New Hampshire, the commission finds that the average lost and unaccounted for gas from total propane gas purchases average between a 5 and 10% factor. The two propane-air companies, Petrolane-Southern and Keene, testified to values of 6% and 8%, respectively. The actual data reconciling the 1988 cost of gas adjustment for Claremont Gas is a 16.9% factor. The commission finds that a 16.9% lost and unaccounted for gas factor is exceedingly high and requires that further investigation needs to be made by the commission. The commission will direct that its Gas Safety Engineer, Richard G. Marini, perform an independent analysis and investigation regarding the high lost and unaccounted for gas. For the purposes of this adjustment period, the commission will direct that Claremont Gas Corporation use an 8% factor for lost and unaccounted for gas. The company shall file a monthly lost and unaccounted for gas report along with the required monthly (over)/under collection reports.

Our order will issue accordingly.

ORDER

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

ORDERED, NISI that 125th Revision, Page 12-2, Superseding 124th Revision Page 12-2, NHPUC No. 9 — Gas, issued April 11, 1989 for effect May 1, 1989 is rejected; and it is

FURTHER ORDERED, that Claremont Gas Corporation must submit a revised tariff utilizing the .915 conversion factor by May 5, 1989; and it is

FURTHER ORDERED, that Claremont Gas Corporation comply with commission policy and file future cost of gas adjustments in a timely manner; and it is

FURTHER ORDERED, that Richard G. Marini, P.E., the commission Gas Safety Engineer, continue to perform an investigation regarding the high lost and unaccounted for gas; and it is

FURTHER ORDERED, for purposes of this Cost of Gas Adjustment period Claremont will use an 8% factor for lost and unaccounted for gas and will undertake a study to determine the proper amounts to be charged to utility and non-utility operations; and it is

FURTHER ORDERED, that Claremont Gas Corporation file monthly (over)/under collection reports and monthly lost and unaccounted for gas; and it is

FURTHER ORDERED, that Claremont Gas Corporation file the 1989 Summer Cost of Gas Adjustment reconciliation within two months of completion of the summer period; and it is

FURTHER ORDERED, that, pursuant to PUC Rule No. 203.1, said petitioner shall notify all persons of the above referenced filing, 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 conducted, such publication to be not later than May 9, 1989, said publication to be documented by an affidavit to be filed with this office on or before May 16, 1989 and any interested party may object and request further hearings in this matter on or before May 16, 1989; and it is

FURTHER ORDERED, that a hearing will be held on May 19, 1989 only if there is a request for a hearing as provided above by an interested party prior to this intervention date or unless otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this third day of May, 1989.

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NH.PUC*05/03/89*[51738]*74 NH PUC 151*Lakes Region Water Company, Inc.

[Go to End of 51738]

74 NH PUC 151

Re Lakes Region Water Company, Inc.

DF 88-207
Order No. 19,395

New Hampshire Public Utilities Commission

May 3, 1989

ORDER authorizing a water utility to borrow money to retire existing debt.

SECURITY ISSUES, § 44 — Authorization — Debt retirement — Water utility.

[N.H.] A water utility was authorized to borrow $50,000 over a ten-year period at an interest rate of approximately twelve and one-half percent in order to retire existing obligations to creditors for monies owed for the purchase of water meters and water tanks.

By the COMMISSION:

ORDER

WHEREAS, Lakes Region Water Company ("Lakes Region") a duly established operating public water utility in various locations in the State of New Hampshire; and

WHEREAS, Lakes Region, having filed on December 5, 1988, an application for authority and approval, pursuant to R.S.A. 369, of the issuance of long term debt; and

WHEREAS, on December 31, 1987 Lakes Region had a long term debt in the amount of $32,995 for meter acquisition and installation and $3,600 for water tanks; and

WHEREAS, Lakes Region proposes to borrow $50,000 from Bank East over a term of ten (10) years at an interest rate of approximately twelve and one-half percent (12 1/2%), and

WHEREAS, Lakes Region's purpose in issuing this $50,000 note is to retire existing obligations to creditors which must be paid and for which there are no funds currently available; it is hereby

ORDERED, that Lakes Region Water Company is hereby authorized to borrow a principal amount of $50,000 by the issuance of a note to Bank East, at a rate of twelve and one-half percent (12 1/2%) for a period of ten (10) years, in accordance with the terms, conditions, and

purposes described in its application and supporting documentation; and it is

FURTHER ORDERED, that Lakes Region shall on January first and July first of each year, file with this commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such Notes until the whole of such proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that this Order shall be effective from the date of this order unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this third day of May, 1989.

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NH.PUC*05/04/89*[51739]*74 NH PUC 151*Public Service Company of New Hampshire

[Go to End of 51739]

74 NH PUC 151

Re Public Service Company of New Hampshire

DR 89-058
Order No. 19,396

New Hampshire Public Utilities Commission

May 4, 1989

ORDER *nisi* approving an experimental rate contract between a marina and an electric utility.

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RATES, § 337 — Electric rate design — Special contract — Transient tenants of marina — Submetering.

[N.H.] Approval was given to an experimental rate contract allowing a marina to assign appropriate portions of its electricity expense to transient tenants of its marina through installation of individual meters at each tenant's boat slip, whereby each tenant will be billed for actual electricity used; the rate will reflect the commission-approved revenue for class GV, modified so that the entire revenue is apportioned according to test-year kilowatt-hour sales in class GV, instead of being assigned to customer, energy and demand charges.

By the COMMISSION:

ORDER

WHEREAS, Public Service Company of New Hampshire (PSNH) an electric utility operating under the jurisdiction of this commission, by a petition filed April 13, 1989, seeks

approval of an experimental contract allowing Wentworth By The Sea, Inc. (Wentworth) to assign appropriate portions of its electricity expense to transient tenants of its Marina in Little Harbor, NH; and

WHEREAS, this agreement provides for a deviation from the tariff conditions for Rate Class GV under which service is provided to Wentworth; and

WHEREAS, this agreement will allow Wentworth to install individual meters at each tenant's slip and to bill these tenants for actual electricity use based on a rate provided to them by PSNH; and

WHEREAS, the rate will reflect the commission approved revenue for class GV, modified so that the entire revenue is apportioned according to test year kilowatt hour sales in Class GV, instead of being assigned to customer, energy and demand charges; and

WHEREAS, PSNH has agreed to monitor and report on the ratios of actual customer, energy and demand charges and to compare them to average ratios for Class GV customers; and

WHEREAS, the contract is experimental and subject to reconsideration by the commission at any time if the pattern of Wentworth's electric use reveals that their tenants are being charged unjustly because their use is significantly different from the average Class GV customer or for other reasons; and

WHEREAS, the rates paid by Wentworth for service to their master meter will be unaffected by this special contract; and

WHEREAS, upon investigation and consideration, this commission finds that special circumstances exist which render departure from PSNH's tariff just and consistent with the public interest; 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 26, 1989; and it is

FURTHER ORDERED, that PSNH 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, 1989 and designated in an affidavit to be made on copy of this order and filed with this office on or before June 5, 1989; and it is

FURTHER ORDERED, *NISI* that special contract no. NHPUC-58 between PSNH and Wentworth is approved as an experimental contract; and it is

FURTHER ORDERED, that such authority shall be effective on June 5, 1989 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 fourth day of May, 1989.

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NH.PUC*05/04/89*[51740]*74 NH PUC 153*Hampton Water Works Company

[Go to End of 51740]

74 NH PUC 153

Re Hampton Water Works Company

DF 89-038
Order No. 19,397

New Hampshire Public Utilities Commission

May 4, 1989

ORDER authorizing water utility to sell stock and bonds.

SECURITY ISSUES, § 44 — Authorization — Retirement of debt — Stock and bonds — Water utility.

[N.H.] A water utility was authorized to issue and sell at private sale $1,800,000 principal amount of its general mortgage bonds, as well as to issue and sell 19,076 shares of its $25 par value common stock at a December 31, 1988, book value of $47.17 to its present sole shareholder, with the proceeds from the sales used to retire existing short-term debts, to reimburse working capital for capital expenditures, and to pay the costs of the subject financing.

APPEARANCES: for the Petitioner, Ransmeier & Spellman by Dom S. D'Ambruoso, Esquire; for the staff, Eugene F. Sullivan and Mary J. Newell.

By the COMMISSION:

REPORT

By this unopposed petition filed March 3, 1989, Hampton Water Works Company (Hampton), a corporation duly organized and existing under the laws of the State of New Hampshire, and engaged in the business of supplying water for public and private use in the towns of Hampton, North Hampton and in the Rye Beach and Jenness Beach precincts in the town of Rye, petitioned the Commission pursuant to the provisions of RSA 369:1 for authority to issue and sell not exceeding $1,800,000 of general mortgage bonds and $900,000 of common stock.

On March 20, 1989, the Commission issued its order of notice establishing a hearing and requiring public notice. A duly noticed hearing was held at the offices of the Commission in Concord on April 27, 1989.

At hearing, Hampton presented its petition through the direct testimony of Bruce E. Tillotson, Vice President-Finance of American Water Works Service Company, Inc., and Rod

Nevirauskas, Business Manager of Hampton. The witnesses presented summaries of their prefiled direct testimony and numerous exhibits supporting the petition, among which were the following: Statement of Net Capital Additions from January 1, 1984 to and including December 31, 1988; Application of Funds to be realized from proposed financing; Investment Budget for the year 1989; Estimated cost of financing; Balance Sheet as at December 31, 1988 giving effect to the proposed financing and proposed entries; Income Statement for the Twelve Months ending December 31, 1988; Statement of Capitalization ratios after giving effect to proposed financing; Certified copies of excerpts from minutes of meeting of Board of Directors; and Commitment Letter between Hampton and Purchaser included in materials entitled "Background and Supporting Information," February 14, 1989.

Exhibits 6 and 9 were reserved for the late filing of the Bond Purchase Agreement and the Fifth Supplemental Indenture, both of which documents are currently being finalized in anticipation of the closing of the loan transaction.

Hampton through its witnesses represented that the net proceeds of the proposed sale of the bonds and common stock will be applied by Hampton (a) to pay off the short-term indebtedness outstanding at the time of the sale, the proceeds of which will have been expended in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of Hampton's business, (b) to reimburse Hampton's treasury for expenditures made from it for the said purpose, (c) to finance the future purchase and construction of such property and facilities, and to defray the

Page 153

costs and expenses of the financing contemplated by this petition or for other proper corporate purposes.

With specific request to Hampton's petition to issue $1,800,000 principal amount of general mortgage bonds, Mr. Tillotson testified that the bonds would be purchased by the Allstate Insurance Company at an interest rate of 9.92%, said bonds to mature in 2019, noncallable for 15 years followed by a declining call premium based on a straight line formula beginning with the coupon in year 1 and declining to 0 at final maturity (see exhibit 8). The arrangement to acquire the bonds of Allstate Life Insurance Company was the best of all the alternative financing structures considered by Hampton in the months preceding the final negotiation with Allstate. Mr. Tillotson testified that considering the small size of Hampton's proposed issue, the response received was positive, and the interest rate and terms are quite favorable.

With respect to the request to issue $1,800,000 of general mortgage bonds, Mr. Nevirauskas testified that the financing meets all tests under Hampton's Fourth Supplemental Indenture currently in force. After the proposed financing, the amount of long-term debt for Hampton is well within the limits set forth in the Indenture. Also, the Indenture states that Hampton may not issue any general mortgage bonds unless the net income before income taxes of Hampton is at least one and one-half times the aggregate annual interest charges immediately after the bonds are issued. For the financing proposed in this case, Hampton's pro forma interest coverage ratio is 2.45 times as shown on Exhibit 4, page 1 of 2, and therefore meets the Indenture requirements.

Mr. Nevirauskas also testified that an advantage of the proposed financing is the ability of

Hampton to retire short-term debt and to solidify the capital structure for future investment.

In addition to the proposed long-term debt financing, Hampton proposes to issue $900,000 worth of common stock. Mr. Tillotson testified that the price of the stock has been based upon the book value of Hampton's common equity at December 31, 1988 which is calculated at $47.17 per share. The issuance of $900,000 worth of additional common stock provides a healthy balance in the debt equity ratio of Hampton.

Upon investigation and consideration of the evidence submitted, this Commission is of the opinion that the granting of the authorization requested herein will be for the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that Hampton Water Works Company, be, and hereby is, authorized to issue and sell at private sale, $1,800,000 principal amount of its General Mortgage Bonds, 9.92% due April 1, 2019; and it is

FURTHER ORDERED, that the petitioner be, and hereby is, authorized to mortgage all, or any part, of its present and future property, both real and personal, tangible and intangible, including its franchises, as security, among other things, for the payment of said Bonds; and it is

FURTHER ORDERED, that the petitioner be, and hereby is, authorized to issue and sell 19,076 shares of its $25 par value common stock at a 12/31/88 book value of $47.17 to Greenwich Water System Inc., its present sole shareholder, for a total consideration of $900,000; and it is

FURTHER ORDERED, that the proceeds from the issue and sale of the Bonds and common stock authorized hereunder shall be used to retire existing short-term debts; to reimburse working capital for capital expenditures, and to pay the costs of the subject financing; and it is

FURTHER ORDERED, that Hampton, pursuant to Commission rules, file a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such Bonds until the whole of such proceeds have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this fourth day of May, 1989.

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NH.PUC*05/04/89*[51741]*74 NH PUC 155*Wesco Utilities, Inc.

[Go to End of 51741]

74 NH PUC 155

Re Wesco Utilities, Inc.

DE 88-139
Order No. 19,398

New Hampshire Public Utilities Commission

May 4, 1989

ORDER granting a franchise to a water utility and approving a rate stipulation.

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1. CERTIFICATES, § 125 — Water — Grant of franchise — Need for service.

[N.H.] A water utility that had been providing needed service to 18 customers for two years was granted a franchise in the area served. p. 156.

2. RATES, § 595 — Water service — New franchise area — Stipulation.

[N.H.] The commission approved a stipulation setting forth rates and rate of return for water service provided to 18 customers in a new franchise area. p. 156.

APPEARANCES: Robert Frank, Esq. on behalf of Wesco Utilities, Inc.; David W. Hess, Esq. intervening on his own behalf; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On July 14, 1988, the commission staff notified Wesco Utilities, Inc. (Wesco) that it could no longer charge its customers for the water service it was providing as it had not yet obtained a franchise, pursuant to RSA 374:22 nor had the commission set just and reasonable rates pursuant to RSA 378:7.

On September 16, 1988, Wesco filed a petition seeking authority to establish a water utility in a limited area in the Town of Hooksett, New Hampshire and to establish rates for said utility. In addition, Wesco filed proposed tariff pages reflecting the terms and conditions of water service and the rates to be charged therefore. An order of notice was issued on October 5, 1988, setting a prehearing conference for November 2, 1988. At said prehearing conference a hearing on the merits was scheduled for February 15, 1989. Subsequently the hearing date was continued until March 28, 1989. On November 8, 1988, David W. Hess, Esq. filed a motion to intervene. At a prehearing conference held on December 2, 1988, the commission granted intervenor Hess' motion. The intervenor is a customer of Wesco. At the hearing on the merits held on March 28, 1989, all parties stipulated that Wesco should be granted a franchise. The parties also stipulated to the level of revenues.

II. *Petition to Establish a Water Utility*

By its petition the company seeks authority pursuant to RSA 374:22 to establish a public utility to provide water to a limited area in the Town of Hooksett, New Hampshire described more particularly as follows:

Beginning at a point at the intersection of the Bow, N.H.-Hooksett, N.H. Town Line

with the westerly line of the F. E. Everett Highway, so-called, said point being the northeasterly corner of the herein described premises; thence

(1) South 4°51´24” E by the said westerly line of the F. E. Everett Highway, 104.44 feet to a N.H. Highway Bound at station 1355+00; thence

(2) Continuing in a straight line South 4°51´24” E, by the said westerly line of the F. E. Everett Highway, 941.80 feet to station 1345+58.2; thence

(3) Southerly, by the said westerly line of the F. E. Everett Highway, on the arc of a curve to the right, having a central angle of 21°45´02” and a radius of 3,669.80 feet, 1393.12 feet to a stone wall; thence

(4) North 85°58´40” W, by said stone wall, 205.06 feet to a point on the easterly

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line of Bow Bog Road, so-called; thence

(5) Northwesterly, by the said easterly line of Bow Bog Road, on the arc of a curve to the left, having a central angle of 21°08´34” and a radius of 455.99 feet, 168.26 feet to a point; thence

(6) Northwesterly, by the said easterly line of Bow Bog Road, on the arc of a curve to the left, having a central angle of 11°26´38” and a radius of 3,501.52 feet, 699.37 feet to a point at land of Edna C. McNamara; thence,

(7) North 50°14´20” E, by the southerly line of said land of Edna C. McNamara, 200.00 feet to a point; thence

(8) North 40°51´00” W, by the easterly line of said land of Edna C. McNamara, 675.00 feet to a point at land now or formerly, of Cass; thence

(9) North 38°17´20” W, by the easterly line of said land now or formerly of Cass, 195.70 feet to the said Bow, N.H.-Hooksett, N.H. Line, 1431.36 feet to the point of beginning and a lot owned by David W. Hess on Bow Bog Road adjacent to said land described above.

Wesco currently serves eighteen customers and has been doing so for approximately two years under its current owner. They have retained the services of a licensed operator, and have obtained the requisite approvals from the Department of Environmental Services, Water Resources Board and Water Supply and Pollution Control Commission. Each of the eighteen (18) customers is currently metered.

Under RSA 374:26, permission under RSA 374:22 shall be granted only if it would be "for the public good and not otherwise."

[1] There is currently a need for service in the proposed franchise area which Wesco has been providing for the past two years, albeit with some complaints. The company has, however, recently hired a competent licensed operator to manage the physical system which should alleviate some of the complaints and the "problems" with service. Furthermore, the intervenor, a customer of the utility, along with staff have no objection to the granting of a franchise after an

investigation into the matter.

The commission, therefore, accepts the stipulation of the parties and grants Wesco the requested franchise.

III. *Rates*

A. Background

[2] Marcel Croteau, the owner of Wesco, purchased the system in 1986 as part of the larger acquisition of Riverview Land Corporation (Riverview). That is, the water supply system was a facet of Riverview. The price of Riverview was broken into components. The water distribution system being one of the components. Mr. Croteau paid $22,754 to the owner of Riverview for the system. The price was based on a set of penciled ledgers provided by the previous owner. Staff, the company and the intervenor agreed that based on those records and staff's previous experience with water systems of a similar size and nature the price paid for the system would be allowed in rate base. Since purchasing the system Mr. Croteau has made $5,268 in improvements to the system.

B. Operating Expenses

Operating expenses were based on the companies past two years of experience and reasonably foreseeable future expenses. They were calculated as follows:

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

Operating Expenses:	
Electric	$ 861
Water Testing	134
Meter Reading ($50. per quarter)	200
Maintenance	500
Office Supply	250
Customer Accounting ($75. per quarter)	300
Amortization — Rate Case Expense (3 yrs.)	1,825
Amortization — Franchise Expense (20 yrs.)	121
Amortization — Pump area land survey (10 yrs.)	200
Legal & Accounting	500
Total Operating Expenses	$4,891

C. Rate Base

The stipulated rate base was calculated as follows:

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

Plant in Service	
Historical Cost	$46,194.00
Less: Retirement of old pump house:	$ 4,398.00
Less: Accumulated Depreciation	$26,952.00
Net Plant in Service January 1, 1988	$14,845.00
Other Capitalized Expenses:	
Improvements	$ 5,268.00

Company Sign	$ 114.00
Meters	$ 2,480.00
	$ 8,862.00
Net Plant in Service	$23,707.00

D. Rate of Return

The parties also agreed that a fair rate of return, based on similarly situated small water companies, was ten (10) percent.

E. Minimum Charge

The parties stipulated that depreciation, property taxes and insurance were fixed costs in running the system and that the customers should pay these costs regardless of their actual water usage. Property taxes were based on last years bill from the Town of Hooksett. Depreciation was based on depreciation rates generally accepted by the commission. Insurance was based on staff's previous experience with similarly situated water companies. The calculations are as follows:

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

Minimum Charge:	
Depreciation	$1,577.00
Property Taxes	$ 99.00
Insurance	$1,200.00
Total Fixed Expenses	$2,876.00
Number of Customers	24
Minimum Annual Charge	$ 119.83
Minimum Quarterly Charge	$ 29.95

F. Rate Structure

The parties stipulated to the following rate structure:

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

Minimum Charge:	
Depreciation:	$ 1,577.00
Property Taxes:	99.00
Insurance:	1,200.00
	$ 2,876.00
Number of Customers:	24
Annual Minimum Customer Charge =	$ 119.83
Quarterly Minimum Charge =	$ 29.95
Operating Expenses:	$ 4,891.00
Return on Rate Base:	$ 2,922.00
Consumption Charge:	
Total Revenue Requirement	$10,689.00
Less Minimum Charge	$ 2,876.00
	$ 7,813.00

Annual Metered Consumption 212,304 cubic feet.

Rate/Hundred Cubic Feet $3.68

Average Annual Consumption 8,846 Cubic Feet.


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Average Annual Bill:

Minimum Charge/Quarter   $29.95

Consumption Charges/2211CF @ 3.65/HCF = $80.70

  Total Average Quarterly Charge        $110.65

  Annual Average Charge               $442.60
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G. Miscellaneous

Company revenues were based on an annual average water consumption of 8,846 cubic feet per household times a charge of .0368 per cubic foot for twenty-four (24) households. Although the system only currently serves eighteen (18) households and Water Supply and Pollution Control has only approved the system for twenty-three (23) households, the parties felt it was only reasonable that the revenues be based on the potential expansion of the development in which the system is located. However, before actually expanding to twenty-four (24) customers Wesco must obtain approval from Water Supply and Pollution Control for said expansion.

Our order will issue accordingly.

ORDER

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

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ORDERED, that Wesco Utilities be granted a franchise to provide water to a limited area of the Town of Hooksett, New Hampshire described in detail in the foregoing report; and it is

FURTHER ORDERED, that Wesco Utilities shall be allowed to collect gross annual revenues of $10,689.00 by utilizing the following rate structure: $119.83 per customer, per year ($29.95 quarterly) and $3.68 per hundred cubic feet of consumption; and it is

FURTHER ORDERED, that the proposed tariff, terms and conditions submitted by Wesco Utilities, are hereby approved with the exception of those pages providing for the rate schedules of the company; and it is

FURTHER ORDERED, that Wesco Utilities shall file revised tariff pages reflecting the approved rates in the foregoing order which shall become effective for service rendered on or after the date of this order; and it is

FURTHER ORDERED, that all tariff pages shall bear this order number.

By order of the Public Utilities Commission of New Hampshire this fourth day of May, 1989.

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74 NH PUC 158

Re Manchester Water Works

DE 89-036
Order No. 19,399

New Hampshire Public Utilities Commission

May 4, 1989

ORDER authorizing a water utility to extend service to a previously unserved area.

SERVICE, § 210 — Water utility — Extensions — Previously unserved area.

[N.H.] A water utility was authorized to extend its mains and service to a previously unserved area where no other utility had franchise rights in the area sought and the town government of the area was in accord with the authority requested.

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 March 1, 1989, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Bedford; and

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

WHEREAS, the Town Council, Town of Bedford, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this commission is satisfied that, unless additional information is forthcoming to indicate otherwise, 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 26, 1989; 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, 1989 and designated in an affidavit to be made on copy of this order and filed with this office on or before June 5, 1989. In addition, individual notice shall be given to all known

current and prospective customers by serving a copy of this order to each by first class U. S. mail, postage prepaid and postmarked on

or before May 19, 1989; and it is

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

> Beginning at a point on Route 3 at the southerly limits of the existing franchise boundary as approved in DE 87-169/18878; thence easterly along such boundary to the Manchester/Bedford town line; thence southerly along the town line to a point at the intersection with the Merrimack town line; thence westerly along the Bedford/Merrimack town line to the F. E. Everett Turnpike; thence northerly along the easterly boundary of the turnpike to the above referenced existing southerly franchise limits; thence easterly along such southerly boundary to the point of beginning on Route 3.

and it is

FURTHER ORDERED, that such authority shall be effective on June 5, 1989 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 fourth day of May, 1989.

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NH.PUC*05/05/89*[51743]*74 NH PUC 159*New England Telephone and Telegraph Company, Inc.

[Go to End of 51743]

74 NH PUC 159

Re New England Telephone and Telegraph Company, Inc.

DE 89-051
Order No. 19,400

New Hampshire Public Utilities Commission

May 5, 1989

ORDER *nisi* granting a license for construction of a telephone facility enclosure.

CERTIFICATES, § 123 — Grant or refusal — Telephone facility enclosure — Construction.

[N.H.] A local exchange telephone carrier was conditionally granted a license to construct and maintain a telephone facility enclosure where the facility was found necessary to meet the

reasonable requirements for service; final approval was conditioned on the public having an opportunity to respond in support of, or opposition to, the license.

By the COMMISSION:

ORDER

WHEREAS, on April 4, 1989, the New England Telephone and Telegraph Company (New England Company), filed with this commission a petition seeking a license pursuant to RSA 371:17 to construct and maintain telephone facilities on New Hampshire Department of Transportation property located south of Hazen Drive and west of Ormond Street in Concord, New Hampshire; and

WHEREAS, the telephone facilities will consist of a concrete equipment enclosure (hut) measuring seventeen feet five inches (17´5”) by ten feet (10´) by nine feet six inches (9´6”), a manhole, and an outside terminal to be mounted on a six foot (6´) by seven foot (7´) concrete pad; and

WHEREAS, these facilities shall be constructed where shown on Plans No. 901752-1 and No. 901752-2, which plans are on file with the commission; and

WHEREAS, the New England Company states that the proposed construction has been reviewed by and meets with the approval of the commissioner and Director of the New Hampshire Department of Transportation; and

WHEREAS, the commission finds such facilities necessary for the Petitioner to meet the reasonable requirements for service, and that the granting of such license will not adversely affect the public rights on said property, thus it is 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 written request for a hearing on the matter before this commission no later than May 19, 1989; and it is

FURTHER ORDERED, that the New England Company effect such notification by publication of this order once in *The Union Leader*, no later than May 12, 1989; and it it is

FURTHER ORDERED, that said facilities be constructed and maintained in accordance with established minimum safety standards, such as, the National Electrical Safety Code; and it is

FURTHER ORDERED, *NISI* that the New England Company be, and hereby is, granted license pursuant to RSA 371:17 *et seq* to construct and maintain telephone facilities as herein described; and it is

FURTHER ORDERED, that said authority shall become effective twenty (20) days from the date of this order, unless a hearing is requested as provided herein or the commission so directs

prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifth day of May, 1989.

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NH.PUC*05/05/89*[51744]*74 NH PUC 160*Dockham Shore Estates Water Company, Inc.

[Go to End of 51744]

74 NH PUC 160

Re Dockham Shore Estates Water Company, Inc.

DE 89-003
Order No. 19,401

New Hampshire Public Utilities Commission

May 5, 1989

ORDER granting a franchise to provide water service, and setting temporary water rates.

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1. CERTIFICATES, § 76 — Grant or refusal — Public utility service — Factors considered.

[N.H.] Permission to provide public utility service shall be granted only it it would be for the public good and not otherwise, and the criteria for determining public good are (1) the need for service, and (2) the ability of the petitioner to provide service; furthermore, the standards for fitness are (1) financial backing, (2) management and administrative expertise, (3) technical resources, and (4) general fitness of applicant. p. 161.

2. CERTIFICATES, § 125 — Water — Grant of franchise — Need — Fitness.

[N.H.] Because the record demonstrated a need for water service in the proposed service area, and the commission recognized the applicant's ability to provide technical, financial, and business expertise in providing water service to the proposed area, a franchise was granted to a water utility. p. 161.

3. RATES, § 630 — Temporary rates — Recoupment — Surcharges.

[N.H.] Pursuant to RSA 378:27, the commission may fix reasonable, temporary rates for the duration of any rate proceeding, and such rates shall be subject to recoupment if they are determined to be too high after a permanent rate analysis; analogously, the utility shall be entitled to surcharge its customers for any amounts it could have collected had permanent rates been set at the beginning of the proceeding. p. 161.

4. RATES, § 597 — Water rate design — Special factors — Rate shock — Stipulation.

[N.H.] A stipulated 33% increase in water rates was accepted where current rates were comparatively low and the originally proposed permanent rate filing would have resulted in an 162% increase in rates. p. 162.

APPEARANCES: Dom S. D'Ambruoso, Esq. on behalf of Dockham Shore Estates Water Company, Inc.; and Eugene F. Sullivan, III,

Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 5, 1989, Dockham Shore Estates Water Company, Inc. (Dockham or company) filed a petition to provide water service in a limited area of the town of Gilford, New Hampshire. On January 25, 1989, Dockham filed its notice of intent to file rate schedules. By an order of notice dated February 23, 1989 a prehearing conference was scheduled for March 3, 1989. At the prehearing conference the parties proposed to have a hearing on the merits of the proposed franchise and to set temporary rates on April 13, 1989. The parties further proposed that the seventeen (17) days prior publication of notice to set rates be waived in light of the fact that the company would be directly notifying each of its customers by mail of its intent to set temporary rates. By a report and order dated April 3, 1989, the commission waived the seventeen day notice period in light of the direct notification of the company's customers. A hearing was held on April 13, 1989 on the issues of a franchise and temporary rates therefore. Staff took no position on the issue of the franchise. On the issue of temporary rates, the parties stipulated to a thirty-three (33) percent increase for the duration of the proceeding. Said thirty-three (33) percent increase to be implemented by raising the current $150 per year flat rate to $200 per year.

II. *Findings of Fact*

The company has requested a franchise for a limited area of the town of Gilford, New Hampshire, more particularly described as follows: the franchise is bounded by Dockham Shore Road, Sanborn Road and Route 11B, that is the franchise is contained within the triangle created by those three roads. At the hearing held on April 13, 1989, the company supplied the commission with approvals pursuant to RSA 374:22,III from the Water Supply and Pollution Control and Water Resources Divisions of the Department of Environmental Services. Through its filings, the company has made a commitment to comply with commission rules and filing requirements. The company provided documentary evidence showing the following: a) that it was financially capable; b) that it was managerially capable; c) administratively capable; d) legally capable; e) technically capable to run the franchise. The last five conditions were shown from a resume supplied from the owner of Dockham which established that he had the background for providing water service to these areas.

On the issue of temporary rates the company has been charging a flat rate of $150 per year. Testimony revealed that this is a relatively small amount when compared to other similar water companies in the State, and if the company's requested rates were put into effect they could result in a 162% increase in permanent rates.

III. *Commission Analysis*

[1, 2] 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 *New Hampshire Yankee Electric Corporation,* 70 NH PUC 563 (1985) the commission stated the criteria for determining the public good as follows; the need for service and the ability of the petitioner to provide service. Furthermore, the commission has laid out standards for fitness and from the filling the public interest which include financial backing, management and administrative expertise, technical resources, general fitness of the applicant *Re International Generation and Transmission Company,* 67 NH PUC 478, 484 (1982). The record demonstrates a need for service in the proposed franchise area. The commission recognizes the petitioner's ability to provide technical, financial and business expertise in providing water service to the proposed franchise area and franchise is therefore granted.

[3] Pursuant to RSA 378:27, the commission may fix reasonable temporary rates for the duration of any rate proceeding. Said temporary

rates shall be subject to recoupment if they are determined to be too high after a permanent rate analysis. Analogously, the company shall be entitled to surcharge its customers for any amounts it could have collected had permanent rates been set at the beginning of the proceeding.

[4] The commission accepts the stipulation of the parties in light of the fact that the rates currently being charged are comparatively low, and if the proposed permanent rate increase were to go into effect it would result in a 162% increase in rates. Thus, the thirty-three (33) percent increase would ease the effect of any increase which may ultimately go into effect.

Our order will issue accordingly.

ORDER

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

ORDERED, that Dockham Shore Estates Water Company, Inc. is granted a franchise to provide water in the area described in the foregoing report; and it is

FURTHER ORDERED, that temporary rates be set at $200 per year from the date of this order to the final decision on rates in this matter.

By order of the Public Utilities Commission of New Hampshire this fifth day of May, 1989.

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NH.PUC*05/08/89*[51745]*74 NH PUC 162*Merrimack County Telephone Company

[Go to End of 51745]

74 NH PUC 162

Re Merrimack County Telephone Company

Additional applicant: Excalibur Store Fixtures, Inc.

DR 88-008
Supplemental Order No. 19,403

New Hampshire Public Utilities Commission

May 8, 1989

ORDER approving a special rate contract between a telephone utility and commercial customer.

RATES, § 534 — Telephone rate design — Special contract.

[N.H.] Approval was given to a rate contract between a telephone utility and a commercial customer, allowing the utility to provide a four-wire, full duplex data circuit between the customer and the utility's facilities, and establishing special rates for that service, because only that customer desired such service, so that special circumstances existed that rendered the terms and conditions of the contract in the public interest.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Merrimack County Telephone Company (Merrimack) filed with the commission on April 26, 1989 a renewal of 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 January 21, 1989; and it is

FURTHER ORDERED, that this contract shall be renewable on an annual basis without further approval unless the contract changes in any way or upon order by the commission.

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 1989.

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NH.PUC*05/15/89*[51746]*74 NH PUC 163*Gunstock Glen Water Works Company

[Go to End of 51746]

Re Gunstock Glen Water Works Company

DE 89-067
Order No. 19,405

New Hampshire Public Utilities Commission

May 15, 1989

ORDER *nisi* authorizing the transfer of a water utility franchise.

CERTIFICATES, § 137 — Transfer of franchise — Water utility.

[N.H.] Authority was granted to a water utility, "Gunstock Glen Water Company," to transfer its franchise, works and system to the "Gunstock Glen Water Company, Inc.," because after investigation and consideration, the commission was satisfied that the granting of the petition was for the public good.

By the COMMISSION:

ORDER

On March 9, 1989, Gunstock Glen Water Co., a proprietorship, filed a petition pursuant to RSA 374:30 seeking authority to transfer its franchise, works and system to the Gunstock Glen Water Company, Inc.; 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 June 7, 1989; and it is

FURTHER ORDERED, that Gunstock Glen Water Co. 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 31, 1989, and designated in an affidavit to be made on a copy of this order and filed with this office on or before June 14, 1989. In addition, individual notice shall be given to all known current and prospective customers by serving a copy of this order to each by first class U. S. Mail, postage prepaid and postmarked on or before May 31, 1989; and it is

FURTHER ORDERED, *NISI* that Gunstock Glen Water Company is authorized to reorganize its corporate structure by transferring its franchise, works and system, used and useful, to Gunstock Glen Water Co., Inc.; and it is

FURTHER ORDERED, that Gunstock Glen Water Company is hereby authorized to

discontinue operations as a public utility; and it is

FURTHER ORDERED, that Gunstock Glen Water Company, Inc. is hereby authorized to commence business as a public utility in limited area in the Town of Gilford, presently served by the Gunstock Glen Water Co. as granted in DE 74-100 and Order No. 11583 (59 NH PUC 290 [1974).

FURTHER ORDERED, that such authority shall be effective on June 14, 1989 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 fifteenth day of May, 1989.

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NH.PUC*05/16/89*[51747]*74 NH PUC 164*Tilton and Northfield Aqueduct Company

[Go to End of 51747]

74 NH PUC 164

Re Tilton and Northfield Aqueduct Company

DF 89-063
Order No. 19,407

New Hampshire Public Utilities Commission

May 16, 1989

ORDER authorizing a water utility to issue long term debt.

SECURITY ISSUES, § 44 — Authorization — Long term debt — Retirement of existing obligations — Costs of operations — Public water utility.

[N.H.] A public water utility was authorized to issue long-term debt in the form of a 10 year bank note where the purpose of the issuance was to retire existing obligations and to fund meter acquisitions and other costs.

By the COMMISSION:

ORDER

WHEREAS, Tilton and Northfield Aqueduct Company ("the Company") a duly established operating public water utility in Tilton, New Hampshire; and

WHEREAS, pursuant to R.S.A. 369:1 and 4, the Company filed on April 20, 1989, an application for authority and approval of the issuance of long term debt; and

WHEREAS, on April 20, 1989 the Company states that its long term debt was in the amount of $77,110; and

WHEREAS, the Company proposes to increase its long term debt to $164,354.46; and

WHEREAS, the Company's purpose in issuing this $164,354.46 note is to retire existing obligations to the Bank of New Hampshire, 700 meter acquisitions, State Street Bank and Trust costs, engineering start-up cost, and a back-flow prevention survey; it is hereby

ORDERED, that the Company is hereby authorized to borrow a principal amount of $164,354.46 by the issuance of a note to the Bank of New Hampshire, at a rate of one and one-half percent (1 1/2%) over the prime rate from the State Street Bank and Trust, for a period of ten (10) years, in accordance with the terms, conditions, and purposes described in its application; and it is

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

FURTHER ORDERED, that this Order shall be effective from the date of this order unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of May, 1989.

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NH.PUC*05/16/89*[61410]*69 NH PUC 244*Granite State Electric Company

[Go to End of 61410]

69 NH PUC 244

Re Granite State Electric Company

DR 84-1, Order No. 17,031

New Hampshire Public Utilities Commission

May 16, 1989

INVESTIGATION into a possible reduction in an electric utility's incentive rate of return.

Return, § 26.4 — Cost of common equity — Incentive return — Effect of incentive.

An electric company's rate of return on common equity containing an incentive element was undisturbed where the company's tariff rates were deemed just and reasonable and not affected by the incentive component.

Return, § 26.4 — Cost of common equity — Incentive return versus fair rate of return.

Statement, in a dissenting opinion, that an incentive rate of return should never be granted a utility and that efficient management should only be balanced by a fair rate of return. p. 246.

(IACOPINO, commissioner, concurs in part and dissents in part, p. 246.)

APPEARANCES: For the Company, Michael Flynn, Esquire; For the Community Action Program, Gerald Eaton, Esquire; For the New Hampshire Public Utilities Commission Staff, Larry Smukler, Esquire.

By the COMMISSION:

REPORT

Per Order No. 16,837, dated January 4, 1984 (69 NH PUC 4), the Commission established this docket in order to determine "whether Granite State Electric Company's rate of return on common equity should be reduced and, if so, by what amount".

A properly noticed public hearing was accordingly held at 10 a.m. on April 7, 1984 at the Commission's office in Concord.

The subject was Granite State Electric Company's incentive and accordingly the reasonableness of its rates.

Granite State Electric Company's rate of return as established in Dr 81-86, Report and Sixth Supplemental Order No. 15,452, dated April 3, 1982 (67 NH PUC 117), was 16.0% on common equity. This 16.0% was comprised of a 15.5% return element and a 0.5% incentive element.

Granite State Electric Company had originally been granted the 0.5% incentive per the following rationale as stated in DR 81-86 (67 NH PUC at pp. 132, 133):

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The subject of incentives is a delicate one. It invariably leads to the proverbial "carrot or stick". Are we as a Commission to award a utility for above-average performance, or are we to be punitive to poorly managed companies, or both? If an award or punishment, to what extent for each?

Both GSA and [Community Action Program] CAP confronted this subject in brief. We find they both agree, that, in most instances, [New England Electric System] NEES has shown good management practices. The Commission agrees that NEES has demonstrated some excellent management techniques.

The development of NEESPLAN, the encouragement of conservation, the coal conversion of Brayton Point and their investment in nuclear projects with construction permits all demonstrate a serious commitment to the backout of oil, both in the near and long term. The Commission believes it reasonable to expect that NEES will continue to demonstrate leadership by purchasing an additional share in Seabrook I or II, or both, in the very near future. Such a move will allow the benefits of Seabrook to be further extended to New Hampshire ratepayers and replace the loss of potential baseload capacity from the now-cancelled Pilgrim II unit.

A utility that shows initiative and concern that goes beyond the stockholder's interest and encompass a minimization of costs to ratepayers (i.e., coal conversions) can only be in the aforementioned "carrot" category.

At this point, however, the Commission finds it difficult to determine the incentive value to be given simply because of a lack of precedent. We consider two hundred basis points as presented by Mr. Houston excessive; yet it appears some value is in order. Due to the lack of precedent, we will develop a starting point of 50 basis points to be added to the cost of common equity.

A utility that is deserving of this incentive will be expected to perform as well, if not better, than it has in the past. Additionally, we expect the ratepayers of New Hampshire to see benefits from this incentive in a tangible form, and, because this is an innovation for the period these rates, and amendments thereto, are in effect, we will not hesitate to exercise our legal option, under NH RSA 365:5 and withdraw this incentive if we are with the opinion a utility is no longer warranting of it.

So the issue became one of whether the utility still warranted the incentive and what effect the 0.5% has on the Company's rates being reasonable and just.

The Company provided a post-hearing analysis on April 3, 1984, showing the utility's adjusted 1983 return on common equity to be 14.8%. Beyond this, the utility on May 2, 1984 updated its analysis through March 31, 1984, and stated that the adjusted return on common equity had eroded over the first three months of 1984.

The Commission finds the calculations used to arrive at an adjusted return on equity in the 14.8% range are reasonable based on the record in DR 81-86, and that at this time, if we were to determine a reasonable return on equity for this Company, the 14.8% would fall within the range of reasonableness.

Based on these facts, the Commission will not address the incentive aspect at this time, as we feel the current tariff rates are just and reasonable, and accordingly will close the docket without ordering any rate changes, but will

continue to closely monitor the return on equity being earned by Granite State Electric Company.

Our Order will issue accordingly.

ORDER

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

WHEREAS, the Commission has determined that Granite State Electric Company's current tariff rates are just and reasonable; it is

ORDERED, that this docket, opened by the Commission, will be closed without ordering any rate changes.

By Order of the Public Utilities Commission of New Hampshire this sixteenth day of May,

1984.

Opinion of Commissioner Vincent J. Iacopino

I concur with the conclusion set forth in the report accompanying Order No. 17,031. However, I do not approve the granting of an incentive rate of return for any utility. Efficient management should be valanced by a fair rate of return. Efficient management should be compensated by ratepayers only with a "fair" rate or price for the utility service. Other compensation may be found in the basic monopoly franchise concept of delivering utility services. A well-managed company with an efficient operation will receive compensation for its stockholders and ratepayers by having easy access to capital markets and other benefits that will be shared between them.

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NH.PUC*05/23/89*[51748]*74 NH PUC 164*Public Service Company of New Hampshire

[Go to End of 51748]

74 NH PUC 164

Re Public Service Company of New Hampshire

Additional applicant: Wentworth By The Sea, Inc.

DR 89-058
Supplemental Order No. 19,410

New Hampshire Public Utilities Commission

May 23, 1989

ORDER approving an amended special contract for the provision of electric service.

RATES, § 321 — Electric — Special contract — Assignment of costs by customer.

[N.H.] An amended special contract for the provision of electric service was approved

where it was found that the amendments did not alter the basis for approval of the original contract; the approved amendment provided that nothing in the agreement, including a grant of permission to the customer to assign costs to tenants, would render the customer a public utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

On May 4, 1989 the commission issued order no. 19,396 (74 NH PUC 61) approving Special

Contract No. NHPUC-58 between Public Service Company of New Hampshire and Wentworth By The Sea, Inc. This contract modifies the tariff conditions under which rate class GV service is provided to Wentworth and allows Wentworth to assign appropriate portions of its electricity expense to transient tenants of its Marina in Little Harbor, NH.

On May 1, 1989 PSNH filed an amended contract which was not available for commission review when order no. 19,396 was prepared. The amended contract added the following sentence to Article 8 on page 5 of the contract:

> "Nothing in this Agreement, including the grant of permission by PSNH to Wentworth to allow assignment of the cost and redistribution of electricity, is intended to render Wentworth a public utility under the terms of New Hampshire RSA 362:2."

Upon review of this amendment we conclude that the supplemental agreement between PSNH and Wentworth does not alter the basis upon which approval was granted and it is consistent with our findings. Therefore, it is

ORDERED, that contract No. NHPUC-58 executed on April 28, 1989 and filed with the commission on May 1, 1989 is approved subject to the terms of the original order no. 19,396 and further notice to the public, and it is

ORDERED, that PSNH shall effect 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 25, 1989 and designated in an affidavit to be made on copy of this order and filed with this office on or before June 5, 1989; and it is

FURTHER ORDERED, that all persons interested in responding to this amended contract may submit their comments to the commission or may submit a written request for a hearing on this matter no later than June 1, 1989.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of May, 1989.

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NH.PUC*05/24/89*[51749]*74 NH PUC 165*Connecticut Valley Electric Company

[Go to End of 51749]

74 NH PUC 165

Re Connecticut Valley Electric Company

DR 88-121
Order No. 19,411

New Hampshire Public Utilities Commission

May 24, 1989

ORDER adopting an electric rate design stipulation reflecting seasonal and peak cost differences based on long run marginal cost analysis and a "Ramsey" pricing reconciliation procedure.

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1. RATES, § 143 — Reasonableness — Cost of service — Marginal costs — Electric service.

[N.H.] In a approving a stipulated rate design proposal for an electric utility based on long run marginal costs, the commission found that cost reflective rates serve to achieve better allocation of society's resources, fairer allocations of costs among customers, more effective efforts at least cost planning, and ultimately a reduced revenue requirement. p. 168.

2. RATES, § 321 — Electric — Rate design — Marginal costs — Seasonal and peak factors.

[N.H.] Electric rates were redesigned as

Page 165

proposed in a stipulated agreement based on long run marginal costs and a Ramsey pricing reconciliation procedure while maintaining current interclass allocations of revenue responsibility; the redesigned rates reflected "significant" variations in costs across seasons of the year and time of day and a three year phase in of all rate adjustments. p. 168.

3. RATES, § 326 — Electric — Hours of use — Seasonal rates — Marginal cost factors.

[N.H.] Seasonal electric rates were adopted as part of a marginal cost-based rate design stipulation where it was found that the accepted cost of service study supported such rate distinctions and where peak reduction activities were appropriate given capacity constraints in the region. p. 168.

APPEARANCES: Connecticut Valley Electric Company, Inc. by Morris Silver, Esq.; Office of the Consumer Advocate by Joseph Rogers, Esq.; Staff of the Public Utilities Commission by Mary C.M. Hain, Esq.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On November 21, 1988 Connecticut Valley Electric Company (CVEC or company) filed a retail rate structure proposal pursuant to the commission's findings in *Re Connecticut Valley Electric Company, Inc.*, 72 NH PUC 385. Order no. 18,811 approved a special contract between CVEC and Joy Technologies but noted CVEC's recognition that load management rates should be considered for all of the company's retail customers and its commitment to filing rate design proposals for all of its rates.

A prehearing conference was held on January 5, 1989 and the commission issued report and order no. 19,309 (74 NH PUC 51) establishing a procedural schedule which incorporated discovery, staff testimony and settlement discussions, and which designated hearing dates of May 10, 11 and 12, 1989. On May 10, 1989, the parties filed their Stipulation and Agreement and the commission heard testimony supporting the Stipulation and Agreement on May 11,

1989.

II. *POSITIONS OF THE PARTIES*

A. Company

CVEC's rate redesign proposal is based on a long run marginal cost methodology and study, and in part is modeled on the pricing policies that CVEC's parent company, Central Vermont Public Service Corporation (CVPS), has implemented in its own service territory in Vermont in the past 15 years. The company proposed to restructure rates in order to more closely approximate the cost of providing service, in general as it varies with load, and in particular as it varies by voltage and time of use (seasonal and hourly). The proposed restructure included the following elements:

1) A first step toward reflecting seasonal cost differences in rates.

2) The winter peak season defined as December through February.

3) The differential of peak season to off peak season rates of 1.25/1.

4) Mandatory time of use (TOU) rates for the 16 primary and six transmission voltage customers and voluntary TOU rates for secondary voltage residential and business customers.

5) Lower kWh charges (particularly for the nine month off peak season) to reflect the current lower incremental cost associated with energy.

6) Higher kW demand charges (particularly for the peak costing periods) to reflect the higher incremental cost associated with capacity.

7) Higher customer service charges to reconcile between the results of the marginal cost study and the revenue requirements.

8) Disaggregation of the kW demand charge into two components for the classes that are demand and TOU billed: a

production related part and fixed facilities component with a ratchet applying only to the latter part.

9) An increase of the rate for the first 250 kWh residential block toward the level of the tail block rates so that the tailblock rates can be set closer to marginal cost by season.

10) Proration of monthly customer charges on a daily basis.

11) Street and area lighting rate adjusted to reflect the cost saving associated with high efficiency fixtures.

12) Power factor charges increased to reflect cost.

13) Establishment of two new rate classes, class O (nighttime only water heating service) and G-T (TOU for secondary business customers).

14) No change in the existing class revenue responsibility.

CVEC argued that its restructured rates were more reflective of the economic measures of cost, and would ultimately lead to better allocation of resources, fairer allocations of costs among customers, more effective planning and implementation of demand-side management programs and reduced revenue requirement for the company.

B. Staff

Staff generally supported the company's efforts in designing rates that are more reflective of cost and in particular the seasonal and TOU aspects of the company's proposals. In testimony, however, staff expressed reservations in the following areas.

1. Computational procedures employed by the company when developing in marginal cost of service study.

2. The effect of the disparity between the costing periods in the rate and in the cost of service study, particularly as it relates to TOU rates D-T, G-T and T.

3. Specific characteristics of some of the individual rate proposals such as the level of rate D-T, the lack of seasonal differential in the initial block of rate D, the peak/off-peak revenue responsibility and the fixed facilities charge of rate GV, and the level of production demand charge of rates GT and T.

4. The power factor adjustment clause in rates T and GV.

5. The increase of the customer charge to reconcile between marginal cost and the revenue requirement and its implications for the commission's policy with regard to lifeline rates.

6. The burden placed on rate design as a tool for lowering system peak rather than the implementation of company-initiated demand-side management programs.

7. The cost associated with the implementation of innovative rates.

8. The allocation of the costs associated with the conversion from mercury vapor to high pressure sodium lighting fixtures.

C. Office of the Consumer Advocate

The Consumer Advocate did not file testimony.

III. *STIPULATION AND AGREEMENT*

The parties agreed that the marginal cost study indicates that the variations in providing an increment of service at different times of the year and day were significant and that rates reflecting those cost differentials would cause customers to make better consumption decisions, which in turn would reduce system costs. The company proposed to reconcile the difference between the results of its marginal cost of service and its revenue requirement by applying Ramsey pricing to the customer, demand and energy components in each class while holding the inter-class allocations of revenue responsibility constant. To ameliorate the impact on customer bills, the parties agreed to phase the adjustments in over three years and the company agreed to establish specific programs to assist customer in the adjustment process. The time horizon for implementation of phases two and three will be, respectively, one and two years after the rates have gone into effect.

For purposes of phase one, the parties agreed that the historical data used in the

company's marginal energy cost calculation is a reasonable approximation of the rate year marginal energy costs. However, the parties agreed that forward looking marginal energy cost is appropriate for ratemaking purposes and the company will employ its new capability to simulate hourly marginal energy costs and update its system load data and energy lost multipliers for phase two. CVEC will recalculate its marginal generation capacity cost using the methodology proposed by staff for phase one and will subsequently improve on the methodology in line with its Least Cost Planning obligations. It will also correct calculations for marginal transmission and distribution capacity costs starting in phase one.

In finalizing the rate levels, the parties agreed to reflect the 1989 purchased power costs and the results of the settlement resulting from the investigation by the commission Finance Department into CVEC's rate of return. For phase one, the adjustments will be applied first to rate classes T, GV and O until their percentage of revenue requirements equals that last found by the commission. Any additional adjustment will be equi-proportional across all rate classes.

The parties noted that CVEC's ability to move toward marginal cost based rates is constrained by the price signals the company receives via the wholesale rate set by the Federal Energy Regulatory Commission (FERC) on embedded cost principles. The company and staff agreed to monitor the New England Power Company rate case currently before the FERC, consider its application to CVPS and advise the commission as to the applicability of a marginal cost based wholesale rate.

The parties settled on a number of modifications to individual rates. In particular, they agreed to an equi-proportional allocation of fixed costs in rate D, excluding the first 250 kWh block. The company will study targeted lifeline proposals and will provide evidence on the effects by income level in the event it subsequently proposes to raise the customer charge. The company will also investigate issues of the time of use periods in its cost study and the optimal power factor. It has agreed to adjust its fixed facilities charge as it relates to transmission capacity costs and has withdrawn its shared savings plan for street light conversions.

The company has agreed to actively pursue company-initiated demand-side management programs in keeping with its Least Cost Planning guidelines. It will provide data regarding the implementation costs of its rate redesign program.

The parties will use their best efforts to implement the new rates by October 1, 1989 but in any event no earlier than August 1, 1989 and no later than January 1, 1990.

The Consumer Advocate accepts the phase one rate design restructure but stated that, if the company's goal was to prevent cream-skimming, further moves toward marginal cost should be accomplished by reductions in its rate of return rather than shifts in its revenue allocation.

IV. *COMMISSION ANALYSIS*

[1-3] The commission has reviewed the company's original proposal and its prefiled and oral testimony, staff testimony and the proposed Stipulation and Agreement, and finds that the

Stipulation and Agreement is fair, reasonable and in the public good.

The commission in general supports the concept that rates should reflect the cost of service. We concur with the company and the parties that cost reflective rates serve to achieve better allocation of society's resources, fairer allocations of costs among customers, more effective efforts at least cost planning and ultimately a reduced revenue requirement for the company. Given the conclusion by the parties that the cost of service study indicates significant variations in costs across seasons of the year and time of day, we find that the institution of rates reflecting those seasonal and hourly variations to be fair and reasonable. The company's efforts to reduce its peak load growth are especially timely in the current New England capacity situation.

We note that the parties intend to phase in the rates over a three year period and will continue their efforts during that period to improve on the cost study and load data and to further

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consider such issues as lifeline rates and the optimal power factor. We find the three year phase-in to be reasonable, both from the perspective of rate continuity and of the advisability of refining the cost of service study and monitoring changes in the NEPOOL rules prior to fully implementing the study.

We will therefore approve the Stipulation and Agreement as submitted by the parties.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Stipulation and Agreement filed by the parties be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of May, 1989.

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NH.PUC*05/26/89*[51750]*74 NH PUC 169*Dodge Falls Hydroelectric Project

[Go to End of 51750]

74 NH PUC 169

Re Dodge Falls Hydroelectric Project

DE 89-020
Order No. 19,414

New Hampshire Public Utilities Commission

May 26, 1989

ORDER granting authority to operate and maintain electric transmission lines as part of a hydroelectric project.

ELECTRICITY, § 7 — Authorization for transmission lines — Crossing of public waters — Hydroelectric project.

[N.H.] Authority to cross over public waters (the Connecticut River) with electric transmission facilities was granted to the proponent of a hydroelectric project where overhead placement of the facilities was necessary due to geological conditions in the area, and where it was found that recreational use of the river would not be adversely affected and that the line would pose no aeronautical hazard.

APPEARANCES: Kenneth Oriole and Jeffrey T. Klaucke on behalf of Dodge Falls Associates; and Arthur C. Johnson on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 27, 1989, Northeast Engineering Associates, Inc. filed on behalf of Dodge Falls Associates (company) a petition pursuant to NH RSA Chapter 371:17, 19 and 20 for a license to construct, operate and maintain a 34.5 kV transmission line across the Connecticut River between the towns of East Ryegate, Vermont and Bath, New Hampshire. This power line crossing is proposed as part of the 5 MW Dodge Falls Hydroelectric Project. On January 31, 1989, the commission sent a letter to Jeffrey Klaucke, Northeast Engineering Associates, the project development engineer, informing him of the nature of the docket and enclosing a copy of the New Hampshire Code of Administrative Rules, Puc 204.03. On February 6, 1989, staff recommended that a public hearing be held instead of approving the petition *Nisi.* On March 1, 1989, an order of notice was issued setting a hearing for April 11, 1989. The hearing was held as scheduled, and the affidavit of publication indicated that the proceeding was properly noticed. The petitioner filed additional information on April 18, 1989 in response to a commission's request during the hearing.

II. *Background*

The Dodge Falls Hydroelectric Project is located on the Connecticut River in Bath, New Hampshire at the left (east) abutment of the Clairmont Paper Mill Dam. A new single unit 5 MW powerhouse with an adjacent switchyard is to be constructed. The power generated by the project will be sold to Vermont utilities through

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the Vermont Power Exchange, Inc. as purchasing agent. A 34.5 kV transmission line crossing of the Connecticut River is planned adjacent to the new powerhouse and existing dam. A single span transmission line crossing with wood pole dead-end structures located close to the river's edge on both banks is planned. The transmission line will cross the river approximately 90

feet upstream of the existing dam alignment. Clearances of 41.8 and 20.0 feet are respectively planned above the normal pool (elev. 423.6 ft.) and 100 year flood pool (elev. 438.0 ft.) levels. The property on both banks of the river where the subject crossing will be located is owned by Clairmont Paper Mill, Inc. Dodge Falls Associates has an easement for construction and operation of the hydroelectric project, including the proposed transmission line interconnection to Green Mountain Power Corporation's (GMP) substation.

On February 8, 1989, the Vermont Public Service Board (VPSB) conducted its own separate hearing regarding site aesthetics. This hearing resulted in several modifications to the site configuration. One of these changes was the relocation of the access road away the area of the proposed transmission line.

III. *Positions of the Parties*

A. There were two witnesses on behalf of Dodge Falls Associates; Kenneth Oriole, Project Manager, Hydra-Co Enterprises of Syracuse, New York, and Jeffrey Klaucke, professional engineer, Northeast Engineering Associates, Inc., Fairfield, Connecticut. The company has requested a license to construct, operate and maintain a 34.5 kV, single span transmission line across the Connecticut River as part of the Dodge Falls Hydroelectric Project between the towns of East Ryegate, Vermont and Bath, New Hampshire. The proposed project is located at the existing Clairmont Paper Mill Dam and will consist of a single 5 MW unit. Witness Klaucke testified that the power line will be located approximately ninety feet upstream of the existing dam. The subject line will be constructed to maintain a minimum vertical clearance of approximately forty feet above normal pool level, and twenty feet above the one hundred year flood level.

Mr. Klaucke explained that the decision to go overhead instead of going underground was due to a major concern for the cable's integrity over the life of the project. He stated that the channel upstream of the dam is shallow and consists of irregular bedrock. On the left bank in the area of the substation, the ledge is exposed indicating that it would be difficult to bury. Additionally, a short distance upstream the water flow is very high during flooding, and scoring and movement of materials would make it difficult to protect the cable and keep it in place.

The witness explained that the project will provide public access and parking on the New Hampshire side of the river. Currently, there is no public access on either side. Fishing would be allowed along the tailrace area; however, for safety, the area adjacent to the powerhouse intake area will be posted as a non-fishing area.

In regard to boating, Mr. Klaucke stated that boating in the project area consists mainly of canoeing. Warning signs will be used to alert boaters of the dam. A canoe outage point with a second emergency takeout point with associated portage trails will be installed. The witness concluded that the project area is not suitable for sailing; moreover, he is not aware of any local sailboat launching facilities.

The company plans to control fishing and boating mainly by the use of warning signs. The design of these signs will be reviewed by commission staff prior to their construction and installation.

The two witnesses clarified that the access road to the powerhouse will be rerouted as the results of the hearing in Vermont on February 8, 1989 by the VPSB. On March 24, 1989, the

VPSB issued its order regarding their review of the powerhouse design and landscaping plans. In response to this order, the powerhouse access road alignment will be changed such that the approach to the powerhouse is from the downstream side rather than from the upstream side as originally shown. Therefore, the road will no longer pass beneath or be situated near the line.

B. The staff did not support or oppose the petition. Staff's participation consisted of

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questioning the witnesses to develop a more complete record.

IV. *Findings of Fact*

The company has requested a license for authority to cross over public waters of the Connecticut River with a 34.5 kV transmission line. The record indicates that the powerhouse for the Dodge Falls Hydroelectric Project will be constructed on the left (east) abutment of the existing Clairmont Paper Mill Dam. The power generated will be sold to Vermont utilities, thus necessitating a transmission line crossing of the Connecticut River.

The existing crest of the dam elevation is 421.6 feet. However, the dam will be operated with 2 feet of flashboards. This will bring the elevation to 423.6 feet. The line will be constructed to maintain a forty foot vertical clearance above normal pondage level and twenty foot clearance above the one hundred year flood level of 438 foot elevation. The record shows that the transmission line crossing will be located approximately ninety feet upstream of the dam. In defense of the project's decision to go overhead as opposed to underground, the developer's witness testified that due to the nature of the waterflow, scoring and movement of material, it would be difficult to protect the cable and keep it in place if an underground water crossing were constructed.

The record shows that on February 6, 1989, the commission received a letter from Richard Bolin, Aeronautics Inspector, Division of Aeronautics, State of New Hampshire Department of Transportation, stating that his division has reviewed the filing and has found that it "will not constitute a hazard to air navigation, and will not have any other adverse aeronautical effect."

The record also addressed the concern of public access relative to fishing and canoeing. In regard to the subject of fishing at the project, the shoreline near the powerhouse intake will be posted with danger signs that also indicate no fishing. The overhead transmission line traversing this area will be approximately 50 feet above the normal pool level. The Vermont shoreline in the vicinity of the transmission line crossing is within the CPM complex and not open to the public.

Canoeing is popular along this stretch of the river, and canoe portage facilities will be constructed. At the takeout point, canoe portage signs will be placed. For additional safety, a second emergency takeout point will be maintained slightly downstream of the main canoe portage point. The record shows that it would not be reasonable to expect sailboating in the project area.

In response to an order from the Vermont Public Service Board, the project access road will be rerouted to minimize the impact on the shoreline. This will require the road to approach the powerhouse from a different direction than originally planned. Therefore, the public access road

will not go underneath the subject transmission line.

V. *Commission Analysis*

This was a properly noticed public hearing; moreover, the petitioner indicated in its petition that it served copies of the petition, along with pertinent attachments, maps and diagrams to those identified on the filed Service List. However, the commission takes note that there were no intervenors or public interest shown during the time of the hearing or since.

The proposed powerhouse and accompanying substation will be located on the east bank of the river in Bath, New Hampshire, with the generated power being sold to Vermont utilities on the opposite side of the river. This situation provides a reasonable need for a power line water crossing in order to interconnect into the Vermont grid.

In light of the concern for the maintenance and protection of the 34.5 kV cable if placed underground, we accept the proposed design of an overhead crossing. In regard to an overhead facility, the line construction provides for vertical line clearances which meet or exceed applicable code requirements.

Additionally, we find that the concern for public safety in the project area regarding anticipated canoeing and fishing activities have been adequately addressed.

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 Dodge Falls Associates be, and hereby is, granted license pursuant to RSA 371:17 *et seq.* to place, operate and maintain electric lines over and across the Connecticut River as described in Exhibit one of the proceedings; and it is

FURTHER ORDERED, that all construction meet 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-sixth day of May, 1989.

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NH.PUC*05/26/89*[51751]*74 NH PUC 172*New Hampshire Electric Cooperative

[Go to End of 51751]

74 NH PUC 172

Re New Hampshire Electric Cooperative

DR-88-119
Supplemental Order No. 19,415

New Hampshire Public Utilities Commission

May 26, 1989

ORDER allowing an electric cooperative to continue a fuel charge refund credit.

AUTOMATIC ADJUSTMENT CLAUSES, § 57 — Billing collections, and adjustments — Over- and undercollections — Fuel clause credits — Electric cooperative.

[N.H.] An electric cooperative was directed to continue its fuel charge refund credit pending the filing of a revised fuel charge where a continuing overcollection on base fuel costs was present and where the cooperative was waiting for a revised bill from its fuel supplier that would have a major impact on the overcollection.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on September 1, 1988 by Order No. 19,162 the commission approved a fuel charge of $0.01475 per kwh for the New Hampshire Electric Cooperative, Inc. (the Coop); and

WHEREAS, by the same order number the commission further approved a credit of $0.00296 to the fuel adjustment charge to be effective from September 1, 1988 to May 31, 1988 to cover an over recovery of its fuel charge of $1,320,937 as of June 30, 1988; and

WHEREAS, by letter dated May 11, 1989 the New Hampshire Electric Cooperative, Inc. has stated its intention to continue this credit through June 30, 1989; and

WHEREAS, the Coop claims that it will have refunded in excess of the $1,320,937 as of May 31, 1989; and

WHEREAS, the Coop further states that they continue to over collect on the base fuel costs; and

WHEREAS, in reports submitted to this commission on a monthly basis, the Coop appears to have an over collection as of March 31, 1989 of $767,869; and

WHEREAS, it is the Coop's intention to file for a revised fuel charge that will refund this overcollection; and

WHEREAS, the Coop states that it is waiting for a revised bill from its major fuel supplier (Public Service Company of New Hampshire) which will have a major impact on its fuel charge over collection; and

WHEREAS, the commission finds that it is in the public good to continue the credit; it is

ORDERED, that the New Hampshire Electric Cooperative, Inc. is hereby permitted to continue to reflect its refund to the fuel charge a credit of $(0.00296) per KWH until June 30, 1989; and it is

FURTHER ORDERED, that the Coop file on or before June 1, 1989 a revised fuel charge for effect on July 1, 1989.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of May, 1989.

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NH.PUC*06/01/89*[51753]*74 NH PUC 174*Tennessee Gas Pipeline Norex Project/EFEC

[Go to End of 51753]

74 NH PUC 174

Re Tennessee Gas Pipeline Norex Project/EFEC

DSF 89-060
Order No. 19,417

New Hampshire Public Utilities Commission

June 1, 1989

ORDER granting authority to cross public waters along the proposed route of a natural gas pipeline.

CERTIFICATES, § 121 — Pipeline — Public water crossings — Natural gas.

[N.H.] Proposed natural gas pipeline public water crossings were approved where it was found that such crossings were necessary for the provision of gas service to the public and all crossings would be buried under stream beds and would not unreasonably interfere with the public use of any ponds, tidewater bodies or streams.

By the COMMISSION:

REPORT

I. *Introduction*

On November 8, 1988 Tennessee Gas Pipeline submitted an application to the Energy Facility Evaluation Committee (EFEC) for a permit under statute RSA 162-H to construct 10.5 miles of 12” diameter natural gas pipeline and associated meter stations. The facilities, known as the NOREX project are located in Hillsborough and Merrimack Counties, New Hampshire and generally parallel the existing 8” diameter pipeline between Manchester and Allenstown. The route is fully documented on maps contained in the application.

Section RSA 162-H:4 II defines the relationship of the EFEC to other state agencies having jurisdiction over such facilities and

reads in part as follows:

> "The committee shall incorporate in any permit issued hereunder such terms and conditions as may be specified to the committee by any of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any permit hereunder if any of such other state agencies denies authorization for the proposed activity over which it has jurisdiction."

The Public Utilities Commission has jurisdiction over construction and maintenance of pipelines which cross public waters of the state and state owned land. RSA 371:17 provides as follows:

> "Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, `public waters' are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility."

The subject docket, DSF 89-060 was opened for the purpose of performing the required investigation and issuing an appropriate order to the EFEC on the findings of those investigations.

II. *Procedural Background*

On November 8, 1988 the application of Tennessee Gas Pipeline was filed with the EFEC. In accordance with the requirements of RSA 162-H a duly noticed public information hearing was held in Hooksett, NH on February 22, 1989. Adversarial hearings were held in Concord, N.H. on March 30, 1989. As members of the EFEC both the Chairman and Chief Engineer of the Public Utilities Commission participated in these hearings.

III. *Commission Findings*

In response to a data request of the PUC, the applicant identified a total of 21 wetlands which might meet the definition of a public water crossing as described in RSA 371:17. No public lands under PUC licensing jurisdiction were identified. No further PUC review of the wetland issues is necessary in view of the Department of Environmental Service's participation in this proceeding.

On April 11, 1989 a land reconnaissance of the pipeline route was conducted and on April 24, 1989 an aerial flyover took place. Based on these inspections it is determined that none of the wetlands are navigable and they are unlikely to be actively used by the public. Four of the wetlands have sufficient flow to be characterized as named brooks or streams.

Browns Brook in Hooksett was the largest stream observed and was approximately 10-12 ft. wide with rapid flow during the springtime reconnaissance. Peters Brook in Hooksett bisects the

lands of Manchester Sand and Gravel Company and is crossed overhead by the existing 8” diameter line. Dalton Brook is a small brook crossing Route 101-B in the general vicinity of the pipeline's highway crossing. Messer Brook flows through a wetland area adjacent to Route 28 — Bypass in Hooksett but was not readily distinguishable as a stream at the proposed pipeline crossing.

After complete review of these facts, we find that the proposed pipeline crossings are reasonably necessary for the provision of gas service to the public and subject to the conditions stated below will not unreasonably impact public safety or public use of any ponds, tidewater bodies or streams.

This finding is predicated on the condition that all water crossings including the crossing of

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Peters Brook be buried under the stream bed. Furthermore, the pipeline shall be designed, constructed, operated and maintained in accordance with the minimum safety standards of the U. S. Department of Transportation as given in 49 CFR part 192 and the requirements of the New Hampshire Gas Safety Program as administered by the NHPUC. Construction and site restoration must conform to the requirements of the New Hampshire Wetlands Board and the Department of Environmental Services.

Our order will issue accordingly.

ORDER

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

ORDERED, that a license for crossing Browns Brook, Peters Brook, Dalton Brook and Messer Brook and other minor streams along the route as shown on maps TE-E14-273C-100-25 through TE-E-14-273C-100-35 of the application of Tennessee Gas Pipeline; be and hereby is granted; and it is

FURTHER ORDERED, that the conditions contained in the foregoing Report be included within any permit issued by the Energy Facility Evaluation Committee for the proposed 12” diameter pipeline.

By order of the Public Utilities Commission of New Hampshire this first day of June, 1989.

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NH.PUC*06/05/89*[51752]*74 NH PUC 173*Winter Termination Rules

[Go to End of 51752]

74 NH PUC 173

Re Winter Termination Rules

DE 89-082
Order No. 19,416

New Hampshire Public Utilities Commission

June 5, 1989

ORDER instituting an investigation of whether to continue current waivers to termination rules for two electric utilities.

PAYMENT, § 33 — Winter termination rules — Electric utilities.

[N.H.] The commission instituted an investigation of whether to continue current waivers of winter termination rules for two electric utilities where the commission had granted applications for such waivers in the past in order to implement an experimental program and had ruled at that time that a generic investigation of empirical data gathered as part of the experiment was necessary to protect against an erosion of customer protections for residential users.

By the COMMISSION:

ORDER

WHEREAS, on November 26, 1984, as a result of Docket DE 80-154, the public utilities commission implemented N.H. ADMIN. Rule PUC 303.08(k) and 503.9(k) governing termination of utilities service during the winter months; and

WHEREAS, in December, 1981, the commission opened DRM 81-374 to investigate and reevaluate the winter termination rules, wherein, by Order No. 15,952 (67 NH PUC 742), the commission amended said rules concerning arrearage limits not subject to disconnection, and extended the protection of the elderly to include those 65 years of age or above, and

WHEREAS, in Docket DRM 82-304, the commission, by Order No. 16,164 (68 NH PUC 22 [1983]), reaffirmed its findings and adopted them into the permanent rules; and

WHEREAS, by supplemental Order No. 16,656, dated September 27, 1983, the commission reinstituted an investigation of winter termination policies and indicated an interest in considering requests for waivers from the winter termination rules when those waivers proposed serious alternative programs; and

WHEREAS, on September 16, 1983, Exeter and Hampton Electric Company (E&H) filed a petition for temporary exemption from N.H. ADMIN. Rules PUC 303.08(k)(2)(3)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; and

WHEREAS, by Order No. 16,751 in Docket DE 83-297 (68 NH PUC 660 [1983]), the commission found that E&H's efforts in developing the program were constructive and therefore granted the request for waiver; and

WHEREAS, E&H sought and was granted a continuation of the temporary waiver for each subsequent year since 1983; and

WHEREAS, a similar waiver was requested and granted to Concord Electric Company in

Docket No. DE 86-228 by Order No. 18,389 dated September 2, 1986 (71 NH PUC 526), with said waiver being renewed by the commission to the present time; and

WHEREAS, in Docket No. DE 88-111, in report and order No. 19,199 (73 NH PUC 412 [1988]), the commission granted E&H's request for continued waiver of the winter termination rules with the following reservations:

> ... (T)he clear erosion of customer protection experienced by E&H's residential customers suggests 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 useful in suggesting amendments in 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 consistence with the public interest in the long run.
>
> Docket DE 88-111, report accompanying Order No. 19,199, at 11 (73 NH PUC at 417).

WHEREAS, the commission has determined that it is now appropriate to investigate whether all electric and gas utilities should henceforth be required to adhere to the Winter Termination Rules prescribed in N.H. ADMIN. Rules 303.08(k) and 503.09(k); it is hereby

ORDERED, that Docket No. DE 89-082 is hereby opened to investigate whether the waivers to the Winter Termination Rules currently in force regarding E&H Electric Company and Concord Electric Company should continue to be authorized, whether consideration of other such waivers or amendments to the Winter Terminations Rules are in the public interest, or whether strict adherence to the current Winter Termination Rules by all electric and gas utilities should henceforth be strictly enforced; and it is

FURTHER ORDERED, that a prehearing conference pursuant to RSA 541:16 and rule Puc 203.05, be held at the offices of the commission at 8 Old Suncook Road, Concord, New Hampshire at ten o'clock in the forenoon on the 20th day of June, 1989; and it is

FURTHER ORDERED, that said prehearing conference will address the issues of procedural schedule, intervention, and other preliminary matters; 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 hearing.

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1989.

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74 NH PUC 176

Re Chichester Telephone Company

DF 89-021
Order No. 19,419

New Hampshire Public Utilities Commission

June 5, 1989

ORDER approving a petition by a local exchange telephone carrier to amortize certain deferred extraordinary maintenance costs.

EXPENSES, § 12 — Ascertainment of expenses — Abnormal expenses — Maintenance — Amortization — Telephone.

[N.H.] A local exchange telephone carrier was allowed to treat certain unusual and extraordinary maintenance expenses incurred to bring service to a minimum acceptable level as deferred assets for amortization over a three-year period.

By the COMMISSION:

ORDER

WHEREAS, Chichester Telephone Company ("Chichester"), a New Hampshire telephone utility, having filed, on February 3, 1988, a petition for approval to treat unusual and extraordinary maintenance as a deferred asset for amortization in 1988 through 1990; and

WHEREAS, Chichester states in its petition that it has experienced Extraordinary Maintenance Expense for Central Office Equipment and Outside Plant in 1988 in connection with bringing service up to a minimum acceptable level; and

WHEREAS, Chichester provided a schedule reflecting the computation of the requested deferred amount; and

WHEREAS, Chichester proposes to amortize the Central Office deferral in 1988 and 1989 and the Outside Plant portion over 1988 through 1990; and

WHEREAS, Chichester states that the Central Office Equipment portion is $36,835 and the Outside Plant portion is $36,450 and that the amount of the total $73,285 will be recognized in 1988 is $30,567; and

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

ORDERED, that Chichester, Inc. is hereby authorized, to treat the unusual and extraordinary maintenance as a deferred asset for amortization in 1988 through 1990; and it is

FURTHER ORDERED, that the amortization of the Central Office portion of $36,835,

shall occur in 1988 and 1989; and it is

FURTHER ORDERED, that the amortization of the Outside Plant portion of $36,450, shall occur 1988 through 1990 as scheduled in the petition; and it is

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1989.

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NH.PUC*06/05/89*[51755]*74 NH PUC 177*New England Telephone and Telegraph Company, Inc.

[Go to End of 51755]

74 NH PUC 177

Re New England Telephone and Telegraph Company, Inc.

DR 89-042
Order No. 19,421

New Hampshire Public Utilities Commission

June 5, 1989

ORDER approving tariff changes expanding the availability of "Flexpath" and analog to digital PBX services provided by a local telephone carrier.

SERVICE, § 433 — Telephone — "Flexpath" service — Analog to digital PBX service — Local exchange carrier.

[N.H.] A local exchange telephone carrier was permitted to extend its "flexpath" service tariff to include WATS lines and other network access lines and to extend the availability of analog to digital PBX service where it was found that the changes would have little effect on the utility's net revenue.

By the COMMISSION:

ORDER

WHEREAS, on March 15, 1989 New England Telephone and Telegraph Company, Inc. (Company) filed a revision of its NHPUC No. 75, Part C — Section 5, Third Revision of Page 1, Third Revision of Page 2, Second Revision of Page 3 and Second Revision of Page 5, for effect on April 14, 1989; and

WHEREAS, such filing proposed, first, to expand the provision of Flexpath to include

WATS lines and other network access lines, second, to expand the availability of Analog to Digital PBX service to include suitably equipped digital central offices, and third, to capitalize the words Flexpath and Superpath and change such from a service mark (SM) to a Registered Service Mark designation; and

WHEREAS, the Company has requested the waiver of Chapter Puc 1603 and 1601.05 (J); and

WHEREAS, on April 14, 1989 the proposed tariff revision was suspended by Order No. 19,369 to allow for further investigation; and

WHEREAS, further investigation indicates shows that the purpose of such filing has a *de minimis* effect on net revenue; and

WHEREAS, the stated purpose of such filing is to expand the provision of Flexpath digital PBX service to include WATS and other network access lines to permit growth and flexibility of customers' network choices; and

WHEREAS, such filing also expands the availability of Analog to Digital PBX Service to include suitably equipped central offices enabling customers to retain analog service while adding feature flexibility; and

WHEREAS, the proposed change from use of a Service Mark to a Registered Service Mark is an administrative change having no real effect on customers; it is therefore

ORDERED, that Chapter(s) Puc 1603 and 1601.05 (J) be waived for the purposes of this filing; and it is

FURTHER ORDERED, that NET's NHPUC No. 75 be revised so that Part C — Section 5

— Second Revision of Page 1 be superceded by Third — Revision of Page 1,

— Second Revision of Page 2 be superceded by Third — Revision of Page 2,

— First Revision of Page 3 be superceded by Second Revision of Page 3, and

— First Revision of Page 5 be

superceded by Second Revision of Page 5, be effective as of the date of this order.

Further Ordered, that the above revisions are hereby effective as of the date of this order; and it is

Further Ordered, that the above noted tariff pages be resubmitted and annotated as required by PUC 1601.04 (b)

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1989.

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NH.PUC*06/06/89*[51756]*74 NH PUC 178*Gunstock Glen Water Company

[Go to End of 51756]

74 NH PUC 178

Re Gunstock Glen Water Company

DF 89-014
Order No. 19,423

New Hampshire Public Utilities Commission

June 6, 1989

ORDER granting a water utility authority to borrow funds.

SECURITY ISSUES, § 51 — Factors affecting authorization — Intercorporate relations — Debts owed to affiliate — Water utility.

[N.H.] A water utility was permitted to borrow $30,000 at the prime interest rate variable semiannually to satisfy a debt to an affiliated construction company where it was found that the utility had booked the costs as accounts payable and the financing was in the public interest; however, the commission added that approval of the financing did not constitute acceptance of questionable charges by the construction company as reasonable for ratemaking purposes.

APPEARANCES: Bernice Paradise on behalf of Gunstock Glen Water Company and Eugene F. Sullivan, III, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 20, 1989, Gunstock Glen Water Company (Gunstock Glen or Company) filed a petition for approval of financing in the amount of $30,000. By an order of notice dated February 14, 1989, a prehearing conference was scheduled for March 29, 1989. A hearing on the merits was held on April 14, 1989. Staff and the company stipulated that the proposed financing would be in the public good.

II. *Findings of Fact*

Gunstock Glen has accounts payable to Lakes Region Construction Company in the amount of $30,000. The proposed financing is to pay off this account payable. As Lakes Region Construction Company is a corporation wholly owned by the same owners of Gunstock Glen the commission staff conducted an audit of the purported expenditures. The Finance Department found that Gunstock Glen did in fact have $30,000 worth of accounts payable on its books to Lakes Region Construction Company although it did not find a certain overhead charge reasonable in its opinion. The Engineering Department indicates that said expenditures would be expected in light of the work needed to be done on the water system.

The financing is a variable interest rate note; the interest rate to be fixed every six months at the prime rate. Said prime rate is to be established as reported in *The Wall Street Journal* on the first business day of the month of which the loan is to be adjusted semiannually. If more than one prime rate is reported in *The Wall Street Journal* the average of the reported rates will be used.

III. *Commission Analysis*

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The commission finds that the proposed financing is in the public good. The commission believes that the withholding of its approval of the proposed financing would be detrimental to the company and, therefore, its customers. However, the commission notes that a certain 15% surcharge charged by Lakes Region Construction Company to Gunstock Glen is, in the opinion of the staff, unreasonable. As Gunstock Glen currently has a rate case pending the reasonableness of said surcharge will be analyzed in that proceeding. Thus, this financing approval shall not be considered implicit approval of the surcharge.

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 Gunstock Glen Water Company for authority to borrow $30,000 at the prime interest rate variable semiannually is hereby approved subject to the conditions noted in the attached report.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1989.

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NH.PUC*06/06/89*[51757]*74 NH PUC 179*Claremont Gas and Light Company

[Go to End of 51757]

74 NH PUC 179

Re Claremont Gas and Light Company

DE 87-256
Order No. 19,424

New Hampshire Public Utilities Commission

June 6, 1989

ORDER directing a natural gas distributor to show cause why penalties should not be imposed or criminal prosecution initiated for noncompliance with state and federal safety regulations.

GAS, § 5.1 — Construction and equipment — Safety rules and regulations — Staff training

problems — Penalties — Show cause order — Distribution company.

[N.H.] A natural gas distribution utility was directed to appear before the commission and show cause why penalties should not be imposed or criminal prosecution initiated for its failure to comply with natural gas safety laws where the utility admitted that the probable cause of outages was improper implementation of emergency plans due to a lack of training and where revised plans submitted by the utility to cure such inadequacies were found in probable violation of state and federal safety laws.

By the COMMISSION:

ORDER

On November 19, 1987, Claremont Gas & Light Company (Claremont) had an incident that caused an outage affecting approximately 800 - 900 customers; and

WHEREAS, the commission held a hearing on January 19, 1988, on the matter to determine whether Claremont was in noncompliance with appropriate 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, commission order no. 19,242 (73 NH PUC 480 [1988]) required Claremont to submit revised emergency plans and procedures showing modifications and updates, and to deal with the perceived inadequacies of staff training; and

WHEREAS, the commission staff finds these plans and procedures to be in probable violation of state and federal gas safety regulations, specifically, N.H. Admin. Rules Puc 506.02-H, 508.04-A, 508.04-B, 508.04-C, 508.04-D, 49 CFR 191.5, 49 CFR 192.615, and RSA 374:49; it is hereby

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ORDERED, that Claremont appear before this commission at its office in Concord, New Hampshire, 8 Old Suncook Road, Building No. 1, in said State at 10 o'clock in the forenoon on August 8, 1989, to show cause why Claremont should not be subjected to criminal prosecution or civil penalties up to $1,000 for each violation for each day that the violation persists, pursuant to the provisions of New Hampshire Statutes RSA 365:41, RSA 365:42, RSA 370:2, RSA 374:7-A, RSA 374:41 *et seq.*, RSA 374:17, or other sanctions prescribed by law.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1989.

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74 NH PUC 180

Re Automatic Dialing Announcing Devices

DE 87-043
Order No. 19,425

New Hampshire Public Utilities Commission

June 8, 1989

ORDER closing docket concerning customer complaints about the use of telephone automatic dialing announcing devices.

SERVICE, § 294 — Connections, instruments, and equipment — Telephone equipment — Automatic dialing announcing devices — Restrictions on use — State legislation.

[N.H.] The commission closed its investigation of customer complaints regarding the use of telephone automatic dialing announcing devices where recently enacted state legislation provided for customer protection through registration of users of such equipment and a requirement that users identify themselves and release the called party's line after the party hangs up.

By the COMMISSION:

ORDER

WHEREAS, on March 23, 1987 the instant docket was opened in response to customer complaints regarding use of Automatic Dialing Announcing Devices ("ADADS") which randomly dial telephone numbers and, upon customer answer, provide a recorded message; and

WHEREAS, House Bill 373-FN relative to the use of ADADS requires any person using such devices to register with the customer protection and antitrust bureau of the Department of Justice; and

WHEREAS, under HB 373-FN, the attorney general would have rulemaking authority to implement the registration process; and

WHEREAS, under the bill's provisions persons using ADADS must identify themselves and state the purpose of such call within 30 seconds; and

WHEREAS, such ADAD system shall be operated, under HB 373-FN, so as to release the called party's line after the called party hangs up; and

WHEREAS, any violations of HB 373-FN are governed by the application of RSA 358-A:2 with any right, remedy, or power for enforcement as set forth in RSA 358-A; and

WHEREAS, HB 373-FN shall take effect January 1, 1990; it is hereby

ORDERED, that the instant docket shall be closed, effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this eighth day of June, 1989.

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NH.PUC*06/08/89*[51759]*74 NH PUC 181*Comex, Inc.

[Go to End of 51759]

74 NH PUC 181

Re Comex, Inc.

DR 89-102
Order No. 19,426

Re Kearsarge Telephone Company

DR 89-102
Order No. 19,426

Re Merrimack County Telephone Company

DR 89-102
Order No. 19,426

Re Contel of New Hampshire, Inc.

DR 89-102
Order No. 19,426

Re Mobile Radio Services and Paging

DR 89-102
Order No. 19,426

New Hampshire Public Utilities Commission

June 8, 1989

ORDER directing regulated telephone carriers providing mobile telephone and paging services to discontinue provision of such services as tariffed offerings and develop rates and file relevant information as nonregulated services.

MONOPOLY AND COMPETITION, § 83 — Telephone — Mobile radio and paging services — Deregulation.

[N.H.] To encourage the development of cellular telephone services through competition, the commission directed all regulated utilities providing mobile radio service (a competitive form of service) to provide such services on a nonregulated basis — i.e., to remove current services from tariffed offerings and develop and file rates for deregulated service.

By the COMMISSION:

ORDER

WHEREAS, in its order no. 19,367 dated April 11, 1989 (74 NH PUC 120) the commission approved New England Telephone and Telegraph Company's withdrawal of its mobile radio service tariff and exempted Radio Telephone Services (RTS) from regulation of mobile telephone service; and

WHEREAS, the above decision was based on RSA 362:6 which states that cellular mobile radio is not regulated; and

WHEREAS, the purpose of such statute is to encourage the development of cellular mobile radio through competition, and because mobile radio competes with cellular mobile radio, that mobile radio service was therefore found to not be a "public utility" under RSA 362:6; and

WHEREAS, Comex, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Contel of New Hampshire, Inc., and Contel of Maine, Inc. offer forms of mobile radio service; and

WHEREAS, Comex, Inc., Merrimack County Telephone and Contel of New Hampshire, Inc. also offer paging services under tariff; and

WHEREAS, paging was determined by the New Hampshire Supreme Court to be unregulated by its 1982 *Omni* decision; it is hereby

ORDERED, that all forms of mobile telephone services offered by regulated New Hampshire utilities be deregulated and removed from such companies tariffed offerings; and it is

FURTHER ORDERED, that any regulated utilities still offering paging service under tariff shall remove such offering(s); and it is

FURTHER ORDERED, that all companies affected shall provide information on the costs and equipment associated with the offering of mobile service and paging as non-regulated service(s); and it is

FURTHER ORDERED, that each such company shall develop and file rates to be charged the deregulated mobile service and unregulated paging service for the use of the common and jointly used facilities and services

of the regulated company.

By order of the Public Utilities Commission of New Hampshire this eighth day of June, 1989.

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74 NH PUC 182

Re Connecticut Valley Electric Company, Inc.

DR 88-176
Order No.19,428

New Hampshire Public Utilities Commission

June 9, 1989

ORDER affirming a stay on the effective date of changes in short-term rates paid by an electric utility to qualifying facilities (QFs) and affirming findings that the utility had failed to pursue long-term contract negotiations with the QFs.

COGENERATION, § 17 — Contracts — Long-term agreements — Utility obligation to negotiate — Effect of short-term avoided cost rates.

[N.H.] The commission affirmed a prior order staying the effective date for changes in short term avoided costs rates to be paid by an electric utility for purchases from qualifying facilities (QFs); the electric utility had failed to pursue contract negotiations with the QFs during a period between the approval and effective date of the rates, and the extension of the effective date provided an additional period of long-term contract negotiations at the utility's expense as a fair allocation of associated costs, according to the commission.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On April 3, 1989, by report and order 19,360 (74 NH PUC 107), the New Hampshire Public Utilities Commission (commission) stayed the effective date in the change in the short term rate for Qualifying Facilities (QFs) approved by order 19,290 (74 NH PUC 28) from January 1, 1989 until May 1, 1989 to allow additional time for negotiations between Connecticut Valley Electric Company (CVEC) and the New Hampshire QFs currently operating on the CVEC system. It further ordered that the Fuel Adjustment Clause (FAC) rates remain in effect as previously ordered. On April 24, 1989 (by letter dated April 21, 1989) CVEC submitted a status report on the company's negotiations with the QFs in its service territory and also filed a Motion for Rehearing and Reconsideration and Reform. The Motion alleged in part

> 1. that the commission's findings concerning the company's misconduct in its dealings with its QFs has no basis in the record in docket number DR 88-176 in that the company did not indicate that the effective date for new short term rates would be in the fall of 1989, the record contains no evidence of assurances by CVEC that they would negotiate

long term rates prior to the change in the short term rate, orders no. 19,052 (74 NH PUC 117) and no. 19,141 (74 NH PUC 285) do not specifically direct CVEC to negotiate, previous orders do not make clear that the change in the short term rate requires an immediate change in rates paid to interconnected QFs, and neither orders nor agreements with QFs require the company to provide QFs with special notice of its FAC hearing; and

2. that the New Hampshire Limited Electrical Energy Producers Act RSA 362-A and the Public Utilities Regulatory Policy Act of 1978 prohibit the commission from setting rate above avoided cost, neither requires CVEC to negotiate long term arrangements with QFs, and the commission has found the short term rates filed by CVEC to be reasonable.

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CVEC proposed that order no. 19,360 (74 NH PUC 107) be amended to direct that all long term contracts into which it enters on the basis of its then currently filed long term avoided costs be effective as of January 1, 1989. In particular, it noted in its April 21, 1989 status report that Claremont Hydro (Claremont) and Sunander Hydro (Sunander) do not wish to pursue long term contracts at this time; Woodsville-Rochester Hydro are negotiating sale of the facility and offers pursuant to the Request for Bids of Central Vermont Public Service Corporation (CVPSC); Bath Electric Power Company (Bath) is only eligible for a four year rate because of the termination of its financing within a year; and Pettyboro Hydro is ineligible for a long term rate because of its small size.

On May 2, 1989 the commission ordered all parties that wished to file comments, counterproposals and objections to the CVEC Motion to do so by May 12, 1989. Eastman Brook and Bath filed comments, and Orr and Reno filed an objection on behalf of Claremont and Sunander.

The commission has reviewed the CVEC Motion for Rehearing, and the comments and objections of the other parties. Contrary to CVEC's assertions, and based on the record in DR 88-176 and the information provided to the commission regarding the stipulation in DR 86-72, we continue to find that the timing of the contract negotiations in relation to the change in the short term rate were matters of discussion, understanding and agreement among the parties to DR 86-72, and that CVEC failed to pursue contract negotiations with the QFs on its system during the eight months between our April 1988 order and the change in the short term rate on January 1, 1989. The cost of negotiations during this eight month period was borne by the CVEC ratepayers. In providing an additional four months for negotiation at CVEC's expense, we are fairly allocating the costs of further negotiation to be borne by the parties between CVEC and the QFs. We note that according to information thus far filed by the company, no long term contracts have yet been signed between CVEC and the QFs on its system. The commission must assume that had projects like Claremont and Sunander been made aware of their vulnerability to revenue loss pursuant to our decisions in DR 86-72 by offers to negotiate by CVEC, they would have resolved their situations between April and December 1988 rather than after January 1, 1989. Costs of negotiation for the time period following May 1, 1989, for those QFs who are continuing to negotiate for long term arrangements, are being borne by the QFs.

Having found that the Motion for Rehearing contains no fact or argument that had not been

fully reviewed prior to the issuance of our decision and that the decision was reasonable and lawful, we will deny CVEC's 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 Connecticut Valley Electric Company's Motion for Rehearing, and Reconsideration and Reform be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this ninth day of June, 1989.

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NH.PUC*06/12/89*[51761]*74 NH PUC 183*New England Telephone and Telegraph Company, Inc.

[Go to End of 51761]

74 NH PUC 183

Re New England Telephone and Telegraph Company, Inc.

DR 89-010, DR 85-182
Order No. 19,429

New Hampshire Public Utilities Commission

June 12, 1989

ORDER directing a local exchange telephone utility to provide the commission staff with copies of confidential information and granting a request by the carrier for proprietary treatment of the information.

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PROCEDURE, § 16 — Production of evidence — Proprietary data — Telephone carrier.

[N.H.] A local exchange telephone utility was directed to provide the commission staff with copies of confidential customer usage studies utilized by the utility in preparing cost of service studies submitted in a rate proceeding where it was found that the staff and other parties needed the information to formulate their positions in the case and where the commission granted a request by the utility for proprietary treatment of the documents.

By the COMMISSION:

ORDER

WHEREAS, this Commission issued Order No. 19,321 (74 NH PUC 68) in the

above-captioned docket on February 10, 1989, and

WHEREAS, Order No. 19,321 authorized New England Telephone and Telegraph Company ("NET" or the "Company) to file a motion on or before February 17, 1989 to set aside that order, and

WHEREAS, NET filed a motion to set aside that order and seeking proprietary treatment for the information requested, and

WHEREAS, certain other parties to this docket filed a response to NET's Motion, and

WHEREAS, the Commission Staff and certain parties to this docket desire to obtain copies of the usage studies NET utilized in the preparation of the Cost of Service Study ("COSS") and Incremental Cost Study ("ICS") it prepared and filed in this docket in order to review, understand, and evaluate the COSS and the ICS and to formulate their positions regarding the COSS and the ICS, and

WHEREAS, NET desires to facilitate such review without compromising its claim of confidentiality, and

WHEREAS, NET states and represents that the usage studies and other usage information it utilized in the Preparation of the COSS and the ICS consist of the following:

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

Local Usage (COSS)

Residence	CUSTOMER Usage Study
Business	CUSTOMER Usage Study
Business Trunks	Dual Bill Track records
Centrex	Dual Bill Track records
Local Coin	Derived from toll revenues
Semipublic	Derived from toll revenues

Intrastate Toll Usage (COSS)

Residence	CMDS Usage Study
Business	CMDS Usage Study
Coin	CMDS Usage Study
Centrex	CMDS Usage Study
Optional Calling Plans	REMUS Usage Study
Wide Area Telephone Service	BOCWIS Usage Study
Directory Assistance	Derived from DA message volumes

Switched Access Usage (COSS)

Separations Study 1162

Local Usage (ICS)

Residence	CUSTOMER Usage Study
Business	CUSTOMER Usage Study
Business Trunks	n/a
Centrex	n/a
Local Coin	Derived from 1FR revenues
Semipublic	Derived from MS-4E revenues

Intrastate Toll Usage (ICS)

Residence	CMDS Usage Study
Business	CMDS Usage Study
Coin	n/a
Centrex	n/a
Optional Calling	


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 Plans               REMUS Usage Study
Wide Area Telephone
 Service             BOCWIS Usage Study
Directory Assistance Derived from DA
                      message volumes

Switched Access Usage (ICS)
  n/a
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where "CUSTOMER" stands for Comprehensive Usage Sensitive Tracking on Market Enterprise Resource, "CMDS" stands for Centralized Message Data System, "BOCWIS" stands for Bell Operating Company WATS Information System, and "REMUS" stands for Revenue Matters Usage Analysis System. The usage

studies and other usage information referenced above are hereinafter referred to as the "Confidential Information", and

WHEREAS, the Commission Staff, NET, Granite State Telephone Company, Kearsarge Telephone Company, Inc., Merrimack County Telephone Company, Union Telephone Company, Wilton Telephone Company, Inc., Contel of New Hampshire, Inc., United States Department of Defense, and V.O.I.C.E. all agree to entry of this Order, and

WHEREAS, the form of this Order has been provided to all parties and no party has objected to the entry of this Order, and

WHEREAS, the New Hampshire Right to Know Law, RSA 91-A:5 IV, exempts from Public disclosure "confidential, commercial, or financial information... ", and

WHEREAS, the confidentiality of the Confidential Information may be reviewed by the Commission at any time in the future if a request is made for disclosure; it is hereby

ORDERED, that NET provide the Commission Staff with two copies of the Confidential Information, in paper form, within two days of NET's receipt of this Order; and it is

FURTHER ORDERED, that within approximately three weeks of NET's receipt of this Order, or sooner if available, NET shall provide the Commission Staff with two copies of the CUSTOMER Usage Studies referenced above on Lotus 2.1 version IBM microcomputer compatible diskettes; and it is

FURTHER ORDERED, that in accordance with the procedures set forth in this Order and subject to the requirements set forth in this Order, NET shall provide any or all of the parties with one copy of any requested Confidential Information; and it is

FURTHER ORDERED, that NET's request for proprietary treatment regarding the Confidential Information is hereby granted pursuant to RSA 91-A:5 IV. The specific parameters of the proprietary treatment to be accorded the Confidential Information are set forth as follows:

1. The Confidential Information shall be used solely for the purposes of preparation for and conduct of this proceeding, including but not limited to the preparation and conduct of direct and cross examination, memoranda, motions, exhibits, or briefs, subject to the requirements set forth in this Order. More specifically and without limiting the foregoing, the Confidential Information shall not be used for any competitive or commercial purposes.

2. The Confidential Information provided to the Commission and the Commission Staff shall be retained in a locked file cabinet when not in use. The Commission Staff may make as many hard copies or diskette copies of the Confidential Information as it desires for the purposes set forth herein, and such copies shall be treated the same way as the Confidential Information itself under this Order.

3. If any party to this docket desires to obtain a copy of some or all of the Confidential Information, then that party shall submit to NET a Notification and Agreement in the form attached hereto as Exhibit A, signed by an appropriate agent, including but not limited to legal counsel, of the requesting party. Upon verifying that the requirements set forth in this Paragraph have been satisfied, NET shall provide the requesting party with a copy of the Confidential Information.

4. The Confidential Information provided pursuant to Paragraph 3 of this Order shall be retained by the individual signing the Notification and Agreement. The requesting party may review the Confidential Information with or disclose the Confidential Information to only those employees of the requesting party with a legitimate need to know the Confidential Information for the purpose of preparation for and conduct of this proceeding.

5. If the Commission, Commission Staff, or any party desires to make the Confidential Information available to any outside consultant, then such person shall submit to NET a Notification and Agreement in the form attached hereto as Attachment B, signed by an appropriate agent and by the outside consultant. Upon verifying that the requirements set forth in this Paragraph have been satisfied, NET shall provide the outside consultant with a copy of the Confidential Information.

6. The Confidential Information shall be delivered to the Commission, the Commission

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Staff, requesting parties, and appropriate agents or consultants (the "Authorized Persons") in a relationship of confidence. The Authorized Persons shall preserve that confidence. Specifically, the Authorized Persons shall not disseminate or otherwise disclose any of the Confidential Information to any other person, except as expressly authorized by this Order. For the purpose of this Order, the term "person" shall refer to any individual, corporation, partnership, joint venture, or other entity or association.

7. To prevent inadvertent or inappropriate disclosure, the Authorized Persons shall use their utmost best efforts to safeguard the Confidential Information from falling into the hands of any unauthorized person. In particular, the Authorized Persons shall not permit the Confidential Information to be read, copied, duplicated, or otherwise reproduced, other than as set forth herein.

8. The Authorized Persons may take notes regarding the Confidential Information solely for the purposes expressly authorized by this Order, and such notes shall be treated the same way as the Confidential Information itself under this Order.

9. If any party or the Commission Staff desires to place some or all of the Confidential Information into the record in this docket in a manner which, in the absence of this Order, would

place such Confidential Information in the public record, then such party shall notify the Commission that such Confidential Information is to be filed or otherwise introduced and should be placed by the Commission in a sealed record. The Commission shall insure that such Confidential Information is placed in a sealed record and is available for review solely by the Authorized Persons. Confidential Information placed in a sealed record shall not be made part of the public record except upon consent of NET or upon Commission order (and, if applicable, exhaustion of any appeals by NET) after notice to all parties and opportunity to be heard. The provisions of this Order governing sealed records shall survive the conclusion of this docket. If this matter is appealed, then the Commission may provide those portions of the sealed record on which it relied to the reviewing court on appeal after NET has had an opportunity to obtain a ruling on a request for a protective order from the reviewing court.

10. Upon conclusion of this Docket, including any appeals that may be taken, the Confidential Information, other than the Confidential Information which has been made part of the formal record in this case in a sealed record, shall be returned to NET. Any notes taken with regard to the Confidential Information by the Commission, the Commission Staff, or their agents (other than those notes which constitute attorney work-product) shall be destroyed or, at the election of the Commission or the Commission Staff, placed in a sealed record in accordance with the provisions of Paragraph 9 of this Order, and the General Counsel of the Commission shall advise NET when this has been done. Any notes taken with regard to the Confidential Information by a Party or its agents (other than those notes which constitute attorney work-product) shall be destroyed or, at the election of the party, placed in a sealed record in accordance with the provisions of Paragraph 9 of this Order, and the Party shall advise NET when this has been done.

11. In the event that any of the Confidential Information is released or otherwise becomes publicly available other than as a result of a violation of this Order or the breach of a confidentiality agreement with NET or other unlawful means, the confidentiality provisions of this Order shall cease with respect to such Confidential Information but shall remain in full force and effect as to the Confidential Information not so released or made publicly available.

12. Nothing herein constitutes a waiver of the rights of any party at any time to contest any assertion or to appeal any finding that specific information is or is not appropriately designated as Confidential Information or that it should or should not be subject to this Order. All parties shall further retain the right to question, challenge, or object to the admissibility of any and all of the Confidential Information on any available grounds, including but not limited to competency, relevancy and materiality.

13. Nothing contained in this Order shall limit the parties or the Commission Staff's

respective rights to request production of some or all of the Confidential Information in any other proceeding, and NET expressly reserves the right to object to such requests, if it considers objections appropriate, at that time. It is

FURTHER ORDERED, that the Commission, on review of the documents, or on motion by a party, may review the appropriateness of continued confidentiality in this matter and may issue

appropriate amendments to this Order after notice and hearing.

By order of the Public Utilities Commission of New Hampshire this twelfth day of June, 1989.

(ATTACHMENT A to be shot)

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(ATTACHMENT B to be shot)

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[Go to End of 51762]

74 NH PUC 189

Re New England Telephone and Telegraph Company, Inc.

DR 89-010
Order No. 19,430

New Hampshire Public Utilities Commission

June 12, 1989

ORDER consolidating two rate dockets, and directing that a local exchange carrier update its cost-of-service studies.

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1. RATES, § 234 — Procedure — Consolidation of dockets — Intervenor status.

[N.H.] A docket on a local exchange carrier's (LEC's) rate schedules was consolidated with a docket to develop cost of service studies on which to base the LEC's redesign of its rate structure; however, parties to the cost-of-service docket who had not requested full intervenor status in the rate scheduling docket would be allowed only limited intervenor status in the rate scheduling docket, and may only participate on the issue of cost of service and rate design. p. 191.

2. RATES, § 143 — Reasonableness — Cost-of-service study — Updates.

[N.H.] A local exchange carrier was ordered to update both its embedded and incremental cost-of-service studies to calendar year 1988, with the updates made available no later than August 15, 1989; the commission required that all parties put forth their best efforts to resolve issues of methodology before the update is completed, to minimize any potential need for further updates that may not be available before expiration of the one-year schedule. p. 192.

3. MONOPOLY AND COMPETITION, § 83 — Intrastate telecommunications services — Motion to designate issue.

[N.H.] The commission denied a motion to designate (in a proceeding review a petition for a rate increase and to consider a new form of regulation for a local exchange telephone carrier) the issue of whether intrastate telecommunications services should be provided in New Hampshire on a competitive basis; it was found that although competition was a factor that may be considered in evaluating petitions for a new form of regulation, the carrier had not advocated competition as an essential component of the proposed form of regulation; nevertheless, the commission noted that it may wish to address the issue of competition in a separate docket. p. 193.

APPEARANCES: Representing New England Telephone Co., Holly Laurent, Esq.; for Granite State Telephone and Merrimack County Telephone, Frederick Coolbroth, Esq.; for Kearsarge Telephone Co. and Wilton Telephone Co., Dom D'Ambruoso, Esq.; for Union Telephone Co., Dorothy Bickford, Esq.; for U. S. Air Force, Major G. Intoccia, Esq.; and Captain S. Marshand, Esq.; for AT&T Communications of New Hampshire, Thomas Eichenberger, Esq.; for V. O. I. C. E., Alan Linder, Esq.; for the Office of the Consumer Advocate, Michael Holmes, Esq.; and Representing Staff of the Public Utilities Commission, Mary Hain, Esq.

By the COMMISSION:

REPORT

I. *Procedural History*

On November 18, 1988 New England Telephone & Telegraph Company (NET) filed a notice of intent to file rate schedules pursuant to Rule 1603.02 and requested waiver of certain PUC filing requirements. The filing was assigned docket no. DR 88-170. On December 5, 1988 the commission issued order no. 19,253 regarding the request for waivers and allowing NET to submit a motion for protective order. On January 6, 1988 NET requested an extension of

time to file rate schedules. This request for extension was granted on January 19, 1988. For administrative purposes docket DR 88-170 was closed and the filing was assigned to new docket DR 89-010. On February 21, 1989 NET requested additional partial waivers of filing requirements and on February 23, 1989 this request was granted.

On March 3, 1989 NET filed its petition for increased rates and for consideration of a new form of regulation identified as Info Age NH 2000. On March 23, 1989 the proposed tariffs were suspended by order no. 19,352.

On April 5, 1989 the staff of the Public Utilities Commission filed a motion to consolidate docket DR 85-182 with docket DR 89-010 and also to compel production of usage study data. On April 20, 1989 the commission issued an order of notice establishing a preliminary procedural schedule and setting hearings for May 18, 1989 and June 16, 1989.

On April 27, 1989 AT&T Communications of NH filed a petition to intervene and to designate an issue. Timely petitions to intervene were also filed by Union Telephone Co.,

Granite State Telephone Co., Merrimack County Telephone Co., the Dept. of Defense, Wilton Tel. Co., Kearsarge Tel. Co., Ad Hoc Telecommunications Users Assoc., Indian Head Data Services Inc., and V. O. I. C. E. A Notice of Appearance was filed by the Consumer Advocate on May 2, 1989.

On May 2, 1989 the commission sent a letter to all parties indicating that the AT&T motion to designate an issue would be heard at the hearing to be held on May 18. On May 5, 1989 NET filed their response to motions to intervene and also to staff's motions to consolidate and for production of the usage studies. The NET response also addressed the AT&T motion to designate an issue. Responses were also filed on that date by Union Telephone, Wilton Telephone, and Kearsarge Telephone Co.

On May 15, 1989 responses to the AT&T motion to designate an issue were filed by Staff of the Public Utilities Commission, by Kearsarge Telephone Company, by Granite State Telephone Inc./Merrimack County Telephone Company and by Wilton Telephone Company.

II. *Introduction*

On May 18, 1989 a properly noticed hearing was held in accordance with the April 20, 1989 Order of Notice. The hearing notice identified the following issues:

1. Intervention petitions and objections.

2. Motion for consolidation of dockets.

3. Motion to compel production of usage studies and to issue an appropriate protective order.

4. Updating of the NET Embedded Cost of Service Study.

Additionally, the scope of the hearing was expanded by letter dated May 2, 1989 to include the AT&T motion to designate an issue. Each of these issues is dealt with in the following sections.

III. *Intervention*

Appearances were filed on behalf of, and interventions were approved from the bench for, the following parties:

- AT&T Communications of New Hampshire Inc.
- Union Telephone Company
- Granite State Telephone Inc. and Merrimack County Telephone Co.
- Department of Defense and Other Federal Executive Agencies
- Wilton Telephone Company
- Kearsarge Telephone Company
- Volunteers Organized in Community Educating (VOICE)
- Contel of NH Inc. and Contel of Maine Inc.

The Consumer Advocate filed an appearance and is also a party to the docket.

No appearance was filed on behalf of Ad Hoc Telecommunications Inc. or Indian Head Data

Services Inc. and therefore action on their petitions to intervene was deferred.

IV. *Consolidation*

In the April 5, 1989 motion, staff of the Public Utilities Commission proposed consolidation of docket DR 85-182 with docket DR 89-010. In support of that motion staff described the background of docket DR 85-182. The Commission opened the docket for the purpose of investigating NET's rate structure.

Re: New England Telephone and Telegraph Co., (70 NH PUC 496) (1985).

The intent of DR 85-182 is to develop cost of service studies on which to base NET's redesign of its rate structure. By Order No. 18,977 (January 18, 1988) in DR 85-182 (73 NH PUC 23), the Commission approved an agreement of the parties that the basic question to be answered was "What are New England Telephone's costs of providing service?" and that a stipulated set of cost studies would be performed. Thus far, NET has filed five embedded cost of service studies in DR 85-182, and a summary of one embedded cost of service study and its incremental cost study in DR 89-010. Most recently in DR 85-182, the parties have been negotiating the protective agreement under which the usage study that formed the basis of the embedded allocations can be provided. Staff argues it requires the usage study prior to analyzing the cost of service studies. Once the usage study has been provided, staff and the parties to DR 85-182 will be able to recommend modifications to finalize the embedded and incremental studies.

Kearsarge, Wilton and Union expressed no objection to the motion to consolidate. VOICE supported the motion to consolidate. Granite State and Merrimack did not object to consolidation, however, they did not want to limit, thereby, the issues which might be raised. Kearsarge, Wilton, Granite State, Merrimack and Union argued that they could not consolidate their participation as they had in DR 85-182. Union asked that the commission define the scope of the matters raised in DR 85-182 that would be consolidated. New England Telephone expressed no objection to the motion (TR 32) but cautioned that procedural safeguards should be put in place to assure an orderly conduct of the proceeding. Specifically, it expressed concern regarding timely resolution of the NET filing due to the following:

- Whether it is appropriate to re-visit issues already discussed by the parties to DR 85-182.
- Whether parties to DR 85-182 should automatically be allowed full intervenor status in DR 89-010.
- Whether the 12 month schedule for completion of the rate case allows complete resolution of methodology issues for cost of service studies.
- Whether the 12 month schedule for completion of the rate case allows complete resolution of methodology issues for cost of service studies.

The company proposed that the nature of the safeguards should be to establish a sequence of activities having a predefined procedural schedule. That sequence would be (1) production of the

usage studies (2) finalization of the methodology and (3) generation of the final required cost studies. In conjunction with this sequence, NET offered to update both the embedded and incremental studies.

There was no opposition to the general sequence but Chairman Iacopino expressed concern that the results not be compromised by scheduling considerations and that the parties not be foreclosed from arguing against the methodology used for the studies. Attorney D'Ambruoso supported the latter concern by reference to the October 1987 report of the DR 85-182 parties which stated "While the parties concur in this report, no party waives any right in this or any other proceeding. Such concurrence does not constitute an endorsement of the proposed study approaches or results." (TR 62)

[1] On the basis of these arguments, the commission finds that DR 85-182 and DR 89-10 involve "the same or similar relief" under N.H. Admin. Code PUC 20307, that consolidation of the dockets for purposes of discovery and hearings will result in more efficient use of time by all parties, and that consolidation will be allowed. However, parties to DR 85-182 who have not requested full intervenor status in DR 89-010 will be allowed only limited intervenor

status in the latter docket and may participate only on the issue of cost of service and rate design. Furthermore, the commission recognizes the possibility that these hearings may again be bifurcated at some time in the future.

V. *Protective Order on Usage Studies*

Prior to the May 18, 1989 hearing, agreement was reached among the parties to DR 85-182 as to the form of a protective order. Although the hearing notice included that issue, there was no further discussion and no new positions were offered relative to the proposed protective order. The commission decision on this issue is contained in order 19,429 dated 6/12/89 (74 NH PUC 182). We understand that the data is now available and expect NET to complete its filing of the data by June 16, 1989.

VI. *Updating of Embedded Cost of Service Study*

By letter dated April 26, 1989, NET responded to staff's request for an updated cost of service study by proposing use of calendar year 1988 data. On May 3, 1989 commission staff indicated agreement, provided the study was filed between August 1st and mid-August and that the staff was allowed a full opportunity to perform discovery, file testimony, and argue the methodology after the updated study was filed.

During the May 18 hearing NET described the process of updating a cost of service study, pointing out that it is a significant effort requiring as much as three to four months of work. They expressed concern that if the methodology were not determined by the commission before the next update, and the parties sought to modify the methodology further, "We would not even be able to generate another study, in all likelihood, before the one year mark." (TR 36) The company did agree that August 1, 1989 or mid-August at the outside was a reasonable time frame for an update.

[2] On the basis of these facts, the commission finds that the company should update both the

embedded and incremental cost of service studies to calendar year 1988 and these updates should be made available no later than August 15, 1989. Furthermore, the underlying usage studies should be made available at that time. We will also require that all parties put forth their best efforts to resolve issues of methodology before this update is completed, to minimize any potential need for further updates which may not be available before expiration of the one year schedule. We will not, however, require the parties to waive their rights to contest the methodology.

In conjunction with the procedural schedule to be developed at the June 16, 1989 hearing, the parties shall establish a schedule for informal technical discussions of methodology to provide guidance to the company on their needs. The company is encouraged to enter into good faith negotiations with the parties to resolve methodological issues but we will not require that consensus be reached before the update is performed.

VII. *Motion to Designate an Issue*

In its April 26, 1989 petition to intervene AT&T Communications of New Hampshire also petitioned to designate an issue. That issue is "whether intrastate telecommunications services should be provided in New Hampshire on a competitive basis."

On May 5, 1989 NET responded in opposition to designating this issue. Staff of the PUC responded on May 15, 1989 without taking a position on whether the commission should designate this issue. On May 11, 1989 Union Telephone responded that it had no position on AT&T's petition to designate an issue. On May 15, 1989 Kearsarge Telephone Company filed an objection to the petition, Wilton Telephone Company filed an objection to the petition and a joint objection was filed by Granite State Telephone and Merrimack County Telephone.

AT&T's motion to broaden this docket is based on a number of allegations including:

A. NET's filing is implicitly predicated on the authorization of competition in New Hampshire.

B. There are serious internal

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inconsistencies in NET's presentation (insufficient coverage of the impact of competition.)

C. Competitive issues should logically be considered with NET's proposals.

D. The Commission should establish rules insuring fair competition.

E. Policy issues concerning competition are unavoidable in this proceeding.

F. Competition would be beneficial in New Hampshire.

In the hearing AT&T supported its petition by stating that competition is inherent in the NET petition (TR 83). It claims that NET wishes to be regulated as if competition exists but that a balance must be struck between the amount of competition and the amount of regulation. AT&T further claims that its offering of competitive sources in New Hampshire could be damaged by the NET proposed deregulation. Finally AT&T stated that the only way to eliminate the problem

would be for NET to file specific tariff rates for access (TR 106).

NET has responded that the AT&T motion serves its interests but is not a part of the NET price regulation proposal. NET avers that introduction of competition would not be in the interest of efficient and effective use of the Commission or other parties' resources. In oral arguments NET states that price regulation can be appropriate where competition has not been authorized. (TR 109). It is NET's stated position that change is needed so the monopolistic parts of the telecommunications market can realize the benefits of innovative services. It states that the proposed form of regulation will provide incentives for new services. Finally it distinguishes between price regulation (which it seeks) and deregulation (which is used by AT&T as justification for considering competition).

Kearsarge and Wilton Telephone Companies take the position that the issue of intrastate competition should not be determined in this docket because it is unnecessary, premature and inconsistent with Commission precedent in the case of Long Distant North where it said that there has been no demonstration that competition exists in the marketplace to the extent that a formal docket must be opened (TR 119).

Granite State Telephone and Merrimack County Telephone ask that the AT&T motion be denied because it is not part of NET's petition and the filing already includes a full plate of issues.

Union Telephone and Department of Defense reiterated that they take no position on the matter.

The Consumer Advocate asked that NET show it is not stifling competition. Therefore he believes that the Commission needs to address competition.

VOICE averred that competition is a central feature of the NET filing but that the Commission should conduct only a limited inquiry. It should not address the questions of whether competition should be allowed in New Hampshire and to what extent.

Staff of the Commission filed a response to the AT&T motion which took no position on designation of the issue. However, staff directed Commission attention to several portions of NET's supporting testimony which would indicate that competitive considerations are the basis for the price regulation plan, and the rate design. Therefore, it is staff's opinion that if reconciliation of marginal and embedded costs is to be based on competitive considerations then the Commission should determine whether competition exists for these particular services.

[3] On the basis of this information the Commission finds that competition is a factor which may be considered in evaluating the NET petition for a new form of regulation but NET has not advocated competition as essential component of the proposed form of regulation. We may wish to address the question of "whether intrastate telecommunications services should be provided in New Hampshire on a competitive basis" in a separate docket but will confine ourselves here to the adequacy of NET's case for its proposed form of regulation. The Commission will not ignore the role that competition is playing or will play in intrastate telecommunications and will consider it with the same diligence that technological change, financial risk or any other factor will be considered. However, we will not create the objective that we will decide the issue of whether competition should

be allowed.

Our order will issue accordingly.

ORDER

On the basis of the foregoing report, which is made a part hereof, it is

ORDERED, that the following are approved as parties to this case:

- AT&T Communications of New Hampshire Inc.
- Union Telephone Company
- Granite State Telephone Inc. and Merrimack County Telephone Co.
- Department of Defense and Other Federal Executive Agencies
- Wilton Telephone Company
- Kearsarge Telephone Company
- Volunteers Organized in Community Educating (VOICE)
- Contel of NH Inc. and Contel of Maine Inc.

and it is

FURTHER ORDERED, that dockets DR 85-182 and DR 89-010 are consolidated for purposes of investigation, discovery and hearings, and it is

FURTHER ORDERED, that NET shall update both the embedded cost of service studies and the incremental cost studies to reflect calendar year 1988 data, and it is

FURTHER ORDERED, that the AT&T motion to designate an issue is denied.

By order of the Public Utilities Commission of New Hampshire this twelfth day of June, 1989.

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NH.PUC*06/19/89*[51763]*74 NH PUC 194*Public Service Company of New Hampshire

[Go to End of 51763]

74 NH PUC 194

Re Public Service Company of New Hampshire

Additional petitioner: New Hampshire Electric Cooperative, Inc.

DE 89-086
Order No. 19,434

New Hampshire Public Utilities Commission

June 19, 1989

ORDER *nisi* authorizing an electric utility to transfer portion of its franchise service area to rural electric cooperative.

SERVICE, § 198 — Extensions — Service franchise area — Transfer — Electricity.

[N.H.] An electric utility was authorized to transfer a portion of its service franchise area to a rural electric cooperative so that the cooperative could extend its distribution lines to serve one power generating customer located in the utility's service area; all parties, including the customer, consented to the transfer, which would allow the interconnection to be made at minimal cost and inconvenience.

By the COMMISSION:

ORDER

WHEREAS, on May 18, 1989, Public Service Company of New Hampshire (PSNH) and the New Hampshire Electric Cooperative, Inc. (NHEC), electric utilities operating under the jurisdiction of this Commission, filed a joint petition for authority to transfer a portion of PSNH's service territory to NHEC pursuant to N.H. RSA 374:22-a and c to allow NHEC to serve one customer, Wendell Water Power Company (Wendell), Sunapee, New Hampshire, for so long as such customer is in existence and

operating as a generator of electric power; and

WHEREAS, by agreement with NHEC, Wendell shall sell its generated power to NHEC pursuant to the provisions of N.H. RSA 362-A; and

WHEREAS, Wendell's proposed location is currently within the PSNH franchise area, however, NHEC distribution lines are in close proximity to Wendell and station service power and energy can be made available over the same interconnection required between Wendell and NHEC for sale of Wendell's generated power, at minimal cost and inconvenience to each and all of the parties; and

WHEREAS, this transfer of service franchise is desired by Wendell and is acceptable to NHEC and PSNH; and

WHEREAS, Wendell consents to the proposed transfer; and

WHEREAS, the commission finds that such transfer appears to be in the public good; but feels the public must be given an opportunity to respond in support of, or in opposition thereto; it is

ORDERED, that all persons desiring to respond to this joint petition be notified that they may submit their comments in writing or file a written request for public hearing before this

commission no later than July 12, 1989; and it is

FURTHER ORDERED, that the joint petitioners give such notice via a one-time publication in a newspaper having wide circulation in the affected area, such publication to be no later than July 5, 1989; and documented by affidavit to be made on a copy of this order and filed with the commission; and it is

FURTHER ORDERED, that all construction shall meet the requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that the joint petitioners file revised Commission Service Territory Maps for their respective territory 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 PSNH be, and hereby is, granted authority under N.H. RSA 374 *et seq* to transfer to NHEC that portion of its service territory which will enable NHEC to extend its distribution lines, which is hereby authorized, to provide service to the Wendell Water Power Company; and it is

FURTHER ORDERED, that said authority shall become effective on July 19, 1989 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 nineteenth day of June, 1989.

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NH.PUC*06/27/89*[51764]*74 NH PUC 195*New England Telephone and Telegraph Company, Inc.

[Go to End of 51764]

74 NH PUC 195

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,442

New Hampshire Public Utilities Commission

June 27, 1989

ORDER establishing three-month procedural schedule for local exchange carrier's alternative rate regulation proposal.

RATES, § 640 — Procedural schedule — Alternative rate regulation — Complexity of issues.

[N.H.] Where a local exchange carrier requested authority to adopt an alternative rate regulation proposal, the complexity of the issues to be resolved and the necessity to conclude

investigation of the proposed rate schedule within 12 months created conflicting demands on establishing an effective yet flexible procedural schedule; therefore, in the interest of expedience, the commission established a schedule for the three-month period from June 23, 1989 through September 23, 1989, with completion of the procedural schedule to be considered and documented in a subsequent order.

APPEARANCES: Representing New England Telephone and Telegraph Company, Holly C. Laurent, Esq.; for Granite State Telephone and Merrimack County Telephone, Frederick Coolbroth, Esq.; for Kearsarge Telephone Co. and Wilton Telephone Co., Dom D'Ambruoso, Esq.; for Union Telephone Co., Dorothy Bickford, Esq.; for U. S. Air Force, Captain Scott Marshand, Esq.; for AT&T Communications of New England, Thomas Eichenberger, Esq.; for V.O.I.C.E., Alan Linder, Esq.; for the Office of the Consumer Advocate, Joseph Rogers, Esq.; and Representing Staff of the Public Utilities Commission, Mary Hain, Esq.

By the COMMISSION:

SUPPLEMENTAL REPORT ON
PROCEDURAL SCHEDULE

I. *Introduction*

On June 16, 1989 a duly noticed hearing was held to address the issue of commission authority to adopt the alternative rate regulation proposal, the applicability of RSA 378:61, and to establish a procedural schedule for the case. This order deals only with the procedural schedule.

II. *Proposed Schedules*

New England Telephone and Telegraph Company (NET) filed a proposed procedural schedule on June 9, 1989, and a revised proposed procedural schedule on June 16, 1989, incorporating necessary changes as mandated by commission order no. 19,430 (74 NH PUC 189). NET proposed the following schedule:

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

Date	*Event*
06/23/89	Informal conference regarding COSS and ICS methodology.
06/30/89	Informal conference regarding COSS and ICS methodology.
07/07/89	Informal conference regarding COSS and ICS methodology.
08/04/89	Last date to submit data requests to NET (by intervenors and staff) regarding non-cost issues. Data requests may be submitted on a rolling basis prior to this cutoff date.

08/15/89 NET to submit updated COSS and ICS.

08/25/89 Last date for NET's responses to data requests regarding non-cost issues. Responses to be submitted within two (2) weeks of receipt of request, again on a rolling basis.

08/29/89 Last date to submit data requests to NET (by intervenors and staff) regarding COSS and ICS issues. Data requests may be submitted on a rolling basis prior to this cutoff date.

Date *Event*

09/15/89 Last date for NET's responses to data requests regarding COSS and ICS issues. Responses to be submitted within two (2) weeks of receipt of request, again on a rolling basis.

09/15/89 Informal conference.

09/29/89 Intervenors and Staff testimony due.

10/04/89 Bonding date.

10/12/89 Last date to submit data requests to intervenors and staff. Discovery requests may be submitted on a rolling basis prior to this cutoff date.

11/02/89 Last date for intervenor and staff responses to data requests. Responses to be submitted within two (2) weeks of receipt of request, again on a rolling basis.

11/06/89 Hearings.
12/01/89

12/15/89 Rebuttal testimony due from all parties.

12/22/89 Last date to submit data requests to any party regarding rebuttal testimony.

01/03/90 Last date for responses to data requests regarding rebuttal testimony.

01/08/90 Hearings regarding rebuttal testimony.
01/19/90

02/19/90 Briefs due from all parties regarding all issues.

03/01/90 Reply briefs due from all parties.

04/04/90 PUC Decision.

On June 9, 1989, staff submitted the following proposed procedural schedule:

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

N.E.T. submits usage data June 16, 1989

Complete first round staff
& intervenor data requests July 7

Final Cost Study methodology
discussions July 14

N.E.T.'s data responses July 28

N.E.T. submit updated Cost Studies	Aug. 15
Complete second round staff & intervenor data requests	Sept. 15
Response to data request	Oct. 6
Final data requests on Cost Studies	Oct. 20
Response to final data requests	Nov. 3
Intervenor testimony	Nov. 17
Data requests on intervenors testimony	Dec. 1
Staff testimony & intervenor's data responses	Dec. 15
Data requests on staff & intervenors testimony	Dec. 29
Response to data requests	Jan. 12, 1990
Settlement discussions	Jan. 15-19
Hearings	Feb. 5-9 Feb. 19-23
Filing of briefs	Mar. 9
Final decision	Apr. 2

On June 14, 1989, Union Telephone responded to the proposed procedural schedules expressing a preference for staff's schedule over the schedule proposed by NET.

III. *Positions of the Parties:*

Staff argued in favor of its own proposed procedural schedule and expressed several concerns over NET's proposal. Staff's first concern was NET's proposed due date for staff testimony. Staff said it could not file testimony before December 15, 1989 because consultant work would not be completed until December. Staff also took issue with the proposal of two different testimony filings. The investigation, discovery, and preparation will be extensive and will only allow time to file testimony once. Staff believes the major thrust in the case should be on factual issues and considers NET's protracted schedule for briefs unnecessary. Staff also suggested a hearing be held to set temporary rates before the bonding date October 4, 1989. Finally, staff rejected NET's abbreviated schedule for review of the usage study.

NET defended their revised schedule and asked the commission to balance the needs of all parties. In response to staff's proposal, NET expressed several concerns. NET questioned why intervenor and staff testimony would be due on different dates. They also argued hearings should be scheduled in phases to allow enough time to sufficiently incorporate all issues into the record. They stressed the importance and fairness of rebuttal testimony. Finally NET proposed to overlap the schedules to permit staff more time for discovery; NET time for rebuttal testimony, adequate hearing time, and briefs; and the commission time to make their final decision.

Granite State and Merrimack County Telephone Companies said they could abide by either

schedule but suggested the following changes. They felt staff's schedule did not allow enough time to prepare data requests on staff's testimony. They proposed staff and intervenor testimony be submitted on the same date. They argued NET's schedule compressed time for informal conferences at the beginning of the schedule and did not allow enough time for intervenors to write data requests, testimony and data responses to intervenor testimony.

Kearsarge and Wilton Telephone Companies concurred with Granite State and Merrimack County Telephone Companies.

The U.S Department of Defense had no objections to either schedule but requested they

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be kept appraised of schedules to avoid conflict with their work in other states.

Union Telephone generally supported staff's schedule. They expressed concern with NET's scheduled compression of discovery. Additionally, they contended NET's schedule did not allow enough time for intervenors to review the updated cost of service study, incremental cost study and accompanying usage studies. They suggested hearings regarding rebuttal testimony and rebuttal testimony reply briefs be eliminated to allow more time for investigation and discovery. Union also supported staff's request for a hearing to set temporary rates.

The Assistant Consumer Advocate supported staff's schedule except he thought staff & intervenor testimony should be due at the same time. Additionally, he supported a hearing to set temporary rates.

AT&T had no position on a schedule. They suggested the commission dismiss NET's petition and permit NET to file a separate rate case and generic docket for regulation.

VOICE did not receive a copy of NET's revised schedule so they did not comment on it. VOICE stated the proceedings were public and the purpose was to determine just and reasonable rates and requested the discovery period remain open through December. They also suggested staff and intervenor testimony be due at the same time to give intervenors additional time to prepare testimony.

IV. *Commission Analysis/Procedural Schedule*

The complexity of the issues to be resolved in this case and the necessity to conclude investigation of the proposed rate schedule within 12 months create conflicting demands on establishing an effective yet flexible procedural schedule. In the interest of expedience, we will establish a schedule for the 3 month period from June 23, 1989 through September 23, 1989 in this order. Completion of the procedural schedule will be carefully considered and documented in a subsequent order.

We will also eliminate specific dates for filing of and response to data requests during this initial period and will instead establish the requirement that all data requests be responded to within three weeks of their filing date. Data requests may be made at any time during the initial three month period. If any party finds the three week response period cannot be met, the parties should attempt to establish a mutually convenient response time. If agreement cannot be accomplished, the respondent shall petition the commission to set a response date.

On the basis of our review of the positions of all parties we find that the dates given below represent a reasonable and equitable schedule for the next three month period:

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

First Conference on COSS and ICS 6/30/89

Second and Final Conference on
COSS and ICS                     7/14/89

NET Submits Updated Cost Studies 8/15/89

Filing of testimony on temporary
rates                            9/08/89

Hearing on temporary rates       9/19/89
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Long Distance North of New Hampshire Inc. (LDN), MCI Telecommunications Corporation (MCI), and US Sprint filed late motions to intervene but did not appear at the June 16, 1989 hearing. Indian Head Data Services and Ad Hoc Telecommunications Users Association were denied intervention status from the bench for failure to appear at the two hearings held after their motions to intervene were filed.

If LDN, MCI, Sprint and the Business and Industry Association (BIA) are interested in becoming full party intervenors in this proceeding, they must request a hearing on their motion, to be held on or before July 14, 1989. This action is necessary to ensure the orderly and prompt conduct of this proceeding pursuant to N.H. Administrative Code Puc 203.02 and RSA 521-A:17.

Our order will issue accordingly.

ORDER

On the basis of the foregoing report, which is made a part hereof, it is

ORDERED, that the procedural schedule for the period June 23, 1989 through September 23, 1989 as described in the foregoing report be established for all parties, and it is

FURTHER ORDERED, that any party seeking intervenor status shall file for and appear at a hearing to be held on or before July 14, 1989.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of June, 1989.

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NH.PUC*06/27/89*[51765]*74 NH PUC 200*Winter Termination Rules

[Go to End of 51765]

Re Winter Termination Rules

DE 89-082
Order No. 19,443

New Hampshire Public Utilities Commission

June 27, 1989

ORDER opening a generic investigation of winter termination rules.

PAYMENT, § 33 — Methods of enforcing — Winter termination rules — Generic docket — Investigation.

[N.H.] It was found appropriate to open a generic docket to evaluate winter termination rules in order to examine their efficacy, efficiency and justness in light of the concerns of the electric and gas companies, as well as the needy citizens of the jurisdiction.

APPEARANCES: Elias G. Farrah, Esquire of Leboeuf, Lamb, Leiby, & MacRae on behalf of Concord Electric Company and Exeter & Hampton Electric Company; Kenneth Traum on behalf of EnergyNorth; Mary Marziak on behalf of Connecticut Valley Electric Company; Michael Holmes, Esquire, Consumer Advocate, on behalf of Residential Ratepayers; Gerald Eaton, Esquire on behalf of Public Service Company of New Hampshire; Mark Dean, Esquire of Merrill & Broderick on behalf of New Hampshire Electric Cooperative; Alan Linder, Esquire on behalf of VOICE; Shannon Dole on behalf of New Hampshire Division of Human Resources; and Eugene F. Sullivan, III, Esquire on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On June 5, 1989, the commission issued order no. 19,416 setting a hearing for June 20, 1989 to examine the Winter Termination Rules applicable to all electric and gas utilities. On June 9, 1989, order no. 19,416 (74 NH PUC 173) was published in the *Union Leader.* On June 14, 1989, the commission received motions to intervene from Public Service Company of New Hampshire (PSNH) and Connecticut Valley Electric (Conn. Valley). On June 15, 1989, the commission received a motion to intervene from EnergyNorth, Inc. (EnergyNorth). On June 16, 1989, the commission received motions to intervene from Granite State Electric (Granite State), New Hampshire Electric Cooperative (NHEC) and Volunteers Organized in Community Education (VOICE). Granite State subsequently clarified that it seeks only to monitor the proceedings and not to participate as a party. On June 19, 1989, the commission received motions to intervene from Concord Electric Company (Concord Electric) and Exeter & Hampton Electric Company (E&H). On June 20, 1989 a prehearing conference was held at the commission offices.

II. *Motions to Intervene*

At the prehearing conference held on June 20, 1989, the Consumer Advocate appeared and made a motion to intervene pursuant to his statutory right. The New Hampshire Division of Human Resources also made an oral motion to intervene. There being no objections to the motions to intervene, all motions to intervene except for that filed by Granite State, will be granted.

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III. *Position of the Parties*

Order no. 19,416 states in pertinent part that "docket no. DE 89-082 is hereby opened to investigate whether the waivers to the Winter Termination Rules currently in force regarding E&H Electric Company should continue to be authorized, whether consideration of other such waivers or amendments to the Winter Termination Rules are in the public interest, or whether strict adherence to the current Winter Termination Rules by all electric and gas utilities should henceforth be strictly enforced."

The parties, at the June 20, 1989 hearing, made a motion for clarification of the above quoted portion of the order. That is, the parties wish to determine whether or not the commission was attempting to open a generic docket in which the Winter Termination Rules would be examined, or whether the commission merely intended to examine E&H's and Concord Electric's yearly requests for a waiver from the Winter Termination Rules.

The parties also proposed a procedural schedule. The proposed procedural schedule is as follows:

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

June 27, 1989	The commission shall issue a clarifying order, clarifying the scope of this proceeding.
July 10, 1989	Any party wishing to intervene as a result of that clarifying order may do so by filing a motion to intervene.
July 14, 1989	Technical conference between the parties to discuss issues in the case.
July 26, 1989	All parties will submit their first set of data requests.
August 23, 1989	Responses to the first set of data requests are due.
August 25, 1989	Parties will have a second technical conference to discuss issues in the case.
September 1, 1989	A list of proposed issues will be submitted to the commission to focus the issues in the proceeding.
September 15, 1989	If necessary, the commission will issue an order delineating the issues.
October 13, 1989	First set of testimony from all parties is due.
November 17, 1989	Second set of data requests are due.

December 15, 1989	Replies to the second set of data requests are due.
January 26, 1990	Rebuttal testimony is due.
February 15 & 16, 1990	Settlement conference between the parties.
March 14, 1990	Submittal of a full or partial agreement between the parties.
March 26 - 30, 1990	Hearing on the merits.

IV. *Commission Analysis*

In regard to the parties motion to clarify, the commission will clarify its order as follows:

In the initial application of the current Winter Termination Rules the commission indicated that it was willing to consider waivers from the Winter Termination Rules so that alternative means of protecting the needy during the winter heating months could be evaluated.

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During the past years E&H and Concord Electric have requested waivers, annually, from the rules in order to implement its "E.S.P." program. The commission feels it is appropriate at this time to open a generic docket to evaluate the Winter Termination Rules as they currently exist to examine their efficacy, efficiency and justness in light of the concerns of both the electric and gas companies and the needy citizens of the State of New Hampshire. Said evaluation shall consider whether or not the rules shall remain unchanged or be modified to allow such programs as "E.S.P.", alleviating the need for yearly waiver requests.

The commission finds the procedural schedule to be in the public interest and will issue an order accordingly.

Our order will issue accordingly.

ORDER

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

ORDERED, that docket DE 89-082 has been open to generically investigate the Winter Termination Rules currently in force to determine whether or not said rules should remain the same or should be amended generally; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report is approved; and it is

FURTHER ORDERED, that all motions to intervene are granted subject to the conditions in the foregoing report; and it is

FURTHER ORDERED, that all electric and gas utilities receive a copy of this order; and it is

FURTHER ORDERED, that a copy of this order be published in the *Union Leader*; and it is

FURTHER ORDERED, that all motions to intervene as a result of this order shall be filed by July 14, 1989.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of June, 1989.

74 NH PUC 202

Re Tennessee Gas Pipeline Norex Project/EFEC

DSF 89-060
Supplemental Order No. 19,446

New Hampshire Public Utilities Commission

June 28, 1989

ORDER granting a petition by a gas pipeline for a license to cross state-owned railroad property.

CERTIFICATES, § 121 — Gas pipeline — Railroad crossings.

[N.H.] Proposed natural gas pipeline railroad crossings were approved where it was found that such crossings were necessary for the provision of gas service to the public.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Public Utilities Commission issued order no. 19,417 (74 NH PUC 174) on June 1, 1989 granting a license for crossing streams along the route of a proposed 12" diameter pipeline as described in the Tennessee Gas Pipeline Company application to the Energy Facility Evaluation Committee (EFEC) dated November 8, 1988,and

WHEREAS, by letter dated June 8, 1989 the Company's consultant, Stone & Webster Environmental Services, communicated information describing an additional crossing requiring Commission approval, and

WHEREAS, the additional crossing was unknown to the company at the time of the original filing with the EFEC, and

WHEREAS, the additional crossing consists of a short run of underground pipe (less than 500 ft. long) along an abandoned railroad right-of-way in Manchester, N.H. adjacent to

the Route 93, which has been acquired by the State of New Hampshire; and

WHEREAS, RSA 371:17 provides as follows:

"Whenever, it is necessary, in order to meet the reasonable requirements of service to

the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, `public waters' are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.", and

WHEREAS, after staff investigation we find that the proposed pipeline crossing of public lands is reasonably necessary for the provision of gas service to the public, and

WHEREAS, this finding is predicated on the condition that the crossing be designed, constructed, operated and maintained as required of other crossings licensed under order no 19,417, it is hereby

ORDERED, that a license for railroad crossing as described in the June 8, 1989 letter and map no. TE-E14-273C-100-25 which is on file at the Commission, be and hereby is granted.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1989.

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NH.PUC*06/29/89*[51767]*74 NH PUC 203*Villaggio Bianco Property Owners Association

[Go to End of 51767]

74 NH PUC 203

Re Villaggio Bianco Property Owners Association

DE 89-112
Order No. 19,447

New Hampshire Public Utilities Commission

June 29, 1989

ORDER *nisi* granting an association providing water service to less than ten customers an exemption from registration as a public utility.

PUBLIC UTILITIES, § 39 — Tests of public utility character — Provision of service — To limited class — Exemption from regulation — Water utility.

[N.H.] Pursuant to RSA 362:4, which provides that if a water utility supplies less than ten customers the commission may exempt that utility from any and all provisions of registration as a public utility, the commission granted an exemption from registration to an association that was supplying service to less than ten customers, because it would serve no meaningful purpose

for the association or the commission to incur the expense associated with regulation.

By the COMMISSION:

ORDER

On June 19, 1989, Villaggio Bianco Property Owners Association (Association) requested an exemption from registration as a public utility pursuant to RSA 362:4; and

WHEREAS, RSA 362:4 provides in pertinent part that "[i]f the whole of [a water company]... shall supply a less number of customers than ten (10)... 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

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the public good"; and

WHEREAS, the Association asserts that it is supplying water to members only and to one (1) other lot owned by Daniel Bianchino; and

WHEREAS, the association is supplying water to Mr. Bianchino's lot at no cost in exchange for certain easements across his property; and

WHEREAS, the grant of an exemption would be consistent with the public good since, absent a showing to the contrary, it would serve no meaningful purpose for the Association or this commission to incur the expense associated with regulation in this instance; and

ORDERED, *NISI*, that Villaggio Bianco Property Owners Association be granted an exemption pursuant to RSA 362:4 as they are serving less than ten customers; and it is

FURTHER ORDERED, *NISI*, that the Association notify Daniel Bianchino and any other lot owners which may be affected by this order by mailing a copy of this order to each of said individuals no later than ten (10) days after the date of this order and verify said notification in an affidavit to be made on a copy of this order and filed with the commission within seven (7) days after said notification; and it is

FURTHER ORDERED, *NISI*, that any interested party may file written comments 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, *NISI*, that this order *NISI* shall be effective thirty (30) days from the date of this order unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of June, 1989.

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74 NH PUC 204

Re New Hampshire Electric Cooperative, Inc.

DE 89-104
Order No. 19,448

New Hampshire Public Utilities Commission

June 30, 1989

ORDER *nisi* authorizing the installation and maintenance of submarine electric cable.

ELECTRICITY, § 7 — Authorization for transmission lines — Submarine electric cable — Crossing.

[N.H.] An electric utility was authorized to install and maintain submarine electric cable beneath public waters where such crossing was deemed necessary for the utility to meet its obligation to provide service within its franchise area.

By the COMMISSION:

ORDER

WHEREAS, on June 9, 1989, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with this commission a petition seeking license pursuant to RSA 371:17 to install and maintain electric power submarine cable under the public waters of Lake Winnipesaukee in the Town of Moultonborough, New Hampshire; and

WHEREAS, electric service has been requested for Perch Island on Lake Winnipesaukee; and

WHEREAS, the necessary right-of-way easements have been obtained; and

WHEREAS, Permit No. 89-461 has been issued by the Wetlands Board, Department of Environmental Services, for the submarine cable crossing; and

WHEREAS, the cable crossing will consist of approximately 1055 feet of one 1/0, 15 KV submarine electric cable to be operated at standard distribution voltages; and

WHEREAS, the commission finds such crossing necessary for NHEC to meet its obligation to provide service within its franchise area, thus it is 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 interest in responding to this petition be notified that they may submit their comments or file written request for a hearing on the matter before this commission no later than July 14, 1989; and it is

FURTHER ORDERED, that NHEC effect such notification by publication of this order once in the Laconia *Evening Citizen*, and once in the *Plymouth Record* no later than July 7, 1989; and it is

FURTHER ORDERED, *NISI* that NHEC be, and hereby is, authorized pursuant to RSA 371:17 *et seq* to install and maintain submarine electric cable beneath Lake Winnipesaukee as well as associated aerial plant as depicted in NHEC Staking Sheets for Work Order No. 524334 and other documentation on file with this commission; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code as well as requirements of the Wetlands Board, Department of Environmental Services; and it is

FURTHER ORDERED, that such authority shall be effective 20 days from the date of this order, unless a hearing is requested as provided herein or the commission so directs prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1989.

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NH.PUC*06/30/89*[51769]*74 NH PUC 205*Energynorth Natural Gas, Inc.

[Go to End of 51769]

74 NH PUC 205

Re Energynorth Natural Gas, Inc.

DR 89-093
Order No. 19,449

New Hampshire Public Utilities Commission

June 30, 1989

ORDER approving tariff rate step adjustment for gas utility.

RATES, § 380 — Gas — Stipulated step increase.

[N.H.] Approval was given to a stipulated step rate increase for two gas utilities that had merged into one utility where the increase was in compliance with the terms of the stipulation and was in the public good.

By the COMMISSION:

ORDER

WHEREAS, by Order Number 19,207 (73 NH PUC 430) dated October 27, 1988 the commission approved a stipulation which granted Manchester Gas Company, Gas Service, Inc. and Concord Natural Gas Corporation a rate increase; and

WHEREAS, as of October 1, 1988, Manchester Gas Company, Gas Service, Inc. and Concord Natural Gas Corporation were merged into Energynorth Natural Gas, Inc. (hereafter referred to as the Company or ENGI); and

WHEREAS, as one of the provisions of the agreement was that ENGI could file revised tariff pages embodying a step adjustment to the Company's permanent rates by June 1, 1989 for effect July 1, 1989; and

WHEREAS, on June 1, 1989 the Company filed the above referenced step increase by filing tariff page and exhibits to support the request increase in the amount of $940,828 or a 1.43% increase; and

WHEREAS, the commission finance staff by letter dated June 2, 1989 requested supporting documentation to the exhibits in compliance with the terms of the settlement agreement; and

WHEREAS, on June 5, 1989 the Company complied with the commission staff request of June 2, 1989; and

WHEREAS, by letter dated June 16, 1989 the Company filed revised worksheets to update its filing to reflect the wage increase granted its clerical union as of June 15, 1989, the increase in clerical union payroll was $91,112 over the original step increase; and

WHEREAS, the company further adjusted its step adjustment filing to include $6,844 more in FICA taxes than in its original filing and further adjust its step adjustment by a decrease of $(1,421) to correct an error the Company made in its original filing as brought out by staff; and

WHEREAS, the Company and commission staff met on June 28, 1989 to review various concerns the staff had with the Company's filing dealing with merger costs, payroll increases and merger savings; and

WHEREAS, the Company and staff have signed a stipulation agreement in which the Company has agreed to reduce various costs; and

WHEREAS, these reductions are as follows: Merger Costs are reduced by $6,000 or $600 per year. Payroll increases applicable to merchandising and jobbing were removed by $98,000. These costs should be offset by revenues affected by merchandising and jobbing. Merger savings relative to the Gas Street property are further increased by $12,223; and

WHEREAS, the net effect of these changes is to arrive at a required increase in the step adjustment of $926,550; and

WHEREAS, the commission staff has thoroughly reviewed the filing ; and

WHEREAS, the commission finds that the Company's filing as negotiated is in compliance with the terms of the settlement agreement and is in the public good; it is

ORDERED, that the ENGI refile its tariff pages to reflect a step adjustment of $926,550; and it is

FURTHER ORDERED, that the tariff rate will be effective for all bills rendered on or after July 1, 1989.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1989.

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NH.PUC*06/30/89*[51770]*74 NH PUC 206*Chichester Telephone Company

[Go to End of 51770]

74 NH PUC 206

Re Chichester Telephone Company

DF 89-062
Order No. 19,450

New Hampshire Public Utilities Commission

June 30, 1989

ORDER authorizing a telephone utility to issue a mortgage note to finance new plant.

SECURITY ISSUES, § 44 — Authorization — Financing new plant — Telephone utility.

[N.H.] A telephone utility was authorized to issue a mortgage note in the aggregate principal amount of $1,749,000 to the United States of America, acting by and through the Rural Electrification Administration, with the proceeds from the financing used to finance the utility's construction program in order to modernize a certain service plant including the purchase of a new digital switch.

APPEARANCES: Dom S. D'Ambruoso, Esquire on behalf or Chichester Telephone Company; Michael Holmes, Esquire and Elaine Blanchette on behalf of the Consumer Advocate's office; and Eugene F. Sullivan, Merwin Sands and Kathryn Bailey on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

By this unopposed petition filed April 18, 1989, Chichester Telephone Company (Chichester), a corporation duly organized and existing under the laws of the State of New Hampshire, and operating therein as a telephone public utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1 to issue its mortgage note in a principal amount not exceeding $1,749,000 to the United States of America, acting by and through the Rural Electrification Administration (REA). A duly noticed hearing was held in Concord on June 13, 1989 at which Chichester submitted the testimony of Robert J. Collins, its President.

Mr. Collins stated that the proceeds of the issuance of the mortgage note will be used (a) to modernize the service plant at Chichester, to include a new digital switch; (b) to rehabilitate and to expand the outside plant facilities; (c) to have constructed a new building which will house the digital switch and the garaging and storing of vehicles and work equipment. The Company submitted evidence regarding its construction program for the year 1989.

The Company submitted a balance sheet as at December 31, 1988, actual and proformed to reflect the proposed $1,749,000 mortgage loan. Exhibits were also submitted showing: Report of Proposed Expenditures, estimated expenses of the financing; statement of income, actual and proformed to reflect the proposed financing. Certified copies of authorizing votes of the Company's stockholders and board of directors were put into evidence.

Mr. Collins also described the mortgage to be entered into in connection with this proposed financing. He testified that a loan contract was executed on May 18th, that they received a mortgage note for the 5% borrowings and a mortgage and security agreement was drawn to provide REA with a lien on all the property.

Mr. Collins testified that the proposed loan is required for the Company to construct facilities necessary continue to meet the needs of its customers and to render service into the future. He further testified that the proposed loan was necessary in order to expand the toll facilities, EAS facilities and the outside plant to replace worn plant equipment as well as to expand communication paths.

Based upon all the evidence, the Commission finds that the proceeds from the proposed financing will be expended to finance the Company's construction program in order to modernize the service plant at Chichester including the purchase of a new digital switch and further finds that the proposed financing will be consistent with the public good.

Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof, it is:

ORDERED, that Chichester Telephone Company be, and hereby is, authorized to issue its mortgage note or notes in the aggregate principal amount of $1,749,000 to the United States of America, acting by and through the Rural Electrification Administration, in accordance with the foregoing Report; and it is

FURTHER ORDERED, that Chichester Telephone Company be and hereby is authorized to

mortgage its present and future property, tangible and intangible, including franchises, as security for such mortgage note or notes and as further security for its loans from the United States of America; and it is

FURTHER ORDERED, that the proceeds from this proposed financing shall be used to finance the Company's construction program; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year, Chichester Telephone Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds of said proposed 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 thirtieth day of June, 1989.

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NH.PUC*06/30/89*[51775]*74 NH PUC 215*Public Service Company of New Hampshire

[Go to End of 51775]

74 NH PUC 215

Re Public Service Company of New Hampshire

DR 89-091
Order No. 19,456

New Hampshire Public Utilities Commission

June 30, 1989

ORDER revising the energy cost recovery mechanism rate of an electric utility and approving energy and capacity rates for purchases from qualifying cogeneration and small power production facilities.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Energy cost recovery mechanism — Fossil fuel — Forecast.

[N.H.] In setting the energy cost recovery mechanism (ECRM) rate for an electric utility, the commission forecasted oil prices using the most recent contract prices and applied a fuel price escalator for the upcoming ECRM period. p. 218.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Energy cost recovery mechanism — Power costs — Forecast.

[N.H.] In setting the energy cost recovery mechanism (ECRM) rate for an electric utility, the commission replaced the utility's projection of combustion turbine generation costs with the average costs projected for the ECRM period for Northeast Utilities slice of the system purchases. p. 218.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Over- and undercollections — Interest — Energy cost recovery mechanism.

[N.H.] The interest rate to be applied to energy cost recovery mechanism (ECRM) over- and undercollections was based on commission rules governing interest on customer deposits; however, the commission requested that the

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parties propose a new, less complex interest rate methodology for use in future ECRM proceedings. p. 218.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 53 — Over- and undercollections — Amortization — Energy cost recovery mechanism.

[N.H.] In setting the energy cost recovery mechanism (ECRM) rate for an electric utility, the commission declined to require the utility to amortize a prior period undercollection over a 12-month, rather than a traditional 6-month period; it was found that the rate impact of using a 12-month amortization period was not so significant as to justify a departure from its past ECRM procedures. p. 219.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost recovery mechanism — Performance incentives — Electric utility.

[N.H.] An electric utility was directed to present, in its next energy cost recovery mechanism proceeding, testimony reviewing and comparing the performance incentive program (PIP) instituted by the New England Electric Power Pool (NEPOOL) and the net outage adjustment (NOA) scheme included in its ECRM, with particular emphasis on whether the NOA scheme should be retained. p. 220.

6. COGENERATION, § 25 — Rates — Avoided costs — Short-term avoided energy and capacity.

[N.H.] In setting new short-term avoided energy and capacity rates for purchases by an electric utility from qualifying cogeneration and small power production facilities, the commission determined the short-term market value of capacity using the weighted average of the projected capacity costs of the utility's current short-term purchases and deficiency charges; it rejected the proposed use of New England Electric Power Pool (NEPOOL) capability adjustment and deficiency charges as not representative of the short-term market value of capacity in NEPOOL at any particular time. p. 220.

7. AUTOMATIC ADJUSTMENT CLAUSES, § 65 — Administrative review — Reopenings — Energy cost recovery mechanism proceeding — Bankrupt utility.

[N.H.] In an energy cost recovery mechanism proceeding involving a bankrupt electric utility, the commission stated that it would monitor progress in the bankruptcy proceeding and reopen the docket should any circumstances affecting the ECRM rate arise. p. 221.

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i. AUTOMATIC ADJUSTMENT CLAUSES, § 68 — Administrative review — Reopenings —

Energy cost recovery mechanism proceeding — Reconciliation — Bankrupt utility.

[N.H.] Statement, in a separate opinion to an order setting the energy cost recovery mechanism (ECRM) rate for a bankrupt electric utility, that the majority should have limited the effective period of the ECRM rate to 60 days, calculated the reconciliation on a monthly basis, and scheduled an interim proceeding to adjust the rate if appropriate; the commissioner argued that uncertainties surrounding the resolution of the utility's financial situation were so great that the establishment of a standard, 6-month ECRM rate could lead to an unfair result. p. 221.

APPEARANCES: Eaton W. Tarbell, Jr., Esquire, of Sulloway, Hollis and Soden, and Gerald M. Eaton, Esquire for Public Service Company of New Hampshire; Michael Holmes, Esquire for the Consumer Advocates Office; Jack Lahey, Esquire for the Business and Industry Association of New Hampshire; and Eugene F. Sullivan, Finance Director, George McCluskey and Thomas Frantz, Economics Department, for the NHPUC staff.

By the COMMISSION:

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REPORT

This docket was initiated on May 26, 1989 when Public Service Company of New Hampshire (PSNH) filed a revision to its ECRM rate for the period July through December 1989. This rate represents a change from the prior period rate of $2.821/100 KWh to $3.821/100 KWh, an increase of $1.00/100 KWh. An order of notice was issued on May 31, 1989, and was published in the *Union Leader* on June 5, 1989.

Duly noticed hearings were held on June 26 and 29, 1989. Hearings were also held at the commission's office in Concord on June 27, 1989 in order to complete the hearings before July 1, 1989.

At the hearing on June 26, 1989 the Business and Industry Association of New Hampshire (BIA) addressed its motion to intervene and asked that PSNH's filing for a 1¢ increase per KWh be suspended, subject to interest for the appropriate portion and to make all funds collected subject to refund. The Consumer Advocate made a motion that the Commission dismiss PSNH's request for any ECRM change until the revenue requirement is addressed to insure that the company receives only the just and reasonable return to which it is entitled. The consumer advocate further argues that the U.S. Bankruptcy Court's rejection of the Commission represents an intrusion into the process by which rates are set and restricts the Commission's ability to set just and reasonable rates. The commission denied the motion of the Consumer Advocate to suspend the filing and to continue the ECRM rate in effect during the January through June period. The BIA was granted intervention status but was limited to retaining the current methodology used to establish an ECRM rate unless extraordinary circumstances could be established.

The ECRM rate filed by PSNH for the period from July 1, 1989 to December 31, 1989 was $0.03821 per KWh, or $3.821/100 KWh. That rate represents an increase from the rate of $2.821/100 KWh which was in effect in the prior period. The company witness testified that the

major reason for the increase was an increase in the estimated average cost of oil fired generation due to estimated increases in the average cost of oil. A second major reason was an underrecovery of $7,996,696 during the first half of 1989. The factors contributing to the underrecovery were as follows:

1. The average cost of oil fired generation was greater than estimated due to the increase in the cost of oil.

2. The average cost of Merrimack coal generation was greater than estimated.

3. The amount of QF generation was greater than estimated.

4. The actual overrecovery for the July-December 1988 period was $5,000,000 less than the estimated overrecovery used to calculate the ECRM rate for the January through June 1989 ECRM period.

The witness attributed the difference in the prior period overrecovery to the average cost of oil-fired generation for December 1988 being greater than estimated, QF generation for December being greater than estimated, greater than estimated December 1988 net output, and an error in reported fuel oil consumption and cash expenditures for fuel oil during November 1988 which was corrected in December 1988.

On June 22, 1989 the company filed data responses to staff at a pre-hearing conference where some of the issues in the ECRM filing were discussed. The data responses (Exhibit 22) included a revised calculation of the ECRM rate using May actual results. The revised rate was reduced to $3.784/100 KWh as compared to the original filing of $3.821/100 KWh.

During the course of the hearing several aspects of the filing were explored, some of which were:

1. The present and projected price of oil.

2. Sales projections for June 1989 and the forecasted July through December 1989 period.

3. Forecasted replacement power for the Northeast Utilities slice of the system during November and December 1989.

4. The effects of the previous period over estimate of the over recovery of ECRM costs.

5. Interest rates applied to the underrecovery from the prior period.

6. The reasons for burning oil in Schiller Units 4 and 5 during July through November

1989.

7. Coal contracts for Merrimack and Schiller Stations.

The Business and Industry Association of New Hampshire (BIA) presented a witness who testified that the ECRM should be viewed in distinct components. The issue raised was that the surcharge for the undercollection from the prior period was unusual in nature and so large that it should be amortized over a twelve month period. The witness claimed that the forecast of fuel costs was unreliable and that the increase of 15.5% in bills was so high that it should be limited

to one half of the request. Finally, it was proposed that the increase should be based upon the costs for the first half of 1989 because those costs are more reflective of fuel prices than are the Company's estimates of fuel costs. The BIA took the position that interim rates should be set for July and possibly August because energy costs were higher in November and December and would be reflected in higher average rates during the early months of the year. BIA claims that its proposal would result in avoiding rate shock.

Several of these items merit further discussion and resolution.

I. *Forecasted Oil Prices*

[1] PSNH's fuel forecast was a matter which was discussed fully during the course of these hearings. The Company witness testified that the fuel oil prices were based on using the actual contract oil price effective on May 15, 1989 and assuming that would be the average price of deliveries for the balance of the second quarter. DOE/EIA quarterly price changes for the third and fourth quarter oil price were applied to the second quarter oil price in order to project prices for the balance of the ECRM period. The result was to assume that the prices for oil would be $16.14 per barrel in the second quarter, $16.25 per barrel in the third quarter and $17.07 in the fourth quarter. PSNH testified that its current contract price was $14.40 per barrel. That price is substantially below the prices paid recently, an indication that the price increases due to supply disruptions from the Valdez accident and the fires at the North Sea oil platform were temporary. The BIA takes the position that the current price is more reflective of the costs from the entire January through June period. It would appear from the most recent price that prices are stabilizing at a level lower than the recent months' price. Therefore, for the purposes of this ECRM period, we will calculate oil prices using the most recent contract price and apply the filed fuel price escalator for the upcoming period. A review of the actual data submitted with the ECRM Monthly Data Filing indicates contract purchases during May and June at levels lower than those used for an average price for the second quarter. The June 15 contract price was slightly above $15.00 per barrel, coupled with the $14.40 per barrel price previously mentioned indicates the trend in oil prices is not similar to those predicted by the company.

II. *Forecasted Power Costs*

[2] The forecasted power costs for November and December 1989 include an increased amount of combustion turbine generation used to replace PSNH's purchase of a slice of the Northeast Utilities (NU) system purchase which expires in October 1989. During cross examination the company witness testified that purchases from other utilities were being solicited now for the summer period and purchases for the last quarter would be solicited later. The actual generation would not result in the combustion turbines being utilized in the manner projected for the company's forecasting model (PROSIM). Both the BIA and staff questioned the costs related to using combustion turbines to forecast November and December.

For the purposes of this ECRM period the combustion turbine generation costs for November and December 1989 will be replaced with the average costs projected for the period for the NU Slice of System. Those costs will be used as a surrogate for the costs which will be actually incurred during those months when the company purchases secondary power.

III. *June Sales Forecast*

[3] During cross examination it was

revealed that the actual forecasted sales for June were 3.7%, as compared to the 6.1% forecast used by the company to forecast the final results of the January-June 1989 ECRM. The revised estimate for June using the 3.7% sales forecast has been used by the Commission to determine the ECRM rate for the forecast period.

IV. *Interest Rates Applied to Over/Under Collections of ECRM*

The BIA questioned the use of the prime rate of 11.5% to calculate the interest rate which is applied to the prior period undercollection. As we have stated in previous ECRM proceeding, the actual interest rate applied is based on the rules governing interest on customer deposits which were recommended in October 1987. That rate is based on the prime rate which is in effect on the first working day of the month prior to the calendar quarters and is applied for the quarter, with adjustment for each quarter. The rate which applies to the third quarter is 11.5%. Shortly after June 1st the prime rate dropped to 11%. Staff asked the company to recalculate the interest calculation using 10% for the last quarter of the year. That calculation produced a minimal charge. For the purposes of this ECRM filing we will use the interest formula that was previously agreed to by the parties in past cases. However, during the ECRM hearing which will be held in December 1989 the interest rate to be applied to Over/Under collections will be examined. All parties will be required to propose an interest rate methodology. Based on recent experience, it would appear that an average monthly prime rate would be appropriate as it would take into account changes that occur during any period. The complexity of such an application is for less burdensome than applying interest rates to each customer deposits.

V. *Estimated Prior Period Undercollections*

[4] PSNH's original ECRM filing for this case included an estimated undercollection of $7,996,696 in the requested ECRM rate of $0.03821 per KWh. Based upon the revised calculation which used May actuals (Exhibit 22) the undercollection was reduced to $7,186,627 and the rate was revised to $0.03784 per KWh. After recalculating the forecasted sales for June 1989 the estimated underrecover is $7,151,807, which changes the ECRM rate to $0.03783 per KWh. One of the requests of the BIA is that the undercollection for the prior period be amortized over twelve months rather than six months. The company argues that method would be inappropriate because it deviates from previously established ECRM methodology and is not in accordance with the settlement agreement in Docket 79-187. The BIA argues that this is an extraordinary event which should be considered in order to avoid rate shock. The BIA witness also testified that the Commission should consider continuing the last effective ECRM rate adjusted for the refund of the overrecovery of $10.2 million which was included in the ECRM rate for the first half of 1989.

The impact to rates of including a projected undercollection for the previous period of $7,151,807 is $0.00227 per KWh ($7,151,807÷3,146,439,000 KWh). If that undercollection were repaid over twelve months the amount included in the upcoming ECRM would be $0.0014 per KWh. The last forecasted ECRM rate would be changed from $0.03784 to $0.0367. The

Commission does not feel that is a significant change upon which to deviate from past ECRM procedures. The impact to an industrial customer using 600,000 KWh would be $684. The impact to a residential customer using 500 KWh per month would be $0.57.

The Commission has revised the June forecast, reduced fuel oil projections, and substituted for combustion turbine generation in November and December 1989. We have not revised forecasted sales for the period. The forecast is reasonable, based upon the current trends being experienced by the Company. Based upon the aforementioned changes we have arrived at a rate of $0.03664 per KWh for the upcoming ECRM period.

The previous period ECRM rate of $0.02821 per KWh included an estimated overrecovery of $10,244,837. The current period estimates an underrecovery of $7,151,807. Those amounts alone are a swing of $17,396,644. Based upon the sales for the first

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half of 1989, rates would be increased by $0.00535. If added to the rate in effect of $0.02821 the result would be a rate of $0.0356 per KWh, or $3.356 per 100 KWh. After consideration of that factor and the fact that oil prices have risen from previous levels we do not consider the impact to be as great as it appears when only considering the rate in effect in the current period. Additional factors have to be considered in order to make a valid comparison between periods. The ECRM rate that was in effect for 1988 was $3.249 per 100 KWh as compared to the rate of $3.664 per 100 KWh which we have calculated for the upcoming period.

Net Outage Adjustment Incentive Scheme

[5] During cross examination a company witness testified that the 1989 NEPOOL's Performance Incentive Program (PIP) could result in an increase in PSNH's capability responsibility of about 30 MW, at a cost of around $2 million. The same witness also testified that the instant filing contains a Net Outage Adjustment (NOA) incentive payment of $113,000 in recognition of the fact that the company achieved certain power plant availabilities that were higher than the historical targets. The commission questions whether the net outage adjustment scheme has outlived its usefulness as an incentive to improve plant availability now that NEPOOL has instituted a region wide program. Accordingly, we order the company to review and compare the objectives of the PIP and NOA schemes for the next ECRM proceeding and file testimony. In addition the company should clearly state its reasons (if applicable) for retaining the NOA scheme.

VI. *Qualifying Facility Costs Recovered in ECRM*

[6] On May 26, 1989 PSNH also proposed new short-term avoided energy and capacity rates for qualifying facilities. The energy rates, to be paid on a per kilowatt-hour basis, are as follows:

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

On PeakOff PeakAll Hours

 3.719   2.765  3.186
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Based on the evidence provided, we find the proposed energy rate to be reasonable and calculated in accord with the methodology developed in 86-41 Phase I and approved by the

Commission in Order No. 18,829.

The capacity rate as filed on May 26, 1989 was $75.00/kW-Year. The capacity rate as proposed by the company was set equal to the sum of the NEPOOL capability responsibility adjustment and deficiency charges. In response to a staff data request, PSNH indicated that in its view this was equal to the short-term market value of capacity.

In response to other staff data requests, PSNH provided an exhibit and another late filed exhibit with information on the capacity costs for contracts into which it had entered for the July-December 1989 ECRM period. It also provided an exhibit, corrected in a late filed exhibit, with estimates of the amount of capacity deficiency service it would be taking from NEPOOL, at $75.00/kW-Year, over this period.

PSNH indicated that the cost of capacity for two of its purchases, the NU Slice of System and New Brunswick, should be adjusted for the energy savings associated with them. PSNH referred to the calculation of energy savings filed as exhibits in its previous ECRM proceeding DR 88-184. The Commission's Order No. 19,288 in DR 88-184 (74 NH PUC 22, 99 PUR4th 543 [1989]) noted that the energy savings as calculated then were overestimated. In its calculation, PSNH assumed that it would meet both its marginal capacity and energy needs with deficiency service from NEPOOL. However, in testimony, Mr. Bowie of the Company indicated that PSNH did not anticipate the need to purchase energy deficiency service. Therefore, we have substituted the energy cost of PSNH's own most expensive units for the cost of NEPOOL energy deficiency service. This substitution results in energy savings of $96.45/kW-Year associated with the NU Slice of System Purchase and shows no energy savings from the New Brunswick purchase.

A weighted average of the short-term

capacity costs, after adjusting the NU Slice of System Purchase for energy savings of $96.45/kW-Year, equals $77.38.

The NEPOOL capability adjustment and deficiency charges are established by the consensus of NEPOOL members and differing opinions exist on the appropriateness of their dollar values. We are, therefore, concerned that these charges may not represent the short-term market value of capacity in NEPOOL at any particular time. The weighted average of the capacity costs of PSNH's current 1989 short-term purchases and deficiency charges that are projected to be incurred reflect capacity costs that PSNH is actually paying in the current year. As such, they are a better representation of the short-term market value of capacity. Therefore, we find the appropriate short-term capacity rate for the company to be $77.38 rather than $75.00/kW-Year.

We will, therefore, approve the energy rates as filed and capacity rates of $77.38/kW-year for July-December 1989, effective July 1, 1989, and will direct the Company to file appropriate tariff pages.

Finally, we recognize that the company does not purchase significant amounts of energy and capacity from qualifying facilities under these rates at this time. Therefore, changes in the avoided cost rates will have no significant effect on the ECRM rate as filed and no change will be made at this time.

VII. *Conclusion*

Based on the evidence provided we find the proposed ECRM component of $3.664 per 100 KWh to be just and reasonable and in the public good. The ECRM component of $3.664 per 100 KWH is comprised of a forecasted energy component of $3.437 per 100 KWH and a 6-month recovery of $.227 per 100 KWH, to compensate the company for the $7,151,807 underrecovery in the January through June 1989 ECRM period.

[7] Intervenors in this case have expressed a concern that due to forecasted circumstances occurring during this ECRM period in the Bankruptcy Court there is a possibility that customers may be charged higher rates in the early months of the six month period for which recovery may not be possible. The Company argued during the hearing that the ECRM settlement agreement allows for any party to request a hearing at any time during the ECRM period. This proceeding was conducted as a standard "business-as-usual" ECRM with the standard ECRM provisions in force to reconcile, in the next ECRM proceeding, any over or under collections which occur as a result of the rates set herein. The Commission will monitor progress in the Bankruptcy Court proceeding. Any circumstances which affect the ECRM rate will result in an immediate reopening of this docket to address the appropriate changes.

ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate of 3.664/100 KWH for July through December 1989; and it is

FURTHER ORDERED, that the energy rates filed and the capacity rates as discussed in the foregoing report for purchases from Qualifying Facilities be and hereby are, approved for the months July through December 1989 effective July 1, 1989 and Public Service Company of New Hampshire shall file appropriate tariff pages providing for those rates.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1989.

Separate Opinion

[i] I concur with my colleagues that the ECRM rate is the best estimate of the company's energy cost for the July-December 1989 period that is possible to calculate within the constraints of this docket. However, I find that the uncertainties surrounding both that calculation and the resolution of the company's financial situation are so great that instituting a six-month ECRM rate without specifying additional review and adjustment could lead to an unfair result. Therefore, I would have limited the effective period to sixty days, calculated the reconciliation on a monthly basis, and scheduled an interim proceeding to adjust the rate if appropriate.

The commission established ECRM by

report and order no. 15,534, which eliminated the existing Fuel Adjustment Charge and adopted "a semi-annual adjustment of basic rates on the basis of forward looking estimated energy costs reconciled for differences between actual and estimated costs in the prior period,

accomplished in separate, expedited proceedings." It found that "as a whole, these provisions offer a detailed procedure of treating energy costs in a manner that provides some stability in the company's rates, some protection for the company and its customers against changes in energy costs, and some incentives for better management and operation of the company's facilities." At the time the staff and company signed the underlying stipulation, it was assumed that the company's non-ECRM expenses and shareholder return on investment would continue to be evaluated through the normal rate case process.

A key element in fulfilling the goals of ECRM is obviously the reconciliation between actual and estimated costs. Given the expedited nature of the proceeding, adopted to ease the administrative burdens, the company does not have an extensive period in which to prepare the filing; further, the month allowed for review does not permit a comprehensive investigation by staff and intervenors. However, as long as the estimates are reasonable and are reconciled to actual experience, the company and ratepayers are made whole at the end of the period.

The reconciliation mandated by the ECRM procedures has not been trivial adjustment. The following, from records on file at the commission, are the over- and underrecoveries that have actually occurred during the last two years:

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

Period	*ECRM Revenues Requested by PSNH*	*(Over)/Under Recovery (Actual)*
1-6, 1987	$ 77,512,478	$ 7,533,024
7-12, 1987	91,516,524	5,825,471
1-6, 1988	101,567,181	(270,249)
7-12, 1988	98,247,724	(5,696,385)

Thus, if the reconciliation had not occurred, the company would have been undercompensated $13,358,495 in 1987, and ratepayers would have overpaid $5,966,634 in 1988.

There is no reason to suppose that the company's forecast for the July-December 1989 period will achieve a higher degree of accuracy than it has been possible to attain in the past. Indeed, from the record in the instant docket, it appears that the uncertainties surrounding this calculation may be greater than those characteristic of past estimates. For example, the ECRM calculation incorporates a load forecast that projects a 4.1% increase in residential sales, even though the range projected by the company's other models is 0.7 to 2.8%. The forecasted increase to wholesale customers of 8.6% depends largely on information obtained from the purchasing utilities. However, the commission is aware from its Least Cost Planning docket that the New Hampshire Electric Cooperative, PSNH's largest wholesale customer, does not have a demand forecast. Therefore, it is difficult to surmise the basis of the estimate.

The fuel forecast is based on data observed between April 1 and May 15, 1989. The escalating market of that period was fueled by production accidents in the North Sea, the Valdez oil spill and expectations that OPEC would be able to limit production. The North Sea problems have been corrected, oil is again flowing from the Alaskan North Shore, and OPEC has increased its production quotas. The April/May market price of 16.14, the baseline of the fuel forecast, had fallen to $14.50 by the hearing. Therefore, a forecast that starts at the higher level and assumes continued escalation throughout the year seems now, at best, questionable.

A factor of lesser financial import is the interest rate incorporated in the calculation. The calculation assumes a prime rate of 11.5%; the prime is currently at 10.5% and may drift lower

during the remainder of the year.

It is particularly unfortunate that the direction of the uncertainty in these three factors is the same and, therefore, they do not in any sense offset each other. Further, they all imply the risk that ECRM, which provides approximately one-third of the Company's revenues, has been overestimated for the period of July-December 1989. Should the normal ECRM reconciliation process be assured, and should a potentially excessive ECRM rate not be a factor considered in the company's financial negotiations with other parties, an overestimation would not be a matter of such concern. However, this particular period is complicated, and the potential for unfairness heightened by factors involving the PSNH bankruptcy.

The risk of unfairness is exacerbated by the fact that the commission has been temporarily enjoined from examining the non-ECRM component of rates and that records on file at the commission suggest that the company may continue to earn above the rate of return allowed in its non-fuel rates. Therefore, during the immediate period, ratepayers face the possibility of rates that may be excessive in both the non-ECRM and the ECRM components. The proposal of staff (transcript I-27) to establish ECRM rates on an interim basis, "due to the unusual nature of this upcoming 6-month period", appeared to reduce the consumer risk in the portion of the rate component we are not enjoined from reviewing and, concurrently, to return to the company its actual costs plus a portion of previous period's underrecovery.

Linda G. Bisson
Commissioner

July 19, 1989

Due to a conflicting commitment, Commissioner Bisson was unable to participate in each of the three days during which DR 89-091 was heard. As the transcripts for the sessions not attended were not prepared at the time Report and Order No. 19,456 was issued, a delayed separate opinion was necessitated.

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NH.PUC*07/05/89*[51771]*74 NH PUC 208*Granite State Electric Company

[Go to End of 51771]

74 NH PUC 208

Re Granite State Electric Company

DR 89-095, DR 89-101
Order No. 19,451

New Hampshire Public Utilities Commission

July 5, 1989

ORDER revising an electric utility's fuel adjustment clause, oil conservation adjustment, and qualifying facility power purchase rate.

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1. COGENERATION, § 25 — Rates — Avoided costs — Method of computation.

[N.H.] Where an electric utility had filed its short-term avoided capacity rates in the form of cents-per-kilowatt-hour, which was inconsistent with a previous commission order and the methodology for calculating avoided costs established in that order, the utility was ordered to make whatever arrangements were necessary to convert capacity payments to existing qualifying facilities from a cents-per-kilowatt-hour to a dollars-per-kilowatt-year basis. p. 209.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel adjustment clause — Oil conservation adjustment clause — Electric utility.

[N.H.] An electric utility was authorized to implement increased fuel adjustment clause and oil conservation adjustment (OCA) clause rates; the increases were due to an amendment to the OCA factor and a prior period undercollection. p. 209.

APPEARANCES: Thomas G. Robinson, Esquire for Granite State Electric Company; Eugene F. Sullivan, George McCluskey, Janet Besser and Thomas Frantz for PUC staff.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 23, 1989 to review the Fuel Adjustment Clause (FAC) and Oil Conservation Adjustment rate (OCA) filings of Granite State Electric Company for the second half of 1989.

On June 1, 1989 Granite State Electric Company (Granite) filed a Fuel Adjustment Clause (FAC) factor of $.00447 per KWh and an Oil Conservation Adjustment rate (OCA) of $.00144 per KWh.

At the hearing, Granite filed a revised Fuel Adjustment Charge requesting $.00401 per KWh.

The instant filing covers the six month period from July through December 1989. In support of these filings Granite presented two witnesses, Terry L. Schwennesen and James V. Mahoney. In testimony a witness for Granite provided the following information. Granite proposed an increase in its OCA of $0.00127 per KWh from $0.00023 to $0.00144 per KWh. The increase is due to an amendment to NEP's OCA factor which went into effect on May 1, 1989 as a result of a partial settlement agreement in the NEP W-10 rate case at the Federal Energy Regulatory Commission and an estimated undercollection in the first half of 1989.

On June 1, 1989 Granite State also proposed new short-term avoided energy and capacity rates for qualifying facilities. The energy rates, to be paid on a per kilowatt hour basis, are as follows:

Energy Rates by Voltage Level (cents/KWh):

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

Voltage Level	*Peak Period*	*Off-Peak Period*	*Average*
(1) Subtransmission	3.114	2.515	2.789
(2) Primary Distribution	3.344	2.639	2.962
(3) Secondary Distribution	3.463	2.701	3.050

At the hearing on June 23, 1989, Granite State revised the capacity rate filed on June 1, 1989 to reflect the weighted average of the capacity costs of the company's 1989 short-term power purchase contract. The short-term avoided capacity rate is $78.00/KW-year. Granite State indicated that this was its best estimate of the short-term market value of capacity.

[1] Granite State filed the short-term avoided capacity rates in the form of cent/KWh payments. This form is inconsistent with the Commission's orders in Docket 86-71 and the methodology for calculating avoided costs established in that proceeding. That methodology called for capacity payments on a $/KW-year basis. The company should make whatever arrangements are necessary to convert capacity payments to existing qualifying facilities from a cents per kilowatt hour to a dollars per kilowatt year basis.

[2] Based on the evidence provided, we find the proposed energy rates to be reasonable and calculated in accord with the methodology in DF86-71, Phase I and approved by the Commission in order No. 18,829. We also find the proposed capacity rate of $78.00/KW-year to be reasonable and calculated in such a manner as to represent the short-term market value of capacity in accord with the Commission's order No. 19,052 in DR86-71, Phase III (74 NH PUC 117 [1988]). We will, therefore, approve the energy and capacity rates as proposed for July-December, 1989, effective July 1, 1989, and will direct the company to file appropriate tariff pages noting that capacity is to be paid in $/KW-year.

We note that the company's short-term avoided capacity rate differs from the first year of the long-term avoided capacity cost filed on May 1, 1989 as part of Granite State's Integrated Least-Cost Resource Plan, DR89-075. We will expect the company to address the issue of consistency in these costs in the Least-Cost planning proceedings now under way.

Based on the evidence provided, the commission finds the revised FAC rate of $.00401 per KWh for Granite, the OCA surcharge of $.00144 per KWh, and the revised filed QF rates as filed to be just and reasonable and will approve these rates for the six month period beginning July 1989 and ending December 1989.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 28th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of $0.00401 per KWH for the months of

July through December 1989, be and hereby is, permitted to go into effect for the month of July, 1989; and it is

FURTHER ORDERED, that Twenty-Fourth Revised Page 57 of Granite State Electric Company's tariff, NHPUC No. 10 — Electricity, providing for an Oil Conservation surcharge of $0.00144 per KWh for the months of July through December 1989, be, and hereby is, permitted to go into effect for the month of July, 1989; and it is

FURTHER ORDERED, that Twelfth Revised Page 11C of Granite State Electric Company's tariff, NHPUC 10 — Electricity, providing for an Qualified Facility Power Purchase Rate, be, and hereby is, permitted to go into effect during July through December, 1989; and it is

FURTHER ORDERED, that Granite State shall file revised tariff pages to replace First Revised Page 11-A on the terms of payment for Capacity Transactions and Eleventh Revised

Page 11-C setting energy and capacity rates for the period July-December, 1989, in accordance with the foregoing report.

FURTHER ORDERED, that the company refile its tariff annotated in according to NHPUC Administrative Rule 1601.04-B (Order No., Docket No. and Date).

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1989.

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NH.PUC*07/05/89*[51772]*74 NH PUC 210*Rolling Ridge Water System

[Go to End of 51772]

74 NH PUC 210

Re Rolling Ridge Water System

Additional petitioners: Echo Lake Woods Water System and Woodland Grove Water System

DE 89-002
Order No. 19,453

New Hampshire Public Utilities Commission

July 5, 1989

ORDER setting temporary rates for water service and conditioning the grant of a franchise to provide water service on the submission of proof to the commission that the services of a licensed operator had been obtained.

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1. CERTIFICATES, § 73 — Grant or refusal — Conditions and restrictions — Water franchise.

[N.H.] The grant of a franchise to provide water service was conditioned on the water

systems submitting proof to the commission that the services of a licensed operator had been obtained. p. 211.

2. RATES, § 630 — Temporary rates — Water service — Stipulation.

[N.H.] Pursuant to stipulation, temporary rates for service to be provided to new franchise areas by three water systems were set at the level charged to the existing customers of the systems. p. 211.

APPEARANCES: Dom S. D'Ambruoso, Esq. on behalf of Rolling Ridge Water System, Echo Lake Woods Water System, and Woodland Grove Water System; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 5, 1989, Rolling Ridge Water System, Echo Lake Woods Water System, and Woodland Grove Water System (the water systems) owned by Robert A. Demers filed petitions to provide water service in limited areas of the Towns of Conway, North Conway, and Bartlett, New Hampshire, respectively, and implicitly to set rates therefore.

On April 17, 1989, a hearing was held on the issues of temporary rates and a franchise for said water systems. Staff took no position on the issue of the franchise. On the issue of temporary rates, the parties stipulated to set temporary rates at their current levels. That is, for Echo Lake Woods Water System the temporary rate will be $150 per year; for Woodland Grove Water System, $150 per year; and for Rolling Ridge Water System, $200 per year.

II. *Findings of Fact*

The company has requested a franchise for limited areas of the Towns of Conway, North Conway, and Bartlett, New Hampshire, more particularly described as follows: The Echo Lake Woods franchise, located in Conway, New Hampshire encompasses a forty-one lot subdivision on the north side of Old Westside Road as shown on Plan 360 entitled "Plan of Land in Conway, New Hampshire, property of Richard Sullivan, Echo Lake Woods." A survey of September, 1970, by Thaddeus Thorne, Center Conway, New Hampshire and marked as Exhibit A, Page 1, in NHPUC Docket DE 89-002; the Echo Lake Woods franchise also encompasses nine lots on the south side of Old Westside Road as shown on a plan entitled

"Westwood Lane, Town of Conway, New Hampshire, surveyed 9/29/78 by Thaddeus Thorne, Surveys, Inc., Center Conway, New Hampshire" and part of Exhibit A, Page 2 in NHPUC Docket DE 89-002; the Woodland Grove franchise, located in Conway, New Hampshire, encompasses twenty-five residential lots on the northwest side of Stock Road as shown on "Plan of Land in Conway, New Hampshire, Woodland Grove, Subdivision of a Portion of David L. Limrick Property" surveyed in July, 1971 by Thaddeus Thorne, Center Conway,

New Hampshire and referenced as Plan #71-403 and on file at the NHPUC as Exhibit B, Page 1, in Docket DE 89-002, the Woodland Grove franchise also encompasses fifty-four residential lots on the northwest side of Stock Road, in Conway, New Hampshire, and is more particularly shown on "Plan of Land in Conway, New Hampshire, Woodland Grove, Section 2, Subdivision Plan of a Portion of Land of David L. Limrick, survey of June, 1972, Thaddeus Thorne Surveys, Center Conway, New Hampshire" on file at the NHPUC as Exhibit B, Page 2 in Docket DE 89-002; the Rolling Ridge Water System is located in Bartlett, New Hampshire, and encompasses thirty-one lots on the south side of Maine Central Railroad as shown on a plan entitled "Rolling Ridge Subdivisions, Surveyed in July, 1966, by Thaddeus Thorne, Center Conway, New Hampshire" and on file at the NHPUC as Exhibit C, Page 1, in Docket DE 89-002, the Rolling Ridge Water System also encompasses six additional lots also south of the Maine Central Railroad, in Bartlett, New Hampshire, and shown on a plan entitled "Rolling Ridge, Phase II, Surveyed April 14, 1975, by Thaddeus Thorne Surveys, Inc., Center Conway, New Hampshire" and on file at the NHPUC as Exhibit C, Page 2, in Docket DE 89-002.

After the hearing held on April 17, 1989, the company supplied the commission with approvals pursuant to RSA 374:22,3 from the Water Supply and Pollution Control and Water Resources Divisions of the Department of Environmental Services. Through its filings, the company has made a commitment to comply with commission rules and filing requirements. The company has provided some evidence through the testimony of Robert A. Demers that it is a) financially capable, b) managerially capable, c) administratively capable, d) legally capable, and e) technically capable to run the franchise.

III. *Commission Analysis*

[1, 2] The commission has serious concerns over the fact that there is no licensed operator on staff of these water utilities, nor does Mr. Demers live in the area. In fact, he lives seventy-eight miles away in Canton, Maine and over an hour and a half from these water systems. The water systems are currently managed by White Mountain Electric Company, a company formerly owned by Mr. Demers, and all complaints and repairs are handled by said company. There is no written agreement between Mr. Demers and White Mountain Electric Company. The commission will not grant a franchise to Mr. Demers or these three water systems until he has provided the commission with adequate proof of the fact that he has hired a licensed operator to be on call to service these water systems, and signed a sufficient written agreement with White Mountain Electric Company.

On the issue of temporary rates, the stipulation of the parties is granted and temporary rates shall be set at current rates for the remainder of this proceeding from the date of the submission of proof of compliance with the above requirements.

Our order will issue accordingly.

ORDER

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

ORDERED, that Rolling Ridge Water System, Echo Lake Woods Water System, and Woodland Grove Water System be granted a franchise to provide water in the areas described in the foregoing report only when they have provided proof to the commission that they have obtained the services of a licensed operator; and it is

FURTHER ORDERED, that temporary

rates be set at the level set in the foregoing report as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1989.

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[Go to End of 51773]

74 NH PUC 212

Re Fuel Adjustment Clause

Applicants: Concord Electric Company and Exeter and Hampton Electric Company

DR 89-096, DR 89-099
Order No. 19,454

New Hampshire Public Utilities Commission

July 6, 1989

ORDER revising the fuel adjustment clause rates of two electric utilities and setting the short-term avoided energy and capacity rates for purchases by the utilities from qualifying cogeneration and small power production facilities.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Fuel adjustment clause — Rate revision — Electric utilities.

[N.H.] The fuel adjustment clause rates of two electric utilities were increased to reflect increases in oil prices and an increase in the rates charged by the wholesale supplier of the utilities. p. xxx.

2. COGENERATION, § 25 — Rates — Avoided costs — Short-term energy and capacity.

[N.H.] The short-term avoided energy and capacity rates for purchases by two electric utilities from qualifying cogeneration and small power production facilities were revised to reflect an increase in the short-term market value of capacity. p. xxx.

APPEARANCES: Elias G. Farrah, Esquire for Exeter & Hampton Electric Company and Concord Electric Company; Eugene F. Sullivan, George McCluskey, Janet Besser and Thomas Frantz for PUC staff.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 23, 1989 to review the Fuel Adjustment Clause (FAC) filings of Concord Electric Company and Exeter & Hampton Electric Company.

Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") presented two witnesses, Susan G. Hersey and Karen M. Asbury.

On June 1, 1989 Concord and Exeter & Hampton filed revised FAC rates for the period July — December, 1989. On June 19, 1989 the two companies filed revised FAC surcharge credits of ($0.00680) and ($0.00657) per KWH for Concord and Exeter & Hampton respectively.

On June 19, 1989 the companies filed testimony and exhibits which supported the proposed revision to their respective FAC surcharge credits.

Concord proposed an FAC increase of $0.00111 per KWH and Exeter & Hampton of $0.00154 per KWH. Both companies attribute the increase primarily to increased oil prices. The companies further state that oil prices have been increased in the production costing to reflect the most recent prices available.

The instant filing covers the six month period from June through December, 1989. In testimony a witness for the companies provided the following information. The base energy charge has increased due to the addition of two long term generation units, Indeck, a coal fired QF and Baystate Gas Company Expander Turbine. The fuel charge has increased over the last period due to lower loads in July — December and a change in wholesale fuel charge from Unitil Power Corporation.

Through testimony and cross examination

Page 212

by Staff and Commission of these witnesses, the following issues were discussed:

1. Wholesale rates from Unitil Power and to Concord & Exeter;

2. sales forecast;

3. the short term avoided cost rate that will apply to sales from small power producers.

Based on the evidence provided, the commission finds the FAC rate of FAC surcharge credits of ($0.00680) and ($0.00657) per KWH for Concord and Exeter & Hampton respectively, to be just and reasonable and will above the rate for the six month period beginning July 1989 and ending December, 1989.

On June 1, 1989 UNITIL Service Corp. also proposed new short-term avoided energy and capacity rates for qualifying facilities. The energy rates to be paid on a per kilowatt hour basis, are as follows:

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

On Peak	*Off Peak*	*All Hours*
3.27	2.71	2.87

The capacity rate as filed on June 1, 1989 was $75.00/KW-year. The Companies presented testimony by Susan G. Hersey in support of the energy and capacity rates.

The capacity rate proposed by the Companies represents the sum of the NEPOOL capability adjustment and deficiency charges. Ms. Hersey testified that this was the Companies' best estimate of the market value of peaking capacity in NEPOOL. In response to staff's oral data request at the hearing, the Companies provided a weighted average of the capacity costs of the Companies' short-term capacity only power purchases and sales in 1989. This weighted average is $76.20/KW-year.

Given that the NEPOOL capability adjustment and deficiency charges are established by the consensus of NEPOOL members, some compromises may be made in arriving at the final dollar values for the charges. We are, therefore, concerned that these charges may not represent the short-term market value of capacity in NEPOOL at any particular time. The weighted average of the capacity costs of the Companies' current 1989 short-term power purchases reflect capacity costs the Companies are actually paying in the current year and as such are a better representation of the short-term market value of capacity. Therefore, we find the appropriate short-term capacity rate for the Companies to be $76.20 rather than $75.00/KW-year.

Based on the evidence provided, we find the proposed energy rate to be reasonable and calculated in accord with the methodology developed in DR86-69, Phase I and approved by the commission in Order No. 18,829 (72 NH PUC 369 [1987]). We also find that the capacity rate of $76.20/KW-year to be reasonable and calculated in such a manner as to represent the short-term market value of capacity in accord with the commission's Order No. 19,052 in DR86-69, Phase III (73 NH PUC 117 [1988]). We will, therefore, approve these energy and capacity rates for July-December 1989, effective July 1, 1989, and will direct the Companies to file appropriate tariff pages.

Finally, we recognize that the Companies do not purchase energy and capacity from qualifying facilities under these rates at this time. Therefore, changes in the cost rates have no effect on the Fuel Adjustment Clause surcharge as filed.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 127th Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge credit of ($0.00680) per KWH for the months of July through December 1989, be and hereby is, permitted to

go into effect for the month of July, 1989; and it is

FURTHER ORDERED, that 38th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of

($0.00657) per KWH for the months of July through December 1989, be, and hereby is, permitted to go into effect for the month of July, 1989; and it is

FURTHER ORDERED, that Concord Electric Company and Exeter and Hampton Electric Company shall file revised tariff pages setting energy and capacity rates for the period July-December, 1989 in accordance with the foregoing report.

FURTHER ORDERED, that the companies refile their tariffs annotated in according the NHPUC Administrative Rule 1601.04-B (Order No., Docket No. and Date).

The above noted rates have been adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 16,524 (68 NH PUC 461 [1983]). By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1989.

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NH.PUC*07/06/89*[51774]*74 NH PUC 214*Purchased Power Adjustment Clause

[Go to End of 51774]

74 NH PUC 214

Re Purchased Power Adjustment Clause

Applicants: Exeter and Hampton Electric Company and Concord Electric Company

DR 89-098, DR 89-100
Order No. 19,455

New Hampshire Public Utilities Commission

July 6, 1989

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

AUTOMATIC ADJUSTMENT CLAUSES, § 14 — Purchased power — Energy costs — Electric utilities.

[N.H.] The purchased power adjustment clause rates of two electric utilities were revised to reflect increases in the wholesale rates charged by the companies' sole supplier of energy.

APPEARANCES: Elias G. Farrah, Esquire for Exeter & Hampton Electric Company and Concord Electric Company; Eugene F. Sullivan, George McCluskey, Janet Besser and Thomas Frantz for PUC staff.

By the COMMISSION:

REPORT

On June 1, 1989 Exeter & Hampton Electric Company ("Exeter & Hampton") and Concord Electric Company ("Concord") (collectively the "companies") filed revised PPAC rates for the period July-December 1989. The rate request was $0.02176 for Concord and $0.02190 for Exeter & Hampton. On June 19, 1989 the two companies filed revised PPAC of $0.02145 per KWH for Exeter & Hampton and $0.02168 per KWH for Concord. The companies also filed testimony and exhibits which supported the proposed revision to their respective PPAC. The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 23, 1989 to review the Purchased Power Adjustment Clause (PPAC) filings of Exeter & Hampton and Concord.

The June 23, 1989 hearing on the PPAC was heard along with the companies' FAC filings (DR 89-099, DR 89-098). Exeter & Hampton Electric Company and Concord Electric Company presented two witnesses, Susan G. Hersey and Karen M. Asbury. Testimony by the companies' witness revealed an increase in the companies' PPAC rates from their currently effective rates.

The instant filing covers the six month period from July through December, 1989. In testimony a witness for the companies provided the following information, the increase in purchase power is caused by increased wholesale rates from the companies' sole supplier of energy, Unitil Power Corporation (Unitil). Unitil's increase in rates is caused by a change in its new wholesale rates filed for effect July 1, 1989 in which its demand cost decreased from $14.12 to $12.23 per KWH and an increase in its base energy charge from $0.00963 to $0.01648 per KWH.

Based on the evidence provided, the

commission finds the PPAC rate of $0.02190 and $0.02166 per KWH (including Franchise Tax Effect) for Concord and Exeter & Hampton respectively, to be just and reasonable and will approve the rate for the six month period beginning July 1989, and ending December 1989.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 10th Revised Page 18 of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a PPCA of $0.02166 (including Franchise Tax) per KWH for the months of July through December 1989, be, and hereby is, permitted to go into effect for the month of July, 1989; and it is

FURTHER ORDERED, that 10th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a PPCA of $0.02190 (including Franchise Tax) per KWH for the months of July through December 1989, be, and hereby is, permitted to go into effect for the month of July, 1989.

The above noted rates have been adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 16,524 (68 NH PUC 461 [1983]).

FURTHER ORDERED, that the companies refile their tariffs annotated in according to NHPUC Administrative Rule 1601.04-B (Order No., Docket No. and Date).

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1989.

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NH.PUC*07/07/89*[51776]*74 NH PUC 223*Gunstock Glen Water Company

[Go to End of 51776]

74 NH PUC 223

Re Gunstock Glen Water Company

DR 89-015
Order No. 19,459

New Hampshire Public Utilities Commission

July 7, 1989

ORDER granting a fifty percent increase in temporary rates for water distribution service.

RATES, § 630 — Temporary rates — Negative rate of return — Water utility.

[N.H.] Where annual reports on file with the commission established that a water utility was earning a negative rate of return, the commission granted a fifty percent increase in temporary rates for the duration of an ongoing proceeding to establish permanent rates.

APPEARANCES: Bernice Paradise on behalf of Gunstock Glen Water Company; Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 18, 1989, Gunstock Glen Water Company (Gunstock or company) filed its notice of intent to file an increase in rates. On March 9, 1989, Gunstock filed proposed rate schedules and supporting documents which would result in an annual increase in annual water revenues of $8,855 or a 126 percent annual increase in rates.

By order no. 19,357, dated April 3, 1989, the tariff submissions of the company were suspended. The company also requested temporary rates. A hearing on the procedural schedule and the issue of temporary rates was held on June 8,

1989. The parties stipulated to a fifty percent increase in rates.

II. *Findings of Fact*

The annual reports on file with the commission establish that the company is earning a negative rate of return. In commission order no. 15,645, docket no. DE 81-379, the commission authorized a 9.59 percent rate of return. An initial investigation by staff of the materials supplied by the company in its annual reports and its submissions in this case established that the company is earning a negative rate of return on a non-pro forma basis. In this case the staff felt that a fifty percent increase in rates was just and reasonable in light of the circumstances. Pursuant to RSA 378:27, temporary rates are justified under such circumstances.

The company's tariffs currently establish a charge per fixture. Its tariff filings for the permanent rate case set a general unmetered flat rate and a general metered rate as the company plans on installing meters. For the purposes of the temporary rate order the tariff on file with the commission will be used for the purpose of increasing rates by fifty percent.

The parties stipulated to the following schedule to govern the duration of this proceeding.

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

June 30, 1989	Staff data requests are due.
July 14, 1989	Company responses to Staff data requests is due.
July 28, 1989	Staff testimony is due.
August 11, 1989	Company data requests are due.
August 25, 1989	Staff responses to Company data requests are due.
September 11, 1989	Settlement conference.
September 19, 1989	Hearing.

III. *Commission Analysis*

The commission accepts the stipulation of the parties and approves the fifty percent increase in rates for the temporary rate procedure. The commission further finds that the procedural schedule 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 Gunstock Glen Water Company be granted a fifty percent increase in temporary rates as they appear in their current tariffs on file with the commission for the duration of this proceeding; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report shall govern the duration of this proceeding.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1989.

74 NH PUC 224

Re New Hampshire Electric Cooperative, Inc.

DR 89-109
Order No. 19,462

New Hampshire Public Utilities Commission

July 7, 1989

ORDER authorizing an electric cooperative to continue an existing "fold-in" fuel charge rate and directing the cooperative to provide the commission with a detailed reconciliation of fuel adjustment clause over- and undercollections.

AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel adjustment clause — "Fold-in" fuel charge — Electric utility.

[N.H.] An electric cooperative was authorized to continue an existing "fold-in" fuel charge rate to provide recovery of fuel charges to be paid to wholesale suppliers where the utility (1) agreed to refund, with interest, fuel cost overcollections, and (2) agreed to provide the commission with a detailed reconciliation of fuel adjustment clause over- and undercollections and amounts refunded within 30 days of

the close of each month.

By the COMMISSION:

ORDER

WHEREAS, on September 1, 1988 by Order No. 19,162 the commission approved a fuel charge of $0.01475 per KWH for the New Hampshire Electric Cooperative, Inc. (the Coop); and

WHEREAS, by the same order number the commission further approved a credit of $0.00296 to the fuel adjustment charge to be effective from September 30, 1988 to May 31, 1989 for a refund of $1,320,937 of fuel charges and recovered as of August 31, 1988; and

WHEREAS, by letter dated May 11, 1989 the Coop stated they will have refunded by May 31, 1989 in excess of $1,320,937; and

WHEREAS, the Coop further states that they continue to overcollect on the base fuel costs; and

WHEREAS, by letter dated May 11, 1989 the Coop requested to continue the credit of $0.00296 through June 30, 1989; and

WHEREAS, by Supplemental Order No. 19,415 (74 NH PUC 172) the commission approved extension of the credit of $0.00296 through June 30, 1989; and

WHEREAS, by letter of June 9, 1989 the Coop filed to continue the existing "fold-in" fuel charge rate of $0.01475 per KWH to provide recovery of fuel charges to be paid wholesale power suppliers during the four month period of July 1, 1989 through October 31, 1989; and

WHEREAS, by the same filing the Coop informed the commission that the total overcollection of its fuel costs as of July 1, 1989 is estimated at $865,589; and

WHEREAS, by the same filing the Coop transmitted 4th Revised Page 18A of its tariff NHPUC NO. 13 — Electricity "Fuel Charge Over-Recovery Credit — Refunds Applicable to Months of July through October 1989", canceling 3rd Revised Page 18A, proposing to refund the amount of $882,176 (including estimated overcollections plus interest at 11.5% APR for the months of July, August, September and October 1989) by a credit of $0.00528 per KWH during the months of July through October 1989; and

WHEREAS, the credit will be shown as a separate line item on its bill; and

WHEREAS, the Coop has requested waivers of the rate filing requirements (NHPUC Rules 1601.05(a) and 1603.03) and that they be issued authorization to allow the proposed revision on July 1, 1989; and

WHEREAS, upon review of the material filed, the commission finds the requested revision to be in the public good; it is

ORDERED, the New Hampshire Electric Cooperative, Inc. be, and hereby is authorized to continue the existing "fold-in" fuel charge rate of $0.01475 per KWH to provide recovery of fuel charges to be paid wholesale power suppliers during the four (4) month period of July 1, 1989 through October 31, 1989; and it is

FURTHER ORDERED, that 4th Revised Page 18A of its Tariff NHPUC No. 13 — Electricity, be and hereby is, approved effective for all bills issued on or after July 1, 1989 through October 31, 1989; and it is

FURTHER ORDERED, that the refund of $0.00528 per KWH be shown as a separate line item on Coop bills; and it is

FURTHER ORDERED, the Coop provide this commission with a 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, 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 July 1, 1989; and it is

FURTHER ORDERED, that the Coop file on or before thirty (30) days prior to November 1, 1989 a revised fuel charge for effect November 1, 1989.

FURTHER ORDERED, that the company refile its tariff annotated in according to NHPUC Administrative Rule 1601.04-B (Order No., Docket No. and Date).

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1989.

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NH.PUC*07/07/89*[51778]*74 NH PUC 226*New Hampshire Electric Cooperative

[Go to End of 51778]

74 NH PUC 226

Re New Hampshire Electric Cooperative

DR 86-151, DR 88-141
Order No. 19,463

New Hampshire Public Utilities Commission

July 7, 1989

ORDER approving a stipulated revenue requirement and rate design for an electric distribution cooperative and directing the cooperative to monitor projected efficiency gains of seasonal and time-of-use rates.

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1. RETURN, § 87 — Electric cooperative — TIER — Stipulation.

[N.H.] Pursuant to stipulation, the rate of return for an electric cooperative was based on 2.0 times its non-Seabrook interest costs — i.e., a minimum times interest earning ratio (TIER) of 2.0. p. 229.

2. EXPENSES, § 9 — Ascertainment of expenses — Electric cooperative.

[N.H.] Pursuant to stipulation, an electric cooperative agreed to offset certain pro forma expense adjustments with additional revenue from a depreciation increment produced by customer growth. p. 229.

3. EXPENSES, § 95 — Payroll — Electric cooperative.

[N.H.] Pursuant to stipulation, an electric cooperative agreed to adjust payroll and payroll-related expenses to include only the increases that would be in effect in the 12-month period beyond the test year. p. 229.

4. EXPENSES, § 89 — Regulation expense — Utility assessment — Electric cooperative.

[N.H.] Pursuant to stipulation, an electric cooperative agreed to adjust its proposed utility assessment to reflect only the costs which would be accrued during the 12 months after the test year. p. 229.

5. EXPENSES, § 88 — Lobbying — Charity — Electric cooperative.

[N.H.] Pursuant to stipulation, an electric cooperative agreed to exclude expenses related to lobbying or charitable purposes. p. 229.

6. EXPENSES, § 19 — Depreciation — Electric cooperative.

[N.H.] Pursuant to stipulation, an electric cooperative agreed to include a depreciation adjustment reflecting only plant in service at the close of the test year. p. 229.

7. EXPENSES, § 33 — Capital amortization — CIAC — Electric cooperative.

[N.H.] Pursuant to stipulation, an electric cooperative agreed to amortize over a 20-year period a contribution-in-aid-of-construction (CIAC) made to an electric utility for a new substation. p. 229.

8. EXPENSES, § 121 — Electric — Line maintenance — Cooperative.

[N.H.] Pursuant to stipulation, the line maintenance expense of an electric cooperative was based on an average cost of $2,846 per mile. p. 229.

9. EXPENSES, § 92 — Rate case expense — Amortization period — Electric cooperative.

[N.H.] Pursuant to stipulation, the rate case expense of an electric cooperative was amortized over a 2-year period. p. 229.

10. EXPENSES, § 104 — Labor costs — Particular allowances — Executive recruitment and moving costs — Electric cooperative.

[N.H.] Pursuant to stipulation, the executive recruitment and moving expense of an

Page 226

electric cooperative was based on the assumption that the cooperative would look outside of New Hampshire for new employees. p. 229.

11. EXPENSES, § 122 — Electric — Purchased power — Revenue matching adjustment — Cooperative utility.

[N.H.] Pursuant to stipulation, the purchase power expense of an electric cooperative was adjusted to match revenue to purchase power expense. p. 229.

12. EXPENSES, § 120 — Electric — Distribution operation — Cooperative utility.

[N.H.] Pursuant to stipulation, the distribution operation expense of an electric utility was increased to reflect its plans to operate a 24-hour dispatch center; however, the expense was adjusted to reflect the fact that a portion of the expense should be capitalized. p. 229.

13. RATES, § 326 — Electric rate design — Time-of-use cost study — Cooperative utility.

[N.H.] In an electric cooperative rate proceeding, the cooperative agreed to perform a time-of-use cost study for two of its nonresidential service classes (Rate Classes G and PG) and to negotiate with commission staff as to whether the study should be used as a factor in determining rate design. p. 230.

14. RATES, § 326 — Electric rate design — Time-of-use rates — Statutory considerations.

[N.H.] State statutes, RSA 378:7 and 378:7-b, require every electric utility to have optional

time-of-use and time-of-day rates in order to conserve electricity and discourage excessive consumption. p. 232.

15. RATES, § 326 — Electric rate design — Time-of-use rates — Cooperative utility.

[N.H.] An electric cooperative was *not* required to implement mandatory seasonal or time-of-use rates where it was found that predicted efficiency gains from such rates were not sufficiently significant to justify their implementation; nevertheless, the commission directed the cooperative to monitor the potential for efficiency gains on a continuing basis and placed the cooperative on notice that it would reconsider the implementation of mandatory time of use rates if other utilities implement such rates, wholesale rates change, or the cooperative develops other sources of power supply. p. 233.

APPEARANCES: Stephen E. Merrill, Esq., and Mark W. Dean, Esq., of Merrill and Broderick, on behalf of New Hampshire Electric Cooperative and Mary C.M. Hain, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report addresses two dockets: our investigation of seasonal and time-of-day electric rates for the New Hampshire Electric Cooperative and the petition of the New Hampshire Electric Cooperative for permanent rates. The report discusses the procedural history. It presents the agreements of the parties, the positions of the parties, findings of fact, and our analysis. It authorizes the revenue requirement and the rate design stipulated to by the parties. It does not require the company to implement mandatory time-of-day or seasonal rates at this time.

I. *Procedural History*

A. Investigation of Time-of-Day and Seasonal Rates — Docket DR 86-151

On May 12, 1986 the commission opened docket DR 86-151 by order no. 18,249 to investigate whether the Coop had complied with the stipulation (exhibit 1), in docket DR 84-248. As required under the stipulation, New Hampshire Electric Cooperative (the Coop) completed a load research study of the residential class and submitted a report to the commission on September 28, 1987. In the last provision of the

stipulation, the Coop agreed to implement a mandatory time-of-day electric space heating rate if the study supported such a rate and the rate was cost effective.

On April 20, 1988, the commission issued an order of notice in docket DR 86-151, stating that the results of the company's study support the cost effectiveness of both a mandatory time-of-day electric space heating rate for large customers (over 1525 kwh per month) and seasonal rates. The commission noted that the company had not proposed a plan to implement these findings as required by the stipulation. Thus the order of notice scheduled a prehearing conference on May 24, 1988, for scheduling and discussion of the implementation procedures.

On May 6, 1988, the Coop filed a motion for rehearing of the commission's order of notice. It stated that the study does not speak for itself and requested a hearing on the following issues: 1) whether or not the company study supports the use of a separate mandatory time-of-day electric space heating rate; 2) whether or not such a rate is cost effective; and 3) whether seasonal rates are appropriate and cost effective.

On May 23, 1988, the commission issued order no. 19,096 granting the Coop's request for a rehearing. The order scheduled the rehearing for the May 24, 1988 prehearing conference. On June 14, 1988, the commission issued order no. 19,104 approving a procedural schedule to govern the proceeding.

On August 30, 1988, the Coop filed a request to defer further action in docket DR 86-151 regarding seasonal and time-of-day electric rates. It alleged that it will be filing a general rate case prior to October 31, 1988 and requests that the commission merge this docket, DR 86-151, with that rate filing. By order no. 19,171, issued September 9, 1988, the commission suspended the procedural schedule and granted the Coop's request to merge DR 86-151 and file its completed cost of service and tariff study, including its direct testimony on time-of-day and seasonal rates prior to October 31, 1988.

B. Petition for Rate Increase

On October 31, 1988, the New Hampshire Electric Cooperative (the Coop) submitted a proposed tariff, (NHPUC No. 14 — Electricity); along with supporting testimony and exhibits, designed to increase annual revenues by $2,649,883 or approximately 5.6 percent. The October 31, 1988 tariff did not list an effective date. The Coop refiled the tariff on November 4, 1988, with a proposed effective date of December 1, 1988.

By order no. 19,231 (November 18, 1988), the commission suspended the proposed tariff pending investigation and scheduled a prehearing conference on December 15, 1988. At the prehearing conference the parties recommended a procedural schedule. By report and order no. 19,295 (January 16, 1989), the commission approved the procedural schedule to govern this proceeding.

Pursuant to the commission's procedural order, the staff filed its direct prefiled testimony and exhibits on March 31 and April 15, 1989. The staff found a revenue deficiency of $1,100,845 assuming the commission accepted the TIER coverage of 2.0 recommended by the Coop.

The parties negotiated off-the-record on May 9, 1989. On May 22, 1989, the parties filed a stipulation on the following issues: rate base, TIER coverage, operating revenues and expenses, non-residential rate design, and new optional off-peak storage space and water heating rate. At the hearing on May 24, 1989, the parties presented their agreement and testimony in support of the agreement and their arguments concerning the residential rate design. The only specific residential rate design issue argued was whether the Coop should implement seasonal rates for residential customers.

On June 14, 1989 the Coop filed a post-hearing brief.

II. *Positions of the Parties*

In this section we shall state the terms of the settlement agreement and then the parties'

positions concerning residential rate design.

A. Settlement Agreement

[1-12] The parties agreed to a revenue deficiency of $1,369,363. They agreed to a *pro forma* test year rate base of $67,997,072.

In its original proposal, the Coop asked to base its rate of return on 2.0 times its non-Seabrook interest costs, in other words, a minimum Times Interest Earned Ratio (TIER) of 2.0. In its prefiled testimony, the staff recommended that the commission re-examine its historical practice of approving a 2.0 TIER for determining Coop rate increases. For the purpose of settlement and under the circumstances of the case, the parties agreed that a 2.0 TIER coverage would allow the Coop to earn a just and reasonable return.

The parties also agreed to the following revenue and expense adjustments. The Coop agreed to offset certain proposed pro forma adjustments with the additional revenue of $76,672 for a depreciation increment produced by customer growth. The Coop agreed to adjust payroll and payroll-related expenses to include only the increases that would be in effect in the twelve month period beyond the test year: $299,366 and $21,918 respectively. The Coop agreed to decrease the amount of expense related to leased vehicles by $10,293. It agreed to adjust the proposed utility assessment to reflect only the costs which would be accrued during the twelve months after the test year: $4,685. The Coop agreed to remove the following expenses from general and administrative expenses because the expenses are for lobbying or charitable purposes:

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

NRECA Lobbying	$255
N.H. Utility Assoc.	$5,000
Donation to Univ. of Missouri	$500
Union Integrity Fund	$500

In its original filing, the Coop requested a $754,113 depreciation adjustment, reflecting plant additions through April 30, 1989. In response to the staff's objections, the Coop agreed to include a depreciation adjustment reflecting only plant in service at the end of the test year: $452,066.

The Coop initially proposed to amortize over a five year period its contribution-in-aid-of-construction to Public Service Company of New Hampshire for the new Woodstock substation, amounting to an annual expense of $119,012. For the purpose of settlement, the Coop assented to the staff's recommended 20 year amortization. This equates to an annual expense of $29,753.

For the purpose of settlement, the Coop stipulated to a line maintenance adjustment of $787,462, based on the average cost of $2,846 per mile, instead of the $1,127,565 adjustment initially proposed. The parties agreed to a rate case expense of $68,500 to be amortized over a two year period.

The parties settled on $8,861 and $5,000 as the amount of recurring expense for executive

recruitment and moving expense. This was based on assurances of the Coop that it now frequently looks outside Plymouth and outside New Hampshire for new employees.

The parties settled on an adjustment for customer service of $63,750. This number was a compromise between the Coop proposed $100,000 adjustment and the staff's suggested adjustment of $27,500.

The Coop proposed a purchase power expense based on rates that were in effect at the end of the test year. The staff argued that this adjustment does not match the adjustment to revenue proposed by the Coop. The staff proposed a revenue adjustment of $170,777, reflecting the matching of revenues and expenses. The Coop showed that because of an out-of-period adjustment, purchase power expenses recorded for the test year were understated by $136,472. Thus, the parties stipulated to a $34,305 revenue adjustment to match revenue to purchase power expense.

In response to a staff request, the Coop assented to eliminate $24,218 of non-recurring software expense.

The Coop proposed an adjustment of $200,000 to the distribution operation expense to reflect its plans to operate a 24-hour dispatch center. The staff noted that some of the items included in this adjustment should be capitalized rather than expensed. Therefore, the parties agreed to reduce this adjustment by $113,168 to $86,832.

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The parties agreed to a power supply adjustment of $45,000.

The parties agreed to the proposed rate design with the following exception. The parties agreed to the new storage space and hot water heating rate, however, they did not agree on the rest of the residential rate design. The arguments of the parties on the remaining rate design issues are presented in the following section.

[13] The Coop agreed to perform and produce, within six months of the date of this order, a time-of-use cost study for two of its nonresidential service classes (Rate Classes G and PG). The Coop agreed to negotiate with the staff whether this time-of-use cost study should be used as a factor in determining the class G and PG rate design.

B. Effective Date

The stipulation did not contain an agreement as to when the rates should be implemented. The Coop did not present any testimony concerning when the rates should be implemented. However, in its brief, it requested a July 1, 1989 effective date. The staff did not present any testimony or argument concerning when the rates should become effective.

C. Residential Rate Design

In compliance with the provisions of stipulation in docket DR 84-248 (exhibit 1), the Coop filed a study conducted by Bower/Rohr Associates. The Bower/Rohr study addressed two basic issues. First, it was supposed to perform a load survey for the Cooperative. In its study it determined that such a study would be prohibitive. Therefore, it used surveys performed in Vermont and Maine as proxies for the New Hampshire load information. Second, Bower/Rohr

determined the economic efficiency of implementing mandatory time-of-day and seasonal rates for the residential customer. The study concluded that the economic gains were not sufficiently great to warrant an immediate change, but rather, that the Coop should implement the rates in its next rate case (the case at hand).

In this proceeding the staff opposed the Coop's residential rate design because it did not include a mandatory seasonal rate. The Coop argued against immediate implementation of mandatory seasonal rates.

At the hearing the Coop sought to introduce certain "proposed settlement rates." The exhibit containing these rates had not been prefiled. The staff objected to the exhibit because it had not had an opportunity to look at the rates to determine whether the rates were in compliance with the stipulation agreement. Further, the staff argued that it does not usually review rates proposed pursuant to a stipulation agreement until the commission has approved the stipulation. The commission allowed the staff to reserve its rights to review the compliance rates filed pursuant to the commission's order.

1. New Hampshire Electric Cooperative

The Coop averred that it has no deep conviction against seasonal rates. However, it contends that the following alleged circumstances render seasonal rates inappropriate at this time: 1) there are not sufficient economic efficiency gains at this time, 2) there is a potential for economic hardship to existing electric heating customers, 3) the region may become summer peaking in the future, and 4) the uncertainty concerning the Coop's future power supply because the bankruptcy court in the Public Service Company of New Hampshire proceeding has the power to cancel current power supply agreements between Public Service and the Coop.

The Coop performed its own efficiency gain calculation and determined that the gains it found did not justify implementation of mandatory seasonal rates and time-of-day rates at this time. It argued that the annual efficiency gains from seasonal rates were $2.68 per customer per year (0.27%) using the Vermont data and $2.00 per customer per year (0.15%) using Maine data. It argued that even if the staff's calculations of the efficiency gain are correct, they are only one-quarter to one-half of one percent. It argues that these efficiency gains are not sufficient to justify the disruption and risk

associated with immediate implementation of the rates.

The Coop contended that the New England Power Pool (NEPOOL) is forecasted to become summer peaking in 1993. Thus, it avers, any such increase in Coop summer load will add to the summer peak of NEPOOL and, therefore, to the capacity requirements of the region.

The Coop also argued that it should not be required to adopt mandatory seasonal rates while the state's other utilities, in particular the state's largest utility, have not implemented such rates.

2. Staff

The staff argued that fairness and economic efficiency could be improved by the implementation of a seasonal rate. The staff concluded that the Coop's rate structure is basically

fair, except that space heating customers are being subsidized by other types of customers. The staff also argued that the study performed by Bower & Rohr supported its conclusions.

The staff concluded that there are positive economic efficiencies from the imposition of seasonal rates. It calculated that, using the Vermont load data there would be an efficiency gain of $3.90 per customer per year for the average customer, and using the Maine load data there would be an efficiency gain of $3.11 per customer per year for the average customer.

The staff contended that, while the economic gains are small, the commission should also consider the concept of fairness. It averred that because the cost of supplying customers is higher in the winter than in the summer it is fairer to have the cost reflective seasonal rates proposed by the staff.

The staff testified that a decision favoring seasonal rates would be in keeping with the commission's decision in *Re Connecticut Valley Electric Co. Inc.,* 74 NH PUC 165 (1989). In that case the commission approved a rate restructure based totally on marginal costs principles, reconciled to the revenue requirement.

In response to the Coop's assertions that NEPOOL will become summer peaking in 1993, the staff countered that this will have no effect on the costs to the Coop for the following reasons. PSNH is the main supplier of the Coop. Currently the wholesale rate to the Coop has a flat demand and energy charge. Even if Northeast Utilities or New England Power were the supplier, under the current wholesale rates, there would be a flat demand and energy charge.

It contended that PSNH's capability responsibility is mainly its winter peak, thus, if the Coop increases its summer load, PSNH already has the capacity to serve that load. If, at the same time, it decreases its winter load, it could reduce the capability responsibility of its main supplier, thus lowering PSNH's costs.

The staff argued that the Coop has not proven the instability of its supply.

The staff argued that the Coop's forty-four percent load factor for non-coincidental demand is not adequate or reasonable. It averred that if the Coop's load factor improved to sixty percent that its costs of service would go down.

The staff stated that the Coop's existing optional time-of-day and seasonal rates are inconsistent with its position concerning mandatory seasonal and time-of-day rates. It argues that the optional rates send inappropriate price signals according to the Coop's allegations concerning the stability of its power supply.

III. *Findings of Fact*

The Coop currently is a winter peaking electric utility. Concerning the distribution and transmission investment, the distribution and transmission system was primarily designed to meet the winter peak.

However, concerning the Coop's power supply costs, there is no seasonal differentiation in the wholesale rate under which the Coop takes service. The Federal Energy Regulatory Commission allocates the capacity related costs based on the twelve monthly coincidental demands. The Coop's supply costs are approximately ten times greater than its distribution/transmission costs.

If the Coop loses its power supply from PSNH because of an action by the bankruptcy court, it is considering investing, via a new

generation company, in production facilities or in purchasing blocks of power from other entities, or purchasing partial requirements, or diversity power. If this were to be the case, the Coop might be buying diversity power from large summer peaking utilities. The Coop has not run any load projections to support these possibilities however.

The company's rate design proposal, with the exception of the storage space heating rate, is based on an average embedded cost allocation. The storage space heating rate is based on the marginal cost of service. The Coop currently has an optional seasonal rate. The record does not indicate whether that rate is based on marginal or incremental costs.

The Coop's load factor, based on the non-coincidental demand, is 44%. All other things being equal, improving system load factors would reduce costs on the Coop's system.

The Coop also has the following programs to control system peak: 1) it currently has a load management program and is conducting a communications study to determine how to make the program more effective, 2) has prepared a least cost planning study, and 3) it has interruptible rates for some very large customers. The communications study will evaluate whether the existing radio-controlled load management system is effective, and whether there might be another system today that is more effective.

The Coop's winter peak occurs during the evening on Friday night. This peak is primarily attributable to second homes used for skiing and other recreational purposes, including people turning on their electric heat in their condominiums.

The test used in this case, to calculate the economic efficiency of seasonal rates, compares the economic gains associated with improved cost reflection with the extra cost of implementing the new rate design. There are positive economic benefits associated with seasonal pricing. However, these benefits are only one-sixth to one-half a percent at this time.

IV. *Administrative Notice*

The commission took official notice, from the bench, of its decision in DR 83-360. In DR 83-360, the Cooperative's general manager stated that residential customers who use electric heating for back-up purposes are worsening the residential load factor and driving up costs to all customers.

[14] The commission took administrative notice of RSA 378:7-a and 378:7-b. These statutes require every electric utility to have optional time-of-use and time-of-day rates in order to conserve electricity and discourage excessive consumption.

V. *Commission Analysis*

A. Settlement Agreement

The commission finds that the revenue requirement as developed in settlement agreement is supported by the evidence and will produce just and reasonable rate. Therefore, we will approve

it for resolution of this particular petition.

In determining the rates, one of our concerns was the effect on customers bills as a result of the rate increase. Below we show the impact on bills for average use residential customers.

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

Tariff Class	*Bill at Present Rate*	*Bill at Proposed Rate*	*% Increase*
Schedule D Standard	43.84	44.95	2.5
Schedule DC Controlled Hot Water	79.73	82.18	2.45

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B. Residential Rate Design

The rate design as proposed is approved.

[15] At this time, we will not require the Coop to implement mandatory seasonal or time-of-use rates. In light of all of the countervailing circumstances, we are not convinced that the efficiency gains predicted by the staff are sufficiently significant to justify their implementation at this time. However, our concern is such that we will require the Coop to monitor the efficiency gains on a continuing basis and to notify the commission of the results by July 30, 1990. From its review of the least cost plans of the other electric utilities, the commission is aware that they are reviewing the benefits of implementing more cost reflective rates. We will reconsider our decision earlier than 1990 should other utilities, particularly PSNH, introduce seasonal and/or other time-of-use rates, or should the PSNH wholesale rate change, or should the Coop develop other sources of power supply.

C. Effective Date

Within fifteen days from the date of this order, the Coop shall file tariff pages, and supporting calculations, bearing rates in compliance with the revenue requirement and the rate design methodology approved in this order. These tariff pages shall be effective on the date filed. The staff shall review these rates and shall report to the commission if the rates are not in compliance with the order.

Our order will issue accordingly.

ORDER

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

ORDERED, that the settlement agreement is approved; and it is

FURTHER ORDERED, that the Coop's proposed rate design is approved; and it is

FURTHER ORDERED, that within fifteen days from the date of this order, the Coop shall file tariff pages, and supporting calculations, bearing rates in compliance with the revenue requirement and the rate design methodology approved in this order, for effect on the date of

filing, bearing the following annotation: "Authorized by commission order no. 19,463 in docket DR 88-141, issued July 7, 1989.

FURTHER ORDERED, that the Coop monitor projected efficiency gains of seasonal and time-of-use rates and report current results to the commission on or before July 30, 1990.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1989.

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NH.PUC*07/10/89*[51779]*74 NH PUC 233*New England Telephone and Telegraph Company, Inc.

[Go to End of 51779]

74 NH PUC 233

Re New England Telephone and Telegraph Company, Inc.

DC 88-153
Order No. 19,464

Raymond Historical Society
v.
New England Telephone and
Telegraph Company, Inc.

DC 88-153
Order No. 19,464

New Hampshire Public Utilities Commission

July 10, 1989

ORDER *nisi* authorizing a local exchange telephone carrier to implement tariff changes designed to clarify the definition of residence service and to establish a cost based rate for alarm systems. For prior order requiring the tariff changes, see 74 NH PUC 63, supra.

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1. SERVICE, § 433 — Telephone — Residence service — Definition — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to implement tariff changes designed to clarify the definition of residence service. p. 234.

2. RATES, § 553 — Telephone rate design — Alarm service — Cost-based rate — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to establish an incremental-cost-based rate for alarm systems; however, the commission placed the LEC on notice that it may subsequently decide on a more appropriate basis for determining the cost of

service. p. 234.

By the COMMISSION:

ORDER

[1, 2] WHEREAS, by report and order no. 19,317 (74 NH PUC 63) the commission required NET to revise its tariff NHPUC No. 75, in order to clarify the definition of residence service rates; and

WHEREAS, pursuant to the order, the commission further required that NET file a proposed tariff for a cost based rate for alarm systems; and

WHEREAS, by order no. 19,338 (74 NH PUC 85) the commission denied NET's motion for rehearing and amendment of commission order no. 19,317; and

WHEREAS, NET subsequently filed a revised tariff NHPUC No. 75, Part A, Section 5, Page 1 clarifying residence service rates, and a new tariff provision No. 75, Part A, Section 5, Page 10.1 governing Originating-only Service Lines which may apply to automatic dialer alarm systems; and

WHEREAS, upon investigation, it appears believes that the tariff pages as filed are deemed to be in the public good; it is hereby

ORDERED, *NISI*, that NET be, and hereby is, authorized to implement the following tariff changes to NHPUC No. 75:

— Supplement No. 28 to amend Original of Part A, Section 5, Page 1

— Sixth Revision, cancelling Fifth Revision of Part A, Section 5, Table of Contents, Page 1

— Addition of new tariff provision in Part A, Section 5, Page 10.1;

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 July 21, 1989; and it is

FURTHER ORDERED, that despite the acceptance of incremental rather than embedded costs for the purpose of this filing, the commission will review other cost studies associated with dockets DR 85-182 and DR 89-010 and may subsequently decide on a more appropriate basis for determining the cost of service; and it is

FURTHER ORDERED, that this order *NISI* will be effective on July 25, 1989, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1989.

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74 NH PUC 234

Re Small Energy Producers and Cogenerators

DR 88-107
Order No. 19,465
New Hampshire Public Utilities Commission
July 11, 1989

ORDER waiving the attorney/client privilege and compelling production of a legal memorandum prepared by the commission's general counsel.

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1. PROCEDURE, § 16 — Production of evidence — Discovery — Privileged documents.

[N.H.] Where a document that would ordinarily be privileged was divulged to one party to a commission proceeding, but not to others, fairness required the production of the

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document for discovery by other parties. p. 238.

2. PROCEDURE, § 16 — Production of evidence — Discovery — Privilege.

[N.H.] State statute RSA 541-A (18) requires agencies to give effect to the rules of privilege. p. 238.

3. PROCEDURE, § 16 — Production of evidence — Discovery — Privilege.

[N.H.] Under the New Hampshire Rules of Evidence a client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client; the definition of client includes every conceivable public or private individual or entity that might seek to obtain legal services. p. 238.

4. PROCEDURE, § 16 — Production of evidence — Discovery — Attorney/client privilege.

[N.H.] The commission's attorney acts for both the commission and its staff; therefore, although the attorney may write a memorandum for the staff, the attorney/client privilege may not be waived without the consent of the commission. p. 238.

5. PROCEDURE, § 16 — Production of evidence — Discovery — Attorney work product.

[N.H.] A lawyer's mental impressions, conclusions, opinions, and legal theories are privileged even if they are not prepared for a pending or reasonably anticipated case. p. 238.

6. PROCEDURE, § 16 — Production of evidence — Discovery — Attorney/client privilege.

[N.H.] A memorandum by the commission's general counsel to a staff member was protected from discovery by the attorney-client privilege where the memorandum was simply a legal

interpretation of a prior commission order and contained no factual evidence; nevertheless, the commission waived the privilege in the interests of fairness because the contents of the memorandum had been divulged to one party to a commission proceeding. p. 238.

7. PROCEDURE, § 16 — Production of evidence — Discovery — Attorney/client privilege — Right to Know Law.

[N.H.] The nondisclosure of a legal memorandum from the commission's general counsel to a staff member was not a violation of the New Hampshire Right to Know Law (RSA 91-A) where the memorandum was protected by the attorney/client and attorney work product privileges. p. 238.

8. PROCEDURE, § 16 — Production of evidence — Discovery — Case files.

[N.H.] Preliminary drafts, notes, or interagency or intra-agency communications by or on behalf of a state agency are exempt from production and discovery; accordingly, the commission declined to permit discovery of the contents of its staff's case file. p. 238.

APPEARANCES: Robert A. Olson, Esq., and Meriam Newan, Esq., of Brown, Olson & Wilson on behalf of Alexandria Power Associates, Bridgewater Steam Power Company, Hemphill Power & Light Company, Pinetree Power, Inc., Pinetree Power — Tamworth, Inc., Timco, Inc., and Whitefield Power & Light Company; Joseph Rogers, Esq., for the Consumer Advocate; and Mary C.M. Hain, Esq. for the staff.

By the COMMISSION:

REPORT

On May 8, 1989, Alexandria Power Associates, Bridgewater Steam Power Company, Hemphill Power & Light Company, Pinetree

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Power, Inc., Pinetree Power — Tamworth, Inc., Timco, Inc., and Whitefield Power & Light Company (the intervenors) filed a motion to compel staff responses to certain data requests. On May 10, 1989, the Consumer Advocate filed a motion in support of the motion to compel. On May 15, 1989, Briar Hydro Associates filed a memorandum in support of the motion to compel.

On May 15, 1989, the commission heard oral argument on the motion. By letter of May 17, 1989 we required production. In the following report, we explain our decision.

I. *Background*

On April 14, 1989, the intervenors submitted data requests to the staff. In response to request 19 (f), the staff refused to provide the January 15, 1985 legal memorandum from the General Counsel to a staff member. The staff stated that the memo was a product of staff consultation with legal counsel protected by attorney/client privilege.

In response to question 19 (d), the staff refused to identify any additional documents, related to peak reduction factors, in files at the commission offices or in the possession of the staff. The

staff stated that the only additional file was the "case file of the instant docket" which it contended was not discoverable under RSA 91-A as a staff work product.

II. *Positions of the Parties*

A. The Intervenors

1. The Legal Memorandum

The intervenors argued three positions in support of the motion to compel the legal memorandum. They argue that the memorandum is not protected by the attorney/client privilege or the attorney work product doctrine, and that the information in the memorandum is relevant and material.

They argued that the attorney/client privilege does not apply to communications made by the attorney to the client if such communications do not contain confidential information communicated by the client to his attorney. They asserted that opinion of counsel to a staff member is not confidential.

The intervenors asserted that the memorandum is a public record required, by RSA 91-A, to be made available for public inspection. The memorandum is a public record, they argued, because the memorandum may contain "statements of policy or interpretation that may be applied generally by the PUC Staff, and which may affect the Commission's policy and function." They argue that the General Counsel's legal opinion interpreting DE 83-062, order no. 17,104 (69 NH PUC 352, 61 PUR4th 132 [1984]) is not covered by the attorney/client privilege or the work product rule because it contained statements of policy and interpretation of agency rules and was not prepared in anticipation of litigation. *Falcone v. IRS*, 479 F.Supp. 985 (D.E.Mich.1979).

The intervenors alleged that the memorandum was discoverable because it contained a neutral objective analysis of agency regulations. *Coastal States v. Dept. of Energy*, 617 F.2d 854 (D.C.Cir.1980). Further, they contended, there was no effort within the agency to protect the confidentiality of the document; it was not labeled confidential, not kept in a confidential file, and copies were circulated throughout the agency.

The intervenors averred that, even if the memo is privileged, the privilege has been waived. The memorandum was requested by the staff member and the staff member allowed Mr. Thomas Tarpey of Briar Hydro Associates to review the memo. Thus, they argued, the client waived the attorney/client privilege.

In response to the staff's assertion that the memo was protected against discovery as attorney work product the intervenors argued that, since the memo was written after the final order was issued in DR 83-062 and before the commission opened docket DR 88-107, the memo was not prepared in anticipation of litigation and, therefore, was not protected as attorney work product under *Riddle Spring Realty Co. v. State*, 107 N.H. 271 (1966). It also alleged that the staff had the memorandum drafted so it could inform the *public* about the correct interpretation of the order. They maintained that if

any attorney work product privilege existed, it had been waived. The intervenors argued that the memorandum was material and relevant and useful for impeachment under the *Riddle* case.

2. The Staff's Case File

With respect to staff files, the intervenors noted that they were not asking for the documents — just a list of the documents.

B. The Consumer Advocate

1. The Legal Memorandum

The Consumer Advocate argued that staff should be compelled to answer the data requests. It argued that the staff has no interests to protect, and there is no attorney/-client relationship between the staff and the general counsel and, therefore, no privilege. He averred that the staff's only role in proceedings before the commission is "... to comment upon and make recommendations regarding demand, cost, and other matters affecting public utilities, *see* RSA 363:27 ...." *Appeal of PSNH*, 122 N.H. 1062, 1077 (1982).

He also contended that the attorney/client privilege does not apply in this case because there is a compelling need for the information (due process) and no alternative source is available. *McGranahan v. Dahar*, 119 N.H. 758, 764 (1979). He also argued that the staff waived the privilege.

2. The Staff's Case File

The Consumer Advocate asserted that neither the common law nor RSA 91-A:5 recognize an exemption for staff work product.

C. Briar Hydro Associates

Briar Hydro Associates endorsed the intervenors' and the Consumer Advocate's motions. Further, the motion should be granted, it argued, because: 1) Briar would not be able to develop its case; 2) the attorney/client privilege extends to "communications generated by an attorney only to the degree necessary to protect from disclosure statements made *by the client*," *See* McCormick of Evidence, 3rd Ed., §89; *Matter of Fischel*, 557 F.2d 209 (9th Cir., 1977) (emphasis in memorandum), and 3) the staff has waived the privilege.

D. Staff

1. The Legal Memorandum

The staff objected to the motions to compel. The staff argued that RSA 365:27 charges a party exercising the authority granted in an order with full knowledge of the order and with full compliance therewith. It contended that the authorized party with a question of how to interpret an order must ask the commission.

It averred that the memo was privileged under the attorney work product and attorney/client privilege rule. Under RSA 541-A (18), the staff asserted, agencies are required to give effect to the rules of privilege. The staff made an offer of

proof that the memo did not contain any new information, evidence, or testimony; that it was simply a legal interpretation. Thus, it argued that it was irrelevant and confidential.

The staff stated that the memo was not offered to the commission; thus, it was not an attempt to persuade the commission. Further, it alleged that the memo was not widely distributed, it was only copied to people who were or are working on the case. It argued that the privilege had not been waived because Mr. Thomas Tarpy only alleged that he "reviewed" the memo, he did not allege that he read the memo, remembers all of it, and could understand the legal interpretation contained therein.

In addition, the staff argued that the Right-to-Know Law (RSA 91-A) is not intended to deprive the staff of the benefits of advice of counsel; and the receipt of confidential legal advice can not be deemed a violation of RSA 91-A:3. *Carter v. Nashua*, 113 N.H. 407, 413 (1973), and *Society for Protection of New Hampshire Forests v. Water Supply and Pollution Control Commission*, 115 N.H. 192 (1975).

The staff asserted that the memo constitutes attorney work product. It made an offer of proof that the staff sought this legal interpretation for fear that an incorrect interpretation would produce litigation. It contends that the memorandum was not sought to inform the public, rather it was sought to inform the staff.

2. The Staff's Case File

The staff gave a summary of the materials in the staff's case file. It contended that more than one-third of the state's so-called freedom of information laws and the Federal Freedom of Information Act (5 USCS §552(b)(5)) contain exemptions for non-disclosure of preliminary drafts, notes, or inter-agency or intra-agency communications prepared by or on behalf of any state agency. It argued that the common law establishes this. In *Society for Protection of New Hampshire Forests*, at 195, the Supreme Court in *dicta* stated that: the Right-to-Know Law excludes "`inquiry into the mental processes of administrative decision-makers.'" quoting *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971).

In response to the Consumer Advocates arguments, the staff pointed out that it represents and balances the interests of the public and the utility in every proceeding. The General Counsel has as its client the staff and the commission.

III. *Commission Analysis*

A. The Legal Memorandum

[1] The General Counsel's memorandum is clearly a document that would ordinarily be privileged. However, the memorandum has been divulged to one of the parties, but, not to the rest. Because fairness under these particular circumstances would require it to be divulged, we have allowed it to be discovered. Since we have required production, we will not discuss whether there was a due process need to compel production in this particular case.

1. Attorney/Client Privilege and Attorney Work Product

[2-8] Under RSA 541-A (18), agencies must give effect to the rules of privilege. We find that two privileges, both the attorney/client privilege and the attorney work product privilege, existed in this case.

Rule 502 of the New Hampshire Rules of Evidence creates a lawyer-client privilege. Under Rule 502(b)

> A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client ... and the client's lawyer.

Under Rule 502(c) the privilege may be claimed by the client or the personal representative of an organization." The reporter's notes under Rule 502 state that

> The definition of `client' in paragraph (1) includes every conceivable public or private individual or entity that might seek or obtain legal services. While no New Hampshire decisions could be found, the extension of the definition to public entities finds support in *Riddle Spring Realty Co. v. State*, 107 N.H. 271, 273 (1966). This broad scope is in accord with authority and seems essential if the lawyer is to be able to fulfill his professional responsibilities of advising and representation of all comers. See Federal Advisory Committee Notes to proposed Federal Rule 503; McCormick Evidence 178 (2d ed. 1972). Where the client is an organization, the privilege extends to communications between attorneys and all agents or employees who are authorized to act or speak for the organization concerning the subject matter of the communication. *Mead Data Central v. U.S. Dept. of Air Force*, 566 F.2d 242, 253 (D.C. Cir. 1977).

The sources of the rules of privilege are limited to the federal and state constitutions, federal and state statutes, the N.H. Rules of Evidence and other rules of court. However, the rules do not effect the inherent power of the

Supreme Court to develop new rules of privilege based on common-law principles. Rule 501, Reporter's Notes. Attorney-client privilege is not limited to communications made in anticipation of litigation. *Coastal States Gas Corp. v. Department of Energy* at 862.

While there is no specific privilege under the New Hampshire Rules of Evidence for attorney work product, the "... Rule is not intended to abrogate any immunity from interrogation as to mental processes involved in making a decision which is extended to judicial, quasi-judicial, and administrative officials by decisional law such as *Merriam v. Salem*, 112 N.H. 267 (1972)." *Id.* This is the same language used to describe the exemption 5 of the Freedom of Information Act (5 USCS § 552(b)(5)) which makes inter-agency and intra-agency memorandums or letters unavailable by law to a party. In *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 150 and 154 (1975), the Supreme Court held that exemption 5 exempts those documents privileged from discovery in civil suits, the privileges being the governmental privilege for intra-agency advisory opinions, discovery of which would interfere with the consultative functions of government and the attorney/client and attorney work product privilege. In addition, we conclude that the attorney work product doctrine is consistent with Rule 501, and current case law interpreting the Right-to-Know law.

Under RSA 363:27 the commission may hire a staff and may delegate to the staff such duties

and functions as it sees fit. As such, the commission's attorneys act as attorney for the commission and the staff. Therefore, although the attorney may write a memorandum for the staff, the attorney/client privilege may not be waived without the consent of the commission.

The *Falcone* case was not based on the same facts as the present case and, therefore, is not precedential. In *Falcone*, the plaintiff requested, under the Freedom of Information Act, a general counsel memoranda with an attached proposed revenue ruling and a one-page summary of suggested changes in proposed Internal Revenue Service rulings. The District Court required disclosure because the memoranda were a statement of policy and interpretation adopted by the IRS and were not deliberative.

The General Counsel's memo in the instant case did not contain a statement of policy and interpretation adopted by the commission. This commission had never seen or considered, let alone adopted the memo as a statement of policy or interpretation. The memo was produced to allow the staff to proceed with the capacity audits. It was not given to the staff to help the public or outside parties interpret the commission's order. It is in no way binding on the commission. Thus, the memo would have been protected by the attorney/client privilege and is not a public record under the right to know law. This situation is different than the facts in *Coastal States Gas*. In that case, an auditor communicated to the attorney certain factual situations encountered in the course of an audit. "They [did] not contain private information concerning the agency." *Id.* at 863.

In *Falcone* at 990, the District Court also found that the memoranda were not exempt from disclosure by attorney/client privilege or attorney work product privilege, since such documents were not prepared in anticipation of litigation. It ruled that, in order for the attorney work product privilege to apply, the materials must be prepared in anticipation of litigation. It found that the general counsel memorandum was not prepared in anticipation of litigation, rather it was prepared in the process of issuing an IRS Revenue Ruling and concerned whether the proposed ruling is consistent with the policies of the agency.

The facts in *Falcone* are directly opposite those in the present case. In this case, the commission had issued an order. A staff member requested an interpretation, for his use in performing audits and to make sure that he would be prepared to defend himself in the event someone challenged his reading of the order. If the General Counsel had given a different interpretation, it is likely that the small power producers would have litigated the issue. They ultimately did litigate the issue. Thus, the memo was prepared in anticipation of litigation.

In the *Riddle* case the Supreme Court distinguished between two types of attorney work products. It stated

> [t]he work product of a lawyer consists generally of his "mental impressions, conclusions, opinions or legal theories." *Hickman v. Taylor*, 329 U.S. 495, 508 ( ).

Riddle, at 275. It did not find that this product must be produced in preparation for a pending case or a reasonably anticipated case on behalf of a client.

However, with respect to documents other than those simply containing the mental

impressions, conclusions, opinions or legal theories of the attorney; it found that just because documents or information are turned over to the lawyer, the act of turning over such documents does not make them privileged. *Id.* at 275. It found that "the lawyer's work must have formed an essential step in [their procurement] and he must have performed duties normally attended to by attorneys." *Id.* at 274. In addition, these documents or information must be obtained in preparation for a pending or reasonably anticipated case on behalf of a client. *Id.* at 275.

In the present case, the staff made an offer of proof that the General Counsel's memo did not contain any factual evidence, that it was simply his legal interpretation. Thus, it was the first type of attorney work product, i.e. mental impressions, conclusions, opinions, or legal theories, which is privileged even if it was not prepared for a pending case or a reasonably anticipated case.

2. The "Right-to-Know" Law

The non-disclosure of the legal memorandum was not a violation of the Right-to-Know law (RSA 91-A). The New Hampshire "Right-to-Know" law requires, with certain specific exemptions, the disclosure of all public records. The Right-to-Know law does not intend to deprive the staff of the benefits of advice of counsel; and the receipt of confidential legal advice cannot be deemed a violation of the law. *Society for the Protection of N.H. Forests*, at 194. This interpretation is supported in this report by our discussion of the attorney/client and attorney work product privileges and will not be repeated here. We doubt, under the right-to-know law that the memo was a "public record." However, even if it was, it was privileged.

3. The Staff's Case File

We have been asked to order the staff to give the parties a list of every document in the staff's case file. We have allowed a list to be disclosed. We have only required production of this list because of the special circumstances surrounding the discovery of the General Counsel's legal memorandum. The contents of those files may not be discoverable.

RSA 363:27 specifically provides that all investigatory records shall be public records subject to the provisions of RSA 91-A. However, there is no provision of RSA 363:27 requiring the production of preliminary drafts, notes, or inter-agency or intra-agency communications by or on behalf of the state agency. We interpret the Supreme Court's decision in *Society for Protection of New Hampshire Forests* to exempt from production preliminary drafts, notes, or inter-agency or intra-agency communications by or on behalf of the state agency.

Our order will issue accordingly.

ORDER

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

ORDERED, that the legal memorandum from the General Counsel to the staff dated January 15, 1985 was properly produced, however, its production is not precedent, and absent these particular circumstances we will apply the privileges applicable to commission attorneys, memoranda; and it is

FURTHER ORDERED, that the list of documents in the staff's files was properly disclosed.

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1989.

74 NH PUC 241

Re Dockham Shore Estates Water Company, Inc.

DE 89-003
Order No. 19,466

New Hampshire Public Utilities Commission

July 11, 1989

ORDER adopting a stipulated revenue requirement and rate structure for water distribution service.

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1. RETURN, § 115 — Water — Stipulation.

[N.H.] In a water rate proceeding the commission adopted a stipulation that would allow the utility a 10% rate of return. p. 241.

2. RATES, § 595 — Water rate design — Consumption charge — Customer charge.

[N.H.] In a water rate proceeding the commission adopted a stipulated customer charge of $18.58 per quarter and a stipulated consumption charge of $0.4728 per 100 gallons. p. 242.

3. RATES, § 595 — Water rate design — Stipulation.

[N.H.] In a water rate case the commission adopted a stipulated revenue requirement and rate structure even though the utility entered the stipulation based on marketing considerations and the commission staff entered the stipulation based on the fact that it found the water system had excess capacity. p. 242.

APPEARANCES: Dom S. D'Ambruoso, Esquire on behalf of Dockham Shore Estates Water Company, Inc.; Eugene F. Sullivan, III, Esquire on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 5, 1989, Dockham Shore Estates Water Company, Inc. (Dockham Shore) filed a petition for a franchise in a limited area of the Town of Gilford. On January 25, 1989, Dockham Shore filed a notice of intent to file rate schedules. On March 24, 1989, Dockham Shore filed an

original tariff no. 1 requesting permanent rates and a petition for temporary rates. On April 3, 1989, the commission issued order no. 19,361 setting the procedural schedule for both the franchise and the rate request. Also on April 3, 1989, the commission issued an order of notice establishing April 13, 1989 for the hearing on the franchise petition and the temporary rate petition. On May 5, 1989, the commission issued report and order no. 19,401 (74 NH PUC 160) granting the requested franchise and establishing temporary rates at $200 per customer per year, flat rate.

Pursuant to the procedural schedule set forth in report and order no. 19,361 the parties engaged in discovery and on June 2, 1989, had a settlement conference which led to a settlement agreement. Thus, the parties have reached a stipulation on the revenue requirement and rates to meet said revenue requirement.

II. *Stipulated Agreement*

[1] The parties stipulated that Dockham Shore shall be allowed an opportunity to earn an overall rate of return of 4.2% on a rate base of $81,059. The parties further stipulated that Dockham Shore shall be authorized to charge rates designed to earn annual revenues in the amount of $12,860, and that the rates stipulated to above will become effective with all service rendered on or after July 1, 1989.

However, the parties also stipulated that in determining the final rates to be charged to customers the parties applied a 10% rate of return to the $81,059 rate base then allocated the return requirement of $8,105 to sixty-two (62) customers. Thus, Dockham Shore will actually

collect this return requirement only from its twenty-six (26) existing customers only, in actuality then, Dockham Shore will be earning a rate of return of 10% when it is looked at in a light of twenty-six (26) customers. Furthermore, at the hearing on the merits in which the stipulation was presented, it became apparent that when the rate structure was applied to twenty-six (26) customers the actual revenue requirement would be $10,045 rather than $12,860 due to the fact that the customer charge would only be applied to twenty-six (26) customers rather than sixty-two (62) customers.

[2, 3] At the hearing on the merits of the matter staff indicated that it had reached this stipulation based on the fact that it found the system to have excess capacity in the amount of 58% and, therefore, revenues should be decreased accordingly. Dockham Shore indicated that it had reached the stipulation based on marketing considerations. That is, they did not wish to over charge the customers to such a degree that they would attempt to obtain water in other ways or decrease their water usage to such a degree as to effect total revenues.

The stipulation results in a customer charge of $18.58 per quarter and a consumption charge of $0.4728 per 100 gallons.

It was also stipulated that Dockham Shore would submit tariff pages in compliance with the commission order said tariff pages to include a provision for the recoupment of underpayments during the temporary rate period over the next two years. Temporary rate recoupment will begin on all bills rendered on or after October 1, 1989, prorated for all new customers taking service

during the recoupment period.

III. *Commission Analysis*

Pursuant to RSA 378:7, the commission is required to set just and reasonable rates. The commission finds that the stipulation of the parties meets that requirement. Although Dockham Shore and staff reached their stipulation and the final result for different reasons, the commission finds the bottom line to be just and reasonable, and accepts the staff's rationale of excess capacity as an acceptable regulatory principle on which to base the final result.

Our order will issue accordingly.

ORDER

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

ORDERED, that the stipulation between the parties in the foregoing report is accepted; and it is

FURTHER ORDERED, that Dockham Shore Estates Water Company, Inc. shall be allowed a 10% rate of return and revenues of $10,045 based on twenty-six (26) customers; and it is

FURTHER ORDERED, that said revenues shall be earned from the following rate structure.

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

Customer Charge             $18.58 per quarter
Consumption Charge/100 gals. $0.4728; and it is
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FURTHER ORDERED, that Dockham Shore shall submit tariff pages in compliance with this order which shall include provisions for recoupment of the temporary rate surcharge over two years for all bills effective in October 1989.

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1989.

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NH.PUC*07/13/89*[51782]*74 NH PUC 242*Small Power Producers and Cogenerators

[Go to End of 51782]

74 NH PUC 242

Re Small Power Producers and Cogenerators

Movant: Briar-Hydro Associates

DR 88-107
Order No. 19,469

New Hampshire Public Utilities Commission

July 13, 1989

ORDER denying, without prejudice, a motion by a small power producer for summary relief from an obligation to refund its 1988 capacity payment.

COGENERATION, § 24 — Rates — Capacity payments — Refund obligation.

[N.H.] In denying, without prejudice, a motion by a small power producer for summary relief from an obligation to refund its 1988 capacity payment, the commission found that the interests of all the parties required consideration of all facts and arguments in their totality.

By the COMMISSION:

On July 10, 1989, Briar-Hydro Associates filed a motion for summary relief. The motion requested that the commission find that Briar-Hydro need not refund its 1988 capacity payments based on the circumstances. The purpose of the motion was to relieve Briar-Hydro of the burden of preparing a brief on the other issues in the case. Briar-Hydro requested that the commission decide the motion on an expedited basis.

Briar-Hydro takes three (3) positions in this case. The first concerns whether the commission's order no. 17,104 barred recovery of capacity payments to facilities on long-term rate orders which were producing electricity but were not assigned an audit value prior to January 1. It argued that if it files a brief it will argue that this interpretation is incorrect.

Second, it contends that, if the commission finds that capacity payments apply only to facilities audited before January 1, the commission should apply this interpretation prospectively from the date of the order in this docket. Third, Briar-Hydro argued that even without findings favorable to Briar-Hydro on these two arguments the commission could rule that, under the unique circumstances applicable only to Briar-Hydro, it would be unconscionable to require Briar-Hydro to forfeit its 1988 capacity payment. Thus, Briar-Hydro asked that the commission reach this third ground on a summary basis and resolve the issue in Briar's favor.

The commission denies the motion for summary relief without prejudice. We wish to consider the facts and arguments in this case in their totality. This will allow us to properly weigh the interests of all of the parties.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report on Briar-Hydro Associates' motion for summary relief; it is hereby

ORDERED, that the commission denies the motion for summary relief without prejudice.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of July, 1989.

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[Go to End of 51783]

74 NH PUC 243

Re Resort Waste Services Corporation

DR 88-164
Order No. 19,470

New Hampshire Public Utilities Commission

July 14, 1989

ORDER adopting a stipulation establishing permanent rates for a nonprofit sewer utility.

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1. VALUATION, § 249 — Donated property — Sewer plant — Nonprofit utility.

[N.H.] Pursuant to a stipulation establishing permanent rates for a nonprofit sewer utility, investment in donated sewer plant was recorded at cost and accounted for as paid-in capital where the utility agreed not to claim any recovery on the donated assets; it was found that the stipulated treatment of the plant was supported by the standards of the Financial Accounting Standards Board. p. 245.

2. EXPENSES, § 19 — Depreciation — Donated plant — Nonprofit utility.

[N.H.] A stipulation establishing permanent rates for a nonprofit, land-development, sewer utility provided for rates that included depreciation on plant donated by the developer;

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it was found that recovery of depreciation would provide the utility, which had no investment on which to earn a rate of return, with cash needed to make future plant replacements; the utility agreed that interest earned on depreciation would be flowed back to customers. p. 245.

3. EXPENSES, § 109 — Property taxes — Nonprofit sewer utility.

[N.H.] A stipulation establishing permanent rates for a nonprofit sewer utility, provided for rates that included the utility's estimated property tax calculation; rates would be offset for any overrecovery. p. 245.

4. RATES, § 597 — Sewer — Nonprofit, land-development utility — Service to developer.

[N.H.] A stipulation establishing permanent rates for a nonprofit, land-development, sewer utility provided that service to residential and/or commercial units owned by the developer would be charged at user member rates. p. 245.

5. RATES, § 597 — Sewer — Flat rate structure — Seasonal and intermittent service — Nonprofit, land-development utility.

[N.H.] A stipulation establishing permanent rates for a nonprofit, land-development, sewer

utility provided for a flat rate structure; a flat structure was found reasonable because (1) there was no historical consumption data on which to calculate a usage-based rate, and (2) the provision of service was expected to be seasonal and intermittent, making availability or readiness to serve an important service characteristic. p. 245.

APPEARANCES: Martin L. Gross, Esq., of Sulloway, Hollis, and Soden on behalf of Resort Waste Services Corporation; 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 Resort Waste Services Corporation for permanent rates. It approves the stipulation of the parties on permanent rates.

I. *Procedural History*

On December 28, 1988, Resort Waste Services Corporation (RWSC) filed a proposed tariff (NHPUC No. 1 — Sewer, Resort Waste Service Corporation) and a petition to establish permanent rates pursuant to RSA 378:28.

On December 28, 1988, the petitioner also requested temporary rates at permanent levels pursuant to RSA 378:27. The commission suspended the tariffs by order no. 19,296 (January 16, 1989). The proposed rates allocated the revenue requirement as follows:

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

Residential	$ 93,815
Commercial	$ 10,482
Annual Gross Revenue	$104,297

On February 17, 1989, a hearing was held on the merits of the temporary rate request and a prehearing conference was held to address the procedural matters in the permanent rate investigation. By order no. 19,336, dated February 28, 1989 (74 NH PUC 81 [1989]), the commission granted RWSC's request that temporary rates be set at the proposed permanent rate levels, effective for services rendered on or after January 5, 1989. The commission accepted the terms and conditions set forth in the proposed tariff for the duration of the proceeding.

The staff investigated the filing and held a settlement conference on May 22, 1989 at which the parties agreed to a stipulation settling all of the issues in the case. The terms of the stipulation are set forth in the following section.

II. *Stipulation*

The parties agreed that the commission should approve RWSC's Tariff No. 1 and approve the

rates therein as permanent rates.

[1] RWSC will record its investment in land at zero. It will record the sewer plant at cost. It will account for this cost as paid-in capital. The corporation will charge rates that include depreciation on the donated sewer plant.

The parties stipulated that this accounting treatment of paid-in capital is appropriate and supported by the standards of the Financial Accounting Standards Board. This agreement was subject to the following affirmations by Satter:

A. That the donated plant is a complete, absolute gift and Satter has no claim to any recovery of or on the assets so donated.

B. Satter will make no attempt to sell or otherwise alienate its rights as Capacity Control Member separate and distinct from unsold real estate units within the service territory of RWSC.

[2] The parties stipulated that this accounting treatment of donated plant is unique to the non-profit structure of RWSC and does not set any precedent for future cases. Furthermore, recovery of depreciation will provide RWSC with the needed cash to make future plant replacements. As RWSC is a nonprofit corporation, and there is no investment on which to earn a rate of return, there would otherwise be no earned surplus available with which to replace plant. RWSC will flow the interest income earned on depreciation back to the customers.

Because the utility plant will not be used to provide service capacity control members, and capacity control members will not, therefore, physically depreciate the property, RWSC will not recover depreciation from capacity control members, only from user members.

[3] The parties agree to accept RWSC's estimated property tax calculation provided RWSC reports the actual tax liability if it is substantially different than the estimate. If there is any overrecovery, RWSC will offset rates by that amount.

The parties have proposed the following rate structure.

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

Customer Class	
Residential Service User Member	$404/yr.
Residential Service Capacity Control Member	$275/yr.
Commercial Service User Member	$1.59 × gal/day of design capacity
Commercial Service Capacity Control Member	$1.07 × gal/day of design capacity

[4] Service provided to residential and/or commercial units owned by the developer which are rented or otherwise used, will be charged for at user member rates.

[5] The parties agree that the flat rate structure is reasonable for two reasons First, there is no historical consumption data with which to calculate a usage-based rate. Second, use of

residential units is expected to be highly seasonal and intermittent, thereby, making availability or readiness to serve an important service characteristic and the appropriate factor for rate structure purposes.

Notwithstanding the language in Article II of RWSC Articles of Agreement, RWSC has no intention to receive or maintain property other than in association with the stated purpose of the corporation or to purchase securities on margin or to sell securities short.

III. *Commission Analysis*

The proposed stipulation will produce just and reasonable rates and will, therefore, be approved for resolution of this case. Resort Waste shall file permanent rate compliance tariffs for effect on the date of filing.

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 NHPUC No. 1-Sewer, Resort Waste Service Corporation

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and revenue requirement are approved pursuant to the stipulation of the parties filed on May 26, 1989; and it is

FURTHER ORDERED that Resort Waste Services shall file tariffs in compliance with the foregoing report, effective the date of filing, and bearing the following annotation: "Authorized by commission order no. 19,470 in docket DR 88-164, issued July 14, 1989.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of July, 1989.

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NH.PUC*07/18/89*[51784]*74 NH PUC 246*Southern New Hampshire Water Company, Inc.

[Go to End of 51784]

74 NH PUC 246

Re Southern New Hampshire Water Company, Inc.

DF 89-048
Order No. 19,473

New Hampshire Public Utilities Commission

July 18, 1989

ORDER increasing the short-term debt limit of a water utility.

SECURITY ISSUES, § 98 — Short-term debt — Increased borrowing limit — Water utility.

[N.H.] A water utility was authorized to increase its short-term debt limit pending approval of long-term debt financing; the increase was required due to an acceleration in property taxes.

By the COMMISSION:

ORDER

WHEREAS, the commission has received a letter from Southern New Hampshire Water Company, Inc. (Southern or the Company) formally requesting that the short term debt borrowing limit be increased by $100,000 to $6,350,000 until approval of long-term debt financing; and

WHEREAS, Southern states that an acceleration in property taxes beyond those anticipated results in the need for this request; and

WHEREAS, Southern states that the long-term debt financing will be used to lower the short-term debt obligation; it is

ORDERED, that Southern New Hampshire Water Company, Inc.'s level of short term debt shall be limited on an interim basis to be not in excess of $6,350,000; and it is

FURTHER ORDERED, that on January first and July first of each year Southern New Hampshire Water Company, Inc. shall file with this commission a detailed statement, showing the disposition of proceeds on such short term debt until the whole of such proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1989.

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NH.PUC*07/19/89*[51785]*74 NH PUC 246*Pennichuck Water Works, Inc.

[Go to End of 51785]

74 NH PUC 246

Re Pennichuck Water Works, Inc.

DR 89-120
Order No. 19,474

New Hampshire Public Utilities Commission

July 19, 1989

ORDER extending the effective period of interim rates for water service.

RATES, § 640 — Procedure — Consolidation — Water systems.

[N.H.] The effective period of interim rates for water service provided to one of three systems located within a franchise area was extended pending the commencement of a rate case for permanent rates for all three systems; the commission found that it would be economically efficient to deal with rates for all the systems in one proceeding.

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By the COMMISSION:

ORDER

On June 27, 1989, Pennichuck Water Works, Inc. (Pennichuck) requested an extension of existing interim rates for all franchised East Derry community water systems and for permission to file for consolidated rates for these systems on or before November 1, 1989; and

WHEREAS, on December 31, 1987, Pennichuck was granted interim rates for several community water systems located in East Derry, including Cousins Farms, order no. 18,954 (72 NH PUC 589); Hi & Lo, order no. 18,952 (72 NH PUC 589); and Drew/Bliss, order no. 18,555 (72 NH PUC 589); and

WHEREAS, Pennichuck was ordered to file permanent rates fifteen (15) months after the date operations began for these systems; and

WHEREAS, in addition, Pennichuck was granted interim rates on July 25, 1988 for Hubbard/Bellbrook, order no. 19,135 (73 NH PUC 279), and on March 20, 1989 for Birchfield Community Systems, order no. 19,350 (74 NH PUC 102); and

WHEREAS, Pennichuck was ordered to file permanent rates twelve (12) months after the date operations began for these systems; and

WHEREAS, currently the only community water system which is required to file for permanent rates is Hi & Lo; and

WHEREAS, the company to comply with the original order shall file for permanent rates for Hi & Lo on July 19, 1989; and

WHEREAS, Pennichuck is requesting an extension of all interim rates until November 31, 1989, at which time it is its intention to file for consolidated permanent rates for all franchise systems in East Derry; and

WHEREAS, it would be economically efficient for all these systems in East Derry with interim rates to be dealt with in one proceeding; it is hereby

ORDERED, that the request of Pennichuck Water Works, Inc. to continue interim rates for all systems until November 1, 1989, at which time it will commence a rate case for permanent rates on all systems in East Derry currently under interim rates is granted; and it is

FURTHER ORDERED, that this order shall not be construed in any way as granting consolidated rates for non-interconnected systems in East Derry as that issue will be dealt with in

the filing to be made on or before November 1, 1989.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1989.

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NH.PUC*07/19/89*[51786]*74 NH PUC 247*New England Telephone and Telegraph Company, Inc.

[Go to End of 51786]

74 NH PUC 247

Re New England Telephone and Telegraph Company, Inc.

DE 89-116
Order No. 19,475

New Hampshire Public Utilities Commission

July 19, 1989

ORDER *nisi* authorizing a local exchange telephone carrier to change the boundary between two exchanges.

SERVICE, § 445 — Telephone — Exchange areas and boundaries.

[N.H.] A local exchange telephone carrier was authorized to change the boundary between two exchanges; it was found that the change would enable the carrier to provide more efficient service without requiring a change in rate group in either exchange.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company (NET) filed a petition on June 27, 1989 seeking authority to change the boundary between the Merrimack and

Manchester, New Hampshire exchanges in the vicinity of the Trolly Crossing residential housing development; and

WHEREAS, NET will be able to serve the Trolly Crossing development more efficiently from the Manchester exchange; and

WHEREAS, the proposed boundary change will relocate the portion of the Manchester/Merrimack exchange boundary to be coterminous with the Manchester/Litchfield municipal boundary; and

WHEREAS, the seven existing customers located in this area will be given the option of retaining service from the Merrimack exchange on a "grandfathered" basis or selecting service from the Manchester exchange, without charge; and

WHEREAS, there will be no change in rate group in either exchange as a result of the proposed boundary change; and

WHEREAS, the Commission's investigation finds the proposed boundary change, 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 hereby

ORDERED, that all persons interested in responding to this petition submit their comments or file a written request for a hearing on this matter before the commission no later than August 11, 1989; and it is

FURTHER ORDERED, that the petitioner mail one copy of this report and order, by first class mail, to each customer in the area who will be located in a different telephone exchange as a result of this order, no later than August 2, 1989 and documented by affidavit to be filed with this office on or before August 18, 1989; and it is

FURTHER ORDERED, that NET file revised tariff pages to NHPUC No. 75 Part A Section 5 Twelfth Revision of Sheet 54 and Nineteenth Revision of Sheet 55 within 60 days from the effective date of this order, reflecting the above changes in service areas brought about by this revision in exchange boundaries; and specifying thereon that the maps are effective on the date hereof by authority of this NHPUC order; and it is

FURTHER ORDERED, *NISI* that authority be, and hereby is, granted to New England Telephone & Telegraph Company to revise the exchange boundaries as prescribed in the subject petition in the towns of Manchester and Merrimack 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 nineteenth day of July, 1989.

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NH.PUC*07/19/89*[51787]*74 NH PUC 248*Southern New Hampshire Water Company, Inc.

[Go to End of 51787]

74 NH PUC 248

Re Southern New Hampshire Water Company, Inc.

DE 88-112
Order No. 19,478

New Hampshire Public Utilities Commission

July 19, 1989

ORDER closing an investigation of a water utility's franchise area. Commission finds no evidence that would require redefinition of the franchise area.

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1. SERVICE, § 112 — Jurisdiction and powers — State commission — Water utility — Service to municipality.

[N.H.] Pursuant to R.S.A 365:5, the commission has discretion to investigate on its own motion any act or thing having been done, or having been omitted or proposed by any public utility; accordingly, it was appropriate for the commission to investigate whether it was no longer in the public interest for a water utility to serve a certain municipality, even though no violation of a statute or commission order was at issue. p. 253.

2. CERTIFICATES, § 146 — Revocation —

Page 248

Commission authority — Statutory tests.

[N.H.] Pursuant to R.S.A. 365:28, the commission has authority to alter, amend, or set aside its original franchise order, and that law allows the commission, upon its own motion, to withdraw public utility authority by holding a hearing and determining that a utility has declined or unreasonably failed to render service in its territory or that its service in that territory is inadequate, with no sufficient reason for such inadequacy appearing; the primary tests under that statute are (1) whether the utility has declined or unreasonably failed to render service, or (2) whether service is inadequate. p. 253.

3. SERVICE, § 117 — Duty to serve — Public utility authority — Time limitation — Reasonable attempt to serve.

[N.H.] Pursuant to R.S.A. 374:27, utilities must exercise their public utility authority within two years, or it may not be exercised; that statute does not mean that if a water utility sinks one well or serves a few customers within the service area within two years that it is sufficient exercise of authority to comply with the statute, but does mean that the utility must reasonably attempt to serve all customers who request service within the service area within the two-year period. p. 253.

4. SERVICE, § 123 — Duty to serve — Adequate service within scope of duty — Water utility.

[N.H.] It was not necessary to redefine a water utility's service territory within a certain municipality, nor was it necessary that the commission's enabling order allowing provision of water service be amended, where (1) there was no evidence that the utility denied any requests for service, and (2) the utility made a good faith effort to exercise its public utility authority within the statutory two-year period by serving all customers requesting service and expanding its distribution facilities when prudently possible. p. 253.

APPEARANCES: Margaret H. Nelson, Esq. of Sulloway, Hollis & Soden on behalf of the Amherst Village District; Edmund J. Boutin, Esq. of Boutin & 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:

REPORT

This report concerns the commission's investigation of Southern New Hampshire Water Company's Amherst franchise. It sets forth the positions of the parties, analyzes the law, and reaffirms Southern's authorization to operate as a public water utility in a limited area in the Town of Amherst.

I. *Procedural History*

On September 26, 1983, the New Hampshire Public Utilities Commission (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*, 68 NH PUC 565 (1983). 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. 16,555. Amherst essentially asked for all of the service area not currently being served by Southern north of Route 101-A.

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 for October 12, 1988. On October 12, 1988 the commission held a hearing on the motion to dismiss.

On November 14, 1988, the Amherst Village District filed a motion for injunction or alternative relief. It alleged that Southern is constructing some service connections in the portion of the service area which AVD may seek to provide service. By an order of notice issued November 28, 1988, the commission

scheduled a hearing on the motion for December 19, 1988.

By order no. 19,249 (December 1, 1988) (73 NH PUC 484), we denied the motion to dismiss. We decided to consider this case on our own motion pursuant to RSA 365:5, as it was a matter of concern to the ratepayers, AVD, and Southern. We determined that 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.

We found that there were several statutory bases for this investigation. AVD had alleged that it was no longer in the public good for Southern to serve in Amherst. We decided to investigate to determine if there was a basis a) to alter, amend or set aside the franchise 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 set a procedural schedule to govern this investigation which included a hearing on the merits on March 9, 1989. The schedule set in this report and order superceded the schedule set in our order of notice. The parties proposed an amendment to this schedule which was approved in order no. 19,362 (April 4, 1989). Order no. 19,362 set a hearing for May 22, and 26, 1989.

II. *Positions of the Parties*

A. Amherst Village District

AVD argues that there are two issues in this proceeding. First, the commission must decide whether it has the authority to redefine the franchise of an operating public utility for good cause shown. It argues that the commission has the authority to do so under RSA 374:27 and RSA 365:28. It asserts that the commission has found that it has authority to do so in *Re Lakes Region Water Company*, 72 NH PUC 186 (1987).

It avers that the commission does not have to apply the narrow standard advocated by Southern, to wit: that the commission may only take away a franchise where there has been a refusal to provide service or wholly inadequate service. Rather, it contends, where the utility is providing no service whatsoever, it is impossible to apply the standards of refusal to provide service or inadequate service.

As the second issue, AVD argues that the facts warrant the redefining of the franchise. In support of these arguments it alleges the following facts and legal precedents.

1. The commission approved the water service contract between Pennichuck Water Works and the Town of Milford. See *Re Pennichuck Water Works*, 73 NH PUC 88 (1988). 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, AVD avers, 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 contends it 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. AVD alleges that Southern did not take any steps to provide service in the franchise area until after AVD announced its plan to expand its district.

7. AVD asserts that Southern has no customers and little, if any, investment, north of Route 101-A. AVD should have to pay little, if any, 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 Company*, 72 NH PUC 186 (1987).

8. AVD argues that Southern did not develop the section of the franchise sought within two years of the date the franchise was awarded.

9. AVD alleges that in DE 83-244, Southern developed assets and sized their facilities primarily to serve the Bon Terrain Industrial development. Southern represented to the Town that if it wished to develop outside of Bon Terrain, it would present a plan for that development to the Town.

10. Amherst has the statutory right to provide water to customers in its municipality.

B. Southern New Hampshire Water Company

Southern argues, concerning RSA 374:28, that it has not declined or unreasonably failed to render service, nor has its service been inadequate without sufficient reason. It avers that it is providing service wherever the demand exists.

RSA 374:27 requires that public utility authority "may be exercised within two years after the same shall be granted, and shall not be exercised thereafter." Southern alleges that it has exercised its franchise within two years. Southern contends that, immediately upon receiving the franchise, it began exercising its franchise by requesting government permits, and conducting engineering studies and that, within two years it had laid pipe, had a storage tank and wells and was actually serving customers.

Southern argues that, in developing its service area it must weigh two interests: 1) making investments to allow it to serve and 2) not over-investing where there is no demand for the service. It contended that there is no demand for service north of 101-A. Thus, it contended, the provisions of RSA 374:27 should not be interpreted to require Southern to provide service to every corner of its service territory within two years of receiving the franchise.

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 neither 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 alleges that it has invested substantial sums in the franchise, including areas north of Route 101-A in Amherst.

Southern noted the commission's authority under 356:5 to investigate, on its own motion, any act or thing having been done, or having been omitted or proposed by any public utility in violation of any provision of law or order of the commission. It argued that no party has proven any violation of any commission law or order.

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. Staff

The staff did not take a position on the issues in the case. It simply elicited facts to make a full investigation.

The staff noted that, pursuant to RSA 38:6, the AVD commissioners had notified Southern in writing, that AVD wished to buy the portion of the service territory in question. It pointed out that under RSA 38:7, the utility must reply in writing within 60 days to reserve its rights to have the facilities purchased. It argued that no written reply was made within the statutory period.

III. *Findings of Fact*

The record in this case was immense. However, we will not attempt to cull from it every possible fact that may in some way relate to the case. Rather, we think we can adequately review the issues presented with reference to the following essential findings of fact.

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Southern received commission permission to provide service on September 26, 1983. On September 28, 1983, it received permission from the State of New Hampshire Water Supply and Pollution Control Commission for its well location and construction.

On November 2, 1983, Southern signed a contract for service to the Bon Terrain industrial development. On November 2, 1983, the Town of Amherst Board of Zoning adjustment approved installation of the company's water mains. In November and December of 1983, Southern sought and received permits to dredge and fill, to put water mains across a wetland, to site a well house pump station in a wetland, to open roads to lay water lines.

In January of 1984, Southern obtained commission approval of its special contract for Bon Terrain. In June, Water Supply and Pollution Control approved Southern's storage tank and in September it approved the distribution system. In October of 1984, Southern signed a contract for the installation of the water main and began negotiating with the B & M Railroad for two railroad crossings. The B & M asked that Southern delay the crossing until early 1985 to coordinate with a gas main crossing. In December of 1984, Southern had $11,409. of fixed assets in Amherst.

In January, 1985, the Town of Amherst allowed Southern to put all of its electrical power above ground. In March of 1985, it requested a third railroad crossing.

In April 1985, Southern purchased the Pilgrim Hills satellite. In June of 1985, Southern received B & M approval for the railroad crossings. On July 15, 1985, Southern provided water service to its first Amherst customer.

In October of 1985, Southern contracted for a groundwater exploration study of the Amherst aquifer to seek additional sources of supply. On December 27, 1985, by order no. 18,020 (70 NH PUC 1086), the commission approved rates effective July 15, 1985. In December of 1985, Southern had $1,208,201 of fixed assets in Amherst.

In April of 1986, Southern negotiated with the Seaverns group concerning service to the Souhegan Club development. At the end of 1986, Southern had $1,353,554 of fixed assets in

Amherst.

On February 1, 1988, the State of New Hampshire Bureau of Highway Maintenance informed Southern that it had reviewed Southern's proposed 12” water main extension on Route 101-A. It informed Southern that it may install mains in the existing right-of-way but that any longitudinal installation made within the proposed pavement width must by replaced, removed, or abandoned upon construction of the highway improvement project, and replaced in the new right-of-way, beyond the edge of the pavement. Southern decided to defer placing mains along Route 101-A until the highway improvement project created the new right of way.

On May 16, 1988, the AVD commissioners wrote to Mr. Michael Love, on behalf of Southern, asking how much Southern would accept in exchange for giving up its franchise rights north of Route 101-A. According to the letter, Mr. Love would respond by May 23, 1988.

On June 2, 1988, the AVD commissioners wrote to Mr. Love memorializing a June 1, 1988 telephone conversation in which Mr. Love indicated that Southern was not willing to negotiate. The commissioners stated that they would, therefore, proceed with condemnation. On July 5, 1988, the AVD voted by a more than two-thirds vote to authorize the AVD commissioners to acquire Southern's franchise in Amherst.

In August of 1988, the state finished condemning property for the Route 101-A expansion. On October 17, 1988, Southern signed a service agreement with the Seaverns group.

In January of 1989, the state began expanding Route 101-A. On May 31, 1989, Southern had $2,710,269 of fixed assets in Amherst.

The commission has never received any customer complaints alleging that Southern has declined or unreasonably failed to render service in the Town of Amherst service area, nor has it received any complaints that service was inadequate. In DR 88-55, order no. 19,287, (January 8, 1989) (74 NH PUC 11) the commission determined that Southern had 90 meters in its Amherst franchise.

IV. *Commission Analysis*

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A. Commission Authority

We interpret the statutes in question broadly. The statutes in question are RSA 365:5, 374:27, 374:28, and 365:1.

[1] Under 365:5 the commission has discretion to investigate on its own motion "any act or thing having been done, or having been omitted or proposed by any public utility." It is obligated to investigate any act or thing done or omitted or proposed in violation of law or commission order. The investigation, as generally stated in our order no. 19,249, was whether it is no longer in the public good for Southern to serve in Amherst. This involved the question of whether Southern omitted to expand service within its service area. Thus, we had the discretion to investigate in this case, even if no violation of a statute or commission order was in issue.

[2] We also have authority to alter amend or set aside our original franchise order under RSA 365:28. This is supported by our decision in *Re Lakes Region Water Company*, 72 NH PUC 186

(1987).

We also interpret the provisions of RSA 374:28 broadly. This law allows the commission to, upon its own motion, withdraw public utility authority by holding a hearing and determining that a utility has "*declined or unreasonably failed to render service* in [its territory] or that its service in said service territory is inadequate, no sufficient reason for such inadequacy appearing." (Emphasis added). We do not interpret this to mean that the commission may not withdraw a service territory where the utility has made investments. Investments alone are not the sole criteria. The primary tests in the statute are 1) whether the utility has declined or unreasonably failed to render service, or 2) whether service is inadequate.

[3] We have broad discretion under RSA 374:27. This statute provides that utilities must exercise their public utility authority within two years or it may not be exercised. This statute does not mean that if a water utility sinks one well or serves a few customers within the service area within two years it is sufficient exercise of their authority to comply with the statute. Such an analysis depends on the specific elements of the authorization. Utilities are required to serve all customers. We would interpret RSA 374:27 by the same standards required in RSA 374:28; in other words, that the utility must reasonably attempt to serve all customers who request service within the service area within the two year period.

B. Whether the Franchise Should Be Amended

[4] We have carefully reviewed all of the evidence in this case. We do not find that Southern's service territory in Amherst should be redefined or that our enabling order should be amended. Our analysis is set forth below.

Concerning our investigation under RSA 374:28, there is no evidence that Southern denied any requests for service. While there have been many obstacles to the development of the service area (*e.g.*, the state's rebuilding of Route 101-A) Southern has made a good faith effort to expand service to the portion of its service territory north of Route 101-A. In fact, it expanded north of Route 101-A when it was prudent to do so.

Using the same reasoning, we find that under RSA 365:5, Southern has not neglected to expand service within its service territory. Likewise, Southern has made a good faith effort under RSA 374:27 to exercise its public utility authority within the two year period by serving all customers requesting service and expanding its distribution facilities when it was prudently possible. In light of these findings we do not find it in the public interest to redefine Southern's franchise or to amend order no. 16,555.

The parties have made arguments concerning whether the Town of Amherst was liable for hydrant charges and whether Pennichuck Water Works interfered with Southern's franchise. These issues were not noticed in any of the commission's orders, and neither the Town nor Pennichuck were parties to the proceeding. For these reasons, the issue was not properly before us, and we will not consider these arguments or rule on them in this order.

AVD has presented facts and arguments as to why it wishes to provide service. The parties

have argued whether AVD can provide adequate service. We have not made findings of fact

concerning these allegations as they are not relevant to deciding whether Southern is providing adequate service. This is not a comparative process to find who can provide the best possible service in Amherst, but rather to determine if Southern has met the terms of its franchise obligation.

Although we are sensitive to AVD's wish to provide service in Amherst, we do not have authority to decide whether municipalities should provide service in their towns. There are statutory mechanisms to allow AVD to serve customers in Amherst (RSA Chapter 56) and to acquire Southern's franchise (RSA Chapter 38). However, AVD has not requested relief under these provisions.

Southern argued how its property should be valued and that portions of that property are used to provide service to the area sought. We will not make findings of fact or conclusions of law concerning these allegations because these issues are relevant to a Chapter 38 proceeding but not to the issue before us.

We will also not consider the parties' arguments concerning whether a certain court action is vexatious. We do not stand judgment over the proceedings of other courts or administrative agencies. These courts and agencies are the correct authorities to determine whether proceedings before them are vexatious.

Similarly we do not have the authority to consider whether Southern deserves a tax abatement. However, we will require Southern to pursue any tax abatement that a reasonably prudent utility would pursue.

Our order will issue accordingly.

ORDER

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

ORDERED, that our investigation of the Southern New Hampshire Water Company franchise is closed; and it is

FURTHER ORDERED, that this investigation has not produced evidence which would require us to redefine Southern's franchise area in Amherst or to amend our franchise order no. 16,555.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1989.

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NH.PUC*07/19/89*[51788]*74 NH PUC 254*New England Telephone and Telegraph Company, Inc.

[Go to End of 51788]

74 NH PUC 254

Re New England Telephone and Telegraph Company, Inc.

DR 89-010
Order No. 19,479

New Hampshire Public Utilities Commission

July 19, 1989

ORDER finding that the commission has authority to implement alternative rate regulation.

RATES, § 32 — Commission powers — Power to approve alternative forms of rate regulation — Basis for authority.

[N.H.] The commission has authority to allow alternative forms of rate regulation so long as the form produces rates that are just and reasonable; that authority stems from R.S.A. 378:7, which grants the commission the authority to fix rates that are just and reasonable, and from case law, which states that just and reasonable rates are within the "zone of reasonableness," meaning the lowest rate that is not confiscatory and the highest rate that is not excessive and extortionate.

APPEARANCES: Holly C. Laurent, Esq., and John S. May, Esq. on behalf of New England Telephone Company; Frederick J. Coolbroth of Devine, Millimet, Stahl and Branch on behalf of Granite State Telephone Company and Merrimack County Telephone Company; Dom S. D'Ambruoso of Ransmeier and Spellman on behalf of Kearsarge Telephone Company and Wilton Telephone Company; Captain Scott Marshand, Esq. on behalf of the Department of Defense; Thomas M. Eichenberger, Esq. on

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behalf of AT&T; Dorothy Bickford, Esq. of Shaheen, Cappiello, Stein & Gordon on behalf of Union Telephone Company; Joseph Rogers, Assistant Consumer Advocate, on behalf of residential ratepayers; Alan Linder, Esq. of New Hampshire Legal Assistance on behalf of Volunteers Organized in Community Education.

By the COMMISSION:

REPORT

By this report and order we consider two issues: whether the commission has the authority to implement alternative rate regulation and whether the proposal is a rate schedule. We find that the commission has authority to implement the alternative rate regulation provided rates result which are just and reasonable and otherwise lawful. We defer our ruling on whether the proposal is a rate schedule.

I. *Procedural History*

On March 3, 1989 New England Telephone Company (NET) filed a proposed rate increase of $21.2 million. NET also proposed its InfoAge NH 2000 plan, whereby, the commission would regulate NET's prices rather than its earnings.

On April 20, 1989, the commission issued an order of notice requiring the parties to file legal memoranda on the following two issues:

1) whether the commission has authority to regulate rates based on an alternative form of rate regulation, and

2) whether the alternative form of rate regulation is a rate schedule, pursuant to RSA 378:6,I, which the commission may not suspend for more than a year.

The order of notice required New England Telephone (NET) to file its legal memorandum on May 26, 1989. It required the staff and intervenors to file their memoranda on June 9, 1989. It scheduled a hearing on June 16, 1989.

Parties filed their memoranda pursuant to the schedule.

II. *Public Statements*

At the beginning of the proceeding Mr. William B. Sprague gave a public statement opposing the rate increase.

III. *Positions of the Parties*

Since we will not decide the rate schedule issue in this report and order, we will not present the positions of the parties on that issue. The positions of the parties concerning alternative regulation authority are summarized below.

A. New England Telephone Company

NET argued that, because Infoage NH 2000 constitutes a recommended method of regulation, the commission has plenary authority to consider the proposal. NET asserts that no specific formula is required as long as the methodology produces rates which are neither confiscatory nor exploitative. Appeal of Conservation Law Foundation, 127 N.H. 606, 507 A.2d 652, 660-661 (1986).

NET contends that the commission should not decide today as a matter of law whether it has authority to allow the plan. This decision, it alleges, should be a factual issue of whether the proposed methodology will produce rates that are just and reasonable.

B. Granite State Telephone Company and Merrimack County Telephone Company

Granite State Telephone Company (GST) and Merrimack County Telephone Company (MCT) contend that the commission can authorize the alternative regulatory mechanism provided it is voluntary on the part of the utility and it is not exploitative of ratepayers. GST and MCT argue that the commission should not adopt the price regulation and then impose it on other New Hampshire utilities. It alleges that this action would be confiscatory and unlawful because it would deny the utility the opportunity to demonstrate its need for a reasonable return on rate base after expenses. However, they state, the utility may waive its investors rights to have these interests considered.

C. Wilton Telephone Company and Kearsarge Telephone Company

Wilton Telephone Company (Wilton) and Kearsarge Telephone Company (Kearsarge) argue that the commission has discretion to consider the price caps proposal. It contends that the commission has the freedom to use any method to achieve the goal of just and reasonable rates.

However, it believes certain safeguards may prove appropriate. For example, the commission should indicate that it has the power to interrupt the plan at any time it finds rates to be unreasonable, unjust, or if it would lead to inadequate service. It also asserts that the commission should insure joint network planning with the independent telephone companies toward the goal of a continued high quality integrated network.

Kearsarge avers that the commission should closely monitor NET's rate of return through the initial four year period of the plan and interrupt the plan if the rate of return deteriorates to a point where it decreases Kearsarge's intrastate toll settlement revenues.

In sum, Kearsarge and Wilton are trying to protect the goals of average rates and universal service.

D. AT&T

AT&T argued that the commission does not have authority to adopt Infoage NH 2000. It argued that the commission cannot adopt alternative regulation where NET maintains broad monopoly powers over the provision of essential services. AT&T contended that the commission has the authority to investigate, suspend, modify, and reject tariffs. AT&T asserted that, without such regulation or competition, NET would be free to engage in anticompetitive behavior which the intended to statutes and regulations were intended to prohibit.

E. Union Telephone Company

Union Telephone did not submit a legal memorandum and did not advance a position concerning the commission's authority to adopt alternative rate regulation.

F. Consumer Advocate

The Consumer Advocate argues that the commission lacks statutory authority to set rates by any method other than rate of return regulation. It argues that the statutes and the case law support this contention. RSA 378:27, RSA 378:28 and *Appeal of PSNH,* 125 N.H. 46, 49 (1984), *Appeal of CLF,* 127 N.H. 606, 633, 640, 507 A.2d 652 (1986).

G. Volunteers Organized in Community Education

Volunteers Organized in Community Education (VOICE) argues that the commission does not have authority to consider and set rates based on the alternative form of rate regulation. It argues that the proposed plan would prevent the commission from carrying out its statutory duties to protect the public and set just and reasonable rates pursuant to RSA 378:5, 378:7, 378:8, 378:10, 378:27, 378:28, and 374:2.

It contends that the alternative regulation would set rates independent of the process by which expenses, rate base, and rate of return are determined. In addition, the plan proposes that the commission not disallow any expenses that may be deemed imprudent under traditional ratemaking methods. It argues that the commission has the duty to consider expenses, rate of return, rate base (*Appeal of Conservation Law Foundation,* at 638, 639) and disallow imprudent investments (*Id.* at 637).

In response to NET's assertions that the commission has "wide latitude in the choice of methodologies" in setting rates (*LUCC v. PSNH,* 119 N.H. 332 (1979)), VOICE avers that the cases relied upon by NET were all decided in the context of traditional ratemaking.

H. Staff

The staff argues that the enabling statutes require the commission to set rates using rate of return regulation. RSA 378:27, 378:28 and 378:30-a. It asserted that the case law relied on by NET to support alternative regulation does not rule on the use of any methodology other than rate of return ratemaking and thus is not a

valid precedent.

It also contends that the Infoage NH 2000 proposal will not insure just and reasonable rates. The staff contends that the proposal would allow NET to use the following anticompetitive pricing methods: predatory pricing, monopoly pricing, tying and discriminatory pricing. It averred that the proposal does not allow the commission to weigh the many factors which it must consider in approving the appropriate rate design. The staff avers that the alternative regulation would not necessarily fall within the zone of reasonableness and therefore, may not produce a just and reasonable revenue requirement.

It asserted that the plan would create a zone in which rates would not be suspended but would be *prima facie* lawful. It argued that the New Hampshire legislature has not shown any inclination to shift the burden of proof to the ratepayers in this way.

Under the plan, the commission would not interrupt the plan for four years absent a crisis. The staff states that the commission does not have authority under RSA 378:6 to decline to exercise its discretion to review rates.

IV. *Commission Analysis*

We will not decide whether Infoage NH 2000 is a rate schedule since the question is not ripe for determination at this time. For purposes of administrative ease we have created a procedural schedule which will permit the case to be completed within the one year suspension period. Thus, we do not need to determine whether the proposal is a rate schedule at this time.

We have determined that we have authority to allow alternative forms of rate regulation so long as the form produces rates which are just and reasonable. Our analysis is presented below.

The commission has authority to fix rates (under RSA 378:7) or to allow rates so long as they are "just and reasonable." New Hampshire case law has determined that just and reasonable rates are those that are within the "zone of reasonableness," *i.e.* "the lowest rate that is not confiscatory and the highest rate that is not excessive and extortionate." *New Eng. Tel. & Tel. Co. v. State*, 104 N.H. 229, 234, 183 A.2d 237 (1962). In *New Eng. Tel. & Tel. Co. v. State*, at 234 the Supreme Court determined that

> Since our statutes do not provide a formula to be followed by the Commission in determining what are just and reasonable rates, we are not warranted in rejecting the method employed by it unless it plainly contravenes the statutory scheme of regulation or violates our law in some other respect.

We find that this case requires us to make findings of fact concerning whether a proposed ratemaking methodology will in fact produce rates within the zone of reasonable. We could not

simply find, as a matter of law, that a proposed methodology does not produce just and reasonable rates without fully investigating the methodology proposed. If the methodology can produce just and reasonable rates, then we would have authority to implement it. This decision is supported by the language of the statute which merely requires that rates set be just, reasonable, and lawful.

We will allow the investigation of Infoage NH 2000 to proceed and we will decide, on the basis of the evidence, whether it will produce rates within the zone of reasonableness.

Our order will issue accordingly.

ORDER

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

ORDERED, that the commission has authority to implement the alternative rate regulation so long as it produces rates which are just and reasonable and otherwise lawful; and it is

FURTHER ORDERED, that the commission will defer its decision on whether the Infoage NH 2000 plan is a rate schedule.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1989.

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NH.PUC*07/20/89*[51789]*74 NH PUC 258*Manchester Water Works

[Go to End of 51789]

74 NH PUC 258

Re Manchester Water Works

DE 89-105
Order No. 19,480

New Hampshire Public Utilities Commission

July 20, 1989

ORDER *nisi* authorizing a water utility to extend its service territory.

SERVICE, § 210 — Extensions — Water utility.

[N.H.] A water utility was granted authority to further extend its mains and service into a municipality where no other water utility had franchise rights in the area sought and the town government of the area was in accord with the proposed extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this commission in areas served outside the City of Manchester, by a petition filed June 12, 1989, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

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

WHEREAS, the Board of Selectmen, Town of Hooksett has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

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

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit a written request for a hearing in this matter no later than August 16, 1989; 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 August 7, 1989 and designated in an affidavit notice shall be given to all known current and prospective customers by serving a copy of this order to each by first class U.S. mail, postage prepaid, and postmarked on or before August 7, 1989; 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:

> Proceeding south westerly along Smyth Road from the westerly boundary of the franchise granted in DE 87-179 and Order No. 18,875 (72 NH PUC 497 [1987]), a distance of 470+/- feet for the purpose of serving lots no. 34, 15, and 37-1 as shown on Town of Hooksett assessors map no. 43.

and it is

FURTHER ORDERED, that such authority shall be effective on August 21, 1989, 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 twentieth day of July, 1989.

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74 NH PUC 259

Re Union Telephone Company

DR 89-110
Order No. 19,481

New Hampshire Public Utilities Commission

July 20, 1989

ORDER authorizing the introduction of enhanced digital Centrex service and approving a rate reduction for custom calling service.

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1. SERVICE, § 463 — Telephone — Enhanced Centrex — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to offer enhanced digital Centrex service. p. 259.

2. RATES, § 553 — Telephone — Custom calling — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to reduce its rate for custom calling service. p. 259.

By the COMMISSION:

ORDER

WHEREAS, on June 15, 1989 Union Telephone Company filed two petitions, (a) to offer Enhanced Digital Centrex Service; and (b) seeking a rate reduction for its Custom Calling Service tariff; and

WHEREAS, the proposed services were submitted for effect on July 15, 1989; and

WHEREAS, the two petitions were suspended pending further investigation following order no. 19,471 dated July 14, 1989; and

[1, 2] WHEREAS, the original petition was withdrawn and replaced by a new filing for Enhanced Digital Service (Centrex) and Custom Calling Rate Reduction dated July 17, 1989 which satisfactorily addressed the commission's concerns; it is hereby

ORDERED, that the proposed tariff NHPUC No. 7 — Telephone:

Contents, Page 2, Third Revision — Issued in lieu of Second Revision

Check Sheet, July 1989, Page 1

Check Sheet, July 1989, Page 2

Check Sheet, July 1989, Page 3

Index, Page 3, Second Revision Cancelling First Revision

Index, Page 8, Third Revision, Issued in lieu of Second Revision

Part III — General, Section 21, Page 1, Third Revision, Issued in lieu of Second Revision

Part III — General, Section 21, Page 2, Third Revision, Issued in lieu of Second Revision

Part III — General, Section 21, Page 3, Third Revision, Issued in lieu of Second Revision

Part III — General, Section 21, Page 4, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 5, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 6, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 7, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 8, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 9, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 10, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 11, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 12, First Revision, Issued in lieu of Original

Part III — General, Section 21, Page 13, First Revision, Issued in lieu of Original

Part III — General, Section 22, Page 1, Third Revision, Issued in lieu of Second Revision

Part III — General, Section 3, Page 2, First Revision Canceling Original; be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 1989.

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NH.PUC*07/20/89*[51792]*74 NH PUC 261*Attestation of Commission Orders

[Go to End of 51792]

74 NH PUC 261

Re Attestation of Commission Orders

DE 89-123
Order No. 19,484

New Hampshire Public Utilities Commission

July 20, 1989

ORDER authorizing additional commission employees to assist in the attestation of documents.

COMMISSIONS, § 2 — Delegation of powers — Attestation of documents.

[N.H.] In order to expedite the attestation process, the commission authorized additional commission employees to assist the executive director and secretary in the attestation of commission documents.

By the COMMISSION:

ORDER

WHEREAS, the position of the Executive Director and Secretary entails, among its duties, the attestation of commission signatures and of commission records as being true copies; and

WHEREAS, by order dated May 11, 1983, the commission authorized commission employee Claire D. DiCicco to serve as assistant secretary to assist the Executive Director and Secretary in his absence in the attestation of commission signatures and documents; and

WHEREAS, to expedite the attestation process during the absence or unavailability of the Executive Director and Secretary or Claire D. DiCicco, the commission hereby authorizes additional commission employees to assist the Executive Director and Secretary in the attestation of commission documents; it is

ORDERED, that commission employees Claire D. DiCicco, Kimberly Nolin Smith, Kathleen Barnard and the commission General Counsel are hereby authorized to assist the Executive Director and Secretary as assistant secretaries to attest all records of the commission as being true copies.

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 1989.

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NH.PUC*07/21/89*[51791]*74 NH PUC 260*Manchester Water Works

[Go to End of 51791]

74 NH PUC 260

Re Manchester Water Works

DE 89-106
Order No. 19,483

New Hampshire Public Utilities Commission

July 21, 1989

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

SERVICE, § 210 — Extensions — Water utility.

[N.H.] A water utility was authorized to further extend its mains and service into a municipality where no other water utility had franchise rights in the area sought and the town government of the area was in accord with the proposed extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this commission in areas served outside the City of Manchester, by a petition filed June 12, 1989, seeks authority under RSA 347:22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

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

WHEREAS, the Board of Selectmen, Town of Hooksett has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

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

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit a written request for a hearing in this matter no later than August 16,1989; 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 August 7, 1989 and designated in an affidavit notice shall be given to all known current and prospective customers by serving a copy of this order to each by first class U. S. mail, postage prepaid, and postmarked on or before August 7, 1989 and it is

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

> Beginning at a point along the center line of Winter Drive, Hooksett, New Hampshire, at the southerly limits of the existing franchise area on Winter Drive as approved under PUC Order No. 18,190, dated March 25, 1986 in docket DE 86-75 (71 NH PUC 199); thence southeasterly 850+/- feet along the center line of the proposed Winter Drive extension for the purpose of servicing eleven (11) proposed residential lots along the Winter Drive extension.

and it is

FURTHER ORDERED, that such authority shall be effective on August 21, 1989, unless a

request for hearing is filed with the commission as provided above or unless the commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1989.

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NH.PUC*07/21/89*[51793]*74 NH PUC 261*Rolling Ridge Water System

[Go to End of 51793]

74 NH PUC 261

Re Rolling Ridge Water System

Additional applicants: Echo Lake Woods Water System and Woodland Grove Water System

DE 89-002
Order No. 19,486

New Hampshire Public Utilities Commission

July 21, 1989

ORDER granting a water utility franchise. For prior order granting the franchise subject to conditions, see 74 NH PUC 210.

CERTIFICATES, § 125 — Water — Grant of franchise.

[N.H.] A franchise to operate a water utility was granted where the applicants satisfied a previously established condition requiring a submission of proof that the services of a licensed operator had been obtained.

By the COMMISSION:

ORDER

On July 5, 1989, the commission issued an order granting Robert A. Demers a conditional franchise for limited areas of the Towns of Conway, North Conway and Bartlett, New Hampshire; and

WHEREAS, said order conditioned the granting of a franchise upon Mr. Demers providing proof to the commission that he has obtained the services of a licensed operator; and

WHEREAS, on July 11, 1989, the commission received a letter from Mr. Demers with an attachment from the Department of Environmental Service indicating that Robert A. Demers, the

owner of the three subject water systems had been certified as a Grade 1-A water distribution system operator; it is hereby

ORDERED, that Robert A. Demers d/b/a Rolling Ridge Water System, Echo Lake Woods Water System and Woodland Grove Water System be granted the franchise which was conditional in order no. 19,453 (74 NH PUC 210 [1989]) provided, however, that Mr. Demers provide each of his customers with a number where they can contact him on a twenty-four (24) hour basis for any necessary repairs to the water system.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1989.

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NH.PUC*07/21/89*[51794]*74 NH PUC 262*Southern New Hampshire Water Co., Inc.

[Go to End of 51794]

74 NH PUC 262

Re Southern New Hampshire Water Co., Inc.

DE 88-162
Order No. 19,487

New Hampshire Public Utilities Commission

July 21, 1989

ORDER authorizing a water utility to expand its franchise area.

CERTIFICATES, § 125 — Water — Expansion of service area — New franchise area.

[N.H.] Pursuant to RSA 374:26, the commission shall grant permission to engage in business as a public utility whenever it shall, after due hearing, find that such engaging in business would be for the public good; accordingly, the commission granted a franchise to provide water utility service where it was found that the applicant had the financial backing, the managerial and administrative expertise, the technical resources, and the requisite fitness to own and operate a water system within the proposed franchise area.

APPEARANCES: Dom S. D'Ambruoso, Esq., on behalf of Southern New Hampshire Water Company, Inc. and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission

By the COMMISSION:

REPORT

I. *Procedural History*

On October 31, 1988, Southern New Hampshire Water Co., Inc. (Southern) filed with the commission a petition for expansion of existing franchises within the Town of Pelham, New Hampshire. On November 17, 1988, the commission ordered a prehearing conference for December 7, 1988. At said prehearing conference the parties stipulated to a procedural schedule to govern the case which was adopted by the commission.

On December 9, 1988, Southern, pursuant to said procedural schedule, filed an amendment to page three (3) of the petition modifying the rate to be charged within the proposed franchise area consistent with the rates determined by the commission in docket DR 88-055. Southern subsequently filed testimonies of J. Michael Love, President of Southern, and William Gregsak, an independent engineer hired by Southern, in support of their petition.

The staff promulgated data request which Southern responded to. On May 31, 1989, the parties met to discuss the possibility of stipulating to any and all issues relating to Southern's petition.

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II. *Position of the Parties*

Southern and the staff stipulated that Southern would be granted the proposed franchise areas in the Town of Pelham and that this area would include all of the rest of the Town of Pelham not already granted to Southern as a franchise pursuant to dockets DE 88-077, DE 88-078 and DE 85-354.

The parties further stipulated that in view of the nature of Southern's investment to render such service and the fact that Southern does not presently have any customers in, nor a tariff for the proposed franchise area, it shall render water service to customers in the proposed area in accordance with the terms of its tariff for general metered service for its satellite division as was established in commission docket DR 88-055. Said tariff will be amended to specify those portions of the Town of Pelham, i.e., Williamsburg and the new franchise area to which the said tariff rate will apply. To the extent the fire protection is provided rates MFP-Pelham and PFP-Core shall apply.

The parties further agreed that the rates established by this agreement would be effective on or after the date of the commission's order. Furthermore, Southern has proposed a short-term and long-term plan for Gage Hill which is located in the Town of Pelham. The parties agree that under the circumstances the proposed plan is reasonable. (See Exhibit C, Stipulation of the Parties.)

The parties further stipulated that Southern has the financial, managerial and its administrative expertise, technical resources and is otherwise generally fit to own and operate a water system within the proposed franchise area.

The Town of Pelham has provided a letter dated June 17, 1989, indicating that it does not object to the franchise.

III. *Commission Analysis*

Pursuant to RSA 374:26 "[t]he commission shall grant ... permission [to engage in business

as a utility] whenever it shall, after due hearing, find that such engaging in business ... would be for the public good ...." In the case at hand the commission finds that Southern has the financial backing, the managerial and administrative expertise, the technical resources and is otherwise generally fit to own and operate a water system within the proposed franchise area. Furthermore, Southern has made a substantial investment in the existing franchises it holds in Pelham indicating its ability to serve the proposed franchise areas. Thus, it would be in the public good to grant the proposed franchise.

The commission, therefore, accepts the stipulation of the parties and will grant the proposed franchise.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that Southern New Hampshire Water Company, Inc. be granted a franchise for that area of the Town of Pelham for which it does not currently hold a franchise; and it is

FURTHER ORDERED, that the rates for the proposed franchise area shall be at the satellite rate as set in DR 88-055; and it is

FURTHER ORDERED, that to the extent fire protection is provided rates MFP-Pelham and PFP-Core shall apply; and it is

FURTHER ORDERED, that companies supply the commission with the necessary tariff pages and amendments to tariff pages to comply with this order.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1989.

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NH.PUC*07/24/89*[51795]*74 NH PUC 264*New England Telephone and Telegraph Company, Inc.

[Go to End of 51795]

74 NH PUC 264

Re New England Telephone and Telegraph Company, Inc.

DR 89-010, DR 85-182
Order No. 19,492

New Hampshire Public Utilities Commission

July 24, 1989

ORDER granting motions to intervene in a local exchange telephone carrier rate proceeding.

RATES, § 641 — Procedure — Intervenors — Local exchange carrier.

[N.H.] Pursuant to R.S.A. 541-A:16,V.(a), the commission may allow informal disposition of issues in contested cases; accordingly, the commission granted four unopposed motions to intervene in a local exchange telephone carrier rate proceeding; all parties granted late intervention were required to take the record as they found it.

APPEARANCES: John May, Esq., on behalf of New England Telephone and Telegraph Company; Frederick J. Coolbroth, Esq. of Devine, Millemet, Stahl, & Branch on behalf of Granite State Telephone Company and Merrimack Telephone Company; Ian Wilson on behalf of the Business and Industry Association; Cherie R. Kiser, Esq. on behalf of U.S. Sprint Communications Company; Lee Weiner, Esq. on behalf of MCI Telecommunications Corporation; David W. Jordan, Esq. on behalf of Long Distance North of New Hampshire, Inc.; Peter J. Quinn on behalf of Indian Head Data Services, Inc., and Ad Hoc Telecommunications Users Associates; and Mary C.M. Hain, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT ON LATE MOTIONS
TO INTERVENE

This report and order concerns late motions to intervene filed in this docket. By this report and order we grant all outstanding motions.

I. *Procedural History*

At the time of our last order concerning interventions (Order no. 19,430) (74 NH PUC 189 [1989]) Ad Hoc Telecommunications Inc., and Indian Head Data Services Inc., had filed motions to intervene. The commission deferred action on their petitions because these groups did not appear to argue their positions at the May 18, 1989 hearing on motions to intervene.

On May 31, 1989, Long Distance North of New Hampshire, Inc. (LDN) filed a motion to intervene. On June 26, 1989, NET filed its response to LDN's motion to intervene.

On June 5, 1989, MCI Telecommunications Corporation (MCI) filed a motion to intervene. On June 9, 1989, New England Telephone and Telegraph, Inc. (NET) filed an objection to MCI's motion to intervene. On June 30, 1989 MCI filed a reply to New England Telephone Company's opposition to its motion to intervene.

On June 22, 1989, U.S. Sprint Communications Company (Sprint) filed a motion to intervene. On June 29, 1989, NET filed its opposition to Sprint's motion to intervene. On July 13, 1989, Sprint filed its reply to NET opposition to Sprint's motion to intervene.

On June 29, 1989 SIBMA Associates filed a letter asking for full intervenor status. On July 12, 1989, the Business and Industry Association (BIA) filed its motion to intervene.

On July 17, 1989, the Ad Hoc Telecommunications Users Association withdrew its petition for intervention as the majority of its members are also BIA members. It indicated that it would consolidate its participation with the BIA. On July 17, 1989 Indian Head Data Services Inc. reaffirmed its petition to intervene but indicated that, wherever possible, it would consolidate its

efforts with the BIA.

The commission held a hearing on all

outstanding motions to intervene on July 14, 1989. On July 14, 1989, SIBMA Associates filed a letter with the commission indicating that it would not be able to attend the hearing. It asked that the commission allow it to file some written comments in lieu of its appearance.

II. *Positions of the Parties*

No party objected to the motions to intervene filed by BIA, LDN, Sprint and Indian Head Data Services, Inc. Merrimack County Telephone Company and Granite State Telephone Company, NET, requested that the parties be bound by the record that has been developed thus far. Long Distance North, Sprint, BIA and MCI agreed to take the proceeding as they found it.

The staff asked that the commission order the parties to consolidate their participation as much as possible.

MCI argued that its motion should be granted because it has fulfilled the requirements of N.H. Admin. Code Puc 203.02. It alleged that, where it plans to offer intrastate service in New Hampshire, it is a potential competitor with NET. It also argues that because it is an NET customer it should be allowed to intervene. It asserted that, if the commission allows it to intervene on the basis of being a customer of NET, it should have the full opportunity, as would any other customer to argue any issue raised in the proceeding. It contended that it would not impair the procedural schedule in the proceeding and that its participation would facilitate a more complete record in the case.

NET argued that MCI should not be allowed to intervene but only with respect to those issues that pertain to their status as a customer of NET, rather than as a speculative competitor of NET.

III. *Commission Analysis*

Under R.S.A. 541-A:16,V.(a), the commission may allow informal disposition of issues in contested cases. Pursuant thereto, the commission will grant the following unopposed motions to intervene:

1) Business and Industry Association,

2) Long Distance North of New Hampshire, Inc.,

3) U.S. Sprint Communications Company, and

4) Indian Head Data Services, Inc.

Also pursuant to R.S.A. 541-A:16,V.(a) we will require all late interventions granted in this order and hereafter to take the record as they find it.

Under R.S.A. 541-A:17,III.(c), the commission may require 2 or more intervenors to combine their presentation of evidence and argument, cross-examination and other participation. Pursuant thereto, we will require that the BIA and the Ad Hoc Telecommunications Users Association to combine their participation in this docket, and that the Indian Head Data Services

combine their participation with the BIA where it does not prevent it from protecting its intervention interests under R.S.A. 541-A:17,IV. We ask all parties to attempt to combine their participation consistent with R.S.A. 541-A:17,IV.

We will defer our decision on the intervention of SIBMA Associates since they did not attend the hearing. We will order that SIBMA file a motion supporting its request by August 1, 1989. It should specify, along with all of the other legal requirements for such a motion, whether SIBMA wishes to intervene as a full party, a limited intervenor, or if it simply wishes to file unsworn written or oral comments. If we do not receive any objections by any parties by August 8, 1989, the motion intervention will be granted.

We will grant MCI's motion to intervene. We think MCI's interests as a potential competitor are sufficiently ripe to find that it is in the interests of justice to grant their petition. In addition, it would be unfair not to grant MCI's petition when we have granted Sprint's and AT&T's petitions and where they are all potential NET competitors.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing

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report; it is hereby

ORDERED, that the commission will grant the following motions to intervene:

1) Business and Industry Association,

2) Long Distance North of New Hampshire, Inc.,

3) U.S. Sprint Communications Company,

4) Indian Head Data Services, Inc., and

5) MCI Telecommunications Corporation; and it is

FURTHER ORDERED, that, as further described in the foregoing report, SIBMA Associates shall file a motion supporting its intervention request by August 1, 1989, and if we do not receive any objections by any parties by August 8, 1989, the motion will be granted.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of July, 1989.

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NH.PUC*07/31/89*[51796]*74 NH PUC 266*New England Telephone and Telegraph Company, Inc.

[Go to End of 51796]

74 NH PUC 266

Re New England Telephone and Telegraph Company, Inc.

DR 89-010, DR 85-182
Order No. 19,496

New Hampshire Public Utilities Commission

July 31, 1989

MOTION for reconsideration of an order requiring a local exchange telephone carrier to update certain cost-of-service studies; denied.

RATES, § 143 — Reasonableness — Cost-of-service — Study updates — Updating — Local exchange telephone carrier.

[N.H.] The commission denied a motion by a local exchange telephone carrier (LEC) for reconsideration and/or clarification of a prior order requiring the LEC to file updated cost-of-service studies; clarification was not required inasmuch as the prior order clearly stated that the LEC must update both its embedded cost of service studies and its incremental cost studies to reflect calendar year 1988 data.

By the COMMISSION:

REPORT ON MOTION
FOR CLARIFICATION
AND/OR RECONSIDERATION

I. *The Motion*

On July 3, 1989, New England Telephone and Telegraph, Inc. (NET) filed a motion for clarification and/or reconsideration of our Order no. 19,430 (74 NH PUC 189 [1989]) in this docket. NET requests clarification and/or reconsideration of the order only to the extent that the order could be read to require an update of NET's two National Regulatory Research Institute (NRRI) studies and the study suggested by Voters Organized in Community Education (VOICE).

NET requests that the commission clarify whether order no. 19,430 is intended to only require NET to update its incremental cost study and its embedded cost of service study or whether it also intends to require NET to update the NRRI studies and the VOICE cost matrix. It asks that, if the commission finds that it intended to require NET to update all the above-mentioned studies, that it allow NET to file the incremental cost study and its embedded cost of service study on or before August 15, 1989, and that it require NET to file the NRRI studies and the VOICE study on or before September 5, 1989, using the 1988 usage data from the same sources as used in NET's cost of service study and incremental cost study.

In support of the above requests, NET avers that the staff's motion did not request an update of the NET study or the VOICE study. NET avers that the subject of updating these studies did not come up in the hearings, but that the order may be read to require updating the studies.

NET avers that the NRRI study and the VOICE study cannot be performed until the incremental cost study and the embedded cost of service study are completed. It contends that the three additional studies will require a minimum of three weeks to complete after completion of NET's incremental cost study and the embedded cost of service study. It also contended that this time frame assumes no change in the methodology for developing the NRRI "simulation" or the VOICE matrix.

II. *Commission Analysis*

On November 2, 1987, the parties filed a "report to the commission" in docket DR 85-182. That report was approved by the commission by report and order no. 18,977 (73 NH PUC 23 [1988]). In the report to the commission, the parties agreed that New England Telephone would perform four retrospective studies: two studies — (1) combined results (i.e. before separations) (2) separated intrastate results — will use the methodology proposed by NET (the "Cost of Service Study" or "OSS" method) and two studies — (3) combined (4) separated — will use the methodology proposed by Staff (the "NRRI Peak Responsibility Cost of Service" or "NRRI" method). The report also indicates that NET will restate COSS intrastate results in accordance with a cost matrix more closely corresponding to NET's current tariff structure. NET further indicated that it would produce a combined marginal cost study, using the "Incremental Cost Study" methodology.

A. The Prayer for Reconsideration and/or Clarification

We deny NET's motion for clarification and/or reconsideration. Our order 19,430 does not require clarification. Order no. 19,430 combined dockets DR 85-182 and 89-010. The clear language of the order states that "NET shall update both the embedded cost of service studies and the incremental cost studies to reflect calendar year 1988 data." This requires NET to update all of the studies which we required in our earlier order no. 18,977.

When we combined the rate design docket with the rate case we did not intend to prejudice the interests of the parties or the commission's own investigation. If we only allowed NET to update its own cost studies, we would prejudice the rights of all other parties in the case, including the commission staff, to advocate that another cost study more adequately represents NET's costs in the test period. Thus, we would not be reserving the rights of the parties to argue the appropriateness of the methodologies for ratemaking purposes. Such an order would be inconsistent with our decision in order no. 18,977 at 5.

B. Prayer for Extension

We will amend our order to allow NET until August 29, 1989 to file the NRRI cost studies and the VOICE matrix. These cost of service studies should be based on a 1988 usage study and the usage studies should be performed according to the methodologies required by order no. 18,977. If NET finishes either of the NRRI studies or the VOICE study before August 29, 1989, it shall file the study as soon as possible before August 29, 1989.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that NET's July 3, 1989, motion for clarification and/or reconsideration is denied; and it is

FURTHER ORDERED, that NET shall be allowed until August 29, 1989, at the latest, to file the NRRI cost studies and the VOICE matrix.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1989.

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NH.PUC*07/31/89*[51797]*74 NH PUC 268*Pittsfield Aqueduct Company

[Go to End of 51797]

74 NH PUC 268

Re Pittsfield Aqueduct Company

DF 89-126
Order No. 19,497

New Hampshire Public Utilities Commission

July 31, 1989

ORDER authorizing a water utility to borrow up to $150,000 on a short-term basis at a 12% interest rate.

SECURITY ISSUES, § 44 — Authorization — Short-term debt — Cost savings — Water utility.

[N.H.] A water utility was authorized to increase its short-term debt to a level of $150,000 in order to meet current obligations and to take advantage of certain cost savings in connection with water main installation projects; it was found that the borrowing would enable the utility to save its customers nearly $10,000.

By the COMMISSION:

ORDER

WHEREAS, on July 24, 1989, the Pittsfield Aqueduct Company (Company) filed a petition for authority to issue short-term debt to a level of one hundred and fifty thousand dollars ($150,000.00) to meet current obligations and to take advantage of certain cost savings in connection with water main installation projects in the Town of Pittsfield; and

WHEREAS, that the Company has obtained a commitment from a local banking institution

for a line of credit on a short-term basis up to one hundred and fifty thousand dollars ($150,000.00) at twelve (12) percent interest rate; and

WHEREAS, the Company plans to replace this short-term debt with long-term debt upon this commission's approval of the Company's currently-filed petition to issue long-term debt (docket DF 89-097); and

WHEREAS, the increase in the Company's short-term borrowing to a higher level than originally planned is only temporary in nature; and

WHEREAS, the issuance of this order in a timely manner will enable the Company to take advantage of an estimated cost savings of nearly ten thousand dollars ($10,000.00) for its customers; and

WHEREAS, it is in the general public interest and specifically in the interest of the customers of the Company to achieve the available savings; it is hereby

ORDERED, that the Pittsfield Aqueduct Company be and hereby is authorized to increase its short-term borrowing up to one hundred and fifty thousand dollars ($150,000.00).

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1989.

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NH.PUC*07/31/89*[51798]*74 NH PUC 268*EnergyNorth Natural Gas, Inc.

[Go to End of 51798]

74 NH PUC 268

Re EnergyNorth Natural Gas, Inc.

DF 89-108
Order No. 19,498

New Hampshire Public Utilities Commission

July 31, 1989

ORDER authorizing a natural gas local distribution company to issue and sell bonds.

SECURITY ISSUES, § 50.1 — Authorization — Improvement of capital structure — Short-term debt versus long-term debt — Gas LDC.

[N.H.] A natural gas local distribution company (LDC) was authorized to issue and sell general and refunding bonds at 9.7% with a 30-year maturity, in the aggregate principle amount of $7 million, with the proceeds applied to its unsecured short-term debt; the financing

was found to be in the public good because the issuance of the bonds would allow the LDC to replace relatively volatile short-term debt with long-term debt having a fixed rate.

APPEARANCES: Jacqueline Fitzpatrick, Esquire for EnergyNorth Natural Gas, Inc.; Eugene F. Sullivan and Merwin R. Sands for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

By petition filed June 13, 1989, EnergyNorth Natural Gas, Inc. (ENGI or the Company), a corporation duly organized and existing under the laws of the State of New Hampshire and operating herein as a gas utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1, RSA 369:2 and RSA 369:4 to issue and sell for cash equal to the aggregate principal amount thereof, its General and Refunding Bonds, 9.7%, 30-year maturity, in the aggregate principal amount of $7,000,000.

At a hearing held in Concord on July 21, 1989, the Company submitted the following exhibits in support of its petition: a statement of the Company's capital structure as of March 31, 1989 proformed to reflect the proposed issue, prefiled testimony of the Company's Senior Vice president, Treasurer and Chief Financial Officer, Michael J. Mancini, Jr., a statement of the estimated issuance expenses for the bonds and a letter from Allstate Insurance Company to ENGI citing terms of purchase and sale of bonds. A copy of the Bond Purchase Agreement, a copy of the bond, a copy of the General and Refunding Mortgage Supplemental Indenture and a copy of the Resolution of the Board of Directors were not finalized and will be submitted at a later date.

The bonds will carry an annual interest rate of 9.7% with a final maturity of 30 years. Interest is payable semi-annually and the financing is secured by a mortgage lien on substantially all of the Company's utility property.

The proceeds from the sale of the bonds will be used to retire short-term debt which has been utilized by the Company for construction and acquisition of additions and improvements to its plant and facilities. In addition, the proceeds will also be used for general corporate purposes and operations.

The Company's witness testified that the 9.7% interest rate was favorable when the financing was negotiated and is favorable today given current market conditions. Furthermore, the overall cost of debt would be reduced from 10.5% to 10.33%.

Based upon our review of the record, we find the proposed financing to be in the public good. The issuance of the bonds will allow the Company to replace relatively volatile short-term debt with long-term debt having a fixed rate that we find reasonable in light of existing market conditions. We, therefore, will grant to Company's petition.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the applicant, EnergyNorth Natural Gas, Inc., be and hereby is, authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its General and Refunding Bonds, 9,7%, 30-year maturity, in the aggregate principal amount of $7,000,000; and it is

FURTHER ORDERED, that the proceeds of the issuance and sale of said long-term bonds, 9.7%, shall be applied to EnergyNorth Natural Gas, Inc.'s unsecured short-term debt and to the extent not required therefore for other corporate purposes, and it is

FURTHER ORDERED, that EnergyNorth Natural Gas, Inc. may grant a mortgage lien on substantially all of its utility property to secure payment of such bonds; and it is

FURTHER ORDERED, that the expenses reasonably incurred in connection with the issuance and sale of said bonds shall be amortized by EnergyNorth Natural Gas, Inc. over the life

of the bonds, in accordance with generally accepted accounting principles; and it is

FURTHER ORDERED, that finalized copies of the bond purchase agreement, the bond, the supplemental indenture and the resolution of the Company's Board of Directors be filed with the commission. An accounting of the final actual issuance costs shall also be filed; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year EnergyNorth Natural Gas, Inc. shall file with this commission, a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said bonds shall be fully accounted for.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1989.

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NH.PUC*08/01/89*[51800]*74 NH PUC 273*Power House Systems/Upper Israel Power Hydroelectric Project

[Go to End of 51800]

74 NH PUC 273

Re Power House Systems/Upper Israel Power Hydroelectric Project

DR 86-248
Order No. 19,501

New Hampshire Public Utilities Commission

August 1, 1989

ORDER rescinding a long-term rate order for a hydroelectric small power production project.

COGENERATION, § 19 — Long-term rate order — Recision — Hydroelectric project.

[N.H.] A 30-year, long-term rate order for a small power production project was rescinded where the developer had informed the commission staff through its response to a staff survey form that it would not be going forward with the project.

By the COMMISSION:

ORDER

WHEREAS, on September 8, 1986, Power House Systems filed a long term rate petition; and

WHEREAS, Power House Systems filed amendments to its filing on October 7 and November 14, 1987; and

WHEREAS, in Order No. 18,498 (71 NH PUC 726 [1986]) the petitioner was granted a 30 year rate order pursuant to *Re Small Energy Producers and Cogenerators*, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, the long term rate filing specified a 1989 commercial online date; and

WHEREAS, Power House Systems has informed commission staff through its response to a staff survey form related to this project that they will not be going forward with the project by stating "No further work is being done on

this project;" it is therefore

ORDERED, that Power House Systems 30 year long term rate order No. 18,498 be, and hereby is, rescinded.

By order of the Public Utilities Commission of New Hampshire this first day of August, 1989.

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NH.PUC*08/02/89*[51799]*74 NH PUC 270*Public Service Company of New Hampshire

[Go to End of 51799]

74 NH PUC 270

Re Public Service Company of New Hampshire

DR 89-091
Order No. 19,500

New Hampshire Public Utilities Commission

August 2, 1989

MOTION for rehearing of an order revising the energy cost recovery mechanism rate of an electric utility; denied.

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1. RATES, § 45 — Powers of state commissions — Limitations — Federal bankruptcy court injunction — Bankrupt electric utility.

[N.H.] In denying a motion for rehearing of an order revising the energy cost recovery mechanism charges of a bankrupt electric utility, the commission found that the fact that a federal bankruptcy court had enjoined it from holding hearings on the utility's base rates precluded it from finding that said rates were unjust or unreasonable. p. 272.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 65 — Administrative review — Energy cost recovery mechanism — Bankrupt electric utility.

[N.H.] An injunction issued by a federal bankruptcy court restraining the commission from determining that the current rates of a bankrupt electric utility were unjust or unreasonable did not restrain the commission from exercising routine oversight of the utility, including filings, hearings, and orders relating to the fixing of energy cost recovery mechanism charges. p. 272.

3. BANKRUPTCY — Appeal and review — State commission powers.

[N.H.] The commission does not have authority to review on appeal or act in derogation of the decisions of a federal bankruptcy court. p. 273.

4. BANKRUPTCY — Preliminary injunction — Right to appeal — Proper forum.

[N.H.] In denying a motion for rehearing of an order revising the energy cost recovery mechanism charges of a bankrupt electric utility, the commission found that proper forum for appealing a preliminary injunction issued by a federal bankruptcy court (which restrained the commission from hearing issues related to the base rates of the utility but allowed the commission to exercise routine oversight over the utility's energy cost recovery mechanism) is the Federal District Court. p. 273.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 59 — Rehearing — Energy cost recovery mechanism — Electric utility.

[N.H.] A motion for rehearing of an order revising the energy cost recovery mechanism (ECRM) charges of an electric utility was denied where the movants failed show that the commission's findings regarding the calculation of the ECRM charges were unjust or unreasonable. p. 273.

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PARTIES: As previously noted.

By the COMMISSION:

REPORT ON CONSUMER ADVOCATE'S
MOTION FOR REHEARING

On July 18, 1989, the office of the Consumer Advocate (OCA) filed pursuant to R.S.A.

541:3, a motion for rehearing of *Re Public Service Company of New Hampshire*, Request for Energy Cost Recovery Mechanism change for July through December 1989 (ECRM) DR 89-091, report and order no. 19,456 (74 NH PSC 215) on the grounds that it is unjust, unreasonable, unlawful, and unconstitutional. It prayed that the commission deny PSNH's fuel and purchased power costs (Energy Cost Recovery Mechanism or ECRM) until such time as it files for temporary rates in docket DR 89-006. On July 26, 1989 Public Service Company of New Hampshire (PSNH) filed its objection to the motion for rehearing. For the reasons set forth in the following report, the OCA motion is denied.

I. *The Motion*

The OCA alleged many reasons in support of its motion for rehearing. These reasons may be summarized as follows. It alleged

A) that in *Re Public Service Company of New Hampshire*, 74 NH PUC 22, 99 PUR4th 543 [1989], the commission ascertained that PSNH was earning an overall rate of return of 16.67% on its non-Seabrook rate base and that "it can only be presumed that the commission found a return of 16.67% was, other things being equal, excessive, or it would not have commenced the investigation;"

B) that the bankruptcy court's order enjoining the Public Utilities Commission from proceeding with the PSNH rate case (DR 89-006) is *ultra vires* and otherwise illegal, and that rates that are produced by an unlawful injunction are unjust, unreasonable, and unlawful;

C) that the commission should violate the injunction because its duty to set just and reasonable rates takes precedence over the injunction;

D) that the bankruptcy court lacks personal and subject matter jurisdiction over ratepayers and rates respectively;

E) that the bankruptcy court injunction violates federal law which prohibits federal interference with state ratemaking including the Johnson Act, 28 U.S.C. 1342 and that it also violates the All Writs Statute, 28 U.S.C. 1651;

F) that the bankruptcy court has not accorded full faith and credit to the New Hampshire Supreme Court's decisions as required under 28 U.S.C. 1738 so that as a matter of federal/state comity the commission may not recognize the effect of the decision;

G) that both the bankruptcy court and the creditors are attempting to use monopoly power in violation of the federal antitrust laws, 15 U.S.C. 1 *et seq.*;

H) that the bankruptcy code is unconstitutional because it does not provide a constitutional right to discharge, but merely a statutory right, thus interfering with the right to just and reasonable rates;

I) that PSNH has failed to meet its burden of proof as to whether its rates are just and reasonable; in making this argument, the OCA alleges a *prima facie* finding by the commission that PSNH is overearning and that PSNH has failed to introduce any evidence concerning this issue; and

J) that an increase in ECRM denies ratepayers equal protection (under N.H. Const., pt. 1, art. 12) that would be received by non-regulated business customers or other electric utilities.

II. *PSNH's Objection*

PSNH counters that the commission has the authority to change the ECRM rate without addressing any other component of the rate. Concerning the alleged constitutional errors, PSNH argues that 1) customers do not have a property right to which due process would attach, and 2) customers are not a constitutionally recognized class of persons to be protected from invidious discrimination. PSNH avers that customers are protected from harm under the terms of the preliminary injunction which allow

the commission to set appropriate rates effective from the date they otherwise would have been effective in DR 89-006 when the injunction is lifted. It contends that the OCA's motion would violate the preliminary injunction and that the commission is the wrong forum in which to attack the preliminary injunction.

III. *Commission Analysis*

Pursuant to R.S.A. 541:3, the commission may grant a motion for rehearing if the motion states a good reason for rehearing. As is set forth in the analysis below, the motion does not do so.

A. History of the Injunction Order

On January 11, 1989, the commission *sua sponte* issued an order of notice opening docket *Re Public Service Company of New Hampshire; Investigation into the Rates Charged by Public Service Company of New Hampshire*, DR 89-006 (January 11, 1989). In this order of notice the commission pointed out that, in *Re Public Service Company of New Hampshire*, 72 NH PUC 237 (1987), the commission had authorized a rate of return for PSNH of 14.94%. The commission also noted that

> pursuant to RSA 374:4 and analysis by its staff in order no. 19,288 in docket DR 88-184 (74 NH PUC 22, 99 PUR4th 543 [1989]) regarding the PSNH cost recovery mechanism issued January 10, 1989, the commission has ascertained [according to records on file at the commission] that PSNH is earning an overall rate of return of 16.67% on its non-Seabrook rate base; and ... it accordingly appears that PSNH is earning $10,837,000 in excess of its authorized rate of return. ..."

An order of notice, however, is not a final order of the commission and does not contain the findings of fact and conclusions of law required for final orders by R.S.A. 541-A:20. Our order of notice in DR 86-006, was intended to comply with the requirements of R.S.A. 541-A:16 that the commission give reasonable notice to all parties in a contested case. The information quoted above is the "short and plain statement of the issues involved" required by R.S.A. 541:16 III.(d).

[1] Under R.S.A. 378:7, the commission cannot determine that PSNH's current rates are unjust or unreasonable without a hearing. The United States Bankruptcy Court, District of New Hampshire, preliminarily enjoined the commission from holding such a hearing when it granted PSNH's Motion for Preliminary Injunction Against Involuntary Rate Case to Prevent Interference With Chapter 11. *Re Public Service Company of New Hampshire v. State of New*

Hampshire, Order Granting Preliminary Injunction Against Involuntary Rate Case, Case No. 88-00043, Adv. Proc. 89-6 (Bankr. D.N.H., Feb. 16, 1989). The commission was also preliminarily enjoined from otherwise proceeding with the case, including "the filing of direct testimony or documents and the holdings of any hearing regarding temporary rates or permanent rates." *Id.* at 2.

[2] The injunction did not restrain the commission from exercising routine oversight of PSNH including "filings, hearings, and orders related to the fixing of Energy Cost Recovery Mechanism charges ...." The injunction also specifically preserves the rights of the commission "to fix rates as of the dates that rates would have been fixed in the Rate Case ..." in the event the preliminary injunction is terminated, modified, vacated, or annulled. The bankruptcy court further noted: "...Regarding the contention that this Debtor is earning more than it should during these proceedings, the State does not have to be harmed ultimately. The State can be protected, and it can preserve that claim to the extent that it has to be resolved ultimately, in either litigation or in a consensual plan ..." *Re Public Service Company of New Hampshire v. State of New Hampshire*, Amended Findings and Conclusions on Motion for Preliminary Injunction, Case No. 88-00043, Adv. Proc. 89-6 (Bankr. D.N.H., Feb. 16, 1989 at 8).

The issues presented in paragraphs lettered B, C, D, E, F, G, H, and J above concern the commission's ability to act in derogation of, or to overturn, the bankruptcy court's injunction. We do not have the authority, as an

administrative agency operating under enabling legislation, to review on appeal or to act in derogation of the decision of the bankruptcy court. Therefore, we deny the motion for rehearing on issues B, C, D, E, F, G, H and J.

[3, 4] If the OCA believes that the bankruptcy court's preliminary injunction, which enjoins the commission from hearing issues related to base rates while allowing the commission to exercise routine oversight over ECRM, leads to an unjust result, it may appeal the bankruptcy court's preliminary injunction to the District Court. 28 U.S.C. § 158. The injunction is fully appealable, and there appears to be nothing in the record of that case to indicate that the OCA has waived any right to such an appeal.

[5] Issues A and I above are the only issues over which we have authority. The OCA does not provide evidence or argument that the commission's findings regarding the calculation of the ECRM rates, by themselves, are unjust or unreasonable. Rather, it argues in points A and I that the commission has found the company's base rates to be excessive. However, as indicated above, the commission did not make *prima facie* findings regarding base rates in its order of notice (DR 89-006, January 11, 1989) and has been enjoined by the bankruptcy court from making any such findings. Therefore, we deny the motion for rehearing on issues A and I.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report on the consumer advocate's motion for rehearing; it is hereby

ORDERED, that the consumer advocate's motion for rehearing of report and order no. 19,456 is denied.

By order of the Public Utilities Commission of New Hampshire this second day of August, 1989.

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NH.PUC*08/04/89*[51801]*74 NH PUC 274*Connecticut Valley Electric Company, Inc.

[Go to End of 51801]

74 NH PUC 274

Re Connecticut Valley Electric Company, Inc.

DR 88-121
Order No. 19,502

New Hampshire Public Utilities Commission

August 4, 1989

ORDER *nisi* approving an electric rate stipulation.

RATES, § 321 — Electric rate design — Stipulation.

[N.H.] Pursuant to stipulation an electric utility was authorized to redesign its rate structure to reflect (1) a reduction test year revenue requirement of $300,074 (to reflect 1989 purchased power and energy costs), and (2) an earned return on average equity of no higher than 13% for the 12 months ending December 31, 1989; to implement the target return on equity the utility was authorized to apply temporary credit surcharges totalling approximately $250,000 to rate classes T, GV and O.

By the COMMISSION:

ORDER

WHEREAS, on May 24, 1989 the commission issued report and order no. 19,411 (74 NH PUC 165) in the above proceeding approving a stipulation and agreement on rate structure redesign for Connecticut Valley Electric Company (company); and

WHEREAS, the stipulation sets the company's 1988 test year revenue requirement for electric sales at $15,551,716; and

WHEREAS, the stipulation requires the company to adjust its 1988 revenue requirement to reflect estimated 1989 purchased power and energy costs: and

WHEREAS, the stipulation also requires the company to adjust its 1988 revenue requirement

to reflect the outcome of an investigation by the commission Finance Department into the company's earned rate of return; and

WHEREAS, the parties agreed that the above mentioned adjustments be applied only to the large industrial rate classes T and GV and the water heating rate class O; and

WHEREAS, in accordance with the requirements of the commission order approving the rate redesign stipulation, the staff and the company filed a second stipulation on August 3, 1989 containing the following:

1. The company shall lower its test year revenue requirement by a net $300,074 to reflect 1989 purchased power and energy costs;

2. The company shall lower its test year revenue requirement such that its earned return on average equity shall be no higher than thirteen percent (13.0%) for the twelve months ending December 31, 1989;

3. The net reduction in 1989 purchased power and energy costs shall be reflected in base rates in accordance with the rate redesign stipulation;

4. To implement the target return on equity the company shall apply temporary credit surcharges totalling approximately $250,000 to rate classes T, GV and O; and

WHEREAS, after review and consideration we find that the stipulation appears to be fair and in the public good; and

WHEREAS, the Office of the Consumer Advocate has declined to sign the second stipulation and the commission wishes to provide it an opportunity to state its position; it is hereby

ORDERED, that all persons interested in responding to the second stipulation be notified

that they may submit their comments to the commission or may submit arguments for a hearing in this matter no later than August 21, 1989; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company 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 its operations are conducted, such publication to be no later than August 11, 1989 and designated in an affidavit made on a copy of this order and filed with this commission on or before August 24, 1989; and it is

FURTHER ORDERED, *NISI* that the stipulation filed by the staff and this company on August 4, 1989 be, and hereby is, approved; and it is

FURTHER ORDERED, that such authority shall be effective on August 24, 1989 unless arguments for a hearing are filed with the commission as provided above or unless the commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of August, 1989.

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NH.PUC*08/09/89*[51802]*74 NH PUC 275*Pennichuck Water Works, Inc.

[Go to End of 51802]

74 NH PUC 275

Re Pennichuck Water Works, Inc.

Additional applicant: Glen Ridge Water Company, Inc.

DE 89-028
Order No. 19,503

New Hampshire Public Utilities Commission

August 9, 1989

ORDER *nisi* authorizing a water utility to discontinue service and transfer its assets and franchise to another water utility.

CERTIFICATES, § 137 — Transfer — Assets and franchise — Water utilities.

[N.H.] A water utility that was serving a development was authorized to transfer its franchise rights and water supply distribution system to another water utility; the transferee utility was authorized to provide public utility service to that development.

By the COMMISSION:

ORDER

On February 16, 1989, 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 Derry, New Hampshire, to wit, a development known as Glen Ridge and for approval of rate schedules therein. Glen Ridge Water Company, Inc. (Glen Ridge) simultaneously filed a petition of February 16, 1989, for assent to transfer to Pennichuck its franchise rights and water supply distribution system known as Glen Ridge in the Town of Derry, New Hampshire as established in docket DE 81-358, order no. 15,398 and for authority to discontinue service therein; and

WHEREAS, by an order of notice dated May 5, 1989, a prehearing conference was scheduled for June 14, 1989; and

WHEREAS, on June 9, 1989, Southern New Hampshire Water Company, Inc. (Southern) filed a motion to intervene in the proceeding; and

WHEREAS, Southern's motion to intervene was denied by commission order no. 19,461, dated July 7, 1989; and

WHEREAS, on June 16, 1989, the staff requested data of the company and on July 14, 1989,

the company responded to said staff data requests; and

WHEREAS, the company's data requests indicate that the requested petitions of Pennichuck and Glen Ridge are in the public interest pursuant to RSA 374:26 and RSA 374:28 respectively; and

WHEREAS, RSA 374:26 does not require a hearing if in the discretion of the commission

one is not required; 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, *NISI* that the request of Glen Ridge Water Company, Inc. to discontinue service and transfer its assets and franchise to Pennichuck Water Works, Inc. is granted; and it is

FURTHER ORDERED, *NISI* that the petition of Pennichuck, for permission to engage in business as a public utility in a limited area in the Town of Derry, New Hampshire, to wit, that area known as Glen Ridge, previously franchised to Glen Ridge Water Company, Inc. in docket DE 81-358, order no. 15,398 is granted; and it is

FURTHER ORDERED, *NISI* that the rate schedules being charged by Glen Ridge Water Company at this time remain in effect under the jurisdiction of Pennichuck; and it is

FURTHER ORDERED, *NISI* that any interested party may provide written comments or request an opportunity to be heard in this matter within twenty days after the date of this order; and it is

FURTHER ORDERED, *NISI* that this order will become effective thirty days after the date of this order unless otherwise ordered by the commission; and it is

FURTHER ORDERED, *NISI* that Pennichuck Water Works, 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 ten days after the date of this order, and designated in an affidavit to be made on a copy of this order and filed with this office three days after publication. In addition, individual notice shall be given to all known, current and prospective customers by serving a copy of this order to each by first class U.S. mail, postage prepaid and postmarked within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of August, 1989.

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NH.PUC*08/15/89*[51803]*74 NH PUC 276*New England Telephone and Telegraph Company, Inc.

[Go to End of 51803]

Re New England Telephone and Telegraph Company, Inc.

DE 89-017
Order No. 19,505

New Hampshire Public Utilities Commission

August 15, 1989

ORDER approving a petition by a local exchange telephone carrier to revise its tariffs to include originating switched access service to accommodate the provision of Federal Telecommunications System FTS 2000 service.

SERVICE, § 449 — Telephone — Special service — FTS 2000 — Originating switched access — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to revise its tariffs to include originating switched access service to accommodate the provision of Federal Telecommunications System 2000 service (FTS 2000); the revised tariff was approved solely for the purpose of adding use in conjunction with FTS 2000 service and without prejudice to any issue relating to the provision of access service in connection with FTS 2000 service.

By the COMMISSION:

ORDER

WHEREAS, on January 24, 1989 AT&T Communications of New Hampshire filed a petition for authorization to provide FTS 2000 service in New Hampshire to the General Services Administration (GSA); and

WHEREAS, AT&T wishes to use the access facilities provided by the franchised local exchange carriers (LEC's) for the origination and completion of calls; and

WHEREAS, on August 19, 1987 the Commission authorized in Supplemental Order No. 18,787 (72 NH PUC 346) that New England

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Telephone (NET) offer under NHPUC Tariff No. 78 terminating only switched access for use with Custom Network Services; and

WHEREAS, on July 17, 1989 NET filed a revised NHPUC No. 78 Switched Access Tariff to accommodate the Federal Telecommunications System FTS 2000 for the Federal Government; and

WHEREAS, NET's NHPUC No. 78 tariff has been revised to include originating switched access service to accommodate FTS 2000 by changes to the following tariff pages:

NHPUC No. 78

Section 1 — Title Page
Section 1 — Master Table of Contents
Section 1 — First Revision of Table of
4P'Contents, p. 1
Section 1 — First Revision of Tariff
4P'Information, pages 1-3
Section 1 — First Revision of Page 1
Section 2 — First Revision of Pages 1-7
Section 3 — First Revision of Page 1
Section 4 — First Revision of Pages 1-4
Section 1 — Original Page 5
Section 5 — First Revision of Page 1
Section 6 — First Revision of Page 1;

and

WHEREAS, the revised Tariff NHPUC No. 78 adds originating and terminating switched access service solely in connection with FTS 2000 to the presently effective tariff, which provides for terminating switched access service for use in connection with Software Defined Services; it is hereby

ORDERED, that the above-mentioned Revised NHPUC No. 78 Tariff be approved as filed, solely for the purpose of adding use in connection with FTS 2000 Service and without prejudice of any party to raise any issue relating to NET's provision of access service in connection with FTS 2000 Service or otherwise, in a subsequent proceeding.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of August, 1989.

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NH.PUC*08/17/89*[51804]*74 NH PUC 277*Claremont Gas and Light Company

[Go to End of 51804]

74 NH PUC 277

Re Claremont Gas and Light Company

DE 87-256
Order No. 19,507

New Hampshire Public Utilities Commission

August 17, 1989

ORDER continuing a proceeding to require a gas distribution company to appear and show cause why it should not be subjected to criminal prosecution and civil penalties for failure to submit satisfactory emergency plans and procedures.

GAS, § 5.1 — Safety rules and regulations — Emergency plans — Distribution company.

[N.H.] In response to a request by a gas distribution company and the commission staff, the commission continued a proceeding to require the distribution company to appear and show cause why it should not be subjected to criminal prosecution and civil penalties for failure to submit satisfactory emergency plans and procedures.

By the COMMISSION:

ORDER

On November 19, 1987, Claremont Gas & Light Company (Claremont) had an incident that caused an outage affecting approximately 800 to 900 customers; and

WHEREAS, the commission held a hearing on January 19, 1988, on the matter to determine whether Claremont was in non-compliance with appropriate gas safety laws, rules and regulations; and

WHEREAS, Claremont testified that a probable cause to the sequence of events that led to the outage and improper implementation

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of their emergency plans and procedures was a lack of training; and

WHEREAS, commission order no. 19,242 (73 NH PUC 480 [1988]) required Claremont to submit revised emergency plans and procedures showing modifications and updates, and to deal with perceived inadequacies of staff training; and

WHEREAS, Claremont filed revised emergency plans in accordance with order no. 19,242; and

WHEREAS, the commission staff alleged that the revised plans were unsatisfactory and in probable violation of state and federal gas safety regulations; and

WHEREAS, the commission issued order no. 19,424 (74 NH PUC 179 [1989]) ordering that Claremont appear before this commission at its offices in Concord, New Hampshire, 8 Old Suncook Road, Building #1, in said state at 10 o'clock in the forenoon on August 8, 1988 to show cause why Claremont should not be subjected to criminal prosecution or civil penalties up to $1,000 for each violation for each day that the violation persists, pursuant to the provisions of New Hampshire Statutes, RSA 365:41, RSA 365:42, RSA 730:2, RSA 374:7-A, RSA 374:41 *et seq.*, RSA 374:17, etc.; and

WHEREAS, Claremont is in the process of revising its emergency plans; and

WHEREAS, Claremont and the staff have requested a continuance for Claremont to submit a revised emergency plan; it is hereby

ORDERED, that this matter shall be continued until September 29, 1989 for appropriate commission action.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of August, 1989.

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NH.PUC*08/18/89*[51806]*74 NH PUC 279*Southern New Hampshire Water Company, Inc.

[Go to End of 51806]

74 NH PUC 279

Re Southern New Hampshire Water Company, Inc.

DF 89-107
Order No. 19,509

New Hampshire Public Utilities Commission

August 18, 1989

ORDER authorizing a water utility to issue and sell first mortgage bonds and to reduce its short-term debt limit.

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1. SECURITY ISSUES, § 50.1 — Authorization — Issuance of first mortgage bonds — Improvement of capital structure — Water utility.

[N.H.] A water utility was authorized to issue and sell first mortgage bonds where it was found that the issuance would allow the utility to replace a portion of relatively volatile short-term debt with long-term debt having a reasonable fixed rate. p. 280.

2. SECURITY ISSUES, § 98 — Short-term debt — Borrowing limit — Water utility.

[N.H.] A water utility was authorized to reduce its short-term debt limit where the reduced limit would provide the utility with operating funds to meet capital requirements for general corporate purposes through and until its next long-term debt offering. p. 280.

3. RETURN, § 26.1 — Capital structure — Reduction of short-term debt — Water utility.

[N.H.] Citing its concern over the fact that a water utility was using short-term debt as a means of permanent financing, the commission directed a water utility to submit by June 30, 1990, or the time of its next long-term bond offering, whichever is sooner, a financial plan

for reducing short-term debt through permanent financing. p. 281.

APPEARANCES: Larry S. Eckhaus, Esquire for Southern New Hampshire Water Company, Inc.; and Eugene F. Sullivan, Finance Director, for the Staff.

By the COMMISSION:

REPORT

By petition filed June 13, 1989, Southern New Hampshire Water Company, Inc. (Southern or the Company), a corporation duly organized and existing under the laws of the State of New Hampshire and operating herein as a water utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1, RSA 369:2 and RSA 369:4 to issue and sell for cash equal to the aggregate principal amount thereof, its First Mortgage Bonds Series "H", 10.54% due May, 2009, in the aggregate principal amount of $2,000,000 and, pursuant to RSA 369:7 to issue short-term notes not in excess of $5,900,000.

At a hearing held in Concord on August 4, 1989, the Company submitted the following exhibits in support of its petition:

the Company's balance sheet and income statement as of April 30, 1989, pro formed to reflect the proposed issue;

pre-filed testimony of the Company's President, J. Michael Love and Vice-President-Finance, K. Denise Hauter;

a statement of the estimated issuance expenses for the bonds; and confirmation letter from Mellon Bank citing terms of purchase and sale of bonds to Allstate Insurance Company; a copy of the Bond Purchase Agreement;

a copy of the Eighth Supplemental Indenture; and a copy of the Resolution of the Board of Directors were presented in preliminary form and will be submitted at a later date.

There was testimony presented that no substantive changes are expected to be made to the documents that were filed.

The bonds will carry an annual interest rate of 10.54% with a final maturity of May, 2009. Interest is payable semi-annually and the financing is secured by a mortgage lien on substantially all of the Company's utility property.

The proceeds from the sale of the bonds will be used to retire a portion of the short-term debt that has been utilized by the Company for construction and acquisition of additions, and for improvements to its plant and facilities. In addition, the proceeds will also be used for the payment of the indebtedness to Consumers Water Company incurred by Southern New Hampshire Water Company, Inc. for taxes on contributions in aid of construction.

The Company's witnesses testified that the 10.54% interest rate was favorable when the financing was negotiated and is favorable today given current market conditions. Furthermore, the overall cost of debt would be reduced from 11.50% to 11.39%.

[1] Based upon our review of the record, we find the proposed financing to be in the public good. The issuance of the bonds will allow the Company to replace a portion of the relatively volatile short-term debt with long-term debt having a fixed rate that we find reasonable in light of existing market conditions. We, therefore, will grant the issuance of the $2,000,000 Trust Mortgage Bonds, Series H, due May 2009.

[2] The Commission also finds that it is in the public good that the Company's short-term debt borrowing limit be reduced from $6,350,000 to $5,900,000 as requested by the Company. This will provide the Company with operating funds to meet capital requirements and for general corporate purposes through and until its next long-term debt offering. The Company submitted an exhibit that demonstrated the pro forma effect of the proposed bond issue. The pro forma short-term debt would

Page 280

remain at a level of 25% of the capital structure. Under cross examination, Company witness Love testified that steps were being taken to improve the operating income of the Company and to reduce short-term debt. It was further testified that of the projected 1989 capital budget, a total of $900,000 had been spent by April 30, 1989. A balance of approximately $800,000 was projected to be spent on capital projects during the remainder of the year. Therefore, a short-term debt level of $5,900,000 was requested.

[3] The commission is concerned that the Company is using short-term debt as a means of permanent financing. Short-term debt should be used as an interim step until permanent financing is accomplished. The amount of short term debt in the capital structure remains extremely high. The requested level of short-term debt will be approved until June 30, 1990 or until its next long term bond offering, whichever is sooner. Before that time we will expect the Company to submit a financial plan that will reduce the short-term debt through permanent financing.

We, therefore, will grant the Company's petition.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the applicant, Southern New Hampshire Water Company, Inc., be and hereby is, authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its First Mortgage Bonds, Series "H", 10.54%, due May 2009, in the aggregate principal amount of $2,000,000; and it is

FURTHER ORDERED, that the proceeds of the issuance and sale of said long-term bonds, shall be applied to Southern New Hampshire Water Company, Inc.'s unsecured short-term debt and for other corporate purposes, and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. may grant a mortgage lien on substantially all of its utility property to secure payment of such bonds; and it is

FURTHER ORDERED, that the expenses reasonably incurred in connection with the issuance and sale of said bonds shall be amortized by Southern New Hampshire Water Company, Inc. over the life of the bonds, in accordance with generally accepted accounting principles; and it is

FURTHER ORDERED, that finalized copies of the bond purchase agreement, the bond, the

supplemental indenture and the resolution of the Company's Board of Directors be filed with the Commission. A detailed accounting of the final actual issuance costs shall also be filed; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized to have a short-term debt level of $5,900,000 through, and until June 30, 1990 or the completion of its next long-term bond offering, whichever occurs sooner; and it is

FURTHER ORDERED, that at the time of the Company's next long-term bond offering or no later than June 30, 1990 the Company will submit a financial plan demonstrating how the Company will reduce its short-term debt through permanent long term financing; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Southern New Hampshire Water Company, Inc. shall file with this Commission, a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said bonds until fully accounted for.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 1989.

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NH.PUC*08/19/89*[51805]*74 NH PUC 278*Pittsfield Aqueduct Company

[Go to End of 51805]

74 NH PUC 278

Re Pittsfield Aqueduct Company

DR 89-053
Order No. 19,508

New Hampshire Public Utilities Commission

August 19, 1989

ORDER adopting a stipulated temporary rate level for water distribution service and establishing a procedural schedule for a proceeding to establish permanent rates.

RATES, § 630 — Temporary rates — Stipulated increase — Water utility.

[N.H.] The commission adopted a stipulation authorizing a water utility to increase temporary rates by 41.23%.

APPEARANCES: Dom S. D'Ambruoso, Esquire on behalf of Pittsfield Aqueduct Company; Eugene F. Sullivan, III on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On June 5, 1989, Pittsfield Aqueduct Company (Pittsfield or company) filed a petition and accompanying rate schedules which, if approved, would result in an annual increase in water revenues of $97,249. In said petition the company also requested temporary rate relief pursuant to RSA 378:27. On August 7, 1989, a hearing was held pursuant to an order of notice issued June 28, 1989. Staff and the company stipulated to temporary rates in the amounts of 41.23% based on the prefiled testimony of the assistant finance director, Mary Jean Newell. The staff and the company also stipulated to a procedural schedule. The stipulated procedural schedule is as follows.

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

August 31, 1989	Staff data requests are due
September 14, 1989	Responses to staff data requests are due
September 29, 1989	Staff second set of data requests are due
October 12, 1989	Company responses to staff's second set of data requests are due
October 26, 1989	Staff testimony is due
November 2, 1989	Company data requests are due
November 16, 1989	Responses to company data requests are due
November 30, 1989	Settlement conference
December 7, 1989 10:00 a.m.	Hearing on the merits

The commission finds the stipulated temporary rate level and the stipulated procedural schedule 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 temporary rates be increased 41.23%; and it is

FURTHER ORDERED, that the stipulated procedural schedule shall govern the duration of this proceeding unless otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 1989.

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[Go to End of 51807]

74 NH PUC 282

Re Holiday Ridge Supply Company, Inc.

DF 88-116
Order No. 19,510

New Hampshire Public Utilities Commission

August 21, 1989

ORDER authorizing a water utility to borrow funds.

SECURITY ISSUES, § 44 — Authorization — Loan — Water utility.

[N.H.] A water utility was authorized to borrow $20,000 at two and one half percent above the prime rate where the financing was necessary to the financial viability of the company and an expert witness had testified that the interest rate was reasonable considering the amount borrowed and the collateral backing the loan.

APPEARANCES: Fay Melendy, Esq. on behalf of Holiday Ridge Supply Company, Inc.; and Eugene F. Sullivan, III, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On August 5, 1988, Holiday Ridge Supply Company, Inc. (Holiday Ridge) filed a request with the commission that it be allowed to obtain a loan in the amount of $20,000. In response to said request the commission finance director contacted Holiday Ridge, informing them of the information required for the approval of a financing before the commission. Over the course of the next year this docket dealt with a show cause order why Holiday Ridge should not be fined for failure to file annual reports. That part of this docket has since been dealt with and closed.

On March 3, 1989, Holiday Ridge renewed its request for a financing in the amount of $20,000. Holiday Ridge and the commission staff discussed the financing over the course of the next five months in order to obtain the proper information required for a financing case. At a hearing held on July 17, 1989, Holiday Ridge took the position that the financing should be authorized in order to maintain the financial viability of the company. Staff took no position and merely cross-examined Holiday Ridge witnesses which were presented.

II. *Findings of Fact*

Holiday Ridge presented evidence that it has a need for the proposed financing. In exhibits Holiday Ridge presented, through Daniel D. Lanning, a list of Holiday Ridge's debts which are to be paid for with the proposed financing. According to this list (see Exhibit E) Holiday Ridge owes Water Industries, a firm which installs and repairs water systems, approximately $10,000; it owes approximately $3,400 in pay backs for a special assessment charged the customers without commission approval; it owes interest of approximately $400 on said special assessment; it owes approximately $800 to L.A. Drew, for repairs to mains in 1989; they owe approximately $4,000 in interest of their first year loan; and Daniel D. Lanning & Associates $2,500. Additionally they owe approximately Robert Patnaude and TPM Enterprises for a total of $21,100 plus attorney's fees.

Holiday Ridge's note is with First New Hampshire-White Mountain Bank and will have an interest rate of two and one half (2 1/2) percent above base plus a two point closing cost amounting to $2,000. Holiday Ridge presented the late filed exhibits of Thomas P. McGrevey, a consultant hired by Holiday Ridge to assist it in its financing that if the financing were entered into on this date the interest rate would be thirteen (13) percent, two and a half (2 1/2) above the prime which is now ten point five

(10.5) percent.

Mr. McGrevey also filed his resume along with the late filed exhibit indicating his expertise in these matters. He indicated that the interest rate Holiday Ridge had obtained was reasonable considering the amount of money they were borrowing and the collateral (land) which would back the loan. Mr. McGrevey also indicated that it would be more advantageous for the company to deal with a local bank as they were familiar with the collateral and the company. He further indicated that it was unlikely the company could have obtained more advantageous terms.

III. *Commission Analysis*

Based on the analysis of Mr. McGrevey, the commission finds the financing to be in the public good and necessary to the financial viability of the company. See RSA 369:1. However, the commission does not concede the reasonableness or prudency of any of these expenditures. Said issue will be analyzed in the pending rate case.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that Holiday Ridge Supply Company is authorized to borrow from First New Hampshire-White Mountain Bank, $20,000 at two and a half (2 1/2) percent over base on those terms as set out in its petition.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of August, 1989.

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[Go to End of 51808]

74 NH PUC 283

Re Holiday Ridge Supply Company, Inc.

DR 89-068
Order No. 19,512

New Hampshire Public Utilities Commission

August 22, 1989

ORDER approving a stipulated temporary rate increase for water distribution service and establishing a procedural schedule for the permanent rate filing.

RATES, § 630 — Temporary rates — Stipulated increase — Water distribution service.

[N.H.] The commission approved a stipulated 60% temporary rate increase for water distribution service where annual reports on file with the commission indicated that the utility was earning a negative rate of return; the stipulated increase would result in a rate of return on rate base of approximately 7%.

APPEARANCES: Fay Melendy on behalf of Holiday Ridge Supply Company, Inc.; Eugene F. Sullivan, III on behalf of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On April 27, 1989, Holiday Ridge Supply Company, Inc. (Holiday Ridge or company), a water utility serving a limited area of Bartlett, New Hampshire, filed a petition and accompanying rate schedules, which if approved, would result in an annual increase in water revenues of $13,325. The petitioner also requested temporary rate relief pursuant to RSA 378:27. On August 10, 1989 a hearing was held on the issue of temporary rates and to set a procedural

schedule in this matter. Parties stipulated to a temporary rate level and a procedural schedule.

The annual reports on file at the commission indicated that the company was making a negative rate of return. Whereas, they had been authorized a 12.6% rate of return in the commission's last rate order for this company. Staff and the company agreed to a 60% increase in present rates which would, according to the
company's submitted testimony and annual reports, as yet unaudited and uninspected, result in approximately a 7% rate of return on rate base.

The company never filed tariff pages after its last rate case. Thus, the company will file rate schedules in conformance with this order. The parties also stipulated to the following procedural schedule.

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

August 23, 1989	Company testimony is due
September 13, 1989	Staff data requests are due
September 27, 1989	Company responses to staff data requests are due
October 6, 1989	Staff's second set of data requests are due
October 18, 1989	Company responses to staff's second set of data requests are due
October 31, 1989	Staff testimony is due
November 7, 1989	Company data requests are due
November 17, 1989	Responses to company data requests are due
November 27, 1989	Settlement conference
December 12, 1989 10:00 a.m.	Hearing on the merits

The commission finds the above procedural schedule and temporary rate stipulation to be in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, that the procedural schedule set forth in the preceding report is approved; and it is

FURTHER ORDERED, that the stipulated temporary rate level is approved; and it is

FURTHER ORDERED, that the company shall file a tariff page reflecting this temporary rate order.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of August, 1989.

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NH.PUC*08/23/89*[51809]*74 NH PUC 285*Unicord Power Associates

[Go to End of 51809]

Re Unicord Power Associates

DE 89-143
Order No. 19,513

New Hampshire Public Utilities Commission

August 23, 1989

ORDER determining that commission authorization relative to electric plant construction, electric utility rates, and electric utility financial or organizational regulation would not be required of a small power project developer, so long as the developer obtains certification as a qualifying facility from the Federal Energy Regulatory Commission.

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1. COGENERATION, § 5 — Qualifying status — LEEPA — Regulatory exemptions — Small power producer.

[N.H.] The New Hampshire Limited Electric Energy Producers Act (LEEPA) provides that qualifying small power producers shall be exempt from all rules and statutes relative to electric utility rates or relative to the financial or organizational regulation of electric utilities. p. 286.

2. COGENERATION, § 5 — Qualifying status — Jurisdiction — PURPA — Small power producer.

[N.H.] The Federal Energy Regulatory Commission has sole jurisdiction over the question of whether a facility is a qualifying small power producer under the Public Utility Regulatory Policies Act (PURPA). p. 286.

3. COGENERATION, § 5 — Qualifying status — Regulatory exemptions — Small power producer.

[N.H.] Where a small power project developer indicated that it would operate as a qualifying small power producer under the New Hampshire Limited Electric Energy Producers Act and the Public Utility Regulatory Policies Act, the commission ruled that commission authorization relative to electric plant construction, electric utility rates, and electric utility financial or organizational regulation would not be required, so long as the developer obtains certification as a qualifying facility from the the Federal Energy Regulatory Commission; the commission stated that its order should not be construed as authorizing the construction of the proposed project as a public utility or as authorizing the proposed financing for the project. p. 286.

By the COMMISSION:

ORDER

Unicord Power Associates (Unicord or Petitioner) having filed a petition on August 9, 1989, as amended on August 11, 1989, requesting that the commission by an Order *NISI*:

1. Rule that the Petitioner is hereby exempt from all rules and statutes relative to electric utility rates or relative to the financial or organizational regulations of electric utilities and

specifically exempt from the requirements of RSA 374:22 in connection with the construction of the Plant, provided that no more than 50 percent of the Petitioner is owned by EUC, PUC, EUA, other subsidiaries of EUA or other utilities or their subsidiaries at the time the Petitioner commences full commercial operation of the Plant; or

2. In the alternative, approve the construction of the Plant by the Petitioner pursuant to RSA 374:22 and the following financing and mortgages of the Project pursuant to RSA 369:1, 2 and 4, provided that no more than 50% of the Petitioner shall be owned by EUC, PUC, EUA, other subsidiaries of EUA, and other utilities or their subsidiaries at the time the Petitioner commences full commercial operation of the Plant:

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a. The Loan;

b. The Subordinated Note;

c. The EUA subordinated loan;

d. The capital contributions of EUC and PUC; and

e. The mortgages securing the Loan, the Purchased Power Contract, and the Subordinated Notes; and

WHEREAS, Unicord's petition also requested expedited treatment asserting that delay by the commission in responding to the petition beyond August 31, 1989 would endanger the project by allowing various project contractors, subcontractors, and UNITIL Power Corp. (UNITIL), who entered into a Purchased Power Contract dated March 28, 1988 with Unicord, to terminate said contracts; and

WHEREAS, Unicord was formed pursuant to a general partnership agreement dated February 29, 1989 representing 50% utility ownership and 50% non-utility ownership in order to develop, build and operate a biomass-fixed small power production facility in Pembroke, New Hampshire; and

WHEREAS, Unicord asserts that unanticipated developments caused the non-utility partners to leave the partnership thereby causing Unicord to be 100% utility owned; and

WHEREAS, Unicord asserts that it will find participants for 50% of its partnership interests well before the commencement of commercial operation of the plant; and

WHEREAS, Unicord asserts that it intends to function only as a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA); and

WHEREAS, the regulations of the Federal Energy Regulatory Commission (FERC) at Section 292.206(b) provide that in order to qualify as a small power production facility under PURPA, the facility must not have more than 50% of the equity interest in the facility held by an electric utility or utilities or by an electric utility holding company, or companies, or any combination thereof; and

WHEREAS, Unicord asserts in its petition that its condition of being owned in excess of 50% by public utilities is a temporary aberration which will be remedied prior to the date of

commercial operation; and

[1] WHEREAS, N.H. Rev. Stat. Ann. 352-A:2 exempts qualifying small power producers and qualifying cogenerators from all rules and statutes relative to electric utility rates or relative to the financial or organizational regulation of electric utilities; and

WHEREAS, RSA 374:22 I provides, in pertinent part:

> No person or business entity shall commence business as a public utility within this state, or shall engage in such business, or begin the construction of a plant, line, main or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission; and

WHEREAS, LEEPA further provides, at RSA 362-A:2, that qualifying small power producers "shall be exempt from all rules and statutes relative to electric utility rates or relative to the financial or organizational regulation of electric utilities"; and

[2] WHEREAS, FERC has sole jurisdiction over the question of whether a facility is a qualifying small power producer under PURPA; it is

[3] ORDERED, that under the unique circumstances of this case, including that Unicord's requested authority is limited to operation as a qualifying small power producer under PURPA and LEEPA, commission authorization relative to RSA 374:22 I, electric utility rates or financial or organizational regulation is not required pursuant to RSA 362-A:2, it is

FURTHER ORDERED, that nothing in this order shall be construed as authorizing the construction or operation of the proposed plant as a public utility, nor as authorizing the proposed financing and mortgages; and it is

FURTHER ORDERED, that in the event that Unicord fails to achieve FERC approval as a qualifying small power producer prior to the time Unicord commences commercial

operation, it will be incumbent on Unicord to seek appropriate approvals at that time with no assurance that said approvals will be forthcoming; thus, Unicord bears all risk of going forward with its proposal; and it is

FURTHER ORDERED, that in all other respects, the petition is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of August, 1989.

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NH.PUC*08/24/89*[51810]*74 NH PUC 287*Nuclear Emergency Planning

[Go to End of 51810]

Re Nuclear Emergency Planning

DE 89-114
Supplemental Order No. 19,514

New Hampshire Public Utilities Commission

August 24, 1989

ORDER assessing costs of nuclear emergency planning against the nuclear operation division of an electric utility.

ATOMIC ENERGY — Nuclear emergency planning — Cost assessment — Electric utility.

[N.H.] Costs incurred by the New Hampshire Office of Emergency Management in association with nuclear emergency planning were assessed against the nuclear operation division of an electric utility; the assessment was made payable in 12 equal monthly payments.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Chairman of the Public Utilities Commission issued Report and Order No. 19,439 on June 26, 1989; and

WHEREAS, on July 21, 1989 the New Hampshire Office of Emergency Management requested that Report and Order No. 19,439 be amended to allow for the assessment to be paid in twelve (12) equal monthly payments by New Hampshire Yankee; and

WHEREAS, the parties have filed no objection and consent to the issuance of the amended order; and

WHEREAS, there is no present sitting Chairman and this action is a procedural supplement to the action taken by the Chairman in Report and Order No. 19,439; it is hereby

ORDERED, that the assessment of $1,328,907 shall be paid by New Hampshire Yankee Division of Public Service Company of New Hampshire in twelve (12) equal monthly payments.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of August, 1989.

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NH.PUC*08/30/89*[51811]*74 NH PUC 287*West Swanzey Water Company, Inc.

[Go to End of 51811]

74 NH PUC 287

Re West Swanzey Water Company, Inc.

DE 89-073
Order No. 19,515

New Hampshire Public Utilities Commission

August 30, 1989

ORDER *nisi* granting a petition to expand a water franchise and authorizing the provision of service to the new area under the existing rate schedules of the utility.

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1. CERTIFICATES, § 164 — Procedure — Notice and hearing — Grant of franchise.

[N.H.] State statute, RSA 374:23, pertaining to the issuance of franchises, does not require a hearing if in the discretion of the commission one is not required. p. 288.

2. CERTIFICATES, § 125 — Water — Expansion of franchise.

Page 287

[N.H.] A water utility was conditionally authorized to expand its franchise area where the evidence indicated that the expansion was in the public interest; final approval was conditioned on the public being afforded an opportunity to respond in support of or opposition to the proposed expansion. p. 288.

3. RATES, § 595 — Water — New franchise area.

[N.H.] A water utility was conditionally authorized to provide service to a newly granted franchise area under its existing rate schedules. p. 288.

By the COMMISSION:

ORDER

On May 2, 1989, West Swanzey Water Company, Inc. (West Swanzey) filed a petition to provide water service to a limited area in the Town of West Swanzey, New Hampshire, pursuant to RSA 374:22 and implicitly to establish rates therefore, pursuant to RSA Chapter 378; and

WHEREAS, on July 19, 1989, the staff of the Public Utilities Commission (commission) requested certain data of West Swanzey to determine whether or not it was in the public interest to grant West Swanzey's request, and on August 2, 1989, West Swanzey responded to said staff data requests; and

WHEREAS, West Swanzey's data responses indicate that the requested petition of West Swanzey is in the public interest, pursuant to RSA 374:26 and RSA 374:28; and

[1] WHEREAS, RSA 374:26, pertaining to the issuance of franchises, does not require a hearing if in the discretion of the commission one is not required; 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

[2] ORDERED, *Nisi* that the request of West Swanzey to franchise a certain limited area of the Town of West Swanzey, New Hampshire, described as follows: The Hillwood Mobile Home Park, the Pine Acres Mobile Home Park and the area in between the two mobile home parks and along Route 10 in Cobble Hill Road as described in West Swanzey's petition and more specifically identified in a map marked as Attachment A to said petition is granted; and it is

[3] FURTHER ORDERED, *Nisi* that the rate schedules being charged by West Swanzey at this time in its current franchise area remain in effect for those areas in which West Swanzey has requested to expand its franchise; and it is

FURTHER ORDERED, that any interested party may provide written comments 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 will become effective thirty (30) days after the date of this order unless otherwise ordered by the commission; and it is

FURTHER ORDERED, that West Swanzey shall effect notification of this order by publication of an attested copy of this order once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted. Such publication to be no later than ten (10) days after the date of this order and designated in an affidavit to be made on a copy of this order and filed with this office three (3) days after publication. In addition, individual notice shall be given to all known, current and prospective customers by serving a copy of this order to each by first class U.S. mail, postage prepaid and postmarked within ten (10) days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1989.

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NH.PUC*08/31/89*[51812]*74 NH PUC 289*AT&T Communications of New Hampshire, Inc.

[Go to End of 51812]

74 NH PUC 289

Re AT&T Communications of New Hampshire, Inc.

DE 89-017
Order No. 19,517

New Hampshire Public Utilities Commission

August 31, 1989

ORDER authorizing an interexchange telephone carrier to offer as a public utility FTS 2000 Service to the federal government.

SERVICE, § 449 — Telecommunications — Special service — FTS 2000 — Interexchange

carrier.

[N.H.] An interexchange telephone carrier was authorized to offer as a public utility FTS 2000 service to the federal government notwithstanding the fact that such service, although primarily interstate in nature, involved the incidental provision of intrastate service; it was found that the interexchange carrier was technically and operationally able to provide the service, that there was a need for the service, that no intrastate carrier offered the service, and that all interested parties had consented to the grant of authority.

By the COMMISSION:

ORDER

WHEREAS, on January 24, 1989, AT&T Communications of New Hampshire, Inc., hereinafter AT&T-NH or Applicant, applied pursuant to N.H. Rev. Stat. Ann. §374:22 (1984) for permission to offer as a public utility FTS 2000 Service to the Federal Government on an incidental basis throughout the state; and

WHEREAS, the Applicant has concurrently filed a tariff, AT&T tariff NHPUC No. 3, with an effective date of October 1, 1989, establishing rates, terms, and conditions for FTS 2000 Service, such service described as primarily interstate in nature but also intrastate in incidental amounts; and

WHEREAS, a prehearing conference was held on April 18, 1989 pursuant to N.H. Admin. Code Puc §203.05 and N.H. Rev. Stat. Ann. §541-A:16 V.(b) (supp. 1986) to encourage informal disposition and to determine the scope and procedural schedule of the investigation of the application and the proposed tariffs; and

WHEREAS, on the 17th day of August, 1989, all of the parties to this proceeding filed a Stipulation and Agreement that stipulated to the following:

A. *STIPULATED FINDINGS OF FACT*

AT&T-NH represents and warrants and the parties do not dispute the following facts.

1. On January 24, 1989, AT&T-NH filed an application pursuant to N.H. Rev. Stat. Ann. §374:22 (1984) for permission to provide as a public utility FTS 2000 Service to the Federal Government on an incidental basis throughout the state. AT&T-NH concurrently filed AT&T Tariff NHPUC No. 3 establishing rates, terms, and conditions for FTS 2000 Service.

2. The service is not presently offered by New Hampshire telephone utilities.

3. The Federal government has requested the proposed service.

4. AT&T-NH is incorporated and authorized to do business in the State of New Hampshire and is a wholly-owned subsidiary of AT&T Communications of New England, Inc. ("AT&T").

5. AT&T will operate and manage FTS 2000 New Hampshire intrastate communications functions for AT&T-NH that are incidental and ancillary to the

proposed interstate service. AT&T will, among other things, provide or arrange for the provision of all plant, facilities, personnel and other resources necessary for the provision of the proposed intrastate telecommunications services by the Applicant.

6. AT&T has shown that it is financially,

Page 289

technically, and operationally qualified to be a public utility and to provide common carrier telecommunications. For the present, AT&T will generally utilize existing facilities and operating personnel in the provision of the proposed services.

B. *STIPULATED DISPOSITION OF ISSUES*

1. AT&T maintains and neither staff nor NET dispute that provision of the service proposed, pursuant to AT&T tariff NHPUC No. 3, is in the public interest.

2. AT&T maintains and neither staff nor NET dispute that the proposed engaging in business, construction or exercise of right, privilege or franchise, for the proposed service, would be for the public good.

3. AT&T and staff agree and NET does not dispute that the commission should grant AT&T-NH authority to operate as a public utility and to offer FTS 2000 Service to the Federal government pursuant to AT&T Tariff NHPUC No. 3, for the purposes of the disposition of this case.

4. The effective date of the proposed tariff should follow the effective date of revision to NET NHPUC No. 78 to provide Feature Groups C and D switched access for use with FTS 2000 Service, said date not to be later than October 1, 1989.

C. *STIPULATIONS OF AT&T*

AT&T-NH warrants and agrees as follows, all other parties have no position on the following matters.

AT&T-NH agrees to submit all the filings and reports required by the New Hampshire Public Utilities Commission for telephone companies doing business in the State of New Hampshire. AT&T also agrees to pay all assessments levied upon the company by the New Hampshire Public Utilities Commission, based on the amount of revenues received as a result of doing business in New Hampshire; and

WHEREAS, pursuant to N.H. Rev. Stat. Ann. §374:26 the commission may grant permission to conduct business as a utility without a hearing when all interested parties are in agreement; and

WHEREAS, based on the undisputed facts included in the petition, AT&T-NH is financially, technically and operationally able to provide the proposed services, there is a need for the service and AT&T-NH is organized under the laws of the State of New Hampshire; and

WHEREAS, on July 17, 1989, New England Telephone filed tariff revisions to its NHPUC Tariff No. 78, to provide the necessary regulations, rates and charge for intraLATA usage completed over switched access service that has been provided solely for use in connection with

FTS 2000 Service, and NET will file a copy of its FCC Tariff, FCC No. 40, which is referenced by NHPUC No. 78, and keep it current by filing revisions to it as they come effective; and

WHEREAS, on August 3, 1989, NET gave notice of its filing of the revisions to its NHPUC Tariff No. 78 by publishing notice of its filing of that tariff once in a newspaper having general circulation in that portion of the State in which NET provides service, said publication having been designated in affidavit filed with this commission on August 24, 1989; and

WHEREAS, after investigation, by Order No. 19,505 (in Docket No. DE 89-017) dated August 15, 1989 (74 NH PUC 276), the commission approved the proposed regulations, rates and charges contained in the revised tariff, NHPUC No. 78 without prejudice to the rights of any party to raise any issue relating to the provision of access service in connection with FTS 2000 Service or otherwise, in a subsequent proceeding; and

WHEREAS, the commission having reviewed the Stipulation and Agreement finds it to be in the public good, and accepts it for the disposition of this docket; it is hereby

ORDERED, that AT&T-NH shall be allowed pursuant to N.H. Rev. Stat. Ann. §§374:24 and 374:26, to offer as a public utility, FTS 2000 Service to the Federal government on an incidental basis for the service territory of the entire State of New Hampshire; and it is

FURTHER ORDERED, that the substance of AT&T's proposed tariff pages, AT&T Tariff NHPUC No. 3, are approved except that they shall be refiled with an effective date fourteen

(14) days after the date of this order, except said effective date not to be later than October 1, 1989; and it is

FURTHER ORDERED, that, pursuant to N.H. Rev. Stat. Ann. §374:15, AT&T-NH submit all the filings and reports required by the New Hampshire Public Utilities Commission for telephone companies doing business in the State of New Hampshire and that, pursuant to N.H. Rev. Stat. Ann. §363-A:1, *et seq.*, AT&T-NH 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 thirty-first day of August, 1989.

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NH.PUC*09/01/89*[51813]*74 NH PUC 291*Robert A. Demers dba Echo Lake Woods Water System/Woodland Grove Water System/Rolling Ridge Water System

[Go to End of 51813]

74 NH PUC 291

Re Robert A. Demers dba Echo Lake Woods Water System/Woodland Grove Water System/Rolling Ridge Water System

DE 89-002
Order No. 19,520

New Hampshire Public Utilities Commission

September 1, 1989

ORDER adopting a stipulation establishing permanent rates for water service provided to a new franchise area and requiring the utility to file a plan for metering its systems.

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1. VALUATION, § 19 — Methods and measures — Changing conditions and costs — Stipulation — Water utility.

[N.H.] Under a stipulation establishing permanent rates for water service provided to a new franchise area, the rate base of the utility was determined based on the estimated value of its systems at the time of purchase as modified by a fixed capital adjustment consisting of the difference between the net book value and the purchase price amortized by a corresponding percentage until all assets are retired. p. 292.

2. RETURN, § 115 — Water — Stipulation.

[N.H.] Under a stipulation establishing permanent rates for water service provided to a new franchise area, the utility was authorized to earn a rate of return on rate base of 10%. p. 292.

3. RATES, § 595 — Water rate design — Flat rate structure — Stipulation.

[N.H.] Under a stipulation establishing permanent rates for water service provided to a new franchise area, the utility was permitted to implement a flat rate structure for each of its three water systems. p. 292.

4. RATES, § 630 — Temporary rates — Recoupment of deficiencies — Water utility.

[N.H.] A water utility was authorized to recover through surcharges the difference between the revenue level established in its permanent rate case and the revenue level provided for under temporary rates. p. 292.

APPEARANCES: Dom S. D'Ambruoso, Esq. on behalf of Robert A. Demers, d/b/a Echo Lake Woods Water System, Woodland Grove Water System and Rolling Ridge Water System; Eugene F. Sullivan, III, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 5, 1989, Robert A. Demers, d/b/a Rolling Ridge Water System, Echo Lake

Woods Water System, and Woodland Grove Water System (the company or the systems) filed petitions to provide water service in limited areas of the Towns of North Conway, Conway and Bartlett, New Hampshire, respectively and implicitly to set rates therefor.

On April 17, 1989, a hearing was held on the issue of temporary rates and a franchise for said water systems. On July 5, 1989, in report and order no. 19,453 (74 NH PUC 210), the commission granted a conditional franchise to the company and temporary rates effective the date of the conditional franchise order.

On July 21, 1989, the commission issued order no. 19,486 (74 NH PUC 261), indicating that the company had met the conditions of order no. 19,453 and was, therefore, granted an unconditional franchise for the three systems.

On August 8, 1989, a hearing was held on the issue of permanent rates. The parties presented a stipulation concerning said issue to the commission.

II. *Stipulation of the Parties*

A. Rate Base

[1] Mr. Demers paid $10,000 for Woodland Grove in 1980, $10,000 for Echo Lake Woods in 1978 and $8,000 for Rolling Ridge in 1978. Over the years the company made capital improvements to each of the systems. The company has made the following capital additions to each system since its purchase: Woodland Grove, $.0; Rolling Ridge, $9,023; Echo Lake Woods, $3,146. In addition, the parties stipulated that certain of the expenses the company listed as operating expenses in the past years should be treated as capital additions. Those expenditures which have been capitalized are as follows: Echo Lake Woods, $912; Woodland Grove, $1,966; and Rolling Ridge, $213. Although the company paid the above prices for the systems they supplied the commission with estimated values of the systems at the time of purchase. The stipulation results in a fixed capital adjustment which is the difference between the net book value and the purchased price amortized by a corresponding percentage until the assets are retired. As assets are added or retired, the continuing property records will thus have the correct values of those assets. The ultimate result of these calculations was a rate base of $12,594 for Echo Lake Woods Water System; $17,590 for Rolling Ridge Water System; and $16,260 for Woodland Grove Water System.

B. Rate of Return

[2] The company and staff stipulated that the company shall be allowed an opportunity to earn a rate of return of ten percent on each of the stipulated rate bases set forth in the foregoing paragraph.

C. Revenue Requirement

The parties stipulated that the companies shall be authorized to charge rates designed to earn annual revenues in the amount of $7,374 for Echo Lake Woods Water System; $8,123 for Rolling Ridge Water System; and $11,251 for the Woodland Grove Water System.

D. Rate Structure

[3] The company has no meters although it has agreed to supply the commission with a plan for metering each of the systems by January 1, 1990. Therefore, the resulting rate structure is a

flat rate for each system. Thus, Woodland Grove Water System, which has sixty-one customers, will charge an annual rate of $184.44; Rolling Ridge Water System, which has thirty customers, will charge an annual rate of $270.76; Echo Lake Woods Water System, which has thirty-nine customers, will charge an annual rate of $189.08.

E. Temporary Rate Recoupment

[4] The parties agreed that the company shall be allowed to recover the difference between the revenue level approved in this report and order and the revenue level provided for in the company's temporary rates as authorized by order no. 19,359 by surcharge on the next periodic bill rendered by the company to its customers in accordance with RSA 378:29.

Page 292

It was further agreed that the company, within three weeks of the receipt of this order, would file for approval of a tariff supplement setting forth the method for calculating the revenue deficiency between temporary and permanent rates proposed to become effective on the next periodic billing the company makes to its customers.

Finally, it was agreed that in the case of customers taking service after the effective date of temporary rates, the surcharge would be prorated for such customers usage during the recoupment period.

F. Tariff

Staff and the company also stipulated to the tariff submitted by the company in conjunction with this rate case subject to the following revisions. The original Page 4, Section 7, will be changed to delete the last two sentences. On Page 6, Paragraph 14, will be changed to simply refer to the commission's existing rules with respect to disconnection of service. On original Page 7, Paragraph 17, will be amended to refer to "company owned equipment" and to access to customer premise at "reasonable" times. Finally, on Page 7 and 8, the main pipe extension policy will be deleted as there is no need for it in the case of these particular water systems as they are fully developed within their franchises.

III. *Commission Analysis*

Pursuant to RSA 378:7 and RSA 378:28, the commission shall set rates so that the company receives a just and reasonable rate return thereon. The commission finds the stipulation of the parties achieves said result. Although the stipulation results in a greater increase in rates for one of the systems than was requested by the company, the commission finds that the stipulation more accurately reflects the rate base and expenses of the company and, thus, results in a just and reasonable rate of return thereon. Furthermore, the commission accepts the fixed capital adjustment procedure as adopted in this stipulation and finds that it complies with the present chart of accounts in its interpretation of said chart of accounts.

Our order will issue accordingly.

ORDER

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

ORDERED, that the stipulation of the parties is accepted and is adopted by reference as part

of this order; and it is

FURTHER ORDERED, that the tariff submitted by the company is accepted subject to the modifications made at the August 8, 1989 hearing and in compliance with Puc rules relative to the filing of tariffs; and it is

FURTHER ORDERED, that the company shall file a plan for metering its systems by January 1, 1990.

By order of the Public Utilities Commission of New Hampshire this first day of September, 1989.

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NH.PUC*09/01/89*[51815]*74 NH PUC 295*New England Telephone and Telegraph Company, Inc.

[Go to End of 51815]

74 NH PUC 295

Re New England Telephone and Telegraph Company, Inc.

DE 89-135
Order No. 19,522

New Hampshire Public Utilities Commission

September 1, 1989

ORDER *nisi* authorizing a local exchange telephone carrier to revise its exchange boundaries.

SERVICE, § 445 — Telephone — Exchange areas and boundaries — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to revise the boundaries between certain exchange areas where the revision would enable the carrier to serve a medical center from a single distribution wire center and existing customers would be given the option of retaining service from their present exchanges on a "grandfathered" basis.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company (NET) filed a petition on August 2, 1989 seeking authority to change the boundaries between the Lebanon and Hanover, New Hampshire exchanges and the White River Junction, Vermont (West Lebanon locality) and Hanover New Hampshire exchanges; and

WHEREAS, NET will be able to serve the Dartmouth-Hitchcock Medical Center from a Single Distribution Wire Center in Hanover; and

WHEREAS, the thirty-one existing customers located in this area will be given the option of retaining service from their present exchange on a "grandfathered" basis or selecting service from the Hanover exchange, without charge; and

WHEREAS, the Commission's investigation finds the proposed boundary changes, 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 hereby

ORDERED, that all persons interested in responding to this petition submit their comments or file a written request for a hearing on this matter before the commission no later than September 28, 1989; and it is

FURTHER ORDERED, that the petitioner mail one copy of this report and order, by first class mail, to each customer in the area who

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will be located in a different telephone exchange as a result of this order, no later than September 12, 1989 and documented by affidavit to be filed with this office on or before September 28, 1989; and it is

FURTHER ORDERED, that NET file revised tariff pages to NHPUC No. 75 Part A Section 5 Eighth Revision of Sheet 29, Eleventh Revision of Sheet 43 and Tenth Revision of Sheet 99, effective date of this order, reflecting the changes in service areas brought about by this revision in exchange boundaries; and specifying thereon that the maps are effective on the date hereof by authority of this NHPUC order; and it is

FURTHER ORDERED, *NISI* that authority be, and hereby is, granted to New England Telephone & Telegraph Company to revise the exchange boundaries as prescribed in the subject petition in the towns of Hanover, Lebanon and West Lebanon 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 first day of September, 1989.

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NH.PUC*09/05/89*[51814]*74 NH PUC 293*New England Telephone and Telegraph Company, Inc.

[Go to End of 51814]

74 NH PUC 293

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010

Order No. 19,521

New Hampshire Public Utilities Commission

September 5, 1989

ORDER establishing a procedural schedule for review of a petition by a local exchange telephone carrier for rate increases and the implementation of an alternative regulatory framework.

RATES, § 640 — Procedural schedule — Rate increase — Alternative regulatory framework — Local exchange telephone carrier.

[N.H.] The commission established a procedural schedule for review of a petition by a local exchange telephone carrier for rate increases and the implementation of an

Page 293

alternative regulatory framework.

By the COMMISSION:

SUPPLEMENTAL REPORT ON PROCEDURAL SCHEDULE

I. *Introduction*

On June 27, 1989 the commission issued Order No.19,442 (74 NH PUC 195) addressing procedural schedule. That order evaluated information produced at the June 16, 1989 hearing on this issue and concluded that a procedural schedule be established for the period June 23, 1989 through September 23, 1989. A procedural schedule for the remainder of the docket would follow. This order establishes that remaining schedule.

II. *Commission Analysis*

Our review of the alternative proposed procedural schedules has identified three areas of significant difference. These are (1) the scheduling of testimony, data requests and responses, (2) the company's proposal to allow time for rebuttal testimony with associated discovery and hearings and (3) the company's proposal to allow time for reply briefs. These will be considered individually.

During the June 16, 1989 hearing a question was raised regarding the timing of intervenor testimony, which proceeds staff testimony by approximately one month. This scheduling is necessary in order that staff have available the positions of all parties before preparing final testimony. If the intervenors present facts previously not known by staff, they must have the opportunity to analyze these facts before developing their advisory testimony to the commission. This timing also affects the schedule for discovery on staff. Therefore we will require the proposed earlier filing of intervenor testimony.

During the initial three month procedural schedule we have applied a flexible approach to the discovery process. No specific dates have been established for data requests and the only limitation on responses is that they be made within three weeks. We have also allowed the parties flexibility to negotiate the timing of data requests and responses while retaining the authority to settle disputes. We find that this process can be effective in the conduct of discovery when the company complies with these deadlines and will continue the practice until further notice.

However, in order to provide time for drafting of staff testimony and preparation for hearings this general approach must be limited. All discovery on the company must be completed by December 1, 1989; therefore all data requests on the company must be submitted no later than November 10, 1989. Discovery on the intervenors must be completed by December 8, 1989; therefore the process must be foreshortened to require submittal of data requests by November 29, 1989. Likewise, discovery on staff must be foreshortened to require submittal of data requests by December 22, 1989 and response by January 10, 1989.

With regard to rebuttal testimony we note that it has not been the practice of this commission to require rebuttal testimony. Each party is given sufficient opportunity to present its case and to cross examine all other parties on their testimony. In view of the statutory expiration of the 12 month period for suspension of rates, we find it inappropriate to deviate from our normal practice and will not allow time for rebuttal testimony and a second round of discovery and hearings. If the company believes that further testimony is necessary in order to make their case on non-rate issues, an appropriate motion can be filed.

Regarding the filing of reply briefs, this too has not generally been required by this commission. Again we will expect that each party will summarize its position in the filed brief and the commission will have available a complete record upon which to reach a decision. Therefore, we will not allow time within the procedural schedule for filing of reply briefs.

With the resolution of these issues we find that the proposed schedules of staff and the company can be synchronized with relatively

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minor adjustments. This leads to the following supplemental schedule covering the period September 20, 1989 through April 2, 1990.

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

Final data requests on company	11/10/89
Intervenor Testimony	11/17/89
Data requests on intervenors	11/29/89
Company response to final DR's	12/01/89
Intervenor response to DR's	12/08/89
Staff Testimony	12/15/89
Data requests on staff	12/22/89
Staff response to DR's	1/10/90
Settlement Discussions	1/22/90-1/26/90
Hearings	2/5/90-2/16/90
Briefs from all parties	3/07/90
PUC decision	4/02/90

Unless otherwise noticed all meetings and hearings will be at the offices of Public Utilities

Commission, 8 Old Suncook Rd., Concord, New Hampshire 03301.

Our order will issue accordingly.

ORDER

On the basis of the foregoing report, which is made a part hereof, it is

ORDERED, that the procedural schedule for the period September 23, 1989 through April 2, 1990 as described in the foregoing report be established for all parties.

By order of the Public Utilities Commission of New Hampshire this fifth day of September, 1989.

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NH.PUC*09/11/89*[51816]*74 NH PUC 296*Chichester Telephone Company

[Go to End of 51816]

74 NH PUC 296

Re Chichester Telephone Company

DE 89-141
Order No. 19,524

New Hampshire Public Utilities Commission

September 11, 1989

ORDER authorizing a telephone carrier to reduce its rates for off premise extensions, tielines and local channels.

RATES, § 553 — Telecommunications — Kinds of service — Off premise extensions — Tielines — Local channels.

[N.H.] A telephone carrier was authorized to reduce its rates for off premise extensions, tielines and local channels so that they would conform with industry practices; the commission noted that it may open a generic docket to establish uniformity in the design of tariffs governing off premise extensions, tielines and local channels.

By the COMMISSION:

ORDER

WHEREAS, on August 7, 1989 Chichester Telephone Company (`the company') petitioned for a revision of its NHPUC Tariff No. 3 concerning Off Premise Extensions, Tielines and Local Channels; and

WHEREAS, the filing represents a rate reduction and a move to conform with industry

practices; and

WHEREAS, at present there exists a lack of uniformity amongst telephone companies in the application of rate for off premise extensions, tielines and local channels; and

WHEREAS, the commission may wish to open at a future date a generic docket in order to establish uniformity in the design of tariffs governing off premise extensions, tielines and local channels; it is hereby

ORDERED, that Chichester Telephone Company's NHPUC Tariff No. 3

Section 3, Fifth Revised Sheet 5
Section 3, Original Sheet 5A
Section 3, Original Sheet 5B
Section 3, Original Sheet 5C

be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this eleventh day of September, 1989.

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NH.PUC*09/11/89*[51817]*74 NH PUC 297*Kearsarge Telephone Company

[Go to End of 51817]

74 NH PUC 297

Re Kearsarge Telephone Company

DR 89-069
Order No. 19,525

New Hampshire Public Utilities Commission

September 11, 1989

ORDER setting temporary rates for telephone service and establishing a procedural schedule for a proceeding to establish permanent rates.

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1. RATES, § 640 — Procedural schedule — Permanent rate proceeding — Telephone carrier.

[N.H.] The commission set a procedural schedule for a proceeding to establish permanent rates for telephone service. p. 298.

2. RATES, § 630 — Temporary rates — Telephone carrier.

[N.H.] Based on its review of an annual report filed by a telephone carrier, the commission set temporary rates at current levels for the pendency of a proceeding to establish permanent rates. p. 298.

APPEARANCES: Dom S. D'Ambruoso, Esquire of Ransmeier & Spellman on behalf of Kearsarge Telephone Company; Michael W. Holmes, Consumer Advocate for the residential ratepayers; and Mary C. Hain, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On April 28, 1989, the Kearsarge Telephone Company (company or Kearsarge) filed a notice of intent to file rate schedules. On June 16, 1989, Kearsarge filed a proposed new tariff no. 7 requesting an increase in permanent rates, under RSA 378:28, and a petition for temporary rates, pursuant to RSA 378:27. By order no. 19,440, dated June 27, 1989, the commission suspended the proposed new tariff and established a hearing on August 24, 1989 on the merits of the temporary rate request and for a prehearing conference to address procedural matters regarding the proposed permanent rate increase.

Prior to the commencement of the scheduled hearing on August 24, 1989, the commission staff, the Consumer Advocate and the company met and discussed the matter of a procedural schedule regarding the proposed permanent rate increase and to discuss the issue of temporary rates. As a result of those discussions, the parties proposed the following procedural schedule:

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

September 22, 1989	Staff and intervenor data requests — Set No. 1.
October 6, 1989	Company responses.
October 13, 1989	Staff and intervenor data requests — Set No. 2.
October 20, 1989	Company responses.
October 27, 1989	Staff and intervenor testimony on all issues except rate design.
October 30, 1989	Prehearing conference at 10 o'clock a.m.
November 3, 1989	Company data requests to staff an intervenors.
November 21, 1989	Responses by staff and intervenors.
November 21, 1989	Staff and intervenor rate design testimony.
November 28, 1989	Company data requests to staff and intervenors on rate design issues.
December 6, 1989	Staff and intervenor responses on rate design issues.
December 19 & 20, 1989	Hearing on the merits at 10 o'clock a.m.

[1, 2] The parties agreed that the Staff would commence and conclude an audit during the discovery part of this proceeding. The Company also agreed to provide diskettes, in Lotus 123 format, containing the schedules and exhibits in its rate filing. This schedule will give the

commission adequate time to investigate the petition. It is, therefore, in the public interest and approved.

On the issue of temporary rates, the parties agreed that the Company's current rate schedules should be made temporary for the pendency of this proceeding, effective with all service rendered on and after September 16, 1989. In support of its Petition for Temporary Rates, the Company, through witness Michael LeaVesseur, presented testimony and exhibits (Exhibit T-1) to support the temporary rate level agreed to by the parties.

The commission has reviewed the annual report of the company. Based on this we find it just and reasonable under RSA 378:27 to set temporary rates at current levels.

Our order will issue accordingly.

ORDER

Based upon the foregoing Report, which becomes a part hereof, it is hereby

ORDERED, that the Company be and hereby is authorized to collect as temporary rates its current rate schedules on all service rendered on and after September 16, 1989, pursuant to the provisions of R.S.A. 378:27; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report govern the parties as this case goes forward.

By order of the Public Utilities Commission of New Hampshire this eleventh day of September, 1989.

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NH.PUC*09/11/89*[51818]*74 NH PUC 298*Chichester Telephone Company

[Go to End of 51818]

74 NH PUC 298

Re Chichester Telephone Company

DR 89-070
Order No. 19,526

New Hampshire Public Utilities Commission

September 11, 1989

ORDER setting temporary rates for telephone service and establishing a procedural schedule for a proceeding to establish permanent rates.

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1. RATES, § 640 — Procedural schedule — Permanent rate proceeding — Telephone carrier.

[N.H.] The commission set a procedural

schedule for a proceeding to establish permanent rates for telephone service. p. 300.

2. RATES, § 630 — Temporary rates — Telephone carrier.

[N.H.] Based on its review of an annual report filed by a telephone carrier, the commission set temporary rates at current levels for the pendency of a proceeding to establish permanent rates. p. 300.

APPEARANCES: Dom S. D'Ambruoso, Esq. of Ransmeier & Spellman on behalf of Chichester Telephone Company; Michael W. Holmes Esq. of the Consumer Advocate's Office on behalf of the Residential Ratepayers; and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On April 28, 1989, Chichester Telephone Company (company or Chichester) filed a notice of intent to file rate schedules. On May 24, 1989, Chichester filed its request for a waiver of certain filing requirements which was granted by letter of the commission dated June 2, 1989.

On June 16, 1989, the company filed its proposed new tariff no. 3 requesting a new higher level of permanent rates and also filed a petition for temporary rates, pursuant to the provisions of RSA 378:27. On June 27, 1989, the commission issued order no. 19,441 suspending the proposed new tariff and establishing a hearing on August 24, 1989, on the merits of the temporary rate petition and on procedural matters regarding the proposed permanent rate increase. At the duly noticed hearing on August 24, 1989, the only parties present and appearing as interveners were the consumer advocate and the commission staff. No other parties appeared to intervene and no other interventions were granted.

Prior to the commencement of the scheduled hearing, the parties met and discussed 1) a procedural schedule regarding the proposed permanent rate increase and 2) temporary rates. As a result of those discussions, the parties proposed the following procedural schedule:

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


September 20, 1989 Staff and intervenor data requests.

October 4, 1989    Company responses to staff and intervenor
                   data requests.

October 18, 1989   Staff and intervenor testimony on all issues
                   except rate design.

October 31, 1989   Prehearing conference on all issues except
                   rate design.

November 1, 1989   Company data requests on all issues except
                   rate design.
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November 17, 1989  Staff and intervenor responses on all issues
                   except rate design.

November 28, 1989  Hearing on the merits.
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[1, 2] The parties discussed two rate design issues and indicated that resolution of those rate design issues could proceed informally during the progress of the foregoing procedural schedule. Each party, however, reserved its rights on the rate design issues should there be a necessity to file testimony and engage in discovery on those issues.

This schedule will give the commission adequate time to investigate the petition. It is, therefore, in the public interest and approved.

The company pointed out that in DR 89-141, the company petitioned for a rate reduction for off-premises extension rates. Responding to staff concerns, the company assured the commission that such revenue losses will not be claimed in DR 89-070.

On the issue of temporary rates, the parties agreed that the company's current rate schedule should be made temporary for the pendency of this proceeding, effective with all service rendered on and after September 16, 1989.

The commission has reviewed the annual report of the company. Based on the report, we find it just and reasonable to set temporary rates at current levels. The commission finds that the proposed level of temporary rates meets the statutory requirements of R.S.A. 378:27.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which becomes a part hereof, it is hereby

ORDERED, that the company be and hereby is authorized to collect as temporary rates its current rate schedules effective with all service rendered on and after September 16, 1989, pursuant to the provisions of RSA 378:27 and 29, and it is

FURTHER ORDERED, that the proposed schedule is adopted for the balance of this proceeding.

By order of the Public Utilities Commission of New Hampshire this eleventh day of September, 1989.

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NH.PUC*09/11/89*[51819]*74 NH PUC 300*Southern New Hampshire Water Company, Inc.

[Go to End of 51819]

Order No. 19,527

New Hampshire Public Utilities Commission

September 11, 1989

ORDER authorizing a water utility to increase its rates for service provided from one of its water systems to reflect the fact that the system had been interconnected with a core division in which higher rates applied.

RATES, § 171 — Reasonableness — Uniformity — Water service — Interconnected systems.

[N.H.] Consistent with its policy that interconnected water systems should be charged the same rate, a water utility was authorized to increase its rates for service provided from one of its water systems to reflect the fact that the system had been interconnected with a core division in which higher rates applied; it was found the customers of the interconnected systems received equal service.

APPEARANCES: Larry S. Eckhaus, Esq. on behalf of Southern New Hampshire Water Company, Inc.; Timothy Finnegan on behalf of the Brook Park Estates Homeowners Association; 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*

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On April 4, 1989, Southern New Hampshire Water Company, Inc. (Southern) filed a notice of intent to file rate schedules for Brook Park. On June 2, 1989, Southern filed exhibits, tariff pages and the direct testimony of J. Michael Love supporting their request for a rate increase.

On July 31, 1989, an order of notice was issued setting a hearing for August 18, 1989. Said order required that individual notice be given to the customers of Brook Park so that they would have the opportunity to appear at the August 18, 1989 hearing and make a statement in opposition or in support of Southern's petition. A hearing was held on August 18, 1989, in which the commission analyzed the position of Southern, the staff and the Brook Park Estates Homeowners Association (Homeowners Association).

II. *Positions of the Parties*

Both Southern and staff took the position that rates in the Brook Park system should be increased to the Londonderry Core Division rate to reflect the fact that the system was now interconnected with the Londonderry Core system. Mr. Finnegan, representing the Homeowners Association, took the position that rates should not be increased as they were not receiving equal

service as those customers being served in other parts of the Londonderry Core Division. Specifically, Mr. Finnegan indicated that the company had not installed new mains up to the curb stop of each of the homes in Brook Park.

III. *Findings of Fact*

The commission finds that in late October, 1988, the Brook Park system was interconnected with the Londonderry Core Division and that the customers of Brook Park are now receiving service equal to those customers being served in the rest of the Londonderry Core Division. The commission further finds that in DR 88-055, report and order 19,287 (74 NH PUC 11 [1989]), the commission set a policy that those systems interconnected should be charged the same rate.

IV. *Commission Analysis*

The commission adopts the position of Southern and the staff, that is, that rates being charged in Brook Park should be increased to those being charged the rest of the Londonderry Core Division as Brook Park has been connected to said division in conformance with the policy set in report and order 19,287, of DR 88-055. The commission bases its decision on RSA 378:10 and RSA 378:11 respectively, which require that the rates charged to customers reflect the cost of service. As Brook Park is now a part of the Core Division the other customers of the Londonderry Core division should not subsidize the rates of the customers in Brook Park. Thus, the commission finds it just and reasonable to increase the rates in Brook Park. Furthermore, the commission finds that the increase in rates will not result in Southern over-earning as testimony presented at the hearing established an overall rate of return being earned by Southern of 7.98 percent, whereas, they were authorized to earn 11.14 percent in report and order 19,287, DR 88-055.

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 submit tariff pages reflecting the approved rates in the foregoing report, said tariff pages reflecting the above commission order number.

By order of the Public Utilities Commission of New Hampshire this eleventh day of September, 1989.

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NH.PUC*09/12/89*[51820]*74 NH PUC 302*US Sprint Communications Company Limited Partnership

[Go to End of 51820]

74 NH PUC 302

Re US Sprint Communications Company Limited Partnership

DE 89-118
Order No. 19,528

New Hampshire Public Utilities Commission

September 12, 1989

ORDER denying a motion for a protective order.

PROCEDURE, § 16 — Discovery and inspection — Protective order — Waiver.

[N.H.] In denying a motion for a protective order over usage data filed by a telecommunications company, the commission found that the company had waived its right to a protective order inasmuch as the data it sought to protect already had been made available for public inspection.

PARTIES: US Sprint Communications Company Limited Partnership, and the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT ON MOTION FOR
PROTECTIVE ORDER

On August 3, 1989, US Sprint Communications Company Limited Partnership ("US Sprint") asked for a protective order over certain usage data filed, on July 10, 1989, as an attachment to Sprint's data response. It alleged that this data is private, confidential, commercial and competitively sensitive, and, therefore, exempt from public disclosure under the so-called Right-to-Know Law. RSA 91-A:5 IV.

We determine that Sprint has waived its right to a protective order. Under RSA 91-A:4 I, all records of the commission must be available for public inspection during regular business hours. These records may be abstracted, photographed, or photostated. *Id.*

US Sprint's usage data was already in the public domain for three and one-half weeks when it asked for confidentiality. We cannot protect disclosure of information which is already public information.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that US Sprint Communications Company Limited Partnership's August 3, 1989 Motion for Protective Order is denied.

By order of the Public Utilities Commission of New Hampshire this twelfth day of September, 1989.

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NH.PUC*09/12/89*[51821]*74 NH PUC 302*Kearsarge Telephone Company

[Go to End of 51821]

74 NH PUC 302

Re Kearsarge Telephone Company

DE 89-145
Order No. 19,529

New Hampshire Public Utilities Commission

September 12, 1989

ORDER authorizing a telephone carrier to revise its tariff to incorporate two recently created exchange codes.

SERVICE, § 445 — Telephone — Exchange codes — Tariff revision.

[N.H.] A telephone carrier was authorized to revise its tariff to incorporate two recently created exchange codes.

By the COMMISSION:

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ORDER

WHEREAS, on August 14, 1989 Kearsarge Telephone Company filed a revision of its NHPUC No. 7, Section 5, First Revision of Sheet 10, and First Revision of Sheet 12, for effect September 16, 1989; and

WHEREAS, such filing proposed to incorporate the two recently created NXX Codes of 226 and 229 for Concord; it is hereby

ORDERED, that Kearsarge Telephone Company's NHPUC No. 7 be revised so that Section 5

— Original Sheet 10 be superceded by First Revision of Sheet 10,

— Original Sheet 12 be superceded by First Revision of Sheet 12; and it is

FURTHER ORDERED, that the above revisions become effective September 16, 1989; and it is

FURTHER ORDERED, that the above noted tariff pages be resubmitted and annotated as required by PUC 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twelfth day of September, 1989.

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NH.PUC*09/12/89*[51822]*74 NH PUC 303*Deer Cove Water Company

[Go to End of 51822]

74 NH PUC 303

Re Deer Cove Water Company

DE 89-152
Order No. 19,530

New Hampshire Public Utilities Commission

September 12, 1989

ORDER directing a water company to appear and show cause why it should not be subjected to penalties for failure to seek a franchise and rate approval.

FINES AND PENALTIES, § 7 — Grounds for imposition — Unauthorized operation — Water company — Show cause order.

[N.H.] A water company that was providing utility service without commission approval was directed to appear together with its owner/agent and show cause why they should not be subject to criminal prosecution or civil penalties for failure to seek a franchise or rate approval.

By the COMMISSION:

ORDER

On August 28, 1989, it came to the attention of the staff of the New Hampshire Public Utilities Commission (commission) that David Sands is owning or operating a public utility or an officer of said utility operating under the name Deer Cove in the Town of Freedom, New Hampshire; and

WHEREAS, David Sands is an owner of LOV Water Company, Inc., a utility currently in the process of seeking a franchise and rates therefore; and

WHEREAS, David Sands is therefore aware of the commission regulations governing public utilities and the requirements to seek a franchise and rate approval, pursuant to RSA 374:22 and 378:7 respectively; it is hereby

ORDERED, that Deer Cove Water Company and its agent or owner, David Sands appear before this commission at its offices in Concord, New Hampshire, 8 Old Suncook Road, Building #1, in said state at 10 o'clock in the forenoon on the twelfth day of October, 1989, to show cause why he or the company should not be subjected to criminal prosecution or civil penalties up to $1,000 for each violation for each day that the violation persist, pursuant to the provisions of New Hampshire Statutes RSA 365:41, RSA 365:42, RSA 370:2, RSA 374:7-A,

RSA 374:41 *et seq.*, RSA 374:17 or other sanctions provided by law.

By order of the Public Utilities Commission of New Hampshire this twelfth day of September, 1989.

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[Go to End of 51823]

74 NH PUC 304

Re Southern New Hampshire Water Company, Inc.

DE 88-140
Order No. 19,534

New Hampshire Public Utilities Commission

September 14, 1989

ORDER granting a water franchise, approving special contract rates, and determining the effective date of rates.

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1. RATES, § 249 — Effective date — Operation prior to issuance of franchise — Water utility.

[N.H.] A water utility was prohibited from collecting rates for service rendered prior to the issuance of a franchise to provide the service; moreover, all costs associated with the provision of service prior to the issuance of the franchise were disallowed in order to avoid the recovery of those costs by the utility and the charging of those costs to other customers of the utility; the commission noted that the utility could have obtained temporary rates in an immediate franchise hearing had they requested such a procedure. p. 306.

2. RATES, § 86 — Retroactive effect of schedules — Operation prior to issuance of franchise — Water utility.

[N.H.] State statute, RSA 378:14, precludes rate recovery of the costs of service provided prior to the issuance of a franchise by the commission. p. 306.

APPEARANCES: Larry Eckhaus, Esq., on behalf of Southern New Hampshire Water Company, Inc.; and Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On October 18, 1988, Southern New Hampshire Water Company, Inc. (Southern) filed with the commission, a petition for authority to engage in business as a public utility in a limited area of the Town of Atkinson. Appended to the petition was a water service and franchise agreement by and between the company and Pioneer Development Ltd., (Pioneer) a New Hampshire Corporation and 3-Commerce Realty Trust (Trust) dated July 8, 1988. This development area is within the bounds of the requested franchise. It was agreed by the parties that said agreement constituted a special contract. Thus, the proceeding dealt with the issues of the franchise area and the special contract entered into between the company, Pioneer and the Trust.

On December 15, 1988, the company filed an amended petition modifying the rate to be charged within the proposed franchise area, consistent with the rates determined by the commission in DR 88-055. The staff promulgated data requests which were responded to by the company and on May 16, 1989, the parties met to discuss the possibility of stipulating to any and all issues relating to the company's petition.

Staff and the company entered into a stipulation which would allow the company the requested franchise area and found the special contract to be in the public interest, pursuant to RSA 378:18. However, the company and the staff could not agree on the effective date of rates for the system which has been operating within the franchise since October of 1989.

II. *Positions of the Parties*

As was stated above, the parties have stipulated to a number of factors regarding this petition; however, they could not agree on the effective date of the rates to be charged those

customers being served as of October of 1988, in the industrial complex and developed by Pioneer and the Trust. Said stipulation will be outlined below.

Both the company and staff submitted legal memorandum in support of their positions on the proposed effective date for rates. Staff's position, in short, was that no company should be allowed to charge rates without the issuance of a franchise by the commission. The company, on the other hand, cited four precedents which they stated stood for the proposition that the commission had granted rates prior to the issuance of a franchise in four other cases.

III. *Findings of Fact*

On July 8, 1988, Southern entered into an agreement with Pioneer and the Trust, whereby Pioneer and the Trust would construct a water system in two phases to be taken over by Southern to service an industrial complex to be developed by Pioneer and the Trust.

On October 18, 1988, Southern filed with the commission a petition for authority to engage in business as a public utility in a limited area in the Town of Atkinson. Appended to said petition was the contract referred to above. The proposed franchise area included, but was not limited to, the industrial complex to be developed by Pioneer and the Trust. Apparently the company began providing service to certain customers within the industrial complex in October of 1988 prior to obtaining a franchise. As was indicated above, the parties met and entered into a stipulation; however, they could not agree on the effective date of rates.

IV. *Stipulation of the Parties*

The parties agreed that the franchise area, as described on the map attached to the stipulation agreement (*Exhibit A*) which is made a part of this report, and as is described as follows:

> Starting in the north westerly corner of the Town of Atkinson at the intersection of NH State Highway Route 111 and the convergence of Atkinson/Derry/Salem town line by a stone town mark on south side of said Route 111, thence
>
> Easterly along said Route 111 (6,000´) feet plus or minus to the center line of Hog Hill Brook as it passes under Route 111, thence
>
> Southerly by the center line of Hog Hill Brook approximately 7000 feet to the intersection of Hog Hill Brook and West Side Drive, thence
>
> South westerly by said West Side Drive 2,000 feet plus or minus to the intersection of said road and the Salem, NH town line, thence
>
> North westerly 7,400 feet along the Salem/Atkinson town line crossing Hall Farm Road and a stone marked to a point and corner in said town line at a town stone bound marking Salem/Atkinson intersection, thence
>
> Northerly 750 feet more or less back to point of beginning at said town line convergence of Derry/Salem/Atkinson and NH State Route 111 said area being approximately 500 acres and being described from and shown on the Town of Atkinson Official Tax Map Reference Plan dated 1976.

The parties further agreed that in view of the nature of the company's investment to render service in the area and the fact that the company does not presently have any franchise areas nor a tariff in the Town of Atkinson, the company shall render water service to customers in the proposed area in accordance with the terms of its tariff for general metered service for Satellite Division as such was determined by the commission in docket DR 88-055. To the extent that fire protection is provided, rates MFP and PFP-Core shall apply until the next rate proceeding. Such tariffs will be amended by the company consistent with this section.

The parties further stipulated that the agreement entered into between the company, Pioneer and the Trust was a special contract, wherein, the company was allowed to participate in the design and the construction of the system serving Pioneer Development, Ltd. and other customers within the proposed franchise area, thus ensuring that said system is properly designed and installed to meet the needs of those customers and provide for water service

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to those customers within the proposed franchise area who do not presently enjoy water service.

The special contract consisted of two phases. In both phases of the special contract referred to, in section seven of the stipulation, there is a potential that the developer will be making contributions or advances in aid of construction that are not strictly in conformance with the company's existing main extension tariff for developers. That is, to the extent that refunds are made to Pioneer and the Trust in both phases of the contract the developer will not have paid all

of the costs of main extensions as the tariff requires.

The parties agreed that the special contract was in the public interest in that it minimized the company's up front investment in the water system which will ultimately reduce the cost of service until a customer base is established in the franchise area by reducing rate base and the company's capital requirements. In addition, by relating refunds in phase II to a percentage of prior years revenue, business risk to the company is further reduced if any commercial establishment ceases to become a customer. In addition, the special contract will enable the company to provide water service to other industrial developments within the franchise area outside the Pioneer Development, Ltd.

V. *Commission Analysis*

[1, 2] In regard to the special contract, the commission accepts the stipulation of the parties in that the special contract will serve the public interest and further complies with RSA 378:18. Furthermore, the commission would like to commend the company for its innovative management in entering into this special contract. With regard to the effective date of rates, the commission adopts the position of staff for the following reasons. RSA 374:26 provides in pertinent part that the commission may grant a franchise to a public utility to service a specified area when it finds the issuance of said franchise to be in the public good.

A franchise is a "right to do certain things... which is not possessed by the people as of common right ...." *Public Service Co. v. State,* 101 N.H. 154, 158 (1957) [citing *Opinion of the Justices,* 82 N.H. 561, 564 (927)]. "It is acquired by the state's grant. It is desired because it is taken out of the common right and its exclusive character may give it value." *Id.* [Quoting *Opinion of the Justices,* 84 N.H. 559, 568 (1929).] Thus, a franchise is the right or privilege to do certain things not allowed the public at large. In this case it is the exclusive right to provide water service within a limited area in the Town of Atkinson and the right to charge for said service. As applied to public utilities and the commission, the power to grant franchises is the power to give monopoly status to a public utility, giving it the exclusive right to provide service and the right to charge the public for the provision of said service in accordance with rates determined to be just and reasonable by the commission. See RSA Chapter 378.

In the case at hand, Southern had not obtained a franchise in October of 1988 and, therefore, they should not be allowed to charge rates. Furthermore, any cost associated with the provision of service prior to the issuance of a franchise are disallowed in any future rate proceeding in order to avoid recovery of the cost by the company and charging those costs to the other customers of the company. See RSA 378:14. Furthermore, the commission would like to note that at the prehearing conference, Southern was asked by the hearings examiner if they required temporary rates in this case. Southern's attorney, at that time, informed the commission that temporary rates were not necessary. See RSA 378:27. The commission bases its decision on its analysis above but notes that the company had the opportunity to obtain temporary rates in an immediate franchise hearing had they merely asked for such a procedure at the prehearing conference.

Finally, the four cases cited as precedent by the company all deal with new systems within existing franchise areas and are, therefore, inapplicable to the issue in this case.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing

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report; it is hereby

ORDERED, that Southern New Hampshire Water Company, Inc. be granted the franchise requested as described in the preceding report; and it is

FURTHER ORDERED, that the special contract between Southern and Pioneer Development, Ltd. and 3-Commerce Realty Trust is approved; and it is

FURTHER ORDERED, that rates, as outlined in the foregoing report, shall be effective as of the date of this order. The company shall file revised tariffs for fire protection, however, no amendment is needed for the metered rate as Southern New Hampshire Water Company, Inc.'s present deals with the addition of new systems.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1989.

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NH.PUC*09/19/89*[51824]*74 NH PUC 307*New England Telephone and Telegraph Company, Inc.

[Go to End of 51824]

74 NH PUC 307

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,536

New Hampshire Public Utilities Commission

September 19, 1989

ORDER denying a request for a protective order and establishing standards to be applied to requests for confidentiality.

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1. PROCEDURE, § 16 — Discovery and inspection — Right to Know Law.

[N.H.] The so-called Right to Know Law, RSA 91-A:4 I, requires the commission to hold all public records open for public inspection. p. 309.

2. PROCEDURE, § 16 — Discovery and inspection — Confidentiality.

[N.H.] Under RSA 91-A:5 IV, confidential, commercial, or financial information may be exempted from public disclosure; however, trade secrets and the like enjoy no absolute privilege. p. 309.

3. PROCEDURE, § 16 — Discovery and inspection — Nondisclosure.

[N.H.] In deciding whether to disclose information filed by a utility, the commission must weigh the benefits of disclosure to the public against the benefits to the utility of nondisclosure. p. 309.

4. PROCEDURE, § 16 — Discovery and inspection — Right to Know Law — Penalty for violations.

[N.H.] If the commission or an employee of the commission knowingly violates the Right to Know Law (or reasonably should have known that they violated the law) a court may require the commission or commission employee to pay reasonable attorney's fees and costs incurred in any lawsuit necessary to make the information available. p. 309.

5. PROCEDURE, § 16 — Discovery and inspection — Protective orders — Grounds for granting.

[N.H.] The commission has used the standards set forth in *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 529 F.Supp. 866 (D.Pa.1981) for determining whether a request of a protective order should be granted; in *Zenith*, the court used the following three pronged analysis: (1) is the matter sought to be protected "a trade secret or other confidential research, development, or commercial information" which should be protected; (2) would disclosure of such information cause a cognizable harm sufficient to warrant a protective order; and (3) has the party seeking protection shown "good cause" for invoking the protection; the Zenith court found that good cause exists where there is a clearly defined and serious injury and the petitioner has shown that the injury would occur. p. 309.

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6. PROCEDURE, § 16 — Discovery and inspection — Protective orders — Grounds for denial.

[N.H.] The commission denied a request by a local exchange telephone carrier for a protective order where the commission found that the proposed order would not adequately protect the rights of the public or the rights of parties to access to public records. p. 310.

7. PROCEDURE, § 16 — Discovery and inspection — Requests for confidentiality — Filing requirements.

[N.H.] A local exchange telephone carrier was directed to furnish the following information with all requests for confidentiality: (1) the documents or facts which it seeks to exempt from public disclosure; (2) the specific statutory provision which supports exemption from disclosure; (3) the facts necessary to allow the commission to weigh the benefits of disclosure against the benefits of nondisclosure; (4) an analysis of its confidentiality request using the three pronged analysis established by the case of *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 529 F.Supp. 866 (D.Pa.1981); (5) a discussion of whether a revenue loss would result from disclosure and whether ratepayers would ultimately bear the loss; and (7) the interrogatory or production request to which the request for confidentiality is addressed. p. 310.

8. PROCEDURE, § 16 — Discovery and inspection — Requests for confidentiality — Commission orders.

[N.H.] The commission shall issue an order within three weeks of each request for confidentiality by a local exchange telephone carrier; if the commission fails to issue an order within three weeks, it will be assumed that the commission has found the information confidential. p. 310.

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i. PROCEDURE, § 16 — Discovery and inspection — Confidential material — Proprietary treatment.

[N.H.] Discussion, in an order establishing standards to be applied to requests by a local exchange telephone carrier for confidentiality, of the proprietary treatment to be afforded all information found confidential. p. 310.

By the COMMISSION:

REPORT CONCERNING CONFIDENTIALITY

In this report and order, we consider and deny New England Telephone and Telegraph Company's (NET) request for a protective order. This order establishes 1) standards to be applied to requests for confidentiality and 2) a confidentiality order to protect material found confidential.

I. *Background*

On March 3, 1989, NET filed a motion for protective order in *New England Telephone and Telegraph Company: InfoAge NH 2000*, DR 89-010. The motion sought to protect information contained in the filing requirements of N.H. Admin. Code Puc 1603.03(b)(1), (3), and (22) (as to NYNEX), and 1603.03(b)(19), (20), and (25) (as to NET).

On July 10, 1989, NET filed a supplemental statement regarding its motion. It stated that on June 12, 1989, the commission issued order no. 19,429 (74 NH PUC 183) which was negotiated among a number of the parties in this proceeding, and granted protective treatment to certain NET usage data. It advised the commission that the protective provisions included in the order, to the extent that they apply to paper copies, are acceptable to NET for application to the above-referenced filing requirements.

N.H. Admin. Code Puc 1603.03(b)(22) requires disclosure of the short term debt component of total invested capital on a monthly basis. In its supplemental statement, NET alleged that disclosing this information could

undermine NYNEX's ability to develop a confidential investment strategy. Further, it contended, this information describes programs which should not be disclosed because of SEC requirements concerning the treatment of insider information.

NET did not allege reasons why the information contained in N.H. Admin. Code Puc 1603.03(b)(1), and (3) (as to NYNEX); and 1603.03(b)(19), (20), and (25) (as to NET) should be protected from public inspection. NET asked that the commission issue a protective order,

covering the above-referenced filing requirements, which incorporates certain provisions of order no. 19,429.

On August 18, 1989, NET moved, pursuant to N.H. Admin. Code 203.04, that the commission approve a proposed protective order. It alleged that a protective order was necessary because the staff and intervenors have requested in discovery certain information which NET claims is proprietary. NET avers that the proposed order would facilitate the production of that information and any additional information which NET deems to be proprietary without infringing the rights of any party to contest the confidentiality of the information.

Under the proposed order, all parties would execute a protective agreement. Henceforth, whenever a party requested information which NET deemed proprietary, NET would designate the information "Confidential Information," and then produce the information to any party who had signed a protective agreement. If a party objected to NET's designation, the onus would be on the objecting party to bring a motion to compel, then NET would defend its designation.

II. *The Law Concerning Access to Commission Records*

[1-5] Pursuant to the New Hampshire Constitution "the public's right of access to governmental proceedings and records shall not be unreasonably restricted." N.H. Const. pt. 1, art. 8. Under the so-called Right to Know Law the commission must hold all public records open for public inspection. RSA 91-A:4 I (supp. 1988). Under RSA 91-A:5 IV, confidential, commercial, or financial information may be exempt from disclosure. However, trade secrets and the like enjoy no absolute privilege. *Lincoln v. Langley*, 99 N.H. 158 (1954).

The purpose of the Right to Know Law is to "ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." RSA 91-A:1 (supp. 1988). In deciding whether to disclose information, the commission must weigh the benefits of disclosure to the public against the benefits of nondisclosure to the utility. *Mans v. Lebanon School Bd.*, 112 N.H. 160, 162, 290 A.2d 866, 867 (1972). If the commission or a commission employee knowingly violates the Right to Know Law (or reasonably should have known that they violated the Right to Know Law) the court may require the commission or the commission employee to pay reasonable attorney's fees and costs incurred in a lawsuit which was necessary to make the information available. RSA 91-A:8.

The scope of the exceptions to the Right to Know Law have not been subject to much interpretation by the New Hampshire Supreme Court. In *Re Public Service Company of New Hampshire*, 72 NH PUC 549, 553 (1987) we used the standards set forth in *Zenith Radio Corporation v. Matsushita Electric Industrial Co.*, 529 F. Supp. 866, 889-891, (D.Pa. 1981) (*Zenith*). In *Zenith* the court used the following three pronged analysis when a protective order was appealed.

> First, is the matter sought to be protected "a trade secret or other confidential research, development, or commercial information" which should be protected? Second, would disclosure of such information cause a cognizable harm sufficient to warrant a protective order? Third, has the party seeking protection shown "good cause" for invoking the protection?

The court found that good cause exists where there is a clearly defined and serious injury and the petitioner has shown that the injury will occur. *Id.*

[6-8] All but one of NET's requests for confidentiality do not contain enough information to allow the commission to issue a protective order. Only NET's request concerning NYNEX's N.H. Admin. Code Puc 1603.03(b)(22) contains sufficient information for us to determine that disclosure should be protected.

NET's proposed confidentiality order does not adequately protect the rights of the public or the rights of the parties to access public records. NET's proposed order only gives the parties the right to compel the production of these records. NET's proposed order could allow protection of all information which NET deems confidential; NET could deem confidential all the information it files.

NET shall, with respect to these requests for confidentiality and all future requests for confidentiality, provide the following: 1) which documents or facts are exempt from disclosure, 2) which specific statutory provision exempts disclosure, and 3) the facts necessary to allow the commission to weigh the benefits of disclosure against the benefits of nondisclosure, and specifically, to analyze these requests using the *Zenith* three prong analysis. NET shall also discuss whether a revenue loss would result from disclosure and whether ratepayers would ultimately bear these losses. *Re Pacific Northwest Bell Telephone Co.*, 9 PUR4th 49 (Ore.P.U.C.1975); and *South Central Bell Telephone Co. v. Mississippi Pub. Serv. Comm.*, 61 PUR4th 310, 313 (Miss. Chancery Ct. 1984). Each request for confidentiality shall be preceded by the interrogatory or request to which it is addressed. Whenever, only a portion of a document, transcript or other material is alleged confidential, NET shall limit the request to that portion of the material.

NET shall file within one week all outstanding information required by our filing requirements, or requested in discovery; or file a good reason, using the above stated analysis, why it should not.

The commission shall issue an order within three weeks of each set of requests for confidentiality. If the commission does not issue an order within three weeks of each set of requests for confidentiality, it will be assumed that the commission finds the information confidential. This will address NET's concerns that discovery proceed in a prompt fashion.

[i] Set forth below is the proprietary treatment to be accorded all information found confidential.

1. The confidential information shall be used solely for the purposes of preparation for and conduct of this proceeding, including but not limited to the preparation and conduct of direct and cross examination, legal memoranda, motions, exhibits, or briefs, subject to the requirements set forth in this order. More specifically and without limiting the foregoing, the confidential information shall not be used for any competitive or commercial purposes.

2. NET shall provide the commission an original and nine copies of all confidential information for dissemination to all staff members working on the case and the commission's confidential file. NET shall stamp the word "confidential" on all documents to ensure proper

commission handling. The confidential information provided to the commission and the commission staff shall be retained in a locked file cabinet when not in use. The commission staff may make as many copies of the confidential information as it desires for the purposes set forth herein, and such copies shall be treated the same way as the confidential information itself under this order.

3. When NET files confidential information, it shall indicate on the cover letter that the information is "CONFIDENTIAL INFORMATION" filed pursuant to order no. 19,536." The cover letter should also state a title for the information. All parties shall receive a copy of the cover letter. Confidential information shall be filed under a separate cover letter from public information.

4. If any party to this docket (other than the staff) desires to obtain a copy of some or all of the confidential information, then that party shall submit to NET a notification and agreement in the form attached hereto as Attachment A, signed by an appropriate agent, including but not limited to legal counsel, of the requesting party. Upon verifying that the requirements set forth in this paragraph have been satisfied, NET shall provide the requesting party with one copy

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of the confidential information.

5. The confidential information provided pursuant to paragraph 4 of this order shall be retained by the individual signing the notification and agreement. The requesting party may review the confidential information with or disclose the confidential information to only those employees of the requesting party with a legitimate need to know the confidential information for the purpose of preparation for the conduct of this proceeding.

6. If the commission, commission staff, or any party desires to make the confidential information available to any outside consultant, then such person shall submit to NET a notification and agreement by certified or receipt mail in the form attached hereto as Attachment B, signed by an appropriate agent and by the other employee or outside consultant. Upon verifying that NET has received this notification and agreement, such party may provide the employee or outside consultant with one copy of the confidential information.

7. The confidential information shall be delivered to the commission, the commission staff, requesting parties, and appropriate agents or consultants (authorized persons) in a relationship of confidence. The authorized persons shall preserve that confidence. Specifically, the authorized persons shall not disseminate or otherwise disclose any of the confidential information to any other person, except as expressly authorized by this order. For the purpose of this order, the term "person" shall refer to any individual, corporation, partnership, joint venture, or other entity or association.

8. To prevent inadvertent or inappropriate disclosure, the authorized persons shall use their best efforts to safeguard the confidential information from of any unauthorized person. In particular, the authorized persons shall not permit the confidential information to be read, copied, duplicated, or otherwise reproduced, other than as set forth herein.

9. The authorized persons may take notes regarding the confidential information solely for

the purposes expressly authorized by this order, and such notes shall be treated the same way as the confidential information itself under this order.

10. If any party or the commission staff desires to place some or all of the confidential information into the record in this docket in a manner which, in the absence of this order, would place such confidential information in the public record, then such party shall notify the commission that such confidential information is to be filed or otherwise introduced and should be placed by the commission in a sealed record. The commission shall insure that such confidential information is placed in a sealed record and is available for review solely by the authorized persons. Confidential information placed in a sealed record shall not be made part of the public record except upon consent of NET or upon commission order (and, if applicable, exhaustion of any appeals by NET) after notice to all parties and opportunity to be heard. The provisions of this order governing sealed records shall survive the conclusion of this docket. If this matter is appealed, then the commission may provide those portions of the sealed record on which it relied to the reviewing court on appeal after NET has had an opportunity to obtain a ruling on a request for a protective order from the reviewing court.

11. Upon conclusion of this docket, including any appeals that may be taken, the confidential information, other than the confidential information which has been made part of the formal record in this case in a sealed record, shall be returned to NET. Any notes taken with regard to the confidential information by a party or its agents (other than those notes which constitute attorney work-product) shall be destroyed or, at the election of the party, placed in a sealed record in accordance with the provisions of paragraph 9 of this order, and the party shall advise NET when this has been done.

12. In the event that any of the confidential information is released or otherwise becomes publicly available other than as a result of a violation of this order or the breach of a confidentiality agreement with NET or other unlawful means, the confidentiality provisions of this order shall cease with respect to such confidential information but shall remain in full force and effect as to the confidential information not so released or made publicly available.

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13. Nothing herein constitutes a waiver of the rights of any party at any time to contest any assertion or to appeal any finding that specific information is or is not appropriately designated as confidential information or that it should or should not be subject to this order. All parties shall further retain the right to question, challenge, or object to the admissibility of any and all of the confidential information on any available grounds, including but not limited to competency, relevancy and material.

14. Nothing contained in this order shall limit the parties' or the commission staff's respective rights to request production of some or all of the confidential information in any other proceeding, and NET expressly reserves the right to object to such requests, if it considers objections appropriate, at that time.

The commission, on review of the documents, or on motion by a party, may review the appropriateness of continued confidentiality in this matter and may issue appropriate amendments to this order after notice and hearing.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that NET's proposed protective order is denied; and it is

FURTHER ORDERED, that the foregoing report is adopted governing the standards to applied to requests for confidentiality and to protect material found confidential.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 1989.
[ms pgs 13-14 to be shot]

(Table 14)

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NH.PUC*09/27/89*[51825]*74 NH PUC 314*Granite State Electric Company

[Go to End of 51825]

74 NH PUC 314

Re Granite State Electric Company

DR 88-171
Order No. 19,539

New Hampshire Public Utilities Commission

September 27, 1989

ORDER requiring an electric utility to file revised purchased power cost adjustment rates to reflect changes in the rates billed to it by its wholesale power supplier and directing the utility to file a plan to refund overcollections.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Rate revision — Electric utility.

[N.H.] An electric utility was directed to file revised purchased power cost adjustment rates to reflect changes in the rates billed to it by its wholesale power supplier. p. 314.

2. CONSERVATION, § 1 — Funding mechanism — Electric utility.

[N.H.] In requiring an electric utility to file revised purchased power cost adjustment (PPCA) rates to reflect changes in the rates billed to it by its wholesale power supplier, the commission rejected a proposal by the utility to keep its current PPAC rates in effect until its next superceding PPCA rate and to use the revenue differential between the existing and revised rates

to fund its conservation and load management programs; the commission found that proposal would violate the standard that rates be cost reflective. p. 314.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 57 — Overcollections — Refund — Purchased power adjustment clause — Electric utility.

[N.H.] An electric utility was directed to refund to ratepayers purchase power cost adjustment rate overcollections. p. 314.

By the COMMISSION:

ORDER

WHEREAS, on September 1, 1989, Granite State Electric Company (Granite State) filed tariff revisions to reflect the recent changes in the W-10 rates billed to Granite State by its wholesale power supplier, New England Power Company (NEP) on its Purchased Power Cost Adjustment (PPCA), with an effective date of October 1, 1989; and

[1-3] WHEREAS, Granite State proposes in the alternative that the currently effective W-10 PPCA be allowed to remain in effect until its next superceding PPCA rate and that the revenues from the differential between the W-10 PPCA and the revised W-10 PPCA be accumulated in a separate account to fund Granite State's 1990 Conservation and Load Management (CLM) Programs; and

WHEREAS, Granite State contends that their alternative proposal would contribute to rate stability by avoiding a rate decrease due to the W-10 rate changes and refund on October 1, 1989, followed by a rate increase due to the CLM expenditures on January 1, 1990; and

WHEREAS, Granite State has brought to the attention of the commission staff a number of minor typographical errors in the filing; and

WHEREAS, NEP submitted to the FERC on August 1, 1989 a filing to increase its wholesale rates, and proposed that its Rate W-11 (a) be allowed to go into effect on January 1, 1990; and

WHEREAS, the commission appreciates the validity of Granite State's concern over rate stability but judges that the standard that rates be cost reflective and that customers be aware of the costs of the programs providing their electric service are of greater import in the instant proceeding; and

WHEREAS, the timing of the effect of Rate W-11 (a) and its subsequent effect on Granite State's PPCA is uncertain, in part due to

motions by intervenors for a five month suspension period; and

WHEREAS, Granite State must refund to its customers the $187,877 paid it by NEP to refund NEP's overcollections for the months of May and June and must further refund the PPCA overcollections with interest under its rate W-10 PPCA through the effective date of the instant tariff revisions; and

WHEREAS, Granite State must reconcile the incremental PPCA revenues with incremental purchased power expenses, including the seasonal and marginal effects that are due to the discrepancy between NEP's marginal cost based wholesale rates paid by Granite State and Granite State's average cost based retail rates paid by the retail customers; and

WHEREAS, the extent of reconciliation would be mitigated if the marginal and seasonal price signals of the wholesale rate were reflected in the retail rate design; it is therefore

ORDERED, that Granite State tariff revisions reflecting the recent changes in the W-10 rates be, and hereby are, approved and Granite State file new tariff pages effective October 1, 1989 corrected for the typographical errors, designated in accordance with Puc Rule §1601.5 (h) and annotated in accordance with Puc Rule §1601.4 (b); and it is

FURTHER ORDERED, that Granite State file a refund plan to refund the NEP overcollection of $187,877, as well as the known Granite State PPCA overcollection for July and August 1989 and an estimate for September 1989; and a tariff supplement reflecting the refund in accordance with Puc Rule §1601.5 (m), such refund to be completed in three months; and it is

FURTHER ORDERED, that Granite State periodically reconcile between its incremental PPCA revenues and its incremental purchased power expenses but that it file by July 1, 1990 retail rate design changes to reflect the price signals of the wholesale rate in the retail tariff in order to mitigate the size of the reconciliation.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1989.

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NH.PUC*09/27/89*[51826]*74 NH PUC 315*Concord Electric Company

[Go to End of 51826]

74 NH PUC 315

Re Concord Electric Company

DF 89-127
Order No. 19,540

New Hampshire Public Utilities Commission

September 27, 1989

ORDER authorizing an electric utility to issue and sell up to $5 million in short-term debt.

SECURITY ISSUES, § 44 — Authorization — Short-term debt — Electric utility.

[N.H.] An electric utility was authorized to issue and sell up to $5 million in short-term debt to meet current and future working capital requirements, provide needed financial flexibility, and optimize the cost and timing of future long-term financing; the commission found that the

requested borrowing authority was in the public good.

By the COMMISSION:

ORDER

WHEREAS, Concord Electric Company, a subsidiary of Unitil Corporation, a public utility company engaged in the business of purchasing, transmitting, transforming and distributing electricity in the State of New Hampshire, filed a petition for authority to issue securities on July 27, 1989; and

WHEREAS, Concord Electric Company states that as of May 31, 1989 it had outstanding short-term notes in the amount of $2,423,906; and

WHEREAS, Concord Electric Company proposes to issue and sell from time to time and renew, up to $5,000,000 of notes, bonds, or other evidences of indebtedness payable less than twelve months; and

WHEREAS, Concord Electric Company has a present authority to issue up to

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$3,000,000 of notes, bonds, or other evidences of indebtedness and is hereby seeking authority to issue up to an additional $2,000,000 of such indebtedness; and

WHEREAS, Concord Electric Company states that the increase will help meet current and future working capital requirements and give needed financial flexibility to optimize the cost and timing of future long term financings; and

WHEREAS, Concord Electric Company states that with growth in customers and kilowatt-hour sales over the last several years, accompanied by the related need for additional capital additions to satisfy these requirements, interim funding requirements have grown; and

WHEREAS, Concord Electric Company states that the Board of Directors have authorized said petition and has supplied certification of that vote; and

WHEREAS, the commission on August 14, 1989, issued data requests in connection with staff investigation of this matter; and

WHEREAS, Concord Electric company filed responses to said data requests on September 7, 1989; and

WHEREAS, the commission has investigated this matter including the petition and the responses to staff data requests; and

WHEREAS, it appears that the proposed uses for the requested borrowing are reasonable under all circumstances, and appear to be in the public good; it is hereby

ORDERED, that Concord Electric Company be, and hereby is, Authorized to issue and sell, and from time to time renew, up to five million dollars ($5,000,000) of notes, bonds, and other evidences of indebtedness payable less than twelve months from the date thereof at current interest rates and upon terms and conditions and for the purposes as set forth in the Concord

Electric Company petition and its attached exhibits; and it is

FURTHER ORDERED, that Concord Electric Company first obtain approval of this commission before incurring short-term indebtedness in excess of the amount allowed by the terms of this order; and it is

FURTHER ORDERED, that on or before January 1st and July 1st in each year, Concord Electric Company shall file with this commission a detailed statement, duly sworn to by its treasurer, showing the disposition of proceeds of the notes herein authorized until the expenditure of the whole of said proceeds shall have been accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1989.

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NH.PUC*09/27/89*[51827]*74 NH PUC 316*Exeter and Hampton Electric Company

[Go to End of 51827]

74 NH PUC 316

Re Exeter and Hampton Electric Company

DF 89-128
Order No. 19,541

New Hampshire Public Utilities Commission

September 27, 1989

ORDER authorizing an electric utility to issue and sell up to $5 million in short-term debt.

SECURITY ISSUES, § 44 — Authorization — Short-term debt — Electric utility.

[N.H.] An electric utility was authorized to issue and sell up to $5 million in short-term debt to meet current and future working capital requirements, provide needed financial flexibility, and optimize the cost and timing of future long-term financing; the utility was required to file with the commission a detailed statement showing the disposition of the proceeds from the short-term notes.

By the COMMISSION:

ORDER

WHEREAS, Exeter & Hampton Electric Company, a subsidiary of Unitil Corporation, a public utility company engaged in the business of purchasing, transmitting, transforming and

distributing electricity in the State of New Hampshire, filed a petition for authority to issue securities on July 27, 1989; and

WHEREAS, Exeter & Hampton Electric Company states that as of May 31, 1989 it had outstanding short-term notes in the amount of $2,751,558; and

WHEREAS, Exeter & Hampton Electric Company proposes to issue and sell from time to time and renew, up to $5,000,000 of notes, bonds, or other evidences of indebtedness payable less than twelve months; and

WHEREAS, Exeter & Hampton Electric Company has a present authority to issue up to $3,000,000 of notes, bonds, or other evidences of indebtedness and is hereby seeking authority to issue up to an additional $2,000,000 of such indebtedness; and

WHEREAS, Exeter & Hampton Electric Company states that the increase will help meet current and future working capital requirements and give needed financial flexibility to optimize the cost and timing of future long term financings; and

WHEREAS, Exeter & Hampton Electric Company states that with growth in customers and kilowatt-hour sales over the last several years, accompanied by the related need for additional capital additions to satisfy these requirements, interim funding requirements have grown; and

WHEREAS, Exeter & Hampton Electric Company states that the Board of Directors have authorized said petition and has supplied certification of that vote; and

WHEREAS, the commission on August 14, 1989, issued data requests in connection with staff investigation of this matter; and

WHEREAS, Exeter & Hampton Electric Company filed responses to said data requests on September 7, 1989; and

WHEREAS, the commission has investigated this matter including the petition and the responses to staff data requests; and

WHEREAS, it appears that the proposed uses for the requested borrowing are reasonable under all circumstances, and appear to be in the public good; it is hereby

ORDERED, that Exeter & Hampton Electric Company be, and hereby is, Authorized to issue and sell, and from time to time renew, up to five million dollars ($5,000,000) of notes, bonds, and other evidences of indebtedness payable less than twelve months from the date thereof at current interest rates and upon terms and conditions and for the purposes as set forth in the Exeter & Hampton Electric Company petition and its attached exhibits; and it is

FURTHER ORDERED, that Exeter and Hampton Electric Company first obtain approval of this commission before incurring short-term indebtedness in excess of the amount allowed by the terms of this order; and it is

FURTHER ORDERED, that on or before January 1st and July 1st in each year, Exeter and Hampton Electric Company shall file with this commission a detailed statement, duly sworn to by its treasurer, showing the disposition of proceeds of the notes herein authorized until the expenditure of the whole of said proceeds shall have been accounted for.

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

September, 1989.

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NH.PUC*09/27/89*[51828]*74 NH PUC 317*New England Telephone and Telegraph Company, Inc.

[Go to End of 51828]

74 NH PUC 317

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,542

New Hampshire Public Utilities Commission

September 27, 1989

ORDER overruling a local exchange telephone carrier's "general objections" to a discovery request.

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1. PROCEDURE, § 16 — Discovery and inspection — Compliance — Legal standards.

[N.H.] Compliance with discovery in legal proceedings involves full disclosure of all requested information which the party has at the time of the discovery request; a party has a duty

to find out and provide what is in his or her own records and what is within the knowledge of his or her agents and employees. p. 319.

2. PROCEDURE, § 16 — Discovery and inspection — Compliance — Objections — Burden of disclosure.

[N.H.] Where interrogatories are relevant, the fact that answering them would be burdensome and expensive would not in itself be a reason to refuse ordering discovery which otherwise would be appropriate; furthermore, an objection on the grounds that a request is unduly burdensome would seldom be sustained where the information sought to be discovered lies wholly within the knowledge of the interrogated party and the information would not be revealed at all unless that party were made to bear the burden of disclosure. p. 319.

3. PROCEDURE, § 16 — Discovery and inspection — Attorney work product — Disclosure.

[N.H.] A claim of attorney work product is not a complete bar to discovery; disclosure of attorney work product may be compelled if relevant facts are unobtainable by other means, or are obtainable only under such conditions of hardship as would tend to unfairly prejudice the party seeking discovery. p. 319.

4. PROCEDURE, § 16 — Discovery and inspection — Objections — Legal basis.

[N.H.] The commission overruled a local exchange telephone carrier's "general objections" to a discovery request finding that the carrier must state specific objections together with the specific legal basis upon which the objections to discovery rest. p. 319.

By the COMMISSION:

REPORT CONCERNING DISCOVERY

I. *Background*

NET filed general objections to the staff's data requests on June 6, June 22, July 19, July 24, July 25, July 28, August 11, 1989, August 18, 1989, August 24, 1989, August 25, 1989 and August 28, 1989; to the consumer advocate's data requests on July 17, August 11, 1989 and August 25, 1989; to Union Telephone Company's data requests on August 28, 1989; to VOICE's data requests on August 25, 1989 and August 29, 1989; and to Bower, Rohr, and Associates on August 25, 1989. NET stated that these general objections apply to each data request.

These general objections object to each data request to the extent they seek the following:

1) To compel NET to question each of its employees and to examine each document in its possession or otherwise available to it. NET avers that it is only required to make inquiries of those employees who reasonably may be expected to possess the requested information and to review only those documents which may reasonably be expected to contain the requested information. It contends that to do more would be overly broad, unduly burdensome, vague, and oppressive, would not be stated with sufficient specificity to permit NET to perform a reasonable inquiry and review, and would not be likely to result in the production of admissible evidence or information which is reasonably calculated to lead to the discovery of admissible evidence inasmuch as it was not used or relied upon by NET in this case.

2) To compel NET to provide information which is beyond the proper scope of discovery because it is protected by the attorney-client privilege.

3) To compel NET to provide information which is beyond the proper scope of discovery because it was prepared in anticipation of litigation or for trial, or which constitutes attorney's work product.

4) To compel NET to provide legal conclusions which are not appropriately addressed to a lay witness. NET further objects to these requests to the extent that they attempt to require NET to function as counsel for the

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Office of the Consumer Advocate; Union Telephone; VOICE; Bower, Rohr, and Associates; and the staff and to the extent that legal analyses are not an appropriate subject for data requests.

II. *Commission Analysis*

[1-4] Compliance with discovery in legal proceedings involves full disclosure of all requested information which the party has at the time of the discovery request. See e.g.,

Kearsarge Computer, Inc. v. Acme Staple Co., 116 N.H. 705, 707, — A.2d — (1976). A party has a duty to find out and provide what is in his or her own records and what is within the knowledge of his or her agents and employees. *Id.*

The case law discussed above indicates that NET has a duty to find out and provide what is in its records and what is within the knowledge of its agents and employees. Therefore, we will overrule NET's objection. NET misrepresents the request of the staff. The staff in its cover letter asks that NET furnish all information in its possession including that information in the possession of its employees. This does not mean that NET must ask all of its 28,000 employees each question and examine each document in their possession. However, it does expect that they will provide all information which is in its records which is within the knowledge of its agents and employees. Where interrogatories are relevant, the fact that answering them will be burdensome and expensive is not in itself a reason to refuse ordering discovery which is otherwise appropriate. *Kainz v. Anheuser-Busch, Inc.*, 15 F.R.D. 242 (D. Ill. Feb. 17, 1954). Further, an objection on the grounds that a request is unduly burdensome will seldom be sustained where the information sought to be discovered lies wholly within the knowledge of the interrogated party and will not be revealed at all unless that party bears the burden of disclosing it. *Id.*

We will overrule all of NET's "general objections" as overly broad. The general objections do not indicate what specific objection NET will make to any given question. We have reviewed the questions in the case and have discovered that the general objections could not apply to every data response in the case. For example, in NET's recent responses filed, August 18, 1989, (staff's data requests, set 4, nos. 292, 293, 298, 299, 303, 310), none of these requests on their face request information which is protected by the attorney-client privilege, or the attorney work product privilege, or which calls for legal conclusions, attempts to require NET to function as counsel for staff, or involves legal analysis.

A concise statement of the law concerning attorney client privilege and attorney work product is set forth in *Riddle Spring Realty Co. v. State*, 107 N.H. 271, — A.2d — (1966). In *Riddle*, the court distinguishes attorney client privilege from attorney work product. *Id.* at 273-274 and 274-277. NET's objections shall distinguish between objections based on attorney client privilege and those based on attorney work product.

The claim of attorney work product is not a complete bar to discovery. *Id.* at 275. Disclosure of attorney work product may be compelled.

> [i]f such relevant facts are unobtainable by other means, or are obtainable only under such conditions of hardship as would tend unfairly to prejudice the party seeking discovery ....

Id. at 275 (citations omitted). We must determine this, in our discretion, by considering "the reasons which motivate the protection of the work product of the lawyer together with the desirability of giving every plaintiff and defendant an adequate opportunity to properly prepare his case before trial." *Id.* at 276 (citations omitted). Therefore, NET shall provide the reasons motivating the protection of all alleged attorney work products.

NET has not provided a legal basis for its objections concerning whether legal analysis should be produced. We will assume, that NET is relying on RSA 516:23. RSA 516:23 states

that "[n]o party shall be compelled, in testifying or giving a deposition, to disclose... the manner in which he proposes to prove his case ...."

Riddle, at 276 addresses when evidence is

exempt from discovery under RSA 516:23. There are many cases which narrow the application of RSA 516:23. See *e.g., Humphreys Corp. v. Margo Lyn Co.*, 109 N.H. 488, 256 A.2d 149 (1969) (this section does not prevent incidental disclosure of defendant's evidence necessary to plaintiff's case or discovery of evidence common to both parties' cases); *La Coss v. Lebanon,* 78 NH 413, 101 A. 364 (1917) (the court may order the production of certain writings in advance of trial although they were prepared by the defendant to preserve evidence on which he intends to rely in the trial of the case, if they are also material to the plaintiff's case and justice requires this production). NET shall provide analysis of these and all other pertinent statutes and cases in its objections.

By entering this order we have not ruled on any specific objections which NET has made to individual data requests. We will rule on these specific objections in future orders.

Because of the volume of data requests in this case, all future specific objections to interrogatories shall be set forth in a paper separate from answers given. Each objection and the grounds therefore shall be preceded by the interrogatory or request to which it is addressed.

NET has filed at least seventeen general objections to only five sets of staff data requests. It was administratively burdensome for the commission to review and compare all of these objections, most of which were simply copies of all the other objections. Therefore, NET shall file only one complete set of objections per each set of data requests.

NET's objections shall be due at the same time responses are due. If the objections are based on claims of confidentiality, they shall be adequately supported, (as discussed in our Report and Order Concerning Confidentiality) and set forth in a separate document from all other specific objections. If the objections are based on other claims, e.g., attorney client privilege, the applicable objections shall be specifically stated. It is not sufficient for NET to simply list all of the possible objections which it could apply to any data request. NET shall state the specific objections and the reason the information qualifies for this objection. It shall also state all legal precedent supporting the application of the objection to the information.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that New England Telephone and Telegraph's "general objections" to discovery are overruled; and it is

FURTHER ORDERED, that all future objections shall be governed by the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1989.

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NH.PUC*09/27/89*[51829]*74 NH PUC 320*Southern New Hampshire Water Company, Inc.

[Go to End of 51829]

74 NH PUC 320

Re Southern New Hampshire Water Company, Inc.

DR 89-103
Order No. 19,543

New Hampshire Public Utilities Commission

September 27, 1989

ORDER authorizing a water utility to increase the rates of one of its systems.

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1. RATES, § 171 — Reasonableness — Uniformity — Water utility.

[N.H.] Where the customers of two of the systems of a water utility received service off the same transmission line, it was deemed just and reasonable for the customers of the two systems to pay the same rate. p. 321.

2. DISCRIMINATION, § 184 — Rates — Water.

[N.H.] To alleviate rate discrimination, a water utility was authorized to charge customers receiving service off the same water transmission line the same rate. p. 321.

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APPEARANCES: Larry S. Eckhaus, Esq. on behalf of Southern New Hampshire Water Company, Inc.; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

In docket DE 88-077 and DE 88-078, order no. 19,168 (73 NH PUC 352 [1988]), the commission ordered, *inter alia*, Southern New Hampshire Water Company, Inc. (Southern) to connect the Stonegate system, a Policy Satellite system, to the Williamsburg system, a Satellite system. Southern complied with said order.

On July 20, 1989, Southern petitioned the commission for inclusion of the Stonegate service area and the main running between Stonegate and Williamsburg for inclusion within the Non-Policy Satellite system rates. Each of the customers in Stonegate were given individual

notice and a hearing was held on September 14, 1989, relative to Southern's petition.

II. *Position of the Parties*

Southern took the position that since Stonegate and those being serviced by the main running from Williamsburg to Stonegate were now receiving water from the Williamsburg system, they should be charged rates commensurate with the policy set in DR 87-135 and DR 88-055, that is, that since Stonegate and those receiving service off the transmission line from Williamsburg to Stonegate were receiving water from a Satellite system, they should be charged the Satellite rate. Staff did not object to the proposal submitted by Southern. None of the consumers affected by the proposed rate increase appeared at the hearing, although each was given individual notice.

III. *Findings of Fact*

In December of 1988, Southern interconnected the Stonegate system with the Williamsburg system in order to provide quality water to the Stonegate system, as the Stonegate system was suffering from inappropriate levels of radon and radium in its water supply. Southern attempted to alleviate these problems but was unsuccessful in its efforts. Furthermore, J. Michael Love, President of Southern New Hampshire Water Company, Inc. testified that it was neither technologically or economically feasible to try to treat the radon or radium in the policy water supply. Thus, it was necessary for Southern to connect Stonegate with the Williamsburg system as our order no. 19,168 in dockets DE 88-077 and DE 88-078 indicates.

IV. *Commission Analysis*

[1, 2] The commission finds it just, reasonable and consistent with the policies set in DR 87-135 and DR 88-055 for the customers along the transmission line from Williamsburg to Stonegate and the customers in Stonegate to pay the Satellite rates now being charged in the Williamsburg system. Furthermore, this rate increase will alleviate any rate discrimination between the Williamsburg and Stonegate customers. See RSA 378:10 and RSA 378:11.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that the petition of Southern New Hampshire Water Company, Inc. to increase the rates of the Stonegate system and the rates of those customers being served off the main interconnecting the Stonegate system with the Williamsburg system be granted; and it is

FURTHER ORDERED, that Southern submit tariff pages in compliance with this order.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1989.

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NH.PUC*09/28/89*[51830]*74 NH PUC 322*New England Telephone and Telegraph Company, Inc.

[Go to End of 51830]

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,544

New Hampshire Public Utilities Commission

September 28, 1989

ORDER approving a stipulation setting temporary rates for local exchange telephone service.

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1. RATES, § 630 — Temporary rates — Stipulation — Local exchange telephone carrier.

[N.H.] In order to avoid the potential complexity associated with refunds should a local exchange telephone carrier implement its filed rates under bond and to minimize the burdens associated with recoupment should existing rates remain in effect, the commission adopted a stipulated temporary increase in rates for local exchange telephone service. p. 323.

2. RATES, § 532 — Telephone rate design — Temporary rates — Stipulation — Local exchange carrier.

[N.H.] The commission approved a stipulated temporary increase in rates for local exchange telephone service consisting of $10,771,000 to be collected through an across-the-board increase in present rates by applying an approximately uniform percentage increase to all services and rate groups with the exception of local coin rates and services produced under contract. p. 323.

3. RATES, § 630 — Temporary rates — Stipulation — Recoupment — Local exchange telephone carrier.

[N.H.] Pursuant to a stipulation establishing temporary rates for local exchange telephone service, any refund or recoupment which may result should permanent rates be set at a level different than temporary rates would be based on the difference between the gross revenue increase authorized as temporary rates and the gross revenue increase authorized as permanent rates. p. 323.

4. RATES, § 85 — Commission powers — Temporary rates.

[N.H.] The power of the commission to set temporary rates is discretionary and should be exercised only when such rates are in the public interest. p. 324.

5. RATES, § 85 — Commission powers — Temporary rates — Duty to investigate.

[N.H.] The duty of the commission to investigate temporary rate requests is less than is required in setting permanent rates. p. 324.

APPEARANCES: John May, Esq. and John Reilly, Esq. on behalf of New England Telephone Company; Michael Holmes, Esq. the Consumer Advocate; Alan Linder, Esq. on behalf of Volunteers Organized in Community Education; Dorothy M. Bickford, Esq. of Shaheen, Cappiello, Stein and Gordon on behalf of Union Telephone; Frederick J. Coolbroth, Esq. of

Devine, Millimet, Stahl and Branch on behalf of Granite State Telephone Company and Merrimack Telephone Company.

By the COMMISSION:

REPORT ON TEMPORARY RATES

This report and order addresses the request of New England Telephone & Telegraph Company (NET) for temporary rates. It approves a stipulation of the parties setting temporary rates at an amount to produce an increase in intrastate revenues of $10,771,000.

I. *Procedural History*

On March 3, 1989, NET filed proposed

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permanent rate schedules, for effect April 2, 1989, to produce an increase in intrastate revenues of $21,187,000 (8.4%) after uncollectible and independent telephone company settlements.

By order no. 19,352 dated March 23, 1989, the commission suspended NET's proposed rate schedules pending investigation and decision thereon. By order no. 19,442 dated June 27, 1989 (74 NH PUC 195 [1989]), the commission established a procedural schedule which allowed for the filing of testimony on temporary rates by September 8, 1989 and scheduled a hearing on temporary rates on September 19, 1989.

On August 15, 1989, NET filed proposed temporary rate schedules for effect October 2, 1989, and supporting testimony, recommending an increase in intrastate revenues of approximately $15,700,000 after uncollectibles and independent telephone company settlements.

On September 8, 1989, staff filed testimony concerning NET's temporary rate request. On September 11, 1989, Staff filed revised testimony concerning NET's temporary rate request. In its testimony, staff suggested a temporary rate increase of $10,771,000.

On September 14, 1989, the parties met and discussed temporary rates. The following parties were represented at the meeting: New England Telephone and Telegraph Company (NET), the staff of the Public Utilities Commission (staff), Volunteers Organized in Community Education (VOICE), and the Office of the Consumer Advocate (OCA), MCI Communications Company, Inc., Union Telephone Company, Merrimack County Telephone Company, and Granite State Telephone Company.

As a result of that meeting NET, staff, OCA, and VOICE entered into a stipulation for the purpose of settling all temporary rate issues raised in this docket. The remaining parties either did not oppose or did not take a position on the stipulation.

II. *Positions of the Parties*

At the hearing, NET, Staff, OCA, and VOICE supported the stipulation. No other party appeared in opposition to the stipulation.

III. *Findings of Fact*

[1-3] Since the provisions of the stipulation were not contested they are set forth below as

our findings of fact.

In order to avoid the potential complexity associated with refunds should the company implement its filed rates under bond pursuant to RSA 378:6 and to minimize the burdens associated with recoupment should existing rates remain in effect, NET, staff, VOICE, and OCA recommended a temporary increase in rates of $10,771,000 to be collected through an across-the-board increase in present rates by applying an approximately uniform percentage increase to all services and rate groups with the exception of local coin rates and services provided under contract. No other change will be made in rate design as part of the temporary rates. (The calculation of the revenue requirement and the distribution of the rates among rate classes are described in Appendices A & B to the stipulation.)

NET, Staff, VOICE, and OCA proposed that the increase be effective for services rendered on and after October 2, 1989.

NET, Staff, VOICE, and OCA agreed that the amount of any refund or recoupment which may result should permanent rates be set at a level different than temporary rates should be the difference between the gross revenue increase authorized as temporary rates and the gross revenue increase authorized as permanent rates. They also agreed that any refund to or recoupment from customers should be made, equally on a per access line basis, over a period of time and in a manner to be prescribed by the commission in our order establishing permanent rates.

The stipulation was the result of negotiation and compromise, was without prejudice to the rights of any party to make any contention respecting any other issues in this docket and was without precedent for the final determination of revenue requirement, rate design or any other issue in this proceeding. NET's acceptance of this across-the-board increase was based upon its earnings requirements, the temporary nature of the increase, consideration of the commission's practice of implementing

temporary rate increases across-the-board and a desire to facilitate the resolution of the temporary rate increase issue so that the parties can adequately address the issues in its permanent rate increase request.

IV. *Commission Analysis*

[4, 5] Under RSA 541-A:16V, informal disposition may be made of any contested case by stipulation. The commission may set temporary rates pursuant to RSA 378:27. 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 Company of New Hampshire v. State*, 102 N.H. 66, 70, 28 PUR3d 404, 150 A.2d 810 (1959).

Our review shows that rates set at the level and in the manner agreed by the parties would be just and reasonable and in the public interest. We note that the rates were agreed to by the consumer advocate and VOICE, and were not opposed by other parties. For these reasons, we approve the stipulation. The temporary rates shall become effective for service rendered on and

after October 2, 1989.

We are aware of many public concerns about the effect NET's labor dispute may have on levels of service and consequent rates. Due to the complexities of the ratemaking process, and the aforementioned stipulation of the parties regarding temporary rates, we will defer consideration of these issues to the permanent rate procedure.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that New England Telephone and Telegraph Company (NET) shall be authorized to file and implement temporary rates for service rendered on and after October 2, 1989 in accordance with the stipulation approved in the foregoing report; and it is

FURTHER ORDERED, that NET shall file, on or before October 2, 1989, tariffs in compliance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of September, 1989.

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NH.PUC*09/28/89*[51831]*74 NH PUC 324*Southern New Hampshire Water Company, Inc.

[Go to End of 51831]

74 NH PUC 324

Re Southern New Hampshire Water Company, Inc.

DF 89-169
Order No. 19,545

New Hampshire Public Utilities Commission

September 28, 1989

ORDER authorizing a water utility to increase its short-term debt limit for a period of 35 days.

SECURITY ISSUES, § 48 — Authorization — Plans and purpose — Bond redemption — Short-term debt.

[N.H.] A water utility was authorized to increase its short-term debt limit for a period of 35 days to enable it to comply with a prior order requiring it to redeem its Series E bonds; the short-term debt limit would revert to its previously authorized level at the end of the 35-day period.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company (hereafter called "Southern" or "the Company") filed on September 22, 1989 an emergency petition for authority to have a thirty-five (35) day temporary increase in Southern's debt limitation from $6,350,000 to $7,650,000; and

WHEREAS, the New Hampshire Public Utilities Commission (hereafter referred to as

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"the commission") in Order No. 19,509 (74 NH PUC 279) approved the issuance of Series H Bonds; and

WHEREAS, the Company now avers that it has the interest coverage necessary to issue its bonds on an expedited basis; and

WHEREAS, the Company has a Series E Bond issue due October 1, 1989 in the amount of $1,200,000 bearing interest at 14.75%; and

WHEREAS, the Company states that its historical corporate legal counsel resigned during the debt financing process; and

WHEREAS, the Company has performed various bond legal work in house and has retained new bond counsel; and

WHEREAS, the new bond counsel is performing various work in order to issue their needed opinions; and

WHEREAS, the Company has arranged for a closing of its Series H financing between October 10, 1989 and October 24, 1989; and

WHEREAS, by Order No. 19,509 the commission set the level of short term debt at $5,900,000 as of the date of the closing of the Series H financing; and

WHEREAS, the Company must repay its Series E bonds in order to comply with the commission Order No. 15,509; and

WHEREAS, the Company has arranged with its parent company, Consumers Water Company, to issue to Consumers its short term debt in the amount of $1,200,000 for a thirty (30) day period at an interest rate of prime; and

WHEREAS, the Company will use the $1,200,000 to pay off its Series E bonds; and

WHEREAS, the Company purports that the issuing of this short term debt it will be over its authorized short-term debt limit established by the commission for a period of approximately thirty five days; and

WHEREAS, the Company further purports that it will use the short term debt to pay off its Series E Bond; it is

ORDERED, that Southern New Hampshire Water Company is authorized to increase its short term debt limit from $6,350,000 to $7,650,000 for a period of thirty-five days from the date of this order; and it is

FURTHER ORDERED, that the Company may issue to its parent company $1,200,000 of short term debt at the prime rate for a period of thirty-five (35) days; and it is

FURTHER ORDERED, that the Company will use this short term debt to redeem its Series E Bonds; and it is

FURTHER ORDERED, that at the end of the thirty five day period the Company will redeem its short term debt and that its short term debt limit will revert back to $5,900,000; and it is

FURTHER ORDERED, that at the end of the thirty five day period the Company will certify under oath to this commission by its Treasurer or Assistant Treasurer the details of this transaction and that its short term debt is at or below its authorized level.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of September, 1989.

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NH.PUC*09/29/89*[51832]*74 NH PUC 325*Granite State Electric Company

[Go to End of 51832]

74 NH PUC 325

Re Granite State Electric Company

DR 89-075
Order No. 19,546

New Hampshire Public Utilities Commission

September 29, 1989

ORDER approving the least-cost integrated resource planning process of an electric utility and accepting the long-term avoided cost estimates provided by the utility for use as a basis for its power purchase negotiations with qualifying facilities.

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1. COGENERATION, § 17 — Contracts — Power purchase negotiations — Integration into long-term resource planning.

[N.H.] The proper goal of commission policy regarding short- and long-term utility purchases of energy and capacity from qualifying facilities (QFs) is the integration of QFs into each utility's long-term resource planning

process in an efficient and equitable manner; acceptance of a utility's long-term resource plan indicates that the utility's resource planning process is adequate, but acceptance does not constitute approval of a specific resource included in the plan. p. 328.

2. ELECTRICITY, § 4 — Least-cost planning — Review process — Effect of approval.

[N.H.] The least cost planning review process employed by the commission is not what has been characterized in other jurisdictions as a "pre-approval process"; the commission will review and analyze the prudence of any particular resource option when the utility brings it before the commission in a cost recovery or rate proceeding. p. 328.

3. ELECTRICITY, § 4 — Least-cost planning — Filing requirements.

[N.H.] Electric utilities are required to file reports in seven areas to document their least cost integrated planning processes: (1) forecasts of future demand; (2) assessments of demand-side options; (3) assessments of supply-side options; (4) assessments of transmission requirements, limitations and constraints; (5) integration of demand- and supply-side resource options; (6) two-year implementation plans; and (7) avoided cost forecasts. p. 328.

4. ELECTRICITY, § 4 — Least-cost planning — Filing requirements — Documentation.

[N.H.] In documenting its least cost integrated planning processes, an electric utility must file testimony in three areas: (1) testimony indicating whether it needs additional capacity in the next eight years and whether qualifying facility (QF) capacity could meet that need: (2) testimony documenting its integrated least-cost resource plan for providing all aspects of its energy resource needs; and (3) testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs, if the utility has a need for additional capacity in the next eight years. p. 329.

5. ELECTRICITY, § 4 — Least-cost planning — Review criteria.

[N.H.] In reviewing electric utility least-cost integrated resource plans, the commission looks for (1) *completeness* in meeting reporting requirements, (2) *comprehensiveness* in the assessment of resource options, (3) *integration* of demand- and supply-side options in the planning process, (4) *feasibility* of implementation, and (5) *adequacy* of the planning process in providing for resources in a timely manner sufficient to meet the electricity and energy service needs of customers. p. 329.

6. ELECTRICITY, § 4 — Least-cost planning — Approval.

[N.H.] The integrated least-cost resource plan of an electric utility was accepted and approved as fulfilling the requirements of a prior order (73 NH PUC 117) that established a commission policy for future utility purchases from qualifying facilities and established biennial least-cost integrated planning filing requirements; the commission noted that acceptance of the plan did not constitute approval of specific options in the plan, which would be judged in the context of a rate case or similar proceeding on the basis of the prudence of the specific options. p. 331.

7. COGENERATION, § 25 — Rates — Avoided cost — Contract negotiations.

[N.H.] The long-term avoided cost estimates provided by an electric utility in its least-cost integrated resource plan were approved for use as a basis for negotiations with qualifying facilities; however, the utility was directed to meet with commission staff prior to its next short-term avoided cost filing to resolve inconsistencies in its estimation of avoided costs. p. 333.

APPEARANCES: Philip H.R. Cahill, Esq. and Kathryn J. Reid, Esq. for Granite State Electric Company; Elaine Planchet for the

Consumer Advocate; Janet Gail Besser and Dr. Sarah P. Voll for the commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On April 7, 1988, the commission issued report and order no. 19,052 (73 NH PUC 117) in the consolidated dockets DR 86-41, 86-69, 86-70, 86-71 and 86-72 (DR 86-41, *et al.*). Order no. 19,052 established a new commission policy for future utility purchases of power from qualifying facilities (QFs) and requirements for biennial least cost integrated planning (LCIP) filings by the utilities.

Staff held a workshop for the utilities on April 21, 1988 concerning the utilities' biennial LCIP filings and on April 28, 1988 formally requested a compliance report from each utility relating to the requirements of order no. 19,052. Following receipt of the compliance reports, on August 10, 1958 the commission issued order no. 19,141 (73 NH PUC 285), which established the following filing dates:

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

	DATE
1. Updated estimates of the utilities' long term avoided costs along with a description of procedures being used to secure power purchase arrangements with QFs	October 1, 1988
2. Compliance with the other reporting requirements of order no. 19,052	April 30, 1989 and April 30 of every even-numbered year thereafter
3. Compliance with requirements regarding short term avoided cost calculations	December 1988 and thereafter as part of fuel adjustment charge and energy cost recovery mechanism proceedings

Order no. 19,141 also officially closed consolidated dockets DR 86-41 *et al.*

On September 30, 1988 Granite State Electric Company (Granite State or the company) filed updated estimates of its long term avoided costs. As indicated in order no. 19,141, the commission did not initiate a formal proceeding to review these estimates. Rather, the estimates were to serve as a bridge for moving toward full compliance and implementation of order no.

19,052 by providing current avoided cost information needed by QFs to compete effectively with the utilities' other resource options.

On December 2, 1988 Granite State filed short term avoided cost estimates as part of its fuel adjustment charge proceeding, DR 88-174. These rates were approved in order no. 19,284 issued January 5, 1989 (74 NH PUC 8).

On February 13, 1989 staff held a joint meeting for all of the utilities to discuss compliance with the other reporting requirements of order no. 19,052. At this meeting staff reviewed the requirements of the order and indicated to the utilities the basic criteria the commission would be using to assess the utilities' filings. On February 16, 1989 staff met with Granite State to discuss the status of its least cost planning efforts and the preparation of the reports required by order no. 19,052.

On March 31, 1989 a second general meeting was held with the utilities to which the

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parties from consolidated dockets DR 86-41 *et al.* were also invited. In addition, each utility was asked to invite all of the QFs from which it purchases power. Staff also invited others who it thought would be interested in least cost planning in New Hampshire, including conservation organizations such as the Conservation Law Foundation.

On May 1, 1989 Granite State filed its Integrated Least Cost Resource Plan for the fifteen year period 1989-2003. An order of notice in the instant docket was issued June 6, 1989 setting the procedural schedule.

Staff explored technical issues of the filing by means of data requests and a prehearing conference on July 6, 1989. The hearing on the merits of Granite State's Integrated Resource Plan was held on July 19, 1989.

II. SUMMARY OF THE COMMISSION'S LCIP FILING REQUIREMENTS

A. *THE COMMISSION'S OBJECTIVE*

[1, 2] The goal of the commission's order no. 19,052 was to establish a process whereby we could review and evaluate the context in which utilities were negotiating and contracting for power purchases from QFs. In order no. 19,052, the commission recognized that the QF industry had evolved over the then ten years it had been in existence and that this evolution warranted a change in commission policy toward increased flexibility and direct negotiations between utilities and QFs. However, we also noted that we did not believe such a flexible system could be implemented effectively absent a commission approved framework. We found that "the proper goal for commission policy regarding short 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." P.7. The objective, therefore, of the commission's review of the utilities' least cost integrated resource plans is to evaluate whether they are planning properly.

We note that our acceptance of a utility's least cost resource plan indicates that the utility's

resource planning *process* is adequate. Acceptance of a particular filing does not constitute approval of specific resources included in the plan. We emphasize that our least cost planning review process is not what has been characterized in other jurisdictions as a "pre-approval process." The commission will review and analyze the prudence of any particular resource option when the utility brings it before us in a cost recovery or rate proceeding.

B. *THE REQUIREMENTS OF ORDER NO. 19,052*

[3] The utilities are required to file reports in seven areas to document their least cost integrated planning processes. Order no. 19,052 outlines the commission's requirements for these seven reports:

1. *Forecast of Future Demand*

a) 15 year;

b) high, low, most likely cases;

c) system and subsidiary level; and

d) include price and CLM effects.

2. *Assessment of Demand-Side Options*

a) include all reasonably available programs;

b) explicitly account for price-induced reductions;

c) explicitly account for program-induced reductions; and

d) description of program screening and evaluation methodology.

3. *Assessment of Supply-Side Options*

a) assess range of options;

b) include existing QFs under contract and as available;

c) describe the use of models; and

d) use minimization of present worth of revenue requirements as a criterion.

4. *Assessment of Transmission*

Requirements, Limitations and Constraints

a) include map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system within the forecast period; and

b) evaluate how new generation, regardless of ownership, will be incorporated into the transmission system.

5. *Integration of Demand- and Supply-Side Resource Opinions*

a) describe development of formal process for integration of cost-effective utility

demand- and supply-side resources;

b) demonstrate that utility has considered all of its resource needs;

c) use a dynamic, iterative process; and

d) include consideration of risk, sensitivity, uncertainty.

6. *Two-Year Implementation Plan*

a) include short-term forecast at system and subsidiary levels;

b) describe how optimal mix of demand and supply resources will be developed over next two years; and

c) specify models, data, equipment, personnel and facilities utility will use or require in implementation.

7. *Avoided Cost Forecasts*

a) 15-year avoided cost forecast based on most likely energy and demand forecasts;

b) consistent with DR 86-41 *et al.* Phase I methodology; and

c) exception to Phase I is that avoided costs flow from utility's resource plan.

[4] Order no. 19,052 also requires the utilities to file testimony in three areas:

1. The utility must file testimony indicating whether it needs additional capacity in the next eight years and whether QF capacity could meet that need.

2. The utility must file "testimony documenting... [its] integrated least-cost resource plan for providing all aspects of its energy resource needs." P. 23.

3. The utility must file "testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs." P. 24. This testimony is required only if the utility has a need for additional capacity in the next eight years.

C. *THE COMMISSION'S REVIEW CRITERIA*

[5] The commission reviews the utilities' least cost planning filings according to the criteria indicated by the requirements of order no. 19,052. First, the commission looks for *completeness* in meeting the reporting requirements. Has the utility included all of the required reports and addressed all of the specified areas in them?

Second, the commission evaluates whether the utility's assessment of resource options is *comprehensive.* Has the utility considered all demand- and supply-side resource additions, including QFs?

Third, is the utility's planning process *integrated*? Has the utility evaluated its demand- and supply-side options in an equivalent manner and addressed issues of coordinated timing in the acquisition of one or more resources?

Fourth, is implementation of the utility's resource plan *feasible*? Does the utility's two-year implementation plan indicate that the utility is capable of pursuing the resource additions it has identified in the time available?

Fifth, is the utility's planning process *adequate*? Does it provide for resources in a timely manner sufficient to meet the electricity and energy service needs of its customers now and for the future?

III. SUMMARY OF GRANITE STATE'S FILING AND TESTIMONY

Granite State Electric Company is the retail subsidiary serving New Hampshire of New England Electric System (NEES), a

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holding company with generation, transmission and retail subsidiaries serving Massachusetts and Rhode Island as well as New Hampshire. Granite State represents approximately 3 percent of the NEES system in terms of both peak load and annual energy requirements. Granite State's resource needs are addressed as part of NEES' resource planning process which is what is described in Granite State's LCIP filing.

A. *NEED FOR ADDITIONAL CAPACITY IN THE NEXT EIGHT YEARS*

Granite State's testimony (Ex. III) and its Integrated Least Cost Resource Plan (Ex. I) indicate a need for capacity in the next eight years. NEES is currently purchasing approximately 360 megawatts of capacity on a short term basis. Ex. I, Vol. 1, p. 24. As NEES adds new resources to its system these purchases are projected to decrease. For the winter of 1989/90 NEES will meet its needs with a combination of 460 megawatts of short and long term capacity purchases. NEES projects its need for additional capacity to increase to 800 megawatts by 1993, and 1100 megawatts by 1997 through 2003. Ex. I, Vol. 2, Table 4.

B. *SUMMARY OF GRANITE STATE'S INTEGRATED LEAST-COST RESOURCE PLAN*

NEES plans to meet its resource needs with a combination of demand-side management (DSM), purchases from QFs, purchases from independent power producers and other utility systems, and the repowering of existing utility generation. Ex. I, pp. 20-21; Ex. III, p. 9.

With respect to demand-side management, NEES has recently completed a reassessment of its DSM programs through participation in a collaborative DSM program design and policy process with the Conservation Law Foundation. Ex. I, Technical Appendix G, p. 3. As a result of this process NEES has revised several existing programs and developed new ones. The majority of these programs are either available now or scheduled for implementation system-wide in 1990 and 1991. Tr. 15; Ex. II, SDRI-1. (A few will not be offered in Granite State's service territory because of the nature of its customer size and mix.) NEES projects that system-wide DSM resources will provide 300 megawatts of equivalent supply capacity by 1991, 773 megawatts by 1997, and over 1000 megawatts by 2003. Ex. I, Vol. 1, pp. 20, 23; Ex. III, p. 9.

NEES projects that QF and independent power projects will provide an additional 400 megawatts of capacity between 1992 and 1995. These projects were selected from more than 4700 megawatts of capacity offered in response to NEES' 1988 request for proposals. Three contracts representing a total of 123 megawatts have been signed and three more for about 77

megawatts are under negotiation. NEES expects to sign contracts for the remaining 200 megawatts by mid-1990. The three projects for which contracts have been signed are scheduled to come on-line between January 1, 1992 and June 1, 1993. Combined with projects now on-line (295 megawatts) or under contract (406 megawatts) (Ex. III, p. 12), and additional megawatts in the 1995 to 1997 time period, NEES expects QF projects to provide more than 1250 megawatts for its system by 2003.

NEES power purchases include both short and long term contracts. In the short term, NEES has contracted for 357 megawatts from five sources for the summer of 1989. A number of longer term purchases are already signed and others are being negotiated. NEES has a contract with Northeast Utilities for 236 megawatts until 1992, while an additional 245 megawatts will become available in late 1989, declining to 49 megawatts by 1994. A 90 megawatt purchase through early 1994 is currently under negotiation. Fifty-eight megawatts will be available from Ocean State Power I in late 1990, while Ocean State Power II, with an in-service date of mid-1991, will provide 160 megawatts. Hydro Quebec Phase II, expected to be in service by the winter of 1990/91, will provide 75 megawatts on a winter rating basis and 218 megawatts on a summer rating basis. An additional 300 megawatts from other sources by 1994 is under evaluation, including power from independent producers, Canadian utilities, and utility peaking units. Ex. I, Vol. 1, p. 24.

NEES also has plans for adding capacity at

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two of its small hydro stations — 20 megawatts at Vernon and 6 megawatts at Bellow Falls by the early 1990s — and repowering its Manchester Street steam plant in Providence, Rhode Island. The Manchester Street repowering will provide 295 megawatts of additional capacity by 1995. Ex. I, Vol. 1, p. 25. In addition, NEES expects to rely on 114 megawatts of capacity from Seabrook I which is assumed, for planning purposes, to begin commercial operation in 1990. Ex. I, Vol. 1, p. 24.

Lastly, NEES is considering construction of a new combined cycle unit to meet additional capacity needs of 275 megawatts by 1996/97, and power purchases of 250 megawatts from independent producers to meet needs in 2000. Ex. I, Vol. 1, p. 26.

C. *PROCEDURES FOR NEGOTIATING AND CONTRACTING WITH QFS*

Granite State and NEES use a combination of requests for proposals (RFPs) and individual negotiation to contract for power purchases from QFs. Generally, projects smaller than 1 megawatt contract directly with Granite State, while larger projects contract with New England Power (NEP), NEES' generation subsidiary. Tr. 20.

In 1988, New England Power issued an RFP for 200 megawatts of capacity in the 1992-1995 time period. The solicitation was open to QFs and independent producers. NEP received bids for 4729 megawatts and has signed or is negotiating contracts for 400 megawatts. In the spring of 1989, NEP increased the capacity to be acquired from 200 to 400 megawatts. Ex. III, p. 11. NEP plans to issue future RFPs to solicit additional QF capacity as it is needed.

In addition to the formal solicitation process, NEES and Granite State are willing to negotiate

with any QF or developer who is interested in a long term contract. While no formal advertising takes place between solicitations, Granite State's witness, Mr. Lowell testified that the company regularly receives and responds to QFs who express their interest in selling power. Tr. 20. Granite State filed a standard offer contract for small renewable QFs (between 100-1000 KW) consistent with the requirements of order no. 19,052. Ex. I, Vol. 4.

IV. COMMISSION FINDINGS

[6] The commission has reviewed and analyzed Granite State's Integrated Least Cost Resource Plan for the period 1989-2003 (Ex. I), the responses to staff's data requests (Ex. II), its testimony (Ex. III) and the hearing transcript in our evaluation of Granite State's least cost integrated resource planning. We note again that the focus of our review is on the adequacy of the company's planning *process.* While consideration of the resource options selected by Granite State is a component of our evaluation, our acceptance of the company's planning process does not constitute approval of specific options in its resource plan. The commission's judgment on the prudence of these options will take place as it has traditionally, in the context of a rate case or similar proceeding where Granite State seeks recovery of costs incurred.

We note further that this is the first least cost planning filing by Granite State in response to new requirements of the commission. We have taken this into account in our review and evaluation of Granite State's least cost planning process.

A. *COMPLETENESS OF THE FILING*

The commission finds Granite State's filing to be complete. The presentation of the integrated least cost resource planning process at the NEES level is very thorough enabling us to follow its logic. Our only concern is with the level of detail at the Granite State level. In the future, Granite State should include in its original filing information and data at the level of detail provided in response to staff data requests for Granite State-specific information. See Ex. II.

B. *ADEQUACY OF THE PLANNING PROCESS*

1. *Forecast of Future Demand*

NEES uses a set of sophisticated econometric and end-use models to forecast peak and energy demands for the system and its retail subsidiaries. The commission notes that this level of sophistication is appropriate to and to be expected from a utility the size of Granite State's parent company.

Granite State has indicated that some of the more complex models and methods are not used at its level because it would not be cost-effective to gather the necessary data. Ex. I, Vol. 1, p. 82. The commission notes with approval, however, that Granite State-specific appliance saturation rates were incorporated into its residential forecast this year. We expect that Granite State will continue to develop service territory-specific data as it proves economic. The commission will watch for such data development in future LCIP filings. We find Granite State's forecasting to be reasonable and appropriate.

2. *Assessment of Demand-Side Options*

Granite State's filing clearly demonstrates that it has, through its parent company, a process for assessing and developing demand-side resource options. On September 1, 1989 Granite State will be making a filing at the commission seeking cost recovery for its DSM program expenditures for 1990. At that time we will review and make findings on the specifics of the company's DSM programs. For the purposes of this proceeding, we find Granite State's assessment of demand-side options to be comprehensive and to fulfill the requirements of order no. 19,052.

3. *Assessment of Supply-Side Options*

Granite State's process for assessing supply-side options also appears to be comprehensive. The NEP solicitation in 1988 drew a large response providing it with a range of purchase options from which to choose. In addition, NEES is moving forward with the repowering of one of its existing units, and additional QF purchases, and is considering construction of a new combined cycle unit for the late 1990's. The variety of these options, and the groundwork laid for their development, indicate to the commission that Granite State's process for assessing supply-side options is comprehensive and well-integrated. We note however, the uncertainty associated with the timing of the availability of some of Granite State's supply options, including some QFs and the on-line date for Seabrook 1. We expect Granite State to report on their progress in its future LCIP filings.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

The commission notes that the transmission report did not include the required "map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system... during the forecast period." Order no. 19,052 (73 NH PUC 117). The commission will require Granite State to provide such a map in its next LCIP filing. The commission notes that its objective in requiring this report was to ensure that adequate information was available to QFs to assess locations where their projects would be beneficial to the company. We find, however, that Granite State's transmission report is adequate for the purposes of this proceeding.

5. *Integration of Demand- and Supply-Side Resource Options*

The commission finds that Granite State's process for integrating demand- and supply-side resource options, as described in its LCIP filing, is comprehensive, integrated and adequate to meet the requirements of order no. 19,052. Further, we commend the company for the probabilistic approach it has taken toward assessing its future resource needs and particularly, the confidence level of 80 percent it has chosen for planning purposes. The commission is generally concerned about the adequacy of the region's electricity supplies and specifically concerned about New Hampshire's electricity supplies. We are encouraged when we see a company using an approach to the problem that appears to address the uncertainties inherent in planning for adequate electricity resources.

Granite State has indicated that it has identified and is pursuing a variety of options, some

more or less certain, which in combination leave the company 80 percent confident of meeting its capability responsibility. Tr. 45. The commission finds that this is an appropriate resource planning approach and confidence level for the company to be using.

6. *Two-Year Implementation Plan*

Granite State's two-year implementation plan as described in its initial filing (Ex. I) and responses to staff data requests (Ex. II, SDRI-1) indicates the actions it plans to take in the near term. The commission finds it to be feasible, and adequate for the purposes of this filing; however, we will require Granite State to specify in greater detail in its next LCIP filing "the personnel the utility intends to utilize... in the implementation of the plan." Order no. 19,052.

7. *Avoided Cost Forecasts*

[7] Granite State has calculated its avoided costs largely in accordance with the settlement agreement in consolidated dockets DR 86-41 *et al.* as required. Granite State initially filed an estimate of $109.90 per kilowatt-year as its estimate of the short term market value of capacity for 1989, the first year in its long term avoided cost calculation. Ex. I, Vol. 4, pp. 8-9. The commission notes that this figure differed substantially from the company's estimate of the short term market value of capacity of $78.00 per kilowatt-year filed with the commission in DR 89-095 just one month after its LCIP filing. DR 89-195 was the most recent proceeding where Granite State's short term avoided cost rates were established. We further note that Granite State subsequently revised the figure in its LCIP filing to correspond to the estimate of $78.00 per kilowatt year approved by the commission in DR 89-095.

While Granite State's estimates of the short term market value of capacity in the two avoided cost filings were eventually consistent, the commission remains concerned about Granite State's method for developing this estimate. While we do not disagree with the characterization of the New England capacity market by the company's witness, Mr. Lowell, (Tr. 17-18), it appears that Granite State is not adequately distinguishing between short and long term avoided costs and how the commission intends utilities to be incorporating the short term market value of capacity into the estimation of these avoided costs. Therefore, we will require Granite State to meet with staff to discuss and resolve the inconsistencies in its short and long term avoided cost calculations before its next filing of its short term avoided costs. The commission has been working to ensure that utility and QF supply options and demand-side options are evaluated and treated in an equivalent manner. The consistent estimation of avoided costs is critical to ensure this end.

For the purposes of this proceeding, Granite State's long term avoided cost estimates are approved as revised and should serve as the basis of Granite State's negotiations with QFs.

8. *Overall Evaluation*

The commission finds Granite State's first least cost planning filing to be excellent. Granite State is the beneficiary of a well-developed and implemented integrated resource planning process at its parent company level. Granite State's filing indicates that its planning process is adequate and meets the requirements of order no. 19,052.

C. *ADDITIONAL COMMISSION FINDINGS*

In accordance with the process outlined in order no. 19,052, the commission finds that QFs

can meet some of Granite State's resource needs within the next eight years. We further find that the process Granite State has established for negotiating and contracting for power purchases from QFs — a combination of bidding and negotiations both within and outside of the bidding process — is adequate, consistent with commission policy, and consistent with Granite State's integrated least cost resource plan. Given the role that QFs play in Granite State's resource mix, the commission finds no need to set the megawatt amount of QF

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capacity that Granite State should be seeking. However, we reiterate the commission's policy preference for QFs using renewable and indigenous fuels, including municipal solid waste, and cogeneration based on existing industrial use of fossil fuels, over technologies that increase the dependence of New Hampshire on fossil fuels.

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's resource planning process as described in its filing of May 1, 1989 and subsequent responses to data requests and testimony be, and hereby is, accepted and approved as fulfilling the requirements of order no. 19,052 for the year 1989; and it is

FURTHER ORDERED, that Granite State's long term avoided cost estimates be, and hereby are, approved for 1989 as amended and should serve at the basis for Granite State's negotiations with QFs; and it is

FURTHER ORDERED, that Granite State report in its next LCIP filing on the timing of the availability of the supply-side options included in its resource plan in this LCIP filing; and it is

FURTHER ORDERED, that Granite State provide in its next LCIP filing a transmission map as required by order no. 19,052 (73 NH PUC 117); and it is

FURTHER ORDERED, that Granite State provide additional detail in its next LCIP filing on its two-year implementation plan including a designation of the personnel it will utilize to implement its plan; and it is

FURTHER ORDERED, that Granite State meet with staff prior to its next short term avoided cost filing to resolve inconsistencies in its estimation of avoided costs.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1989.

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NH.PUC*09/29/89*[51833]*74 NH PUC 334*Connecticut Valley Electric Company

[Go to End of 51833]

Re Connecticut Valley Electric Company

DR 89-078
Order No. 19,547

New Hampshire Public Utilities Commission

September 29, 1989

ORDER approving the least-cost integrated resource planning process of an electric utility and accepting the long-term avoided cost estimates provided by the utility for use as a basis for its power purchase negotiations with qualifying facilities.

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1. COGENERATION, § 17 — Contracts — Power purchase negotiations — Integration into long-term resource planning.

[N.H.] The proper goal of commission policy regarding short- and long-term utility purchases of energy and capacity from qualifying facilities (QFs) is the integration of QFs into each utility's long term resource planning process in an efficient and equitable manner; acceptance of a utility's long-term resource plan indicates that the utility's resource planning process is adequate, but acceptance does not constitute approval of a specific resource included in the plan. p. 337.

2. ELECTRICITY, § 4 — Least-cost planning — Review process — Effect of approval.

[N.H.] The least cost planning review process employed by the commission is not what has been characterized in other jurisdictions as a "pre-approval process"; the commission will review and analyze the prudence of any particular resource option when the utility brings it before the commission in a cost recovery or rate proceeding. p. 337.

3. ELECTRICITY, § 4 — Least-cost planning

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— Filing requirements.

[N.H.] Electric utilities are required to file reports in seven areas to document their least cost integrated planning processes: (1) forecasts of future demand; (2) assessments of demand-side options; (3) assessments of supply-side options; (4) assessments of transmission requirements, limitations and constraints; (5) integration of demand- and supply-side resource options; (6) two-year implementation plans; and (7) avoided cost forecasts. p. 337.

4. ELECTRICITY, § 4 — Least-cost planning — Filing requirements — Documentation.

[N.H.] In documenting its least cost integrated planning processes, an electric utility must file testimony in three areas: (1) testimony indicating whether it needs additional capacity in the next eight years and whether qualifying facility (QF) capacity could meet that need: (2) testimony documenting its integrated least-cost resource plan for providing all aspects of its energy resource needs; and (3) testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs, if the utility has a need for

additional capacity in the next eight years. p. 338.

5. ELECTRICITY, § 4 — Least-cost planning — Review criteria.

[N.H.] In reviewing electric utility least-cost integrated resource plans, the commission looks for (1) *completeness* in meeting reporting requirements, (2) *comprehensiveness* in the assessment of resource options, (3) *integration* of demand- and supply-side options in the planning process, (4) *feasibility* of implementation, and (5) *adequacy* of the planning process in providing for resources in a timely manner sufficient to meet the electricity and energy service needs of customers. p. 338.

6. ELECTRICITY, § 4 — Least-cost planning — Approval.

[N.H.] The integrated least-cost resource plan of an electric utility was accepted and approved as fulfilling the requirements of a prior order (73 NH PUC 117) that established a commission policy for future utility purchases from qualifying facilities and established biennial least-cost integrated planning filing requirements; the commission noted that acceptance of the plan did not constitute approval of specific options in the plan, which would be judged in the context of a rate case or similar proceeding on the basis of the prudence of the specific options. p. 340.

7. COGENERATION, § 25 — Rates — Avoided cost — Contract negotiations.

[N.H.] The long-term avoided cost estimates provided by an electric utility in its least-cost integrated resource plan were approved for use as a basis for negotiations with qualifying facilities; however, citing its concern that the avoided capacity cost estimate provided by the utility for the period 1993 to 1997 may be too low, the commission directed the utility to file revised long-term avoided cost estimates with supporting documentation at the time of its next least-cost planning filing. p. 342.

8. CONSERVATION, § 1 — Demand-side management — Least-cost planning — Electric utility.

[N.H.] An electric utility was directed to provide a detailed report on the status of its demand-side management (DSM) program implementation in its next least-cost integrated resource planning filing and to participate in discussions regarding the consideration of a collaborative effort on DSM program design and policy. p. 342.

APPEARANCES: Morris Silver, Esq. for Connecticut Valley Electric Company; Elaine Planchet for the Consumer Advocate; Janet Gail Besser and Dr. Sarah P. Voll for the commission staff.

By the COMMISSION:

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REPORT

I. PROCEDURAL HISTORY

On April 7, 1988, the commission issued report and order no. 19,052 (73 NH PUC 117) in

the consolidated dockets DR 86-41, 86-69, 86-70, 86-71 and 86-72 (DR 86-41 *et al.*). Order no. 19,052 established a new commission policy for future utility purchases of power from qualifying facilities (QFs) and requirements for
biennial least-cost integrated planning (LCIP) filings by the utilities.

Staff held a workshop on April 21, 1988 concerning the utilities' biennial LCIP filings and on April 28, 1988 formally requested a compliance report from each utility relating to the requirements of order no. 19,052. Following receipt of the compliance reports, on August 10, 1988 the commission issued order no. 19,141 (73 NH PUC 285) which established the following filing dates:

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

	DATE
1. Updated estimates of the utilities' long term avoided costs along with a description of procedures being used to secure power purchase arrangements with QFs	October 1, 1988
2. Compliance with the other reporting requirements of order no. 19,052	April 30, 1989 and April 30 of every even-numbered year thereafter
3. Compliance with requirements regarding short term avoided cost calculations	December 1988 and thereafter as part of fuel adjustment charge and energy cost recovery mechanism proceedings

Order no. 19,141 also officially closed consolidated dockets DR 86-41 *et al.*

On October 4, 1988 Connecticut Valley Electric Company (Connecticut Valley or the company) filed updated estimates of its long term avoided costs. As indicated in order no. 19,141, the commission did not initiate a formal proceeding to review these estimates. They were to serve as a bridge for moving toward full compliance and implementation of order no. 19,052 by providing current avoided cost information needed by QFs to compete effectively with the utilities' other resource options.

On December 2, 1988 Connecticut Valley filed short term avoided cost estimates as part of its fuel adjustment charge proceedings, DR 88-176. These rates were approved in order no. 19,290 (74 NH PUC 28) issued January 11, 1989.

On February 13, 1989 staff held a joint meeting for all of the utilities to discuss compliance with the other reporting requirement of order no. 19,052. At this meeting staff reviewed the requirements of the order and indicated to the utilities the basic criteria the commission would be using to assess their filings.

On February 21, 1989 staff met with Connecticut Valley to discuss the status of its least cost planning effort and the preparation of the reports required by order no. 19,052.

On March 31, 1989 a second general meeting was held with the utilities to which the parties

from consolidated dockets DR 86-41, *et al.* were also invited. In addition, each utility was asked to invite all of the QFs from which it purchases power. Staff also invited others whom it thought would be interested in least cost planning in New Hampshire, including conservation

organizations such as the Conservation Law Foundation.

On May 8, 1989 Connecticut Valley Electric Company filed its Least-Cost Integrated Plan dated May 5, 1989. An order of notice in the instant docket was issued June 6, 1989 setting the procedural schedule.

Staff explored technical issues of the filing by means of data requests and a prehearing conference. On July 12, 1989. Connecticut Valley filed a motion for protective order for responses to several data requests. This motion was granted with stipulations by the commission from the bench at the formal hearing on the merits of Connecticut Valley's Least-Cost Integrated Plan held on July 18, 1989. The commission's stipulations on the protective order were that it holds only for this proceeding and that if the company wants this material protected in a future proceeding it will be its responsibility to raise the protective issue again.

II. SUMMARY OF THE COMMISSION'S LCIP FILING REQUIREMENTS

A. *THE COMMISSION'S OBJECTIVE*

[1, 2] The goal of the commission's order no. 19,052 was to establish a process whereby we could review and evaluate the context in which utilities were negotiating and contracting for power purchases from QFs. In order no. 19,052, the commission recognized that the QF industry had evolved over the then ten years it had been in existence and that this evolution warranted a change in commission policy toward increased flexibility and direct negotiations between utilities and QFs. However, we also noted that we did not believe such a flexible system could be implemented effectively absent a commission approved framework. We found that "the proper goal for commission policy regarding short 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." P. 7. The objective, therefore, of the commission's review of the utilities' least cost integrated resource plans is to evaluate whether they are planning properly.

We note that our acceptance of a utility's least cost resource plan indicates that the utility's resource planning *process* is adequate. Acceptance of a particular filing does not constitute approval of specific resources included in the plan. We emphasize that our least cost planning review process is not what has been characterized in other jurisdictions as a "pre-approval process." The commission will review and analyze the prudence of any particular resource option when the utility brings it before us in a cost recovery or rate proceeding.

B. *THE REQUIREMENTS OF ORDER NO. 19,052*

[3] The utilities are required to file reports in seven areas to document their least cost integrated planning processes. Order no. 19,052 outlines the commission's requirements for these seven reports:

1. *Forecast of Future Demand*

a) 15 year;

b) high, low, most likely cases;

c) system and subsidiary level; and

d) include price and CLM effects.

2. *Assessment of Demand-Side Options*

a) include all reasonably available programs.

b) explicitly account for price-induced reductions;

c) explicitly account for program-induced reductions; and

d) description of program screening and evaluation methodology.

3. *Assessment of Supply-Side Options*

a) assess range of options;

b) include existing QFs under contract and as available;

c) describe the use of models; and

d) use minimization of present worth of

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revenue requirements as a criterion.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

a) include map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system within the forecast period; and

b) evaluate how new generation, regardless of ownership, will be incorporated into the transmission system.

5. *Integration of Demand- and Supply-Side Resource Options*

a) describe development of formal process for integration of cost-effective utility demand- and supply-side resources;

b) demonstrate that utility has considered all of its resource needs;

c) use a dynamic, iterative process; and

d) include consideration of risk, sensitivity, uncertainty.

6. *Two-Year Implementation Plan*

a) include- short-term forecast at system and subsidiary levels;

b) describe how optimal mix of demand and supply resources will be developed over next two years; and

c) specify models, data, equipment, personnel and facilities utility will use or require in implementation.

7. *Avoided Cost Forecasts*

a) 15-year avoided cost forecast based on most likely energy and demand forecasts;

b) consistent with DR 86-41 *et al.* Phase I methodology; and

c) exception to Phase I is that avoided costs flow from utility's resource plan.

[4] Order no. 19,052 also requires the utilities to file testimony in three areas:

1. The utility must file testimony indicating whether it needs additional capacity in the next eight years and whether QF capacity could meet that need.

2. The utility must file "testimony documenting... [its] integrated least-cost resource plan for providing all aspects of its energy resource needs." P. 23.

3. The utility must file "testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs." P. 24. This testimony is required only if the utility has a need for additional capacity in the next eight years.

C. THE COMMISSION'S REVIEW CRITERIA

[5] The commission reviews the utilities' least cost planning filings according to the criteria indicated by the requirements of order no. 19,052. First, the commission looks for *completeness* in meeting the reporting requirements. Has the utility included all the required reports and addressed all of the specified areas in them?

Second, the commission evaluates whether the utility's assessment of resource options is *comprehensive.* Has the utility considered all demand- and supply-side resource additions, including QFs?

Third, is the utility's planning process *integrated*? Has the utility evaluated its demand- and supply-side options in an equivalent manner and addressed issues of coordinated timing in the acquisition of one or more resources?

Fourth, is implementation of the utility's resource plan *feasible*? Does the utility's two-year implementation plan indicate that the utility is capable of pursuing the resource additions it has identified in the time available?

Fifth, is the utility's planning process *adequate*? Does it provide for resources in a timely manner sufficient to meet the electricity and energy service needs of its customers now and for the future?

III. SUMMARY OF CONNECTICUT VALLEY'S FILING AND TESTIMONY

A. *NEED FOR ADDITIONAL CAPACITY IN THE NEXT EIGHT YEARS*

Connecticut Valley's pre-filed testimony (Ex. III), its least cost integrated plan (Ex. I) and the testimony of its witness at the hearing on July 18, 1989 indicate a need for additional capacity in the next eight years. Cross-examination of the company's witness, Mr. Bentley brought out that Connecticut Valley (Tr. 32) needs additional capacity today due in large part to the loss on July 1, 1989 of Niagara project power through the Vermont Department of Public Service (41 megawatts). The current capacity need is approximately 50 megawatts, increasing to 90 megawatts by 1993, 140 megawatts by 1997 (the end of the eight year horizon), and 305 megawatts by 2003. Ex. I, Attachment G-15.

B. *SUMMARY OF CONNECTICUT VALLEY'S INTEGRATED RESOURCE PLAN*

Connecticut Valley plans to meet its capacity needs for the next eight years with a combination of demand-side management (DSM), long term power purchases from QFs and other power supply bidders, and short term power purchases. Connecticut Valley "has no current plans to build generating facilities." Ex. I, Section F, p. 39.

With respect to demand-side management, Connecticut Valley's parent, Central Vermont Public Service Company (Central Vermont), is involved in a collaborative conservation and load management program design process in Vermont. The current schedule calls for the screening of programs for Connecticut Valley beginning in September 1989, and implementation of appropriate programs beginning in 1990. Tr. 25. While Connecticut Valley has some small DSM programs in place, the outcome of the collaborative process should be a significant increase in the level of activity in this area. Connecticut Valley will also be working with customers who will be affected by the implementation of its new cost-based rate design (approved in order no. 19,411 in DR 88-121 [74 NH PUC 165]) to help them to adopt energy efficiency measures. This represents more aggressive implementation of existing Connecting Valley DSM programs. Tr. 26.

With respect to QF and other long term non-utility purchases, Central Vermont Public Service is negotiating now with six projects for over 60 MW of capacity. Two of the projects are already on-line, two are scheduled for operation in 1990, and two for 1992. The projects include 2 hydro, 2 diesel (landfill gas), and 2 natural gas combined-cycle units. Ex. III, p. 6. These projects were selected from those offered in response to a combined Connecticut Valley and Central Vermont solicitation in the fall of 1988.

Connecticut Valley plans to meet the remainder of its capacity needs with short term power purchases. The Niagara project power will be replaced by purchases from Ontario Hydro. Ex. I, p. 40.

In addition, existing contracts with Hydro Quebec are being replaced and augmented with new firm contracts. Ex. I, p. 40, Tr. p. 45. These contracts will essentially ensure that Connecticut Valley and Central Vermont Public Service can rely on Hydro Quebec for firm capacity (kilowatts) as opposed to firm energy (sales with a targeted amount for delivery of kilowatt hours, not necessarily at peak times).

C. *PROCEDURES FOR NEGOTIATING AND CONTRACTING WITH QFS*

Connecticut Valley uses a combination of bidding and negotiations to contract for power purchases from QFs. In addition, Connecticut Valley will negotiate individually with QFs when the formal bidding process is not in effect.

Connecticut Valley is the beneficiary of a combined Connecticut Valley and Central Vermont Public Service open supply bidding process. This bidding program is open to all supply sources including utilities, QFs and independent power producers. Projects less than 1 megawatt can participate in the bidding program and will receive a contract offer based on the value of avoided costs in the solicitation. Ex. III, p.4. In the fall of 1989, Connecticut Valley and Central Vermont Public Service issued their first request for proposals seeking bids for 50 megawatts of capacity for the early 1990's. Several QF proposals were received. Central Vermont is now in the process of negotiating contracts with six

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projects proposed in the bidding process, one of which is located in New Hampshire.

Connecticut Valley is also in the process of negotiating long term contracts with two New Hampshire QFs who were previously on short term rates. These negotiations are taking place independently of the bidding process. Ex. III, Attachment BWB-5.

In addition, Connecticut Valley filed a standard offer contract for small renewable QFs (less than 1000 KW) consistent with the requirements of order no. 19,052. Ex. I.

IV. COMMISSION FINDINGS

[6] The commission has reviewed and analyzed Connecticut Valley's Least-Cost Integrated Resource Plan (Ex. I), the responses to staff's data requests (Ex. II), its testimony (Ex. III) and the hearing transcript in our evaluation of Connecticut Valley's least cost integrated resource planning. We note again that the focus of our review is on the adequacy of the company's planning *process.* While consideration of the resource options selected by Connecticut Valley is a component of our evaluation, our acceptance of the company's planning process does not constitute approval of specific options in its resource plan. The commission's judgment on the prudence of these options will take place as it has traditionally, in the context of a rate case where Connecticut Valley seeks recovery of costs incurred.

We note further that this is the first least cost planning filing by Connecticut Valley in response to new requirements of the commission. We have taken this into account in our review and evaluation of Connecticut Valley's least cost planning process.

A. *COMPLETENESS OF THE FILING*

Connecticut Valley's reports on supply, transmission, and integration of demand and supply did not provide adequate information in a clear and reviewable format to enable the commission and staff to evaluate Connecticut Valley's planning process. Staff had to request information that should have been included in Connecticut Valley's initial filing. See Exhibit II. The supply report was particularly lacking in detail.

While the commission's primary concern is the adequacy of Connecticut Valley's planning process, we note that a clear description of this process is a prerequisite for our ability to review

it. Without such a clear description the commission might be led to conclude incorrectly that a utility's planning process was not adequate. We cannot overemphasize the importance of providing complete and comprehensible filings in response to the commission's reporting requirements. We find that Connecticut Valley did not provide a complete filing initially, although it did provide sufficient information for the commission's review in response to staff data requests. Therefore, to assist Connecticut Valley in the preparation of its next filing, we will require the company to meet with staff and provide it with detailed outlines of its reports no later than February 28, 1990, and preliminary drafts no later than March 30, 1990. These intermediate deadlines should allow the company time to incorporate staff comments and suggestions in Connecticut Valley's next least cost planning filing due April 30, 1990.

B. *ADEQUACY OF THE PLANNING PROCESS*

1. *Forecast of Future Demand*

Connecticut Valley has recently developed its own in-house forecasting model. The model is primarily an econometric one and does contain some end-use information. The distinguishing feature of the model structure is that it is closely related to Central Vermont's and now Connecticut Valley's class rate designs. The commission finds that Connecticut Valley's forecasting capability is reasonable and appropriate for a utility of its size and sophistication.

2. *Assessment of Demand-Side Options*

Connecticut Valley has indicated that it will be moving forward in September 1989 with the screening of demand-side management programs from the Central Vermont collaborative DSM program design process. Connecticut

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Valley will begin implementation of programs in 1990. The commission finds that Connecticut Valley's ongoing assessment of DSM options is adequate. The process at Central Vermont appears to be comprehensive and Connecticut Valley has assured the commission that programs will be implemented as aggressively in New Hampshire as in Vermont.

The commission will require Connecticut Valley to file a detailed report on the status of DSM program implementation in its next least cost planning filing due April 30, 1990. We note the importance of pursuing DSM simultaneously with supply options to ensure that the resource plan that results is least cost. Connecticut Valley seems to be doing this.

3. *Assessment of Supply-Side Options*

The commission is concerned about the comprehensiveness of Connecticut Valley's assessment of its supply resources in the short term and whether its plan for their implementation is feasible. The company indicates that it can contract for capacity that is not yet fully subscribed in existing units or units under construction to meet its needs between now and 1993. Given the tight regional capacity situation, the commission is not convinced that any capacity in existing units or units being built now will continue to be available at reasonable cost over the next few years. The commission is cognizant, however, that Connecticut Valley was able to sign short-term contracts for 1989 with capacity costs between $35 and $90 per kilowatt year and

averaging about $62.00 per kilowatt year. Ex. II, Attachment BWB-4. As discussed with regard to the completeness of the filing, the commission will require Connecticut Valley to provide additional information on its supply-side resources generally in its next LCIP filing. We will also require Connecticut Valley to provide more information on its short term resource options, including detail on existing units or units under construction from which capacity would be available; the company's plans for construction of its own units should that be necessary; and the company's plans for contingency situations should load growth be higher than projected or planned supply options become unavailable or fail to materialize. Connecticut Valley should consult with staff on the appropriate level of detail to be provided and the format for its presentation.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

Connecticut Valley shall provide additional information as noted in the discussion on the completeness of its filing. This information shall include, at a minimum, as per order no. 19,052:

a) a map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system within the fifteen-year forecast period; and

b) evaluation of how new generation, regardless of ownership, will be incorporated into the transmission system.

The commission notes that its objective in requiring this report was to ensure that adequate information was available for QFs to assess locations where their projects would be beneficial to the company.

5. *Integration of Demand- and Supply-Side Resource Options*

Connecticut Valley appears to be in the process of developing a resource planning process that integrates demand- and supply-side options in a comprehensive manner. Connecticut Valley has indicated its intentions to provide additional information in this reporting area with its next filing. Ex. I, pp. 37, 40. We expect that this report will also reflect the greater detail Connecticut Valley is being required to provide in its supply-side assessment and transmission reports, and the progress on the demand-side it will have made by next April. As part of this detail, Connecticut Valley should quantify the contribution of demand- and supply-side resources to meeting customer needs and provide documentation demonstrating that the options chosen are cost-effective.

6. *Two-Year Implementation Plan*

Connecticut Valley's two-year

implementation plan describes the actions it plans to take in the near term. While the commission finds it adequate for the purposes of this filing, we note our reservations regarding the feasibility of Connecticut Valley's plans for implementation of supply-side resources. In addition to the greater detail we are requiring on the supply area specifically, we will require Connecticut Valley to provide a timeline for the actions in its implementation plan and specification of the "personnel the utility intends to utilize... in the implementation of the plan"

in its next filing. Order no. 19,052.

7. *Avoided Cost Forecasts*

[7] Connecticut Valley has calculated its avoided costs largely in accordance with the settlement agreement in consolidated dockets DR 86-41, *et al.* as required. The commission notes that Connecticut Valley has used a 25 megawatt decrement in its calculations of avoided energy costs instead of a 20 megawatt decrement as specified in the settlement agreement. This change is acceptable for the purposes of this proceeding as no party or commenter has raised it as an issue. We will, however, require Connecticut Valley to justify this change in its next filing..

Given our questions about how much capacity may actually be available in the market over the next four years and the timing of potentially necessary construction of utility-owned units (Tr. 33, 36), the commission is concerned that the company's avoided capacity cost estimates may be too low in the period 1993 to 1997. The commission will require Connecticut Valley to file revised long term avoided cost estimates with supporting documentation at the time of Connecticut Valley's next least cost planning filing. The supporting documentation should include evidence of the availability of capacity from existing units or units under construction; the timing of the availability of this capacity; and the timing for the siting and building of new utility-owned plant. Until then, the long term avoided cost estimates are approved as filed and should serve as the basis of Connecticut Valley's negotiations with QFs.

8. *Overall Evaluation*

The commission finds Connecticut Valley's first least cost integrated planning filing to be adequate. Despite the reporting deficiencies already discussed, the filing and subsequent data responses and testimony indicate that Connecticut Valley, through its parent company Central Vermont Public Service, has an integrated resource planning process in place. We fully expect that Connecticut Valley will be able to improve its reporting, particularly in the supply area, in its next filing.

C. *ADDITIONAL COMMISSION FINDINGS*

[8] The commission will require Connecticut Valley to participate in initial meetings with staff, the other New Hampshire utilities, the Governor's Energy and Consumer Advocate's Offices, and others as staff and the utility participants see fit, to explore the potential for a collaborative DSM program design process in New Hampshire. Two issues will be addressed in the initial meetings — program design and policy. Connecticut Valley will not be required to participate in a collaborative program design process in New Hampshire if implementation of DSM programs developed in the Central Vermont Public Service collaborative process is moving forward on the schedule Connecticut Valley has indicated. If, however, Connecticut Valley should discover that the Central Vermont process is not providing it with adequate program design assistance or the commission finds that DSM program implementation is not proceeding on schedule, we will require Connecticut Valley to participate in whatever collaborative DSM program design process may develop in New Hampshire.

To the extent that a collaborative DSM process in New Hampshire addresses policy issues, such as cost recovery, Connecticut Valley will be required to participate. We note that the company has indicated its willingness to do so. Tr. p. 40.

In accordance with the process outlined in order no. 19,052, the commission finds that QFs can meet some of Connecticut Valley's resource needs within the next eight years. We

further find that the process Connecticut Valley has established for negotiating and contracting for power purchases from QFs — a combination of bidding and negotiations both within and outside of the bidding process — is adequate, consistent with commission policy, and consistent with Connecticut Valley's least cost integrated resource plan. Given the role that QFs play in Connecticut Valley's resource mix, the commission finds no need to set a megawatt amount of QF capacity Connecticut Valley should be seeking. However, we reiterate the commission's policy preference for QFs using renewable and indigenous fuels, including municipal solid waste, and cogeneration based on existing industrial use of fossil fuels, over technologies that increase the dependence of New Hampshire on fossil fuels.

Our order will issue accordingly.

ORDER

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

ORDERED, that Connecticut Valley's resource planning process as described in its filing of May 8, 1989 and subsequent responses to data requests and testimony be, and hereby is, approved as fulfilling the requirements of order no. 19,052 (73 NH PUC 117) for the year 1989; and it is

FURTHER ORDERED, that Connecticut Valley's long term avoided cost estimates be, and hereby are, approved for 1989 as filed and should serve as the basis for Connecticut Valley's negotiations with QFs; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company provide detailed outlines and draft versions of the reports in its next LCIP filing by February 28, 1990 and March 30, 1990, respectively, for staff comments in order to improve its reporting on its resource planning process; and it is

FURTHER ORDERED, that Connecticut Valley provide a detailed report on the status of its DSM program implementation in its next LCIP filing; and it is

FURTHER ORDERED, that Connecticut Valley consult with staff on the level of detail and provide a description in its next LCIP filing of the short term resource options available to it, including supporting documentation; and it is

FURTHER ORDERED, that Connecticut Valley provide a transmission map and evaluation of the impacts of new generation on transmission as required by order no. 19,052; and it is

FURTHER ORDERED, that Connecticut Valley provide a schedule and designate in its next LCIP filing the personnel and resources it will utilize to implement its resource plan; and it is

FURTHER ORDERED, that Connecticut Valley provide additional supporting information for assumptions and inputs used in calculating its avoided cost; and it is

FURTHER ORDERED, that Connecticut Valley participate in initial discussions regarding

the consideration of a collaborative effort on DSM program design and policy.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1989.

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NH.PUC*09/29/89*[51834]*74 NH PUC 343*Connecticut Valley Electric Company, Inc.

[Go to End of 51834]

74 NH PUC 343

Re Connecticut Valley Electric Company, Inc.

DR 89-156
Order No. 19,548

New Hampshire Public Utilities Commission

September 29, 1989

ORDER *nisi* setting the purchase power adjustment clause and fuel adjustment clause rates of an electric utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10 — Cost recovery clauses — Direct costs — Fuel — Purchased power — Electric utility.

[N.H.] An electric utility was conditionally authorized to set its fuel adjustment and purchase power adjustment clause rates at zero where the utility proposed to institute

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differential base capacity charges. p. 344.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 10 — Cost recovery clauses — Differential base capacity charges — Electric utility.

[N.H.] The commission decided to open a generic docket to review a proposal by an electric utility to institute differential base capacity charges; the utility contended that differential base capacity charges "would more effectively reflect the actual capacity-related revenues raised in base rates". p. 344.

By the COMMISSION:

ORDER

On May 24, 1989 the commission issued report and order no. 19,141 in DR 88-121 (73 NH PUC 285) approving a stipulation and agreement on rate structure redesign for Connecticut

Valley Electric Company (company) for effect October 1, 1989; and

WHEREAS, a second stipulation setting the company's revenue requirement was approved by the commission on August 4, 1989 in order no. 19,502 (74 NH PUC 274); and

WHEREAS, the first stipulation required the company to reflect in base rates the estimated 1989 purchased power and fuel costs; and

WHEREAS, the inclusion of estimated 1989 purchased power and fuel costs in base rates calls for corresponding changes to current purchased power and fuel costs adjustment rates; and

WHEREAS, on September 5, 1989 the company filed the following revised pages to NHPUC Tariff No. 4 — Electricity:

5th Revised Page 12, Superseding 4th Revised Page 12;

6th Revised Page 13, Superseding 5th Revised Page 13; Original Page 13-A

5th Revised Page 16, Superseding 4th Revised Page 16;

16th Revised Page 17, Superceding 15th Revised Page 17;

114th Revised Page 18, Superseding 113th Revised Page 18; and

[1, 2] WHEREAS, the purposes of the revised pages are 1) to reconcile the purchased power cost and fuel cost adjustment rates with the base rates and revenue requirement approved in order no. 19,411 and 19,502; and 2) to institute differential base capacity charges by rate class and by season; and

WHEREAS, the proposed PPCA and FAC rates are set at $0.0000 per kWh effective for the months October, November and December 1989; and

WHEREAS, the company contends that the proposed differential base capacity charges would more effectively reflect the actual capacity-related revenues raised in base rates; and

WHEREAS, after review and consideration we find that the proposal to set the FAC and PPCA rates to zero is in the public interest and consistent with our orders in the rate design proceeding; and

WHEREAS, the timing of the company's filing and the requested effective date have combined to prevent reasonable review of the proposals and the commission wishes to provide an opportunity for interested parties to state their positions; it is hereby

ORDERED, that all persons interested in responding to this filing be notified that they may submit their comments to the commission or may submit arguments for hearing in the matter no later than October 10, 1989; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company 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 its operations are conducted, such publication to be no later than October 3, 1989 and documented by affidavit to be filed with this commission on or before October 13, 1989; and it is

FURTHER ORDERED, *NISI* that the PPCA and FAC rates be set at $0.0000 for all rate classes for the months of October through

December of 1989; and it is

FURTHER ORDERED, that such authority shall be effective on October 15, 1989, retroactive for bills rendered on and after the date of public notification and continue in effect through December 31, 1989 unless the commission orders otherwise prior to said effective date; and it is

FURTHER ORDERED, that the proposal to institute differential base capacity charges be reviewed in a generic docket to be opened by this commission.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1989.

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NH.PUC*10/02/89*[51835]*74 NH PUC 345*Public Service Company of New Hampshire

[Go to End of 51835]

74 NH PUC 345

Re Public Service Company of New Hampshire

DR 89-077
Order No. 19,549

New Hampshire Public Utilities Commission

October 2, 1989

ORDER approving the least-cost integrated resource planning process of an electric utility and accepting the long-term avoided cost estimates provided by the utility for use as a basis for its power purchase negotiations with qualifying facilities.

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1. COGENERATION, § 17 — Contracts — Power purchase negotiations — Integration into long-term resource planning.

[N.H.] The proper goal of commission policy regarding short- and long-term utility purchases of energy and capacity from qualifying facilities (QFs) is the integration of QFs into each utility's long-term resource planning process in an efficient and equitable manner; acceptance of a utility's long-term resource plan indicates that the utility's resource planning process is adequate, but acceptance does not constitute approval of a specific resource included in the plan. p. 348.

2. ELECTRICITY, § 4 — Least-cost planning — Review process — Effect of approval.

[N.H.] The least cost planning review process employed by the commission is not what has been characterized in other jurisdictions as a "pre-approval process"; the commission will review

and analyze the prudence of any particular resource option when the utility brings it before the commission in a cost recovery or rate proceeding. p. 348.

3. ELECTRICITY, § 4 — Least-cost planning — Filing requirements.

[N.H.] Electric utilities are required to file reports in seven areas to document their least cost integrated planning processes: (1) forecasts of future demand; (2) assessments of demand-side options; (3) assessments of supply-side options; (4) assessments of transmission requirements, limitations and constraints; (5) integration of demand- and supply-side resource options; (6) two-year implementation plans; and (7) avoided cost forecasts. p. 348.

4. ELECTRICITY, § 4 — Least-cost planning — Filing requirements — Documentation.

[N.H.] In documenting its least cost integrated planning processes, an electric utility must file testimony in three areas: (1) testimony indicating whether it needs additional capacity in the next eight years and whether qualifying facility (QF) capacity could meet that need: (2) testimony documenting its integrated least-cost resource plan for providing all aspects of its energy resource needs; and (3) testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs, if the utility has a need for additional capacity in the next eight years. p. 349.

5. ELECTRICITY, § 4 — Least-cost planning — Review criteria.

[N.H.] In reviewing electric utility least-

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cost integrated resource plans, the commission looks for (1) *completeness* in meeting reporting requirements, (2) *comprehensiveness* in the assessment of resource options, (3) *integration* of demand- and supply-side options in the planning process, (4) *feasibility* of implementation, and (5) *adequacy* of the planning process in providing for resources in a timely manner sufficient to meet the electricity and energy service needs of customers. p. 349.

6. ELECTRICITY, § 4 — Least-cost planning — Approval.

[N.H.] The integrated least-cost resource plan of an electric utility was accepted and approved as fulfilling the requirements of a prior order (73 NH PUC 117) that established a commission policy for future utility purchases from qualifying facilities and established biennial least-cost integrated planning filing requirements; the commission noted that acceptance of the plan did not constitute approval of specific options in the plan, which would be judged in the context of a rate case or similar proceeding on the basis of the prudence of the specific options. p. 352.

7. CONSERVATION, § 1 — Demand-side management — Least-cost planning — Electric utility.

[N.H.] An electric utility was directed to provide a detailed report on the status of its demand-side management (DSM) program implementation in its next least-cost integrated resource planning filing and to participate in discussions regarding the consideration of a collaborative effort on DSM program design and policy. p. 353.

8. COGENERATION, § 25 — Rates — Avoided cost — Contract negotiations.

[N.H.] The long-term avoided cost estimates provided by an electric utility in its least-cost integrated resource plan were approved for use as a basis for negotiations with qualifying facilities; however, citing its concern that the avoided capacity cost estimate provided by the utility may be too low in the near term, the commission directed the utility to provide in its next least-cost planning filing, supporting documentation for the cost and availability of capacity both in the short term market and as deficiency service from the New England Electric Power Pool. p. 355.

9. COGENERATION, § 1 — Public policy — Preference for renewable and indigenous fuels.

[N.H.] In an order approving the least-cost integrated resource planning process of an electric utility, the commission reiterated its preference, as a matter of public policy, for purchases from qualifying facilities using renewable and indigenous fuels, including wood and municipal solid waste, and cogeneration based on existing industrial use of fossil fuels, over technologies that increase dependence on fossil fuels. p. 356.

APPEARANCES: Thomas B. Getz, Esq. and Sulloway Hollis & Soden by Margaret H. Nelson, Esq. for Public Service Company of New Hampshire; Elaine Planchet for the Consumer Advocate; Janet Gail Besser, Dr. Sarah P. Voll, and Arthur Johnson for the commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On April 7, 1988, the commission issued report and order no. 19,052 (73 NH PUC 117) in the consolidated dockets DR 86-41, 86-69, 86-70, 86-71 and 86-72 (DR 86-41, *et al.*). Order no. 19,052 established a new commission policy for future utility purchases of power from qualifying facilities (QFs) and requirements for biennial least cost integrated planning (LCIP) filings by the utilities.

Staff held a workshop for the utilities on April 21, 1988 concerning the utilities' biennial

LCIP filings and on April 28, 1988 formally requested a compliance report from each utility relating to the requirements of order no. 19,052.
Following receipt of the compliance reports, on August 10, 1988 the commission issued order no. 19,141 (73 NH PUC 285), which established the following filing dates:

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

                                        DATE

1. Updated estimates of the utilities' October 1, 1988
   long term avoided costs along with
   a description of procedures being
   used to secure power purchase
   arrangements with QFs
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2. Compliance with the other reporting requirements of order no. 19,052	April 30, 1989 and April 30 of every even-numbered year thereafter
3. Compliance with requirements regarding short term avoided cost calculations	December 1988 and thereafter as part of fuel adjustment charge and energy cost recovery mechanism proceedings

Order no. 19,141 also officially closed consolidated dockets DR 86-41 *et al.*

On October 5, 1988 Public Service Company of New Hampshire (PSNH or the company) filed updated estimates of its long term avoided costs. As indicated in order no. 19,141, the commission did not initiate a formal proceeding to review these estimates. Rather, the estimates were to serve as a bridge for moving towards full compliance and implementation of order no. 19,052 by providing current avoided cost information needed by QFs to compete effectively with the utilities' other resource options.

On November 23, 1988 PSNH filed short term avoided cost estimates as part of its fuel adjustment charge proceeding, DR 88-184. These rates were approved in order no. 19,288 issued January 10, 1989 (74 NH PUC 22, 99 PUR4th 543).

On February 13, 1989 staff held a joint meeting for all of the utilities to discuss compliance with the other reporting requirements of order no. 19,052. At this meeting staff reviewed the requirements of the order and indicated to the utilities the basic criteria the commission would be using to assess the utilities' filings. On March 6, 1989 staff met with PSNH to discuss the status of its least-cost planning efforts and the preparation of the reports required by order no. 19,052.

On March 31, 1989 a second general meeting was held with the utilities to which the parties from consolidated dockets DR 86-41 *et al.* were also invited. In addition, each utility was asked to invite all of the QFs from which it purchases power. Staff also invited others who it thought would be interested in least cost planning in New Hampshire, including conservation organizations such as the Conservation Law Foundation.

On May 1, 1989 PSNH filed its Integrated Least Cost Resource Plan 1989 Edition. An order of notice in the instant docket was issued June 6, 1989 setting the procedural schedule.

Staff explored technical issues of the filing by means of data requests and a prehearing conference on June 28, 1989. The hearing on the merits of PSNH's Integrated Least Cost Resource Plan was held on July 20, 1989.

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II. SUMMARY OF THE COMMISSION'S LCIP FILING REQUIREMENTS

A. *THE COMMISSION'S OBJECTIVE*

[1, 2] The goal of the commission's order no. 19,052 was to establish a process whereby we could review and evaluate the context in which utilities were negotiating and contracting for power purchases from QFs. In order no. 19,052, the commission recognized that the QF industry

had evolved over the then ten years it had been in existence and that this evolution warranted a change in commission policy toward increased flexibility and direct negotiations between utilities and QFs. However, we also noted that we did not believe such a flexible system could be implemented effectively absent a commission approved framework. We found that "the proper goal for commission policy regarding short 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." P.7. The objective, therefore, of the commission's review of the utilities' least cost integrated resource plans is to evaluate whether they are planning properly.

We note that our acceptance of a utility's least cost resource plan indicates that the utility's resource planning *process* is adequate. Acceptance of a particular filing does not constitute approval of specific resources included in the plan. We emphasize that our least cost planning review process is not what has been characterized in other jurisdictions as a "pre-approval process." The commission will review and analyze the prudence of any particular resource option when the utility brings it before us in a cost recovery or rate proceeding.

B. *THE REQUIREMENTS OF ORDER NO. 19,052*

[3] The utilities are required to file reports in seven areas to document their least cost integrated planning processes. Order no. 19,052 outlines the commission's requirements for these seven reports:

1. *Forecast of Future Demand*

   a) 15 year;

   b) high, low, most likely cases;

   c) system and subsidiary level; and

   d) include price and CLM effects.

2. *Assessment of Demand-Side Options*

   a) include all reasonably available programs;

   b) explicitly account for price-induced reductions;

   c) explicitly account for program-induced reductions; and

   d) description of program screening and evaluation methodology.

3. *Assessment of Supply-Side Options*

   a) assess range of options;

   b) include existing QFs under contract and as available;

   c) describe the use of models; and

   d) use minimization of present worth of revenue requirements as a criterion.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

a) include map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system within the forecast period; and

b) evaluate how new generation, regardless of ownership, will be incorporated into the transmission system.

5. *Integration of Demand- and Supply-Side Resource Options*

a) describe development of formal process for integration of cost-effective utility demand- and supply-side resources;

b) demonstrate that utility has considered all of its resource needs;

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c) use a dynamic, iterative process; and

d) include consideration of risk, sensitivity, uncertainty.

6. *Two-Year Implementation Plan*

a) include short-term forecast at system and subsidiary levels;

b) describe how optimal mix of demand and supply resources will be developed over next two years; and

c) specify models, data, equipment, personnel and facilities utility will use or require in implementation.

7. *Avoided Cost Forecasts*

a) 15 year avoided cost forecast based on most likely energy and demand forecasts;

b) consistent with DR 86-41 *et al.* Phase I methodology; and

c) exception to Phase I is that avoided costs flow from utility's resource plan.

[4] Order no. 19,052 also requires the utilities to file testimony in three areas:

1. The utility must file testimony indicating whether it needs additional capacity in the next eight years and whether QF capacity could meet that need.

2. The utility must file "testimony documenting... [its] integrated least-cost resource plan for providing all aspects of its energy resource needs." P. 23.

3. The utility must file "testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs." P. 24. This testimony is required only if the utility has a need for additional capacity in the next eight years.

C. *THE COMMISSION'S REVIEW CRITERIA*

[5] The commission reviews the utilities' least cost planning filings according to the criteria indicated by the requirements of order no. 19,052. First, the commission looks for *completeness* in meeting the reporting requirements. Has the utility included all of the required reports and

addressed all of the specified areas in them?

Second, the commission evaluates whether the utility's assessment of resource options is *comprehensive*. Has the utility considered all demand- and supply-side resource additions, including QFs?

Third, is the utility's planning process *integrated*? Has the utility evaluated its demand- and supply-side options in an equivalent manner and addressed issues of coordinated timing in the acquisition of one or more resources?

Fourth, is implementation of the utility's resource plan *feasible*? Does the utility's two-year implementation plan indicate that the utility is capable of pursuing the resource additions it has identified in the time available?

Fifth, is the utility's planning process *adequate*? Does it provide for resources in a timely manner sufficient to meet the electricity and energy service needs of its customers now and for the future?

III. SUMMARY OF PSNH'S FILING AND TESTIMONY

In the cover letter that accompanied its initial least cost planning filing, throughout the plan itself (Ex. I), and in testimony at the hearing PSNH emphasized the uncertainties facing PSNH given the status of its bankruptcy reorganization. Tr. 9-10. However, both Mr. Brown, the company witness, and PSNH's attorney, Ms. Nelson, indicated that despite these uncertainties the company believes that "it is an appropriate time to begin the discussions on many of the key issues" with regard to least cost resource planning at PSNH.

PSNH's resource plan is based on a "reference case" of forecast, financial, cost and economic data that assumes a one time 30 percent rate increase in 1990 when Seabrook is projected to begin commercial operation. PSNH explains that the 30 percent rate increase is an assumption made for planning purposes only, and that it has developed a resource plan to meet its needs under these reference case assumptions. It has then tested the sensitivity of

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its plans with different rate assumptions and resulting high and low forecast scenarios. Ex. I, Forecast of Future Demands, pp. 1-1 to 1-3.

A. *NEED FOR ADDITIONAL CAPACITY IN THE NEXT EIGHT YEARS*

PSNH's testimony and integrated least cost resource plan (Ex. I) indicate a need for additional capacity in the next eight years. Figure I-2 of the Assessment of Supply-Side Options (Ex. I) illustrates PSNH's need for capacity now and until Seabrook comes on line (projected to be January 1, 1990) and then again in power year 1993/94. PSNH needs approximately 300 megawatts of capacity currently and this need will continue until Seabrook begins commercial operation. Ex. I, Assessment of Supply-Side Options, p. 1-3. Assuming Seabrook is on-line January 1, 1990, PSNH projects a surplus of 200 megawatts for a few years which then declines and results in a need for 50 megawatts of additional resources by 1993/94. This need will increase to 150 megawatts by 1996/97, the end of the eight year horizon. Without Seabrook, PSNH will need approximately 580 megawatts of new resources by 1994. Ex. I, Integration

report, pp. 3, 42.

PSNH's analysis of uncertainties indicates that by 1996/97, with Seabrook on-line, it could require as much as 580 megawatts of new resources or have a surplus of 291 megawatts. Ex. I, Testimony, p. 2. A high growth scenario and loss of planned resources (e.g., the termination of the Seabrook buyback agreements) could lead to the deficiency of 580 megawatts, whereas lower load growth and the availability of more resources (e.g., the termination of the sale of Merrimack 2 to VELCO) could lead to a surplus. Loss of the New Hampshire Electric Cooperative as a wholesale customer would increase this surplus by another 190 megawatts.

B. *SUMMARY OF PSNH'S INTEGRATED RESOURCE PLAN*

1. *Selection of PSNH's Current Strategy*

PSNH is pursuing what it calls its "current strategy" to procure the resources it will need to meet its customers' demand for electricity and energy services over the next fifteen years. PSNH selected the current strategy from among five resource strategies, the other four being 1) gas; 2) coal; 3) gas/coal; and 4) conservation. PSNH made this selection based on how the strategies compared according to five "figures of merit" or criteria: 1) customer energy service costs; 2) utility revenue requirements; 3) electricity rates; 4) PSNH net income; and 5) CO_2 emissions (a general measure for environmental externalities). Ex. I, Integration report, p. 36.

With Seabrook in operation in 1990, the current strategy fares better than the gas, coal and gas/coal strategies on all of PSNH's criteria except net income and CO_2 output. The current strategy does less well than the conservation strategy on all criteria except rates. Rates under the conservation strategy as modeled are .82 percent higher than they would be under the current strategy. Cancellation of Seabrook in 1990 does not change the relative positions of the strategies on PSNH's criteria, but the magnitudes of the differences between them generally increase. However, without Seabrook, the conservation strategy results in rates only .68 percent higher than under the current strategy.

2. *Description of the Other Strategies*

PSNH considered four other strategies in the process that resulted in selection of the current strategy. In the gas strategy, gas turbines and gas combined cycle units would be built as needed to meet resource requirements. The gas strategy produces less CO_2 output than the current strategy but does worse on PSNH's other criteria. In the coal strategy, PSNH relies on coal-fired baseload plants to meet its needs. This strategy does better than the current strategy on the net income criterion but worse on the others. The gas/coal strategy involves building gas combined cycle units to meet near term load growth and either coal baseload or coal gasification units after 2000 to meet long term needs. This strategy performs worse than the current strategy on all criteria. In the conservation strategy, PSNH would implement conservation and load management programs to capture demand-side savings over and above those

expected to occur because of the 30 percent rate increase assumption in the reference case. This strategy fares better than the current strategy on all criteria except rates.

3. *Summary of the Current Strategy*

PSNH's current strategy for meeting its resource needs includes price-induced conservation, load management programs aimed at reducing peak capacity needs and increasing off-peak energy sales, internal cogeneration and self-generation, power plant life extensions and additional QF purchases. Ex. I, Integration report, p. 44.

On the demand-side, price-induced conservation occurs as a result of the one time 30 percent rate increase assumed in the reference case. PSNH estimates that customers will undertake about 300 megawatts of conservation by 2006 in response to price increases. PSNH-sponsored load management programs are projected to result in 200 megawatts of on-peak load reductions by 2006. Ex. I, Integration report, p. 44.

In its current strategy, PSNH also counts increased internal cogeneration and self-generation on the demand-side. PSNH projects that together they will result in an 80 megawatt reduction in load by 2006. This amount would be larger — approximately 170 megawatts — if PSNH did not structure standby and backup rates to reflect the costs of providing this service to these customers.

On the supply-side, PSNH is committed to life extension work at Schiller and Merrimack because it is less expensive than any other resource option. PSNH indicates that it is also committed to new power purchases from Hydro Quebec. Ex. I, Integration report, p. 44.

QFs are also included in PSNH's current strategy. PSNH notes that the amount of QF power available depends directly on avoided cost levels. PSNH estimates that capacity provided by QFs will increase to 175 megawatts in 1990 due to high avoided cost-based rates in 1985. PSNH notes that at current avoided cost levels little new QF capacity is being offered; however, it expects that QF projects will appear as PSNH needs capacity and avoided cost levels rise. PSNH estimates that 800 megawatts of QF capacity could be available at or below avoided costs in the planning period. Ex. I, Integration report, pp. 44-46.

Lastly, in the current strategy PSNH plans to build gas turbines and gas combined cycle units to meet any remaining resource needs. These resources are not projected to be needed until 1997. Ex. I, Integration report, p. 46.

Without Seabrook (assumed on line in 1991 in the reference case) PSNH will meet its current need for 300 megawatts of capacity with additional QF purchases (up to 600 megawatts by the early 1990s) to meet baseload requirements. Again, PSNH plans to build gas turbines and combined cycle units to fill any remaining need. Ex. I, Integration report, p. 45.

C. *PROCEDURES FOR NEGOTIATING AND CONTRACTING WITH QFS*

PSNH is proposing three forms of arrangements with QFs. First, on July 18, 1989 PSNH released a request for proposals (RFP) seeking 50 megawatts of external generation. PSNH indicated that it was seeking primarily peaking and intermediate generation but had targeted 20 percent of the total supply block (10 MW) for renewables. Proposals are due December 15, 1989 with final selection decisions expected to be made by April 30, 1990. This solicitation was open to QFs, independent power producers and other power suppliers. Should Seabrook be delayed or cancelled or PSNH's needs otherwise increase, the company has indicated that it would increase the size of this solicitation.

In addition to the RFP, PSNH has filed a standard long term contract for renewable QFs between 100 and 1000 kilowatts in accordance with the requirements of order no. 19,052. PSNH will also purchase power from QFs under short term arrangements. Ex. I, Testimony, p. 2.

IV. SUMMARY AND COMMENTS ON THE CONSERVATION LAW FOUNDATION'S COMMENTS ON PSNH'S FILING

The commission received comments on PSNH's integrated least cost resource plan from

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one interested party, the Conservation Law Foundation (CLF). Those comments are summarized and addressed briefly here. We further discuss some of the issues raised in CLF's comments in our findings on PSNH's filing.

Generally, CLF notes that it is disappointed in what it calls PSNH's "timid approach toward energy efficiency investment." Ex. III, p. 1. Specifically, CLF claims that PSNH is asking the commission to endorse the "no loser's test" for conservation and load management and asks that the commission reject it. Ex. III, p. 2. Mr. Brown, PSNH's witness, testified at the hearing that PSNH did not endorse the no loser's test. In fact, Mr. Brown testified that the company agreed with CLF that the no loser's test should be rejected by the company and the commission. Tr. 37. As the issue has been raised and no commenter has supported the no loser's test, the commission will simply indicate here that it does reject the no loser's test as a criterion for either conservation and load management programs or for least cost integrated planning in general.

CLF also expresses its concern about its understanding that PSNH proposes to delay the implementation of demand-side programs in order to avoid possible near term rate increases. Ex. III, p. 3. The commission reiterates that utilities must consider demand-side options simultaneously with supply-side options in order to ensure that the resource plan which results is least cost. However, we do not interpret the discussion referenced by CLF (Ex. I, Integration report, p. 63) as indicating that PSNH will delay implementation of demand-side options. Rather we read it to say that PSNH has considered the effect of such a delay and discovered that "over the long term rates would still increase by roughly the same amount as a result of the [particular] programs" in its scenario. Ex. I, Integration report, p. 63. We will comment further on the timing of PSNH's demand-side programs in our findings on that report.

CLF states that the commission should order PSNH to make direct investments in energy efficiency. Ex. III, p. 4. The commission notes again that its objective in this proceeding is to assess whether the company is planning properly. Should we find that the company's planning process is inadequate in a particular area we will require it to take remedial action. At this point in time, however, we would not order a company to invest directly in any particular resource. Our interest is in ensuring that the company itself has the capability to evaluate all of the resource options it faces and select the least cost from among them.

CLF also asks that the commission order PSNH to undertake a collaborative energy efficiency planning approach similar to the efforts that have been undertaken in Connecticut, Massachusetts and Vermont to date. Ex. III, p. 5. This type of remedial action is more consistent with the commission's objective of ensuring that a utility's resource planning capabilities are

adequate. In fact, PSNH has indicated in both its filing and in testimony at the hearing that it is interested in participating in a collaborative demand-side management (DSM) effort and that it believes such an effort will be important for it in developing its DSM capabilities and priorities. Tr. 38. The commission will require PSNH's participation in a series of meetings with staff, the other New Hampshire utilities, representatives from the Governor's Energy and Consumer Advocate's Offices, and others as staff and the utility participants see fit, to explore the potential for a collaborative DSM program design process in New Hampshire. If appropriate, this group will also develop a plan for implementing such a collaborative design process. Should a collaborative design process be initiated, the commission will require PSNH to participate.

Finally, CLF asks the commission to order PSNH to include external costs in its evaluation of the cost-effectiveness of various resources. The commission notes that PSNH appears, in fact, to have done this with its use of CO_2 emissions as a criterion for evaluating and selecting among its five resource strategies. We will discuss PSNH's use of these criteria further in our findings on its filing.

V. COMMISSION FINDINGS

[6] The commission has reviewed and analyzed PSNH's Integrated Least Cost Resource

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Plan and testimony (Ex. I), the responses to staff's data requests (Ex. II), comments filed by CLF (Ex. III), and the hearing transcript in our evaluation of PSNH's least-cost integrated resource planning. We note again that the focus of our review is on the adequacy of the company's planning *process.* While consideration of the resource options selected by PSNH is a component of our evaluation, our acceptance of the company's planning process does not constitute approval of specific options in its resource plan. The commission's judgment on the prudence of these options will take place as it has traditionally, in the context of a rate case or similar proceeding where PSNH seeks recovery of costs incurred.

We note further that our acceptance of the company's planning process also does not imply endorsement of the validity of the assumptions used in the analysis that underlies it. In particular, the commission recognizes that PSNH's assumption of a one time 30 percent rate increase was only an analytical construct that enabled the company to evaluate its resource situation. The commission regards this rate assumption and other assumptions used in the analysis as just that — assumptions made to facilitate the analysis, not policy decisions that PSNH has made.

Lastly, we note that this is the first least-cost planning filing by PSNH in response to new requirements of the commission. We have taken this into account in our review and evaluation of PSNH's least cost planning process.

A. *COMPLETENESS OF THE FILING*

The commission finds PSNH's least cost integrated planning filing to be complete. We commend PSNH for the clarity and excellence of its presentation. We reiterate staff's comments at the hearing, that it is only because of the detail and clarity of the presentation we are able to make some of the findings we have made. Tr. 14. We also note that PSNH's use of the AES model and conceptual framework appear to have helped facilitate its resource planning process

and analysis of the resource options available to it.

B. *ADEQUACY OF THE PLANNING PROCESS*

1. *Forecast of Future Demand*

PSNH uses an econometrically-based energy forecasting model. In addition, it collects some end-use information. The commission finds that PSNH's forecasting capability is reasonable and appropriate for a utility of its size and sophistication.

2. *Assessment of Demand-Side Options*

[7] PSNH appears to have conducted a preliminary assessment of DSM options for its system, and selected a few programs for implementation at this time. At the same time, in both its filing (Ex. I, Integration report, p. 54 and Assessment of Demand-Side Options, pp. I-4 to I-5) and testimony at the hearing (Tr. 74), PSNH states that it needs to have principles and policies regarding cost recovery in place before proceeding with implementation of a broader range of programs. However, PSNH does not indicate that it plans to raise these issues with the commission in the near future, other than to suggest that they be discussed as part of a collaborative DSM effort. Tr. 74.

As was discussed earlier, the commission will require PSNH to participate in discussions on a collaborative effort for DSM program design. We will also require PSNH to participate in discussions on DSM policy issues, such as cost recovery, which will take place as part of the same process. If PSNH determines that it is ready to move forward with the implementation of any DSM programs before any collaborative effort on DSM policy issues is completed, we expect that PSNH will propose to the commission a mechanism for resolving any policy issues it views as an obstacle to DSM program implementation. We note that another utility has done just that in a recently opened proceeding now before us (DR 89-154).

PSNH also indicates that its end-use data base needs to be developed further if DSM programs are going to be a part of its resource strategy. Ex. I, Integration report, p. 52. Again, PSNH does not indicate that it has near term

plans to do the necessary data development. The commission is concerned that PSNH has not compiled, and appears to have no near term plans for compiling this essential data base. We note the importance of assessing and pursuing DSM simultaneously with supply options to ensure that the resource plans that results is least cost. Therefore, we will require PSNH to include in its next LCIP filing a detailed plan for developing by the end of 1990 the end-use data needed to enable DSM programs to be a part of its resource strategy.

PSNH includes in this report descriptions of DSM programs it plans to implement and programs it is considering. The selection and discussion of these programs indicates that PSNH's primary load shape objectives are peak load reduction and off-peak energy sales promotion (e.g., Ex. I, Assessment of Demand-Side Options, pp. II-7 to II-10, III-5, III-7, III-14). The commission is concerned about the emphasis PSNH is placing on kilowatt-hour sales promotion when it is projecting that its capacity situation will require it to develop new resources by

1993/94. (The commission notes that this leaves only four years, a relatively short period of time, for the development of either new demand- or new supply-side resources.) The goals of PSNH's DSM program development do not appear to be consistent and well-integrated with its assessment of its capacity situation. We recognize that integrating all parts of the company's resource planning process is a large task; however, we expect to see this issue better addressed in PSNH's next least cost planning filing.

PSNH includes a description of the Clockwatch 6 program in the list of programs it plans to implement. While we recognize the value of the Clockwatch 6 program in periods when the electric system is in special operating conditions, the commission notes that it does not meet our criteria for DSM programs that can be counted as a capacity resource for planning purposes. The program is voluntary and any load reductions achieved due to the good will of PSNH's customers. Tr. 68.

Overall, PSNH has begun to develop a comprehensive assessment of demand-side options. While the commission is pleased to see the work that has been accomplished to date, we had expected somewhat more from a company the size of PSNH. Despite its current financial situation, PSNH must move forward with a resource planning process that assesses all potential resource options in an equivalent and comprehensive manner. While for the purposes of this proceeding, we find the report to be adequate and to fulfill the requirements of order no. 19,052, the commission expects to see marked improvement in this area in PSNH's next least cost planning filing.

3. *Assessment of Supply-Side Options*

PSNH's process for assessing supply-side options appears to be comprehensive. PSNH has considered a range of options to meet both its short and long term needs. The commission has some concerns about the choices PSNH has made with regard to meeting its short term needs, i.e., relying on the New England Power Pool (NEPOOL) for capacity deficiency service. While we can see the logic of this decision from PSNH's perspective given the relative costs of deficiency service and capacity in the short term market, we question whether NEPOOL will have capacity available to it in this time frame, either within the region or from neighboring regions. Therefore, we will require PSNH to provide, in its next least cost planning filing, details on the availability of short term capacity from NEPOOL to the extent that dependence on it remains PSNH's plan for meeting its short term needs.

For the longer term, PSNH has indicated that it may build gas-fired combustion turbines and/or combined cycle units depending on the availability of other planned resources and its capacity needs through the 1990s. Given the uncertainty of the current pipeline proposals to bring natural gas to New Hampshire, the commission will require PSNH to provide in its next filing additional detail on the availability of gas supplies to serve any gas-fired generation it may build. In addition, the commission will require PSNH to address more explicitly the uncertainties, risks and costs of any utility construction project, particularly given the company's financial condition.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

The commission finds that PSNH's transmission report is comprehensive and fulfills the requirements of order no. 19,052. We note that the map labeled Figure 3 (Ex. I, Assessment of Transmission Requirements) meets our requirements in order no. 19,052 for a "map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system... during the forecast period." P. 19. We further note that the level of detail provided was excellent and addressed our objective of providing QFs with adequate information to assess locations where their projects would be beneficial to the company.

5. *Integration of Demand- and Supply-Side Resource Options*

PSNH appears to have developed the analytic capability to integrate demand- and supply-side options in its resource planning in a comprehensive manner. PSNH has clearly laid out five criteria by which it evaluated five resource strategies. PSNH reported the results of this evaluation in its least cost planning filing. Given these results the commission questions PSNH's selection of the current strategy over the conservation strategy. Despite a small increase in rates, the conservation strategy results in lower customer energy service costs, both with and without Seabrook. Customer energy service costs can be regarded as equivalent to total bills. While the focus of electric companies has traditionally been supplying electricity, in the current environment, characterized by a least cost planning approach to resource acquisition, this focus has broadened to include the concept of supplying energy services. As such, customers' total bills are more representative of their electricity costs than are rates. With a comprehensive array of DSM programs available, customers should be able to reduce their electricity costs even if rates increase slightly. PSNH's choice of the current strategy over the conservation strategy, based on the information provided in its filing, leads us to believe that it has not fully integrated demand and supply options in its resource planning process. We will require PSNH, in its next least cost planning filing, to justify the selection of any resource strategy which does not rank highest on criteria that PSNH itself has selected for its evaluation.

6. *Two-Year Implementation Plan*

PSNH's two-year implementation plan describes actions that would need to be taken in the next two years to proceed with implementation of its long term resource plan. The commission notes that, with some exceptions, the plan does not indicate a specific schedule for and commitment to taking these actions. We recognize that PSNH may be limited in what it can commit to doing in the near future given its bankruptcy situation. However, we reiterate that PSNH must continue to plan for its resource needs despite its financial situation and to that end should be taking action now to ensure that its needs will be met. In particular, PSNH should be laying the groundwork for those options which are flexible and will prove economic with or without Seabrook, especially demand-side options. The commission is concerned that if PSNH does not take action now, it will be ill-prepared to move forward with development of economic and cost-effective resource options when its financial difficulties are resolved.

We will require PSNH to provide greater detail in its implementation plan in its next least cost planning filing. In particular, we will require PSNH to provide a timeline indicating specifically the dates by which actions will take place and "personnel the utility intends to utilize... in the implementation of the plan." Order no. 19,052 (73 NH PUC 117 [1988]). The commission finds that, for the purposes of this proceeding, the report as filed is adequate.

7. *Avoided Cost Forecasts*

[8] PSNH has calculated its avoided cost in accordance with the settlement agreement in consolidated dockets DR 86-41, *et al.* as required. Given our questions about how much

capacity may actually be available in the market over the next few years and the timing of the availability of Seabrook, the commission is concerned that the company's avoided capacity cost estimates may be too low in the near term. The commission will require PSNH to provide in its next least cost planning filing supporting documentation for the cost and availability of capacity both in the short term market and as deficiency service from NEPOOL. Until then, the long term avoided cost estimates are approved as filed and should serve as the basis of PSNH's negotiations with QFs.

8. *Overall Evaluation*

The commission recognizes that PSNH's circumstances are particularly uncertain at this time given the bankruptcy reorganization. These additional uncertainties will, and should, affect PSNH's resource planning process. However, the commission notes that resource planning at PSNH must continue despite the current circumstances. PSNH has an obligation to serve the electricity and energy service needs of its customers at the lowest possible cost. To ensure that it can fulfill this obligation, PSNH must continue to plan for its future resource needs *and* must continue to implement its plans.

Although the commission finds PSNH's least cost integrated planning filing to be very impressive, we do have concerns. The filing demonstrates that PSNH is well on its way toward developing the analytic capability to do sophisticated resource planning that treats various resources equivalently along well-defined criteria. However, as discussed above, PSNH's decisions about its resource strategy, given the outcomes on the criteria it has selected, cause us some concern. PSNH's planning process needs to be better integrated so that its resource planning decisions, and in particular its choice of resource strategy, are consistent with its stated criteria, objectives, and capacity situation. PSNH also needs to develop further its implementation plan to demonstrate its ability to accomplish its long range plan by laying the foundation in the near term. In its next filing, we will look for evidence that PSNH is making the internal resource allocation decisions necessary to implement its plan in a timely and effective manner.

For the purposes of this proceeding, the commission finds that PSNH's filing fulfills the requirements of order no. 19,052 and demonstrates that PSNH's resource planning process is adequate and we commend the company for its work to date.

C. *ADDITIONAL COMMISSION FINDINGS*

In accordance with the process outlined in order no. 19,052, the commission finds that QFs can meet some of PSNH's resource needs within the next eight years. We further find that the process PSNH has established for negotiating and contracting for power purchases from QFs is adequate, consistent with commission policy, and consistent with PSNH's least-cost integrated resource plan. Given the large role that QFs play in PSNH's resource mix, the commission finds

no need to set the megawatt amount of QF capacity that PSNH should be seeking.

[9] PSNH has indicated in its RFP that it is seeking primarily peaking and intermediate generation but has reserved 10 MW for renewable resources, which tend to be baseload. For purposes of this reservation, it has designated wood generation as non-renewable. We interpret these designations as a willingness by PSNH to accommodate non-wood renewables (hydro, wind, solar, municipal solid waste) for the sake of diversity, and its expectation that wood generation will compete with non-renewable resources in satisfying dispatchability criteria in the RFP. We find the terminology "renewable/non-renewable" somewhat misleading but the expectation that wood, a renewable resource, will compete with non-renewables in terms of dispatchability, not unreasonable. However, we reiterate the commission's preference, as a matter of public policy, for QFs using renewable and indigenous fuels, including wood and municipal solid waste, and cogeneration based on existing industrial use of fossil fuels, over technologies that increase the dependence of New Hampshire on fossil fuels.

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 Public Service Company of New Hampshire's resource planning process as described in its filing of May 1, 1989 and subsequent responses to data requests and testimony be, and hereby is, approved as fulfilling the requirements of order no. 19,052 (73 NH PUC 117) for the year 1989; and it is

FURTHER ORDERED, that Public Service Company's long term avoided cost estimates be, and hereby are, approved for 1989 as filed and should serve as the basis for Public Service Company's negotiations with QFs; and it is

FURTHER ORDERED, that Public Service Company participate in consideration of a collaborative process on DSM program design and policy issues in order to facilitate its development and implementation of cost-effective DSM; and it is

FURTHER ORDERED, that Public Service Company develop a plan for gathering end-use information by the end of 1990 and report on this data collection in its next LCIP filing in order to improve its DSM assessment capabilities; and it is

FURTHER ORDERED, that Public Service Company assess and integrate its DSM options more comprehensively in the context of its capacity situation; and it is

FURTHER ORDERED, that Public Service Company provide a detailed description in its next LCIP filing of the short term resource options available to the region, including supporting information on the timing of their availability, to the extent that the company plans to rely on NEPOOL to meet its own capacity needs; and it is

FURTHER ORDERED, that PSNH provide additional supporting information on short term capacity costs and availability in support of its avoided cost estimates.

FURTHER ORDERED, that Public Service Company provide greater detail in its next LCIP

filing, on the availability of natural gas supplies to the extent that gas-fired generation is included in its resource plans; and it is

FURTHER ORDERED, that Public Service Company provide a justification for the selection of any resource strategy it may choose which does not best satisfy its own criteria; and it is

FURTHER ORDERED, that PSNH provide a schedule and designate in its next LCIP filing the personnel and resources it will utilize to support and implement its resource plan.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1989.

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NH.PUC*10/02/89*[51836]*74 NH PUC 357*Unitil Service Corporation

[Go to End of 51836]

74 NH PUC 357

Re Unitil Service Corporation

DR 89-076
Order No. 19,550

New Hampshire Public Utilities Commission

October 2, 1989

ORDER approving the least-cost integrated resource planning process of an electric utility and accepting the long-term avoided cost estimates provided by the utility for use as a basis for its power purchase negotiations with qualifying facilities.

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1. COGENERATION, § 17 — Contracts — Power purchase negotiations — Integration into long-term resource planning.

[N.H.] The proper goal of commission policy regarding short- and long-term utility purchases of energy and capacity from qualifying facilities (QFs) is the integration of QFs into each utility's long term resource planning process in an efficient and equitable manner; acceptance of a utility's long-term resource plan indicates that the utility's resource planning process is adequate, but acceptance does not constitute approval of a specific resource included in the plan. p. 360.

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2. ELECTRICITY, § 4 — Least-cost planning — Review process — Effect of approval.

[N.H.] The least cost planning review process employed by the commission is not what has been characterized in other jurisdictions as a "preapproval process"; the commission will review and analyze the prudence of any particular resource option when the utility brings it before the

commission in a cost recovery or rate proceeding. p. 360.

3. ELECTRICITY, § 4 — Least-cost planning — Filing requirements.

[N.H.] Electric utilities are required to file reports in seven areas to document their least cost integrated planning processes: (1) forecasts of future demand; (2) assessments of demand-side options; (3) assessments of supply-side options; (4) assessments of transmission requirements, limitations and constraints; (5) integration of demand- and supply-side resource options; (6) two-year implementation plans; and (7) avoided cost forecasts. p. 360.

4. ELECTRICITY, § 4 — Least-cost planning — Filing requirements — Documentation.

[N.H.] In documenting its least cost integrated planning processes, an electric utility must file testimony in three areas: (1) testimony indicating whether it needs additional capacity in the next eight years and whether qualifying facility (QF) capacity could meet that need: (2) testimony documenting its integrated least-cost resource plan for providing all aspects of its energy resource needs; and (3) testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs, if the utility has a need for additional capacity in the next eight years. p. 361.

5. ELECTRICITY, § 4 — Least-cost planning — Review criteria.

[N.H.] In reviewing electric utility least-cost integrated resource plans, the commission looks for (1) *completeness* in meeting reporting requirements, (2) *comprehensiveness* in the assessment of resource options, (3) *integration* of demand- and supply-side options in the planning process, (4) *feasibility* of implementation, and (5) *adequacy* of the planning process in providing for resources in a timely manner sufficient to meet the electricity and energy service needs of customers. p. 361.

6. ELECTRICITY, § 4 — Least-cost planning — Approval.

[N.H.] The integrated least-cost resource plan of an electric utility was accepted and approved as fulfilling the requirements of a prior order (73 NH PUC 117) that established a commission policy for future utility purchases from qualifying facilities and established biennial least-cost integrated planning filing requirements; the commission noted that acceptance of the plan did not constitute approval of specific options in the plan, which would be judged in the context of a rate case or similar proceeding on the basis of the prudence of the specific options. p. 363.

7. CONSERVATION, § 1 — Demand-side management — Least-cost planning — Electric utility.

[N.H.] An electric utility was directed to provide a detailed report on the status of its demand-side management (DSM) program implementation in its next least-cost integrated resource planning filing and to participate in discussions regarding the consideration of a collaborative effort on DSM program design and policy. p. 363.

8. COGENERATION, § 25 — Rates — Avoided cost — Contract negotiations.

[N.H.] The long-term avoided cost estimates provided by an electric utility in its least-cost integrated resource plan were approved for use as a basis for negotiations with qualifying facilities. p. 365.

9. COGENERATION, § 1 — Public policy — Preference for renewable and indigenous fuels.

[N.H.] In an order approving the least-cost

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integrated resource planning process of an electric utility, the commission reiterated its preference for purchases from qualifying facilities using renewable and indigenous fuels, including wood and municipal solid waste, and cogeneration based on existing industrial use of fossil fuels, over technologies that increase dependence on fossil fuels. p. 365.

APPEARANCES: LeBoeuf, Lamb, Leiby & MacRae by Elias G. Farrah, Esq. for UNITIL Service Corporation; Elaine Planchet for the Consumer Advocate; Janet Gail Besser, Dr. Sarah P. Voll, Mary C.M. Hain, Esq., and James Cunningham for the commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On April 7, 1988, the commission issued report and order no. 19,052 (73 NH PUC 117) in the consolidated dockets DR 86-41, 86-69, 86-70, 86-71 and 86-72 (DR 86-41, *et. al.*). Order no. 19,052 established a new commission policy for future utility purchases of power from qualifying facilities (QFs) and requirements for biennial least-cost integrated planning (LCIP) filings by the utilities.

Staff held a workshop for the utilities on April 21, 1988 concerning the utilities' biennial LCIP filings and on April 28, 1988 formally requested a compliance report from each utility relating to the requirements of order no. 19,052. Following receipt of the compliance reports, on August 10, 1988 the commission issued order no. 19,141, (73 NH PUC 285) which established the following filing dates:

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

	DATE
1. Updated estimates of the utilities' long term avoided costs along with a description of procedures being used to secure power purchase arrangements with QFs	October 1, 1988
2. Compliance with the other reporting requirements of order no. 19,052	April 30, 1989 and April 30 of every even-numbered year thereafter
3. Compliance with requirements regarding short term avoided cost calculations	December 1988 and thereafter as part of fuel adjustment charge and energy cost recovery mechanism

Order no. 19,141 also officially closed consolidated dockets DR 86-41 *et. al.*

On October 13, 1988 UNITIL Service Corporation (UNITIL or the company) filed updated estimates of its long term avoided costs. As indicated in order no. 19,141, the commission did not initiate a formal proceeding to review these estimates. Rather, the estimates were to serve as a bridge for moving toward full compliance and implementation of order no. 19,052 by providing current avoided cost information needed by QFs to compete effectively with the utilities' other resource options.

On December 1, 1988 the UNITIL distribution companies, Concord Electric and Exeter and Hampton filed short term avoided cost

estimates as part of their fuel adjustment charge proceedings, DR 88-177 and DR 88-181. These rates were approved as amended in supplemental order no. 19,300 issued January 17, 1989.

On February 13, 1989 staff held a joint meeting for all of the utilities to discuss compliance with the other reporting requirements of order no. 19,052. At this meeting staff reviewed the requirements of the order and indicated to the utilities the basic criteria the commission would be using to assess the utilities' filings. On February 17 and March 10, 1989 staff met with UNITIL to discuss the status of its least-cost planning efforts and the preparation of the reports required by order no. 19,052.

On March 31, 1989 a second general meeting was held with the utilities to which the parties from consolidated dockets DR 86-41 *et. al.* were also invited. In addition, each utility was asked to invite all of the QFs from which it purchases power. Staff also invited others who it thought would be interested in least-cost planning in New Hampshire, including conservation organizations such as the Conservation Law Foundation.

On May 2, 1989 UNITIL Service Corporation filed its Integrated Resource Plan 1989-2003. An order of notice in the instant docket was issued June 6, 1989 setting the procedural schedule. UNITIL's request for an extension until June 29, 1989 to file its testimony was granted by the commission on June 12, 1989.

Staff explored technical issues of the filing by means of data requests and a prehearing conference on July 5, 1989. The hearing on the merits of UNITIL's Integrated Resource Plan was held on July 18, 1989.

II. SUMMARY OF THE COMMISSION'S LCIP FILING REQUIREMENTS

A. *THE COMMISSION'S OBJECTIVE*

[1, 2] The goal of the commission's order no. 19,052 was to establish a process whereby we could review and evaluate the context in which utilities were negotiating and contracting for power purchases from QFs. In order no. 19,052, the commission recognized that the QF industry had evolved over the then ten years it had been in existence and that this evolution warranted a change in commission policy toward increased flexibility and direct negotiations between

utilities and QFs. However, we also noted that we did not believe such a flexible system could be implemented effectively absent a commission approved framework. We found that "the proper goal for commission policy regarding short 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." P.7. The objective, therefore, of the commission's review of the utilities' least-cost integrated resource plans is to evaluate whether they are planning properly.

We note that our acceptance of a utility's least cost resource plan indicates that the utility's resource planning *process* is adequate. Acceptance of a particular filing does not constitute approval of specific resources included in the plan. We emphasize that our least cost planning review process is not what has been characterized in other jurisdictions as a "pre-approval process". The commission will review and analyze the prudence of any particular resource option when the utility brings it before us in a cost recovery or rate proceeding.

B. *THE REQUIREMENTS OF ORDER NO. 19,052*

[3] The utilities are required to file reports in seven areas to document their least cost integrated planning processes. Order no. 19,052 outlines the commission's requirements for these seven reports:

1. *Forecast of Future Demand*

   a) 15 year;

   b) high, low, most likely cases;

   c) system and subsidiary level; and

   d) include price and CLM effects.

2. *Assessment of Demand-Side Options*

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   a) include all reasonably available programs;

   b) explicitly account for price-induced reductions;

   c) explicitly account for program-induced reductions; and

   d) description of program screening and evaluation methodology.

3. *Assessment of Supply-Side Options*

   a) assess range of options;

   b) include existing QFs under contract and as available;

   c) describe the use of models; and

   d) use minimization of present worth of revenue requirements as a criterion.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

   a) include map indicating load concentrations, transmission limits and constraints,

and planned and proposed changes to the transmission system within the forecast period; and

b) evaluate how new generation, regardless of ownership, will be incorporated into the transmission system.

5. *Integration of Demand- and Supply-Side Resource Options*

a) describe development of formal process for integration of cost-effective utility demand- and supply-side resources;

b) demonstrate that utility has considered all of its resource needs;

c) use a dynamic, iterative process; and

d) include consideration of risk, sensitivity, uncertainty.

6. *Two-Year Implementation Plan*

a) include short-term forecast at system and subsidiary levels;

b) describe how optimal mix of demand and supply resources will be developed over next two years; and

c) specify models, data, equipment, personnel and facilities utility will use or require in implementation.

7. *Avoided Cost Forecasts*

a) 15-year avoided cost forecast based on most likely energy and demand forecasts;

b) consistent With DR 86-41 *et. al.* Phase I methodology; and

c) exception to Phase I is that avoided costs flow from utility's resource plan.

[4] Order no. 19,052 also requires the utilities to file testimony in three areas:

1. The utility must file testimony indicating whether it needs additional capacity in the next eight years and whether QF capacity could meet that need.

2. The utility must file "testimony documenting ... [its] integrated least-cost resource plan for providing all aspects of its energy resource needs." P. 23.

3. The utility must file "testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs." P. 24. This testimony is required only if the utility has a need for additional capacity in the next eight years.

C. *THE COMMISSION'S REVIEW CRITERIA*

[5] The commission reviews the utilities' least cost planning filings according to the criteria indicated by the requirements of order no. 19,052. First, the commission looks for *completeness* in meeting the reporting requirements. Has the utility included all of the required reports and addressed all of the specified areas in them?

Second, the commission evaluates whether the utility's assessment of resource options is *comprehensive.* Has the utility considered all demand- and supply-side resource additions, including QFs?

Third, is the utility's planning process *integrated?* Has the utility evaluated its demand- and supply-side options in an equivalent manner and addressed issues of

coordinated timing in the acquisition of one or more resources?

Fourth, is implementation of the utility's resource plan *feasible?* Does the utility's two-year implementation plan indicate that the utility is capable of pursuing the resource additions it has identified in the time available?

Fifth, is the utility's planning process *adequate?* Does it provide for resources in a timely manner sufficient to meet the electricity and energy service needs of its customers now and for the future?

III. SUMMARY OF UNITIL'S FILING AND TESTIMONY

A. *NEED FOR ADDITIONAL CAPACITY IN THE NEXT EIGHT YEARS*

UNITIL's testimony (Ex. III) and its integrated resource plan (Ex. I) indicate a need for additional capacity in the next eight years. Analysis of Table 5-1 in Ex. I shows that the UNITIL system (including Concord Electric, Exeter & Hampton, and Fitchburg Gas & Electric) currently needs 26 megawatts of capacity. UNITIL's capacity needs are projected to decrease slightly over the next few years and then increase to 66 megawatts by 1991/92, 200 megawatts by 1997 (the end of the eight year horizon) and 400 megawatts by 2003.

The Northeast Utilities (NU) slice of system purchase (Ex. I, pp. 45-6) will provide 50 megawatts of capacity toward meeting UNITIL's capacity needs from November 1989 to November 1996. In addition, UNITIL has identified a need for two peaking units (Tr. 29), some baseload capacity, and further out, some intermediate capacity (Ex. III, GRG-3).

B. *SUMMARY OF UNITIL'S INTEGRATED RESOURCE PLAN*

UNITIL has identified a combination of committed and uncommitted resources to meet its capacity needs for the next fifteen years. Specific (as opposed to generic) uncommitted resources are identified for only the next seven years. Ex. III, GRG-3. They include a coal-fired QF under negotiation, two oil-fired combustion turbines, and one oil/gas-fired combined cycle unit. Generic uncommitted resources are identified for the years beyond 1996.

To meet its peaking capacity needs, UNITIL has requested and received proposals for peaking capacity that costs between $80 and $105 per kilowatt-year. In response to these prices, UNITIL has commissioned an engineering study to determine the cost of building its own peaking unit. UNITIL plans to move forward with the acquisition of peaking capacity (either buying or building) by the end of 1989. Ex. I, Chapter Six. To meet its baseload needs, UNITIL will be finalizing contracts, now under negotiation, for coal capacity by the end of 1989. The in-service date for this capacity is projected to be January 1993. UNITIL will also be deciding in the fall of 1989 whether to issue a request for proposals (RFP) in the first quarter of 1990 for intermediate/cycling generation. Ex. I, Chapter Six.

On the demand-side, UNITIL plans to begin development and implementation of demand-side management (DSM) programs in 1990. UNITIL's current forecast of supply and

demand does not include any estimates of DSM program impacts. DSM will be pursued after the commitment to purchase or construction of peaking plants, with the intention of selling any excess capacity that may develop. Tr. 29-30. It is UNITIL's assessment that there will be a market for this capacity.

C. *PROCEDURES FOR NEGOTIATING AND CONTRACTING WITH QFS*

UNITIL uses a combination of RFPs and what it refers to as "constant market testing" to solicit power purchases from QFs. Ex. III, p. 9. A large portion of the uncommitted resources that UNITIL is pursuing in its resource plan is capacity that UNITIL is offering to buy from QFs.

On February 24, 1989 UNITIL issued a "Request for Preliminary Bids for New Generating Capacity" to which QFs were welcome to respond. The request identified UNITIL's interest in dispatchable capacity. Several peaker proposals were submitted by March 31, 1989 and were reviewed by the company. Ex. III, p.9.

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These proposals, along with UNITIL's study on building its own generation, constitute the uncommitted peaking capacity in UNITIL's resource plan.

The coal capacity for which UNITIL is now negotiating consists of a QF project that Fitchburg Gas & Electric Company was offered in its QF solicitation process in Massachusetts. This project was one of five losing proposals in the Fitchburg solicitation. UNITIL actively considered all five and has now selected one for final contract negotiations.

UNITIL filed a standard offer contract for small renewable QFs (between 100 — 1000 KW) consistent with the requirements of order 19,052. Ex. III, GRG-4. UNITIL also indicated that it is committed to a flexible negotiation process and will consider modifications to the standard offer contract on a case by case basis. Ex. III, p. 10.

IV. COMMISSION FINDINGS

[6] The commission has reviewed and analyzed UNITIL's Integrated Resource Plan (Ex. I), the responses to staff's data requests (Ex. II), its testimony (Ex. III) and the hearing transcript in our evaluation of UNITIL's least cost integrated resource planning. We note again that the focus of our review is on the adequacy of the company's planning *process.* While consideration of the resource options selected by UNITIL is a component of our evaluation of UNITIL's planning process, our acceptance of the process does not constitute approval of the specific resource options in UNITIL's plan. The commission's judgment on the prudence of these options will take place as it has traditionally, in the context of a rate case where UNITIL seeks recovery of costs incurred.

We note further that this is the first least cost planning filing by UNITIL in response to new requirements of the commission. We have taken this into account in our review and evaluation of UNITIL's least cost planning process.

A. *COMPLETENESS OF THE FILING*

The commission finds UNITIL's least cost integrated planning filing to be complete. We commend UNITIL for the clarity of its presentation and the quality of the writing in its

Integrated Resource Plan. Ex. I. The logic of the UNITIL planning process was presented in an easy to follow manner. We found the level of detail and the inclusion of supporting data in a Technical Appendix to be particularly helpful to us in our review and analysis.

B. *ADEQUACY OF THE PLANNING PROCESS*

1. *Forecast of Future Demand*

UNITIL recognizes the need to improve its forecasting capability to incorporate econometric techniques. Tr. 24. While UNITIL is not convinced it needs to incorporate end-use data into its forecasting, it acknowledges its need for this data for DSM program purposes.

The commission is concerned that the quality of UNITIL's forecasting will hinder its ability to estimate the timing and magnitude of its capacity needs and its ability to pursue DSM resource options effectively. Therefore, UNITIL should make upgrading its forecasting one of its priorities. The Commission expects to see a forecast using econometric techniques in UNITIL's next LCIP filing. We will also require UNITIL to include a detailed plan for developing relevant end-use data by the end of 1990 in its next LCIP filing. UNITIL should meet with staff to discuss any questions it may have regarding the development of end-use data.

2. *Assessment of Demand-Side Options*

[7] UNITIL has not yet completed a comprehensive assessment of DSM options for its system. The commission is concerned that this has not been completed given UNITIL's plans to make a commitment to peaking capacity by the end of 1989. We note that DSM options focused on peak load management could obviate, at a lower cost to ratepayers, the need for a significant portion of the peaking capacity that UNITIL is seeking to purchase or construct. We further note that DSM must be pursued in an integrated manner with supply-side options to ensure that the resource plan which results is

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truly least cost.

Mr. Gantz, the company's witness, testified that UNITIL has been involved tangentially with a collaborative DSM policy and program design process in Massachusetts. While he indicated that he did not know how effective such a process would be in terms of actually designing and implementing programs, he stated that UNITIL would be willing to discuss DSM plans and program opportunities with staff and others. Tr. 17. Given that UNITIL has not yet begun a full-scale effort to design and implement programs on its own, the commission will require UNITIL's participation in a series of meetings with staff, the other New Hampshire utilities, representatives from the Governor's Energy and Consumer Advocate's Offices, and others as staff and the utility participants see fit, to explore the potential for a collaborative DSM program design process in New Hampshire. If appropriate, this group will also develop a plan for implementing such a collaborative design process in New Hampshire. Should a collaborative DSM program design process be initiated, the commission will require UNITIL to participate. Whether or not such a process is initiated, the commission expects to see a comprehensive assessment of DSM options for the UNITIL system including potential kW and kWh impacts and cost-benefit analyses in its next LCIP filing.

In addition, UNITIL states that its retail subsidiaries' current rate structures do not allow it to take full advantage of DSM opportunities. Ex. I, p. 32. UNITIL has indicated plans to design and file new rate structures in the third quarter of 1990. To reinforce this intention the commission will require UNITIL to make complete rate design filings for its retail subsidiaries at that time.

Lastly, UNITIL should include, in either its assessment of DSM or its Two-Year Implementation Plan, a detailed description of how resources and personnel will be allocated to DSM activities at the company.

3. *Assessment of Supply-Side Options*

UNITIL's process for assessing supply-side options appears to be comprehensive. The commission finds it to be well-integrated and the schedule for its implementation to be feasible. We note that the discussion of supply options in UNITIL's plan reflects the effort that UNITIL has put into developing an independent supply procurement capability and the success UNITIL has achieved at it. Through solicitations (RFPs) and market testing UNITIL identifies potential supply options and then selects among them according to its resource planning guidelines. Ex. I, p. 36.

UNITIL has indicated that it is in the process of making decisions on peaking supply additions, including a decision whether to purchase or build peaking capacity. The commission will require a detailed analysis of the decision to purchase or construct peaking capacity in UNITIL's next LCIP filing. This analysis should address factors such as cost, construction experience, timing (*i.e.*, how quickly a plant could be built and a schedule indicating when decisions and/or commitments would have to be made to insure timely completion), and risk.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

UNITIL indicates that it is in the process of reviewing the circumstances and factors involved in providing wheeling services to QFs and that it may be developing new firm transmission contracts. This issue should be discussed in more detail in UNITIL's next LCIP filing. We also note that the transmission report did not include the required "map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system ... during the forecast period." Order no. 19,052, p. 19. The commission will require UNITIL to file such a map in UNITIL's next LCIP filing. The map should include all power lines used for transmission and the adjoining substations, with their rated capacity. The transmission lines should be 34.5 KV and above. We find, however, that UNITIL's transmission report is adequate for the purposes of this proceeding.

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5. *Integration of Demand- and Supply-Side Resource Options*

As discussed earlier, UNITIL has not yet conducted an assessment of demand-side resource options for its system. As a result, its integration of demand- and supply-side resource options is not comprehensive. The commission will require that UNITIL provide a detailed demand-side assessment in its next LCIP filing. We expect to see these demand-side options integrated with UNITIL's supply-side options in its next filing as well. UNITIL should quantify the contributions to meeting its customers' needs of both demand- and supply-side resources and document that

the various resource options it is pursuing are cost effective.

6. *Two-Year Implementation Plan*

UNITIL's action plan clearly lays out its work schedule for the next two years. As discussed previously, the commission is concerned about the timing of UNITIL's DSM activities in relation to its supply actions. We note that the schedule as shown in the two-year implementation plan reinforces our concern. We also note that the two-year implementation plan does not specify the "personnel the utility intends to utilize ... in the implementation of the plan". Order no. 19,052. While this report is adequate for the purposes of this proceeding, we expect to see this information in UNITIL's next LCIP filing.

7. *Avoided Cost Forecasts*

[8] UNITIL has calculated its avoided costs largely in accordance with the settlement agreement in consolidated dockets DR 86-41, *et. al.* as required. The commission notes that UNITIL has used a 20 megawatt decrement instead of a 10 megawatt decrement as specified in the settlement agreement. This change is acceptable for the purposes of this proceeding as no party or commenter has raised it as an issue. We will require UNITIL to justify the change in its next filing.

UNITIL introduces new generation into its avoided cost calculation in 1992, the year in which it expects to add new peaking capacity. The commission questions whether 1992 represents a realistic date by which the company could build its own peaking unit should that be its choice for peaking capacity, given that UNITIL has not yet identified a site for such a unit. Tr. 49. This timing issue leads us to question the company's avoided cost input assumptions. Therefore, should UNITIL choose to build its own peaking capacity, we will require it to document in its next LCIP filing its ability to site and build peaking capacity by 1992 or whatever date by which it is then estimating it can build new generation. If UNITIL decides to purchase peaking capacity, we will require evidence that that generation will be available by the date indicated. Until then, the long-term avoided cost estimates are approved as filed and should serve as the basis of UNITIL's negotiations with QFs.

8. *Overall Evaluation*

The commission finds UNITIL's first least cost integrated planning filing to be very impressive. The presentation was excellent and UNITIL's planning process adequate in all areas except demand-side management. We fully expect that UNITIL will be able to strengthen its capability in this area, and in forecasting, substantially by the time of its next filing. We commend the company for its work to date.

C. *ADDITIONAL COMMISSION FINDINGS*

[9] In accordance with the process outlined in order no. 19,152, the commission finds that QFs can meet some of UNITIL's resource needs within the next eight years. We further find that the process UNITIL has established for negotiating and contracting for power purchases from QFs is adequate, consistent with commission policy, and consistent with UNITIL's least-cost integrated resource plan. Given the large role that QFs play in UNITIL's resource mix, the commission finds no need to set the megawatt amount of QF capacity UNITIL should be seeking. However, we reiterate the commission's policy preference for QFs using

renewable and indigenous fuels, including municipal solid waste, and cogeneration based on existing industrial use of fossil fuels, over technologies that increase the dependence of New Hampshire on fossil fuels.

Our order will issue accordingly.

ORDER

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

ORDERED, that UNITIL's resource planning process as described in its filing of May 2, 1989 and subsequent responses to data requests and testimony be, and hereby is, approved as fulfilling the requirements of order no. 19,052 (73 NH PUC 117) for the year 1989; and it is

FURTHER ORDERED, that UNITIL's long term avoided cost estimates be, and hereby are, approved for 1989 as filed and should serve as the basis for UNITIL's negotiations with QFs; and it is

FURTHER ORDERED, that UNITIL incorporate econometric techniques into its forecast by the time of its next LCIP filing in order to improve its forecasting capability; and it is

FURTHER ORDERED, that UNITIL develop a plan for gathering end-use information by the end of 1990 and report on this data collection in its next LCIP filing in order to improve its forecasting and DSM assessment capabilities; and it is

FURTHER ORDERED, that UNITIL participate in consideration of a collaborative effort as one means to improve its DSM capability; and it is

FURTHER ORDERED, that UNITIL accelerate existing activities to ensure a comprehensive assessment of DSM options in its next LCIP filing and timely implementation of cost-effective DSM as part of its resource plan; and it is

FURTHER ORDERED, that UNITIL make complete retail rate design filings for its retail subsidiaries by the third quarter of 1990 to support implementation of its DSM plans; and it is

FURTHER ORDERED, that UNITIL provide a detailed analysis in its next LCIP filing of its decision to purchase or construct peaking capacity; and it is

FURTHER ORDERED, that UNITIL expand its discussion in its next LCIP filing on its wheeling policy for QFs; and it is

FURTHER ORDERED, that UNITIL provide a transmission map in its next LCIP filing as required by order no. 19,052; and it is

FURTHER ORDERED, that UNITIL designate in it next LCIP filing the personnel and resources it will utilize to implement its resource plan; and it is

FURTHER ORDERED, that UNITIL provide in its next LCIP filing additional supporting information for assumptions and inputs used in calculating its avoided costs.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1989.

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NH.PUC*10/03/89*[51837]*74 NH PUC 366*Pittsfield Aqueduct Company

[Go to End of 51837]

74 NH PUC 366

Re Pittsfield Aqueduct Company

DF 89-097
Order No. 19,552

New Hampshire Public Utilities Commission

October 3, 1989

ORDER authorizing a water utility to borrow long-term debt in an amount not to exceed $300,000.

SECURITY ISSUES, § 44 — Authorization — Long-term debt — Water utility.

[N.H.] A water utility was authorized to borrow long-term debt in an amount not to exceed $300,000 and to mortgage properties to secure the payment of the debt; authorization was conditioned on the utility expending the borrowed funds for plant additions, debt retirement, and fixed capital additions; a decision on the reasonableness of the expenditures was deferred until the filing of a rate case involving said expenditures.

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APPEARANCES: Dom S. D'Ambruoso, Esq. on behalf of Pittsfield Aqueduct Company, and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On June 5, 1989, Pittsfield Aqueduct Company (Pittsfield), a duly established New Hampshire public water utility, serving a limited area in the Town of Pittsfield, filed with the commission a petition for authority to borrow long-term debt pursuant to the provisions of RSA Chapter 369 *et seq.* in an amount not to exceed $300,000.

On July 12, 1989, the commission issued an order of notice establishing a hearing for August 7, 1989. Thereafter, on July 13, 1989, Pittsfield submitted certain exhibits in support of its petition for authority to borrow.

On August 4, 1989, Pittsfield filed the testimony of Daniel D. Lanning, including certain exhibits and attachments in support of the petition for authority to borrow.

On August 7, 1989, the commission held a duly noticed hearing on Pittsfield's petition.

II. *Findings of Fact*

Pittsfield's filing presented three (3) alternative long-term debt financing proposals from local banking institutions. Staff initially objected to the financing proposal as it did not list one firm proposal on which the commission could act. At the hearing, Pittsfield specified that it would only be seeking one of the proposals. In light of that representation and the testimony as it evolved, staff withdrew its objection to the petition as filed. Thus, staff took no position on the financing issue and Pittsfield proposed that it be allowed to borrow $300,000 from Merrimack County Savings Bank (Merrimack) at an interest rate of 1.5 percent over prime as published in the *Wall Street Journal*, adjusted monthly. The term of the loan would be fifteen (15) years and Merrimack would require a first mortgage on all land, equipment, and the distribution system owned by Pittsfield now and after acquired.

Pittsfield also presented proposals from First Capital Bank (First Capital) and Horizon Bank and Trust (Horizon) to establish the legitimacy of the Merrimack proposal. First Capital would lend $300,000 at 1 percent above the First Capital base floating daily, also for a term of fifteen (15) years. Horizon would lend Pittsfield $300,000 at a floating rate of 1 percent over the Horizon base over a term of twenty (20) years.

Pittsfield represented that the Horizon proposal carried with it a condition and requirement that Pittsfield transfer all of its commercial checking accounts to Horizon. Pittsfield testified that such a transfer would be costly and inconvenient for the company. Pittsfield currently has its checking account and maintains a line of short-term credit with First Capital Bank. First Capital provides, at not cost to the company, a direct customer account collection service. First capital also has a local branch in Pittsfield which is in close proximity to the company's offices. If Pittsfield were to transfer its accounts to Horizon, the company would have the added cost of opening new accounts, would lose the free customer account collection service and would have the added cost and inconvenience of traveling to Horizon in Concord, due to the fact that Horizon does not have a Pittsfield branch.

Due to the inability to quantify the Horizon base or the First Capital base, it was Pittsfield's position that it would place the company in a more secure position to obtain a loan from Merrimack as the Merrimack interest rate was 1.5 percent over prime, whereas, the First Capital and Horizon proposals were based on their in-house base rates with no reliable means of predicting these in-house base movements the company felt more secure in relying on the prime rate as reported in the *Wall Street Journal*.

Pittsfield plans to use the proposed borrowing for certain plant additions, to retire certain existing short and long-term debt, and to expand the balance shown on the sources and

uses data attached to Exhibit 1 presented at the hearing. The detail of the expenditures or fixed capital additions are shown on a statement entitled "Proposed Fixed Capital Additions —

Five Year Plan" also attached to Exhibit 1.

III. *Commission Analysis*

The commission finds the proposed financing to be consistent with the public good; as long as said funds are expended as indicated in the company's proposal of "Fixed Capital Additions." However, the commission does not rule on the reasonableness of the investments to be made with the funds obtained from the proposed financing and, thus, will examine any expenditures in the rate case in which they are filed.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that Pittsfield Aqueduct Company be, and hereby is, authorized to borrow amounts not to exceed $300,000 on a long-term basis pursuant to the provisions of RSA 369:1 on the rates, terms, and conditions proposed by the Merrimack County Savings Bank as detailed in the foregoing report and the company's exhibits; and it is

FURTHER ORDERED, that Pittsfield be and hereby is authorized to mortgage its present and future properties, tangible and intangible, including franchises, to secure the payment of the loan authorized herein; and it is

FURTHER ORDERED, that Pittsfield shall report on January 1, and July 4 of each year, the disposition of the proceeds of said borrowing, all in accordance with New Hampshire Public Utilities Commission's rules and regulations; and it is

FURTHER ORDERED, that the commission does not rule on the reasonableness of any expenditures and will withhold any such decision until the filing of a rate case involving the expenditure of said funds.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1989.

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NH.PUC*10/04/89*[51838]*74 NH PUC 368*Minnewawa Hydro Company, Inc.

[Go to End of 51838]

74 NH PUC 368

Re Minnewawa Hydro Company, Inc.

DR 86-047
Order No. 19,553

New Hampshire Public Utilities Commission

October 4, 1989

ORDER denying a request by a small power producer for an extension of the on-line requirement of its long-term rate order.

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1. COGENERATION, § 19 — Long-term rate order — Extension of on-line requirement — Small power production project.

[N.H.] The commission denied a request by a small power producer for an extension of the on-line requirement of its long-term rate order; it was found that the grant of an extension would be contrary to the public policy of encouraging economically efficient qualifying facilities (QFs) and would unfairly discriminate among similarly situated QFs. p. 370.

2. COGENERATION, § 25 — Long-term rate order — Avoided costs — Small power production project.

[N.H.] The development of small power production projects that are not viable at or below the avoided cost of the purchasing utility is not in the public interest. p. 370.

3. COGENERATION, § 25 — Long-term rate order — Avoided costs — Delay in commercial operation — Small power production project.

[N.H.] The commission will not assign to ratepayers the risk of purchasing power at rates higher than current estimates of avoided cost from facilities whose commercial operation is

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delayed beyond four years. p. 370.

4. COGENERATION, § 24 — Long-term rate order — Extensions — Uneconomic project.

[N.H.] Extending the availability of a long-term rate order to provide an artificially high rate to make an uneconomic small power production project feasible for its investors would offend the standard of economic efficiency that is fundamental to the policies established by federal and state legislation. p. 370.

APPEARANCES: Stephen E. Champagne, Esq. for Minnewawa Hydro Company; Margaret H. Nelson, Esq. for Public Service Company of New Hampshire; Dr. Sarah P. Voll for the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On March 12, 1986, the commission granted Minnewawa Hydro Company (MHC) a thirty year long-term rate by order no. 18,169 (71 NH PUC 166), pursuant to *Re Small Energy Producers and Cogenerators*, 69 NH PUC 352, 61 PUR4th 132 (1984) and 70 NH PUC 753, 69 PUR4th 365 (1985). MHC's petition specified that the project would attain commercial operation during power year 1988 (which ended August 31, 1988); the last on-line date available under order no. 17,838 was power year 1989 (which ended August 31, 1989). Accordingly, on April 26, 1989, under cover letter dated April 24, 1989, MHC filed a Request for Extension of Time

for Effective Date of Long Term Rate Obligation. By order no. 19,412 the commission scheduled a hearing on the merits of the request for June 27, 1989 and subsequently postponed the hearing at the request of MHC until August 3, 1989. MHC and Public Service Company of New Hampshire (PSNH) filed Memoranda of Law on August 18, 1989.

II. FINDINGS OF FACT

MHC is a wholly owned subsidiary of Consolidated Hydro, Inc. Minnewawa Hydroelectric project is a 950 KW facility located in Marlborough, New Hampshire.

On March 12, 1986 MHC was granted a 30-year long term rate by commission order no. 18,186 pursuant to order no. 17,104 (69 NH PUC 352, 61 PUR4th 132) and order no. 17,838 (70 NH PUC 753, 69 PUR4th 365). The last commercial operation date available under these orders is power year 1989, which ended August 31, 1989.

MHC began construction on its project following an agreement with its contractor dated June 15, 1987 which stipulated completion of the project by November 2, 1987. In the ensuing months, MHC became concerned whether the contractor was capable of constructing a safe facility and acknowledged that at best the project would be completed above the contract price and beyond the contract completion date. On December 21, 1987, MHC notified the contractor that the contract was terminated. MHC solicited additional bids but rejected them as unrealistically high; it then redesigned the penstock and in February 1989 received two bids. MHC has invested approximately $2,600,000 in the project; the project, based on the February 1989 bids, will require an additional six months of construction work and an additional $1,332,000 to complete. MHC has the funding available through its parent to complete the project.

Following receipt of the February bids MHC determined that the magnitude of the cost to complete was such that the project was economically feasible to the investors only if the rate order approved by order no. 18,169 remained in force. The incremental cost of putting the project on-line is economically infeasible in the current power market in New England. Therefore, MHC decided not to go forward with construction until the status of rate orders in the resolution of the PSNH bankruptcy was clarified.

PSNH filed for protection under Chapter 11 of the Bankruptcy Code in January 1988. The reorganization plans proposed in that

proceeding may jeopardize the continued validity of long term rate orders.

III. POSITIONS OF THE PARTIES

A. Minnewawa Hydro Company

MHC requests an extension of the on-line requirement of its rate order until 12 months subsequent to the reaffirmation of the rate order by the bankruptcy court. It argues that commission precedent regarding such an extension is irrelevant because MHC's rate filing was not premature. MHC could have completed its project by the August 31, 1989 deadline but chose rather to request an extension to allow it to make the investment decision on a rational basis

depending on whether the rate order continues to be valid. MHC argues that it is inequitable and irrational to force MHC to decide whether to proceed with its project prior to knowing whether PSNH will honor its obligations to purchase power under the terms of the rate order.

B. Public Service Company of New Hampshire

PSNH argues that MHC is in the line of a series of commission decisions where the commission held that PSNH's bankruptcy does not relieve developers of their obligations to bring their facilities on-line within the time prescribed by their rate orders. It cites the commission's intent not to discriminate among similarly situated developers or to allocate any inappropriate risks to PSNH customers, and contends that the possibility of a PSNH bankruptcy was one of the risks that MHC assumed at the time of its filing. PSNH argues that the real problem with MHC's project is its lack of economic viability in the present power supply market and an extension of the on-line date would require an inappropriate subsidy from PSNH customers. Finally, PSNH argues that MHC's filing was premature in that additional engineering work prior to filing might have avoided the subsequent construction delays and enabled MHC to bring its project on-line in the period specified in its filing.

C. PUC Staff

Staff did not file a Memorandum of Law or take a position on the petition.

IV. COMMISSION ANALYSIS

[1-4] Having considered the petition and testimony, the Memoranda of Law and our past commission orders, we find that granting an extension to MHC would be contrary to public policy of encouraging economically efficient qualifying facilities (QFs) and would unfairly discriminate among similarly situated qualifying facilities. Therefore, we deny the petition.

The commission's policy goal in setting long term rates and standard offers, articulated in order no. 17,104, was to "provide encouragement for the development of economically efficient small power production while being just and reasonable to the ratepayers of PSNH and in the public interest." 69 NH PUC 352, 354. It reiterated this goal in *Re Gregg Falls Hydroelectric Project*:

> The underlying rationale of the regulatory structure established by Title II of the Public Utility Regulatory Policies Act of 1978, the Federal Energy Regulatory Commission regulations promulgated pursuant thereto (18 C.F.R. §292.101 *et. seq.*) and RSA Chapter 362-A is to promote the development of facilities that utilize renewable or efficient energy inputs to the extent that they meet the test of economic efficiency. That test of economic efficiency is the purchasing utility's avoided cost; an economic test that is in conformance with marginal ratemaking standards adopted in New Hampshire and other jurisdictions. See *e.g., Public Service Co. of New Hampshire*, 69 NH PUC 67, 57 PUR4th 563, 583 (1984). It therefore follows that the development of a project that utilizes renewable or efficient resources which is viable at a rate at or below avoided cost is in the public interest. 70 NH PUC 138, 140 (1985).

By implication, it found that the development of projects that are not viable at or below avoided cost are not in the public interest.

In *Re Concord Regional Waste/Energy Company*, the commission linked the standard of economic efficiency to the filing requirements and the issue of the assignment of the risk of miscalculations in the forecasts of avoided cost:

> The standard of economic efficiency for a project is whether it can produce power for a price below avoided costs. The most accurate comparison would be obtained if the developer were required to file for a rate based on a projection of avoided cost calculated when the project is ready to go on line. The Commission has recognized however, that many developers need the assurance of a long term rate in order to obtain financing for their projects. Therefore, the Commission has allowed small power producers and cogenerators to file for long term rates considerably in advance of their production of power ... [T]o the extent that a granted rate has over-estimated avoided cost, the developer is paid a rate above actual avoided cost. To the extent that a granted rate underestimates avoided cost, the developer may apply for the re-estimated higher rate. Having provided these benefits to the developers of alternate energy projects, however, we must balance them with a concern for the cost to the ratepayers. It is therefore incumbent upon the Commission to assure that a developer's rate when granted reflects the Commission's best estimate of avoided cost for the period of the developer's obligation. 70 NH PUC 736, 738-9 (1985).

Under the commission orders, the ratepayer has assumed the risk of an overestimation in the forecast of avoided cost as long as the developer can bring his project on-line during the four year period of approved start dates. The commission explicitly stated its unwillingness to extend the four year period when it rescinded the rate order for *New England Alternate Fuels, Inc.* — Swanzey and noted,

> The other reason that the Commission does not grant rate orders for commercial operation more than four years from the establishment of the rates is that the Commission is reluctant to rely on a forecast that is more than four years old by the time the project commences production. 71 NH PUC 423, 426 (1986).

The ratepayer already bears the risks of an underestimation of avoided cost, the risk of an overestimation for operating projects, and, for four years, the risk of an overestimation for undeveloped projects. The commission has not, and will not now, assign to ratepayers the additional risk of purchasing power at rates higher than current estimates of avoided cost from facilities whose commercial operation is delayed beyond four years. We are particularly unwilling to waive the four year requirement in the instant case, where the developer has testified that even on an incremental basis (as opposed to a total cost calculation) the project is not economically viable in the current power market. Extending the order to provide an artificially high rate to make an uneconomic project feasible for its investors offends the standard of economic efficiency that is fundamental to the policies established by the federal and state legislation and implemented by this commission.

We do not find that the filing for the rate order was premature. The petitioners have testified that had they accepted the construction bids in February 1989, they could have achieved commercial operation in accordance with the rate order. Tr. 42. MHC's decision not to go

forward with their project, however, merely provided them with an option unavailable to the other qualifying facilities. Had they completed the project, they would be in the same position as other QFs that had achieved commercial operation and are now concerned with the continued validity of their rate orders in the bankruptcy proceeding. The availability of the alternative of not continuing to invest in a project that is no longer economically efficient, however, is not grounds for extending a rate order that no longer reflects the realities of New Hampshire's energy supply.

We do note that several New Hampshire utilities have demonstrated their need for capacity during the next eight years in their Least Cost Integrated Planning filing. PSNH has

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issued a Request for Proposals for 50 MW of capacity and reserved 10 MW for renewable resources such as hydroelectric. The testimony before us indicates that MHC's project is uneconomic in the current short term power market. We encourage MHC to explore the long term contract possibilities with New Hampshire utilities before abandoning the project altogether.

Our order will issue accordingly.

ORDER

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

ORDERED, that Minnewawa Hydro Company, Inc.'s (MHC) Request for Extension of Time for On-line Date of Long Term Rate Obligation be, and hereby is, denied; and it is

FURTHER ORDERED, that MHC's thirty year rate order approved by order no. 18,169 (71 NH PUC 166 [1986]) be, and hereby is, rescinded.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1989.

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NH.PUC*10/04/89*[51839]*74 NH PUC 372*Winter Termination Rules

[Go to End of 51839]

74 NH PUC 372

Re Winter Termination Rules

DE 89-082
Order No. 19,554

New Hampshire Public Utilities Commission

October 4, 1989

ORDER directing electric utilities to strictly adhere to the provisions of winter termination rules.

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1. PAYMENT, § 33 — Denial of service — Winter termination rules.

[N.H.] Based on evidence filed in a generic docket to review winter termination rules, the commission found that the winter termination rules were efficacious, administratively efficient, just, and had not caused undue hardship to individual utility customers; accordingly, the commission ruled that it was not necessary or appropriate to modify the rules. p. 373.

2. PAYMENT, § 33 — Denial of service — Customer protections — Winter termination rules.

[N.H.] Nothing in the winter termination rules precludes any utility from communicating with its customers regarding payment plans or winter arrearages; such communication can include informing customers that winter termination rules do not protect them from disconnection for arrearages accumulated prior to December 1st, notification of overdue balances during the winter period with reminders that disconnection will occur after April 1st if payment arrangements are not made, and descriptions of various payment plans available to customers. p. 373.

3. PAYMENT, § 33 — Denial of service — Customer protections — Winter termination rules.

[N.H.] In denying a petition by an electric utility for a temporary waiver of winter termination rules so that the utility could continue an experimental program known as a electrical service protection (ESP), the commission reiterated its view that the operation of the ESP program had resulted in substantial erosion of customer protection. p. 374.

By the COMMISSION:

REPORT

On August 3, 1988, Exeter and Hampton Electric Company (E & H) requested a continuation of a temporary waiver from the arrearage provisions contained in Puc 303.08 (k) (2), (3) and (6) of the Winter Termination Rules (WTRs). E & H had first requested a waiver on September 16, 1983 in order to implement an experimental program, Electrical Service Protection (ESP) as a protection to residential ratepayers in lieu of the Puc Rules, and had sought and received a continuation of the

temporary hearing for each subsequent year since 1983. The commission opened docket number DE 88-111 to consider the 1988 request and, following hearings and briefs, issued order no. 19,199 (73 NH PUC 412) on October 14, 1988. Order no. 19,199 granted the waiver for 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 commission put E & H on notice that the order was being issued "on the clear understanding the future waivers are unlikely, and that the commission will be opening a generic docket to review the winter rules." On June 5, 1989, citing its findings in report and order no. 19,199, the commission opened the instant docket to:

> investigate whether the waivers to the Winter Termination Rules currently in force regarding E & H Electric Company and Concord Electric Company [Concord] should continue to be authorized, whether consideration of other such waivers or amendments to the Winter Termination Rules are in the public interest, or whether strict adherence to the current Winter Termination Rules by all electric and gas utilities should henceforth be strictly enforced. Order no. 19,416 at 3 (74 NH PUC at 173 [1989]).

On June 27, 1989 by report and order no. 19,443 (74 NH PUC 200) the commission accepted a proposed procedural schedule which included technical conferences and discovery in July and August, a definition of scope in September, testimony and discovery October 1989 through January 1990, settlement conferences in February and hearings on the merits March 26-30, 1990. The commission also clarified that it did not intend to limit its investigation to E & H's and Concord Electric Company's (UNITIL companies) annual waiver requests but intended to "evaluate the Winter Termination Rules as they currently exist to examine their efficacy, efficiency and justness in light of the concerns of both the electric and gas companies and the needy citizens of the State of New Hampshire." Order no. 19,443 at 4.

The parties duly held the technical conferences and exchanged and filed extensive data regarding the operation of the Winter Termination Rules. On September 5, 1989, the parties filed a List of Potential Issues The Commission May Wish to Address in This Proceeding, under a cover letter from Gerald M. Eaton of Public Service Company of New Hampshire. The cover letter noted that "there was consensus among those attending the meetings that these issues may be raised in testimony; however, there was no agreement as to the parties' positions on these issues."

[1] The commission has reviewed the evidence and our findings in DE 88-111, our orders in the instant docket, the data that has been filed regarding operation of the WTRs as currently defined, the information available in the files of the commission consumer assistant, and the list of potential issues that could be raised concerning the intent and operation of the WTRs. Based on this information, we find that the WTRs, as currently formulated, operate in a fashion that is generally efficacious, administratively efficient and just, and that has not caused undue hardship to individual utility customers. See, for example, Responses to EnergyNorth Natural Gas, Inc. Data Requests Set No. 1, Request No. 1. Further, to the degree that it can be ascertained from the data filed, the residential write-offs do not appear to have substantially increased as a percentage of sales and therefore it would appear that the program does not unduly harm the non-participating customers. Response to VOICE Data Requests, Set No. 1, Request No. 32. Therefore, we do not find it necessary or appropriate to modify our Winter Termination Rules at this time. We will rescind the remainder of the procedural schedule established in order no. 19,443 and close the instant docket. We will, however, make two clarifying observations regarding our winter termination rules.

[2] First, the most beneficial characteristic of the ESP program operated by the UNITIL companies is the level of communication between the companies and their customers regarding payment plans and winter arrearages. Nothing in the WTRs precludes any company from attempting to institute such

communication with their own customers under the aegis of the rules. Such communication can include, but is not limited to, informing customers immediately prior to the winter period that the WTRs do not protect them from disconnection for arrearages accumulated before December 1st; notification of overdue balances during the winter period with reminders that disconnection will occur after April 1st if arrangements are not made; and descriptions of the various payment plans available to customers. The commission views this type of communication as helpful to both the companies and their customers and did not intend the WTRs to foreclose such contacts.

Secondly, the WTRs are intended to strike a balance between protection of those customers who are experiencing difficulties in keeping current on their bills during the winter and the remainder of ratepayers who bear the costs of uncollectibles. In particular, the dollar limits were chosen to assure both that the uncollectible amounts do not become unduly large and that the protected customers do not accrue balances that they are unable to repay with any reasonable payment plan after the winter period. We do expect companies to adhere to the restrictions in the winter protection rules, including disconnection for amounts accrued either prior to the winter period or in excess of the limits established in the rules.

We are aware that companies in the past have not strictly enforced the provisions of the WTRs. Our finding that the operation of the WTRs has not unduly harmed individual ratepayers may be modified when the rules regarding disconnection are more rigorously observed. We will require the companies to monitor the experience of the 1989-1990 winter season, and report to the commission by May 15, 1990 the number of disconnections during and immediately after the winter period compared to previous years. We would expect that the negative effects of stricter adherence to the provisions of the WTRs can be mitigated by more creative efforts of communication between companies and customers, and we will also require companies to describe their efforts to contact their delinquent or potentially delinquent customers.

Specifically, the report due May 15, 1990 shall describe the companies, communication program prior to the winter period and during the winter period. The companies shall report disconnections per month, December through April, and distinguish between space heating and non-space heating customers, and customers over and under age 65. Third, the companies shall describe their various payment plans and report the number of customers per month that have entered into each payment plan option.

[3] Finally, on August 1, 1989 Concord petitioned the commission for a temporary waiver from the WTRs (DE 89-131) and on August 2, 1989 E & H filed a similar petition (DE 89-136). While we will not resolve those dockets in this order, we hereby put the UNITIL companies on notice that we found nothing in our analysis of either their recent petitions or the information reviewed for this order to cause us to disturb our finding in 19,199 (73 NH PUC 412 [1988]) that the operation of the ESP program has resulted in "substantial erosion of customer protection" (at 10) and that future waivers are unlikely to be approved.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that the remainder of the procedural schedule established in order no. 19,443 (74 NH PUC 200 [1989]) be, and hereby is, rescinded and that docket no. DE 89-082 be, and hereby is, closed; and it is

FURTHER ORDERED, that the companies strictly adhere to the provisions of the Winter Termination Rules during the winter period 1989-90; and it is

FURTHER ORDERED, that the companies report to the commission no later than May 15, 1990 on their customer communication programs, their disconnections and their payment plans as specified above in the report.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1989.

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NH.PUC*10/05/89*[51840]*74 NH PUC 375*New Hampshire Electric Cooperative, Inc.

[Go to End of 51840]

74 NH PUC 375

Re New Hampshire Electric Cooperative, Inc.

DR 89-079
Order No. 19,555

New Hampshire Public Utilities Commission

October 5, 1989

ORDER accepting the least-cost integrated resource planning filing of an electric cooperative, finding the cooperative's planning process to be inadequate, and approving long-term avoided cost estimates for use as a basis for the cooperative's power purchase negotiations with qualifying facilities.

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1. COGENERATION, § 17 — Contracts — Power purchase negotiations — Integration into long-term resource planning.

[N.H.] The proper goal of commission policy regarding short- and long-term utility purchases of energy and capacity from qualifying facilities (QFs) is the integration of QFs into each utility's long term resource planning process in an efficient and equitable manner; acceptance of a utility's long-term resource plan indicates that the utility's resource planning process is adequate, but acceptance does not constitute approval of a specific resource included in the plan. p. 377.

2. ELECTRICITY, § 4 — Least-cost planning — Review process — Effect of approval.

[N.H.] The least cost planning review process employed by the commission is not what has been characterized in other jurisdictions as a "preapproval process"; the commission will review

and analyze the prudence of any particular resource option when the utility brings it before the commission in a cost recovery or rate proceeding. p. 377.

3. ELECTRICITY, § 4 — Least-cost planning — Filing requirements.

[N.H.] Electric utilities are required to file reports in seven areas to document their least cost integrated planning processes: (1) forecasts of future demand; (2) assessments of demand-side options; (3) assessments of supply-side options; (4) assessments of transmission requirements, limitations and constraints; (5) integration of demand- and supply-side resource options; (6) two-year implementation plans; and (7) avoided cost forecasts. p. 378.

4. ELECTRICITY, § 4 — Least-cost planning — Filing requirements — Documentation.

[N.H.] In documenting its least cost integrated planning processes, an electric utility must file testimony in three areas: (1) testimony indicating whether it needs additional capacity in the next eight years and whether qualifying facility (QF) capacity could meet that need: (2) testimony documenting its integrated least-cost resource plan for providing all aspects of its energy resource needs; and (3) testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs, if the utility has a need for additional capacity in the next eight years. p. 379.

5. ELECTRICITY, § 4 — Least-cost planning — Review criteria.

[N.H.] In reviewing electric utility least-cost integrated resource plans, the commission looks for (1) *completeness* in meeting reporting requirements, (2) *comprehensiveness* in the assessment of resource options, (3) *integration* of demand- and supply-side options in the planning process, (4) *feasibility* of implementation, and (5) *adequacy* of the planning process in providing for resources in a timely manner sufficient to meet the electricity and energy service needs of customers. p. 379.

6. ELECTRICITY, § 4 — Least-cost planning — Adequacy.

[N.H.] Although the integrated least-cost resource plan of an electric utility was accepted

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as fulfilling the reporting requirements of a prior order (73 NH PUC 117) that established a commission policy for future utility purchases from qualifying facilities and established biennial least-cost integrated planning filing requirements, the planning process of the utility was found to be inadequate in that it failed to include a forecast of future demand, failed to identify steps necessary for implementation of demand-side management programs, and failed to include a comprehensive assessment of supply-side resource options. p. 381.

7. COGENERATION, § 25 — Rates — Avoided cost — Contract negotiations.

[N.H.] The long-term avoided cost estimates provided by an electric cooperative in its least-cost integrated resource plan (which were arrived at by adopting the avoided costs of its all requirements supplier) were approved for use as a basis for negotiations with qualifying facilities. p. 384.

8. COGENERATION, § 1 — Public policy — Preference for renewable and indigenous fuels.

[N.H.] In an order approving the least-cost integrated resource planning process of an electric utility, the commission reiterated its preference for purchases from qualifying facilities using renewable and indigenous fuels, including wood and municipal solid waste, and cogeneration based on existing industrial use of fossil fuels, over technologies that increase dependence on fossil fuels. p. 385.

APPEARANCES: Merrill and Broderick by Mark Dean, Esq. for the New Hampshire Electric Cooperative, Inc.; Elaine Planchet for the Consumer Advocate; Janet Gail Besser and Dr. Sarah P. Voll for the commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On April 7, 1988, the commission issued report and order no. 19,052 (73 NH PUC 117) in the consolidated dockets DR 86-41, 86-69, 86-70, 86-71 and 86-72 (DR 86-41, *et. al.*). Order no. 19,052 established a new commission policy for future utility purchases of power from qualifying facilities (QFs) and requirements for biennial least cost integrated planning (LCIP) filings by the utilities.

Staff held a workshop for the utilities on April 21, 1988 concerning the utilities' biennial LCIP filings and on April 28, 1988 formally requested a compliance report from each utility relating to the requirements of order no. 19,052. Following receipt of the compliance reports, on August 10, 1988 the commission issued order no. 19,141 (73 NH PUC 285), which established the following filing dates:

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

	DATE
1. Updated estimates of the utilities' long term avoided costs along with a description of procedures being used to secure power purchase arrangements with QFs	October 1, 1988
2. Compliance with the other reporting requirements of order no. 19,052	April 30, 1989 and April 30 of every even-numbered year thereafter
3. Compliance with requirements regarding short term avoided cost calculations	December 1988 and thereafter as part of fuel adjustment charge and energy cost recovery mechanism proceedings

Order no. 19,141 also officially closed consolidated dockets: DR 86-41 *et. al.*

The New Hampshire Electric Cooperative, Inc. (the Coop or the company) did not make either its short term avoided cost filing in October 1988 or its long term filing in December 1988, as required by commission order no. 19,141. By letter dated February 14, 1989, the Coop adopted the avoided cost filings of Public Service Company of New Hampshire (PSNH), its primary power supplier.

On February 13, 1989 staff held a joint meeting for all of the utilities to discuss compliance with the other reporting requirements of order no. 19,052. At this meeting staff reviewed the requirements of the order and indicated to the utilities the basic criteria the commission would be using to assess the utilities' filings. On February 23 and March 14, 1989 staff met with the Coop to discuss the status of its least cost planning efforts and the preparation of the reports required by order no. 19,052.

On March 31, 1989 a second general meeting was held with the utilities to which the parties from consolidated dockets DR 86-41 *et. al.* were also invited. In addition, each utility was asked to invite all of the QFs from which it purchases power. Staff also invited others who it thought would be interested in least cost planning in New Hampshire, including conservation organizations such as the Conservation Law Foundation.

On April 27, 1989, the Coop filed a motion for extension of time to make its least cost integrated planning filing by May 31, 1989 instead of April 30, 1989. The extension was granted by letter dated May 1, 1989.

On May 31, 1989 the Coop filed its Report on Least Cost Integrated Resource Planning, May 1989. An order of notice in the instant docket was issued June 6, 1989 setting the procedural schedule.

Staff explored technical issues of the filing by means of data requests and a prehearing conference on June 30, 1989. The hearing on the merits of the Coop's Report on Least Cost Integrated Resource Planning was held on July 19, 1989.

II. SUMMARY OF THE COMMISSION'S LCIP FILING REQUIREMENTS

A. *THE COMMISSION'S OBJECTIVE*

[1, 2] The goal of the commission's order no. 19,052 was to establish a process whereby we could review and evaluate the context in which utilities were negotiating and contracting for power purchases from QFs. In order no. 19,052, the commission recognized that the QF

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industry had evolved over the then ten years it had been in existence and that this evolution warranted a change in Commission policy toward increased flexibility and direct negotiations between utilities and QFs. However, we also noted that we did not believe such a flexible system could be implemented effectively absent a commission approved framework. We found that "the proper goal for commission policy regarding short 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." P.7. The objective, therefore, of the commission's review of the utilities' least cost integrated resource plans is to evaluate whether they are planning properly.

We note that our acceptance of a utility's least cost resource plan indicates that the utility's resource planning *process* is adequate. Acceptance of a particular filing does not constitute approval of specific resources included in the plan. We emphasize that our least cost planning review process is not what has been characterized in other jurisdictions as a "pre-approval process". The commission will review and analyze the prudence of any particular resource option when the utility brings it before us in a cost recovery or rate proceeding.

B. *THE REQUIREMENTS OF ORDER NO. 19,052*

[3] The utilities are required to file reports in seven areas to document their least cost integrated planning processes. Order no. 19,052 outlines the commission's requirements for these seven reports:

1. *Forecast of Future Demand*

a) 15 year;

b) high, low, most likely cases;

c) system and subsidiary level; and

d) include price and CLM effects.

2. *Assessment of Demand-Side Options*

a) include all reasonably available programs;

b) explicitly account for price-induced reductions;

c) explicitly account for program induced reductions; and

d) description of program screening and evaluation methodology.

3. *Assessment of Supply-Side Options*

a) assess range of options;

b) include existing QFs under contract and as available;

c) describe the use of models; and

d) use minimization of present worth of revenue requirements as a criterion.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

a) include map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system within the forecast period; and

b) evaluate how new generation, regardless of ownership, will be incorporated into the transmission system.

5. *Integration of Demand- and Supply-Side Resource Options*

a) describe development of formal process for integration of cost-effective utility

demand- and supply-side resources;

b) demonstrate that utility has considered all of its resource needs;

c) use a dynamic, iterative process; and

d) include consideration of risk, sensitivity, uncertainty.

6. *Two-Year Implementation Plan*

a) include short-term forecast at system and subsidiary levels;

b) describe how optimal mix of demand and supply resources will be developed over next two years; and

c) specify models, data, equipment,

personnel and facilities utility will use or require in implementation.

7. *Avoided Cost Forecasts*

a) 15-year avoided cost forecast based on most likely energy and demand forecasts;

b) consistent with DR 86-41 *et. al.* Phase I methodology; and

c) exception to Phase I is that avoided costs flow from utility's resource plan.

[4] Order no. 19,052 also requires the utilities to file testimony in three areas:

1. The utility must file testimony indicating whether it needs additional capacity in the next eight years and whether QF capacity could meet that need.

2. The utility must file "testimony documenting...[its] integrated least cost resource plan for providing all aspects of its energy resource needs." P. 23.

3. The utility must file "testimony documenting a private contracting and negotiation procedure for securing power purchase arrangements with QFs." P. 24. This testimony is required only if the utility has a need for additional capacity in the next eight years.

C. *THE COMMISSION'S REVIEW CRITERIA*

[5] The commission reviews the utilities' least cost planning filings according to the criteria indicated by the requirements of order no. 19,052. First, the commission looks for *completeness* in meeting the reporting requirements. Has the utility included all of the required reports and addressed all of the specified areas in them?

Second, the commission evaluates whether the utility's assessment of resource options is *comprehensive*. Has the utility considered all demand- and supply-side resource additions, including QFs?

Third, is the utility's planning process *integrated*? Has the utility evaluated its demand- and supply-side options in an equivalent manner and addressed issues of coordinated timing in the acquisition of one or more resources?

Fourth, is implementation of the utility's resource plan *feasible*? Does the utility's two-year

implementation plan indicate that the utility is capable of pursuing the resource additions it has identified in the time available?

Fifth, is the utility's planning process *adequate*? Does it provide for resources in a timely manner sufficient to meet the electricity and energy service needs of its customers now and for the future?

III. SUMMARY OF THE COOP'S FILING AND TESTIMONY

In an introductory statement at the hearing by the Coop's attorney, Mr. Dean, (Tr. 7), and throughout the testimony of the Coop's witness, Mr. Kaminski, (Ex. III and transcript), and the Coop's plan itself (Ex. I), the Coop emphasized the uncertainties facing it given its financial status and resources and the PSNH bankruptcy. The Coop is virtually an all requirements power customer of PSNH. Mr. Dean and Mr. Kaminski both further indicated that the Coop's current situation was such that it could not be forthcoming on many of the details of its resource plans. Tr. 7 and Ex. III, p. 6, respectively.

A. *NEED FOR ADDITIONAL CAPACITY IN THE NEXT EIGHT YEARS*

In his prefiled testimony, Mr. Kaminski stated, "The Cooperative will need additional resources within the next eight years." Ex. III, p. 5. However, in both Mr. Kaminski's testimony and the Coop's least cost planning filing this need was not quantified. Ex. III, p. 5 and Ex. I, Section I. The Coop indicated that it had not yet completed its latest Power Requirements Study (forecast) and therefore could not determine the size of its future resource needs. The Coop expected to complete and file the Power Requirements Study in September 1989. Ex. I, p. I-1 and Tr. 12.

B. *SUMMARY OF THE COOP'S REPORT ON LEAST COST INTEGRATED RESOURCE PLANNING*

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The Coop states that it is in the process of assessing various power supply options for the future including remaining an all requirements customer of PSNH, becoming an all requirements customer of another utility or developing an independent resource procurement capability. Mr. Kaminski testified that "the intention of the Cooperative is to pursue fulfillment of its current arrangements, or develop an alternative long term arrangement that will first preserve the rights and benefits of the Cooperative's status as a long standing wholesale customer of the PSNH system.... A further goal of the Cooperative is to develop a greater degree of independence and flexibility in securing resources for the future..." Ex. III, p. 7. While Mr. Kaminski testified that the Coop was not "planning to remain" an all requirements customer of PSNH, he did indicate that "unless [the Coop] find[s] another arrangement which in a least cost planning context suits [its] needs better", it would continue to be an all requirements customer of PSNH. Tr. 28. He further testified, "Right now we are continuing our present relationship [with PSNH] and we have made a consc[ious] decision to do that ..." Tr. 31.

At the same time, the Coop indicated that it is moving ahead with three demand-side management (DSM) programs which "should be valuable over the long run without regard to [the Coop's] future power supply arrangements." Ex. I, Section II. These programs are controlled

water heating, off-peak storage heating, and an interruptible load program either with PSNH or independently.

C. *PROCEDURES FOR NEGOTIATING AND CONTRACTING WITH QFS*

The Coop indicates that it is "receptive to any shall power producers or any developer that approaches" it. Tr. 54. Because of the nature of its current arrangements with PSNH, however, the Coop argues that it cannot solicit QF power on its own. Tr. 40. The Coop pays QFs based on PSNH's short and long term avoided costs and the contracts the Coop offers are based on PSNH's contract forms. Ex. I, Section VIII. In addition, the Coop will wheel power at no cost for QFs located on its system who wish to sell to other utilities. Ex. I, Section VIII. The Coop provides interested QFs and developers with an information package it has prepared which explains the various purchase options it offers. Ex. I, Section VIII, Attachment 2.

IV. SUMMARY AND COMMENTS ON MATTHEW BONACCORSI'S STATEMENT ON THE COOP'S FILING

One interested party offered a statement at the hearing on the New Hampshire Electric Cooperative's least cost planning filing. Mr. Bonaccorsi, a small power producer, raised the issue of whether incentives should be created for small renewable projects and asked for clarification on the avoided cost estimates that the Coop is using as a basis for its negotiations with QFs. Tr. 5-6.

On the issue of incentives for renewable QFs, the commission determined in consolidated dockets DR 86-41 *et. al.* that the QF industry had matured to the extent that it no longer needed special incentives, such as long term rates set by the commission. Order no. 19,052, p. 12. While we reiterate our policy preference for QFs using renewable and indigenous fuels, we stand by our determination in DR 86-41 *et. al.* that no special incentives are needed for renewable projects beyond the development and implementation of the least cost integrated planning framework established as a result of that proceeding. In the instant docket, a key part of the implementation of the least cost planning framework, the commission will review and evaluate the Coop's process for incorporating QFs into its resource planning.

The second point raised regarding clarification of the Coop's avoided costs and the timing of their applicability is an issue that has been raised by the Coop itself. The commission will take this opportunity to clarify how the Coop's short and long term avoided costs are to be set. The Coop has been and is currently a virtually all requirements customer of PSNH. Consequently in the settlement agreement in Phase I of DR 86-41 *et. al.* it was agreed by the parties that in an economic sense the relevant costs avoided by QFs on the Coop system were those incurred by its supplier, and therefore the

Coop should use PSNH's estimates of short and long term avoided costs as its own avoided cost estimates. The question that has been raised regards the timing of the use of the PSNH estimates for the Coop.

At the hearing, the Coop's witness, Mr. Kaminski, referred to a discussion with staff at the prehearing conference regarding the use of PSNH's avoided costs by the Coop. Tr. 20. At the

prehearing conference, the Coop and staff agreed that the Coop should make a filing with the commission at the same time that PSNH files its short and long term avoided costs estimates. (Short term estimates are filed every six months in May and November as part of PSNH's energy cost recovery mechanism proceeding. Long term estimates are filed as part of PSNH's least cost integrated planning filing on April 30th of even-numbered years.) The Coop's filing should intervene in the PSNH filings and state that the Coop's avoided cost estimates are the same as PSNH's subject to commission approval of the PSNH estimates. It was agreed that the Coop should not delay its filing until the PSNH figures were finalized. As the Coop will not be deviating from the PSNH estimates even if they are revised by the commission, there is no reason for the Coop to make its filing later than PSNH's.

QFs who wish to question the avoided cost estimates should intervene in the PSNH proceedings. QFs who sell or plan to sell their power to the Coop will be regarded as having standing in PSNH avoided cost proceedings as long as the Coop continues to adopt PSNH's avoided costs as its own according to the terms of the settlement in DR 86-41 *et. al.*

At such time that the Coop determines that its avoided costs differ from PSNH's, it will file its own short and long term estimates with supporting documentation. The Coop's filings will be made on the same schedule as PSNH's.

V. COMMISSION FINDINGS

[6] The commission has reviewed and analyzed the Coop's Report on Least Cost Integrated Planning (Ex. I), the responses to staff's data requests (Ex. II), it testimony (EX. III) and the hearing transcript in our evaluation of the Coop's least cost integrated planning. We note again that the focus of our review is on the adequacy of the company's planning *process*. While consideration of the resource options selected by the Coop is a component of our evaluation, our acceptance of the company's planning process does not constitute approval of specific options in its resource plan. The commission's judgment on the prudence of these options will take place as it has traditionally, in the content of a rate case or similar proceeding where the Coop seeks recovery of costs incurred.

We note further that this is the first least cost planning filing by the Coop in response to new requirements of the commission. We have taken this into account in our review and evaluation of all of the companies' least cost planning processes, but have done so particularly for the Coop in recognition of the fact that comprehensive resource planning is a new activity for it.

A. *COMPLETENESS OF THE FILING*

While the Coop did address all seven required reporting areas in its least cost planning filing, the commission finds that its filing is not complete. Most notably, the Coop did not include a forecast in its initial filing. It also provided insufficient information in its assessment of demand- and supply-side options, and consequently in its report on the integration of demand and supply.

While the commission's primary concern is the adequacy of the Coop's planning process, we note that a clear description of this process is a prerequisite for our ability to review it. The lack of a clear description may be due to either reporting inadequacies or planning inadequacies. To the extent that it is due to reporting inadequacies, we might be led to conclude incorrectly that a company's planning process was not adequate. In the case of the Coop, however, the commission believes that the reporting inadequacies flow from inadequacies in the Coop's planning process.

We address these in detail below.

B. *ADEQUACY OF THE PLANNING PROCESS*

1. *Forecast of Future Demand*

The Coop describes the process that is being used to produce its new Power Requirements Study (forecast of future demand) and projects that this forecast will be available in September 1989. (The commission notes that it is now late September and no forecast has yet been filed.) The description indicates that the Coop will be using a mix of econometric and end-use techniques to develop new base, low and high forecasts of energy and demand. However, the Coop did not indicate on what forecast it is basing its current planning, nor did it provide this forecast in its initial filing. Therefore, the commission finds that while it appears that the new forecast the Coop describes will be adequate and appropriate given the Coop's size and sophistication, currently the Coop's filing in this area is incomplete. Similarly, as the Coop has not indicated that it is basing its current planning on any forecast (Ex. III, p. 7), the commission finds that its planning process in this area is inadequate.

The commission will require the Coop to file its new Power Requirements Study by November 1, 1989. Should the new Power Requirements Study not be available by that time, we will require the Coop to file by November 1, 1989 the forecast on which it is currently basing its planning, along with supporting documentation. The commission emphasizes that a forecast of future demand is a necessary first step in utility resource planning. We view its lack as an indication of major deficiencies in a utility's planning process.

2. *Assessment of Demand-Side Options*

The commission finds that the Coop properly identifies a reasonable criterion for selection of demand-side management (DSM) programs in its particular circumstances, i.e., that "[t]hese programs should be valuable over the long-run without regard as to [the Coop's] future power supply arrangements." Ex. I, Section II, first page. However, we also find that the Coop has not undertaken a comprehensive assessment of demand-side options that meet this criterion, nor has it evaluated the programs it has chosen sufficiently to know how they fare on it. Further, although the Coop recognizes that cost-effective DSM programs will produce savings for its members/customers even as an all requirements customer of another company (Tr. 52), it does not appear to have identified the steps necessary for identification and implementation of DSM programs nor set a schedule for their timely accomplishment.

The Coop has selected three demand-side programs for implementation as part of its resource plan: 1) radio controlled water heating; 2) off-peak storage space heating; and 3) an interruptible load program. The radio controlled water heating program is a reactivation of a program run by the Coop in the past. The Coop has not kept accurate records of its use over the last four years nor has it yet developed a protocol for its use in winter 1989/90. Ex. II, Request #15. Mr. Kaminski testified that he could not "give ... an exact time frame ... except that winter is approaching and [the Coop] will have to have some sort of protocol and plan in operation." Tr. 36. To ensure that that is the case, the commission will require the Coop to file by November 1, 1989 a protocol for the implementation and operation of the controlled water heating program. In

addition, we will require the Coop to include as part of that filing a plan and schedule for testing the water heater load controls, such testing to be completed by December 1, 1989.

The off-peak storage heating program is a new program. Mr. Kaminski indicated that no protocol or plan has been developed for its operation either. Tr. 36. Therefore, the commission will also require the Coop to file by November 1, 1989 a detailed plan for implementation of the storage heating program. In addition, the commission will require the Coop to include as part of this filing a detailed marketing plan for this program addressing specifically both marketing to existing electric heat customers and marketing to new customers.

The Commission will further require the Coop to include in its next LCIP filing estimates and projections of the impacts of these

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programs on peak and off-peak, and total annual kilowatt-hour sales; peak and off peak kilowatt demand; and overall load shape. In addition, the Coop shall include a cost-benefit analysis of the economics of the programs.

The Coop has also indicated that it will be implementing an interruptible load program either with PSNH or on its own. If the Coop decides to proceed with its own program, the commission will require it to file its program no later than November 1, 1989 for implementation as soon thereafter as possible and no later than December 1, 1989.

Lastly, in response to cross-examination, the Coop's witness indicated that participation in a collaborative DSM program design process would be useful to the Coop in its efforts to design and implement programs. Tr. 45. Given the level of development and implementation of the Coop's DSM programs, the commission will require the Coop's participation in a series of meetings with staff, the other New Hampshire utilities, representatives from the Governor's Energy and Consumer Advocate's Offices, and others as staff and the utility participants see fit, to explore the potential for a collaborative DSM program design process in New Hampshire. If appropriate, this group will also develop a plan for implementing such a collaborative design process in New Hampshire. Should a collaborative DSM design process be initiated, the commission will require the Coop to participate. Whether or not such a process is initiated, the commission expects to see a more comprehensive assessment of DSM options for the Coop system including potential kilowatt and kilowatt-hour impacts and cost-benefit analyses in its next LCIP filing.

In addition, the Coop should include, in either its assessment of DSM or its Two-Year Implementation Plan, a detailed description of how resources and personnel will be allocated to DSM activities at the company.

3. *Assessment of Supply-Side Options*

While the Coop lists several possible supply options (Ex. I, p. III-2), it does not appear to have conducted a comprehensive assessment of them. The focus of the Coop's analysis appears to have been on remaining an all requirements customer of PSNH. Ex. I, pp. III-1 to III-3. Mr. Kaminski testified that until recently the Coop has not conducted an assessment of alternatives to remaining an all requirements customer of PSNH. Tr. 26-27. While the commission finds this to

have been understandable in the past, given the Coop's long history with PSNH, we are somewhat concerned that the Coop's recent analysis of its alternatives to PSNH is not more rigorous. If the Coop has conducted such an analysis, its least cost planning filing (Ex. I) and testimony (Ex. III and transcript) fail to provide evidence of this. The commission will require the Coop to provide in its next filing a comprehensive assessment of its supply options. The Coop shall clearly set forth its criteria for consistently evaluating supply options, including QFs. These criteria should include such factors as risk, timing, availability, reliability, cost and environmental impacts, and the Coop should indicate how each option fares along these criteria. The Coop should meet with staff to discuss any questions it may have regarding the development of this analysis.

Further, the commission is concerned that to the extent that the Coop is assessing supply options, it appears to be using inconsistent cost criteria. The Coop appears to be comparing its supply alternatives to remaining an all requirements customer of PSNH, which implicitly identifies PSNH wholesale costs as the criteria against which it is comparing the costs of alternative supplies. The inconsistency arises with regard to QFs which are measured against PSNH's avoided costs, rather than the wholesale rates the Coop faces. The PSNH wholesale rates are not based on marginal costs, that is, costs consistent with PSNH avoided costs as required to be calculated for the purposes of the commission's least cost planning proceedings. This may place QFs at a disadvantage in the Coop's assessment of supply options as the relative levels of wholesale rates and avoided cost may change.

4. *Assessment of Transmission Requirements, Limitations and Constraints*

The commission finds that the Coop's

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transmission report is comprehensive and fulfills the requirements of order no. 19,052 (73 NH PUC 117 [1988]). We note that the Coop has adopted much of PSNH's transmission report and supplemented it with Coop-specific information. We find this to be appropriate. We would also like to commend the Coop for the transmission map it provided as Attachment IV-2, p. 2. It meets our requirements for a "map indicating load concentrations, transmission limits and constraints, and planned and proposed changes to the transmission system ... during the forecast period." Order no. 19,052, p. 19. We note that the detail on comparative load levels was excellent. We will, however, require the Coop to provide a larger, more legible copy of the map within thirty days of the issuance of this report and related order.

5. *Integration of Demand- and Supply-Side Resource Options*

The Coop indicates that its "current resource planning effort is aimed at developing the organization and resources needed to assess and implement future supply and demand-side resource options based on least cost planning techniques, *after* the relationship of [the Coop] and PSNH, or its successor post-bankruptcy, and [the Coop's] financial picture are defined." (Emphasis added) Ex. I, Section V, first page. The commission points out that least cost planning techniques should be used to analyze and evaluate issues such as the definition of the relationship between the Coop and PSNH, not developed after the fact. Our objective in establishing requirements for least cost integrated planning filings was to ensure that a

framework existed within which the utilities considered and evaluated their various resource options comprehensively and equivalently. A process whereby major resource decisions are made prior to the comprehensive and integrated assessment of all of a utility's resource options does not fulfill these requirements.

The commission will require the Coop to accelerate the development and refinement of the "elements and flows" it has identified as part of a least cost planning process. We note that the Coop does not have "several years" to wait. Ex. I, Section V, first page. We will require the Coop to provide in its next least cost planning filing a detailed plan for developing a basic least cost planning capability by the end of 1990. We will also require the Coop to include as part of this plan, a detailed schedule for further refining its least cost planning process by the end of 1991. The plan should indicate personnel and resources the Coop will use in its implementation. It should also include a schedule for the accomplishment of the various tasks in it. The Coop should meet with staff to discuss any questions it may have regarding the development of this plan. The commission notes that it expects that the sophistication of the Coop's least cost planning process will be appropriate to and consistent with its size and resources; however, we do expect that an integrated and comprehensive process will result.

6. *Two-Year Implementation Plan*

The Coop's two-year implementation plan describes the actions it plans to take in the next two years to proceed with the implementation of the programs and actions it has identified. The commission finds it to be adequate given the level of development of the Coop's long range plans. We have discussed our findings on the coop's long range plans in the preceding sections and will not restate them here. We will, however, require the Coop to provide greater detail on its implementation plan in its next least cost planning filing. The Coop should provide a timeline stating specifically the dates by which actions will be taken and should indicate the personnel the utility intends to utilize ... in the implementation of the plan". Order no. 19,052.

7. *Avoided Cost Forecasts*

[7] The Coop has adopted PSNH's avoided costs as its own. The commission's findings on PSNH's avoided costs are restated below:

> PSNH has calculated its avoided costs in accordance with the settlement agreement in consolidated dockets DR 86-41, *et. al.* as
>
> **Page** 384
>
> required. Given our questions about how much capacity may actually be available in the market over the next few years and the timing of the availability of Seabrook, the commission is concerned that the company's avoided capacity cost estimates may be too low in the near term. The commission will require PSNH to provide in its next least cost planning filing supporting documentation for the cost and availability of capacity both in the short term market and as deficiency service from NEPOOL. Until then, the long term avoided cost estimates are approved as filed and should serve as the basis of PSNH's negotiations with QFs. Order No. 19,549 (74 NH PUC at 345, [1989]).

These long term avoided cost estimates should also serve as the basis of the Coop's negotiations

with QFs. However, while the commission agrees that the appropriate avoided costs in economic terms for the Coop are still the avoided costs of its wholesale-supplier, PSNH, we reiterate our concerns about the consistency of the criteria the Coop is using to analyze its supply alternatives to PSNH.

8. *Overall Evaluation*

The commission recognizes that the Coop's circumstances are particularly uncertain at this time given its own financial status and the PSNH bankruptcy. We also recognize that these uncertainties have brought to the forefront a number of resource planning issues that the Coop previously has not had to face. These issues are major ones and may be thrusting the Coop, its management and its members/customers into a planning environment that is completely new to them. Further, we recognize that the Coop has not provided us with certain details regarding the specific resources it is considering given the status of negotiations with potential power suppliers. However, our focus is not on the particulars of individual options but rather on the process the Coop is using to evaluate them.

The commission reiterates the view it expressed at the hearing (Tr. 8), that the Coop must plan for its future resource needs despite the uncertainties in its environment. The Coop has an obligation to serve the electricity and energy service needs of its customers at the lowest possible cost. Use of a least cost integrated planning approach to resource selection, development and implementation can greatly facilitate the Coop's efforts in this area. The commission will be working to assist the Coop in moving in this direction.

Overall, the commission finds the Coop's initial least cost planning filing to be disappointing despite our recognition of it as a first effort. The Coop has not described a planning process that is comprehensive and integrated and whose implementation is feasible. The commission did not expect that the Coop would have a fully developed process at this stage; however, we had expected that it would have outlined such a process and its plans for implementing it. We are therefore concerned that the Coop's planning process is not sufficient to meet the challenges it faces.

Based on the Coop's filing and testimony in the proceeding, the commission finds that its planning process is inadequate at the present time. We are requiring the Coop to take a number of steps which should result in an improvement in its planning process. We expect to see this reflected in its next filing.

C. *ADDITIONAL COMMISSION FINDINGS*

In accordance with the process outlined in order no. 19,052, the commission finds that QFs can meet some of the Coop's resource needs within the next eight years and, for the purposes of this proceeding, that the process the Coop has established for negotiating and contracting for power purchases from QFs is adequate and consistent with commission policy. However, we reiterated that we are concerned about whether the Coop is evaluating its supply options, including QFs, consistently and that we expect to see an improvement in this area in the Coop's next least cost planning filing.

[8] Given the current status of the Coop as an all requirements customer of PSNH, the commission finds it not appropriate to set the megawatt amount of QF capacity the Coop should be seeking. However, we reiterate the

commission's policy preference for QFs using renewable and indigenous fuels, including municipal solid waste, and cogeneration based on existing industrial use of fossil fuels, over technologies that increase the dependence of New Hampshire on fossil fuels.

Our order will issue accordingly.

ORDER

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

ORDERED, that the New Hampshire Electric Cooperative, Inc.'s least cost integrated planning filing of May 31, 1989 and subsequent responses to data requests and testimony be, and hereby are, accepted as fulfilling the reporting requirements of order no. 19,052 for the year 1989 although we find the Coop's planning process as described to be inadequate; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative's adoption of Public Service Company of New Hampshire's (PSNH) long term avoided cost estimates as approved in order no. 19,549 be, and hereby are, approved for 1989 and should serve as the basis for the Coop's negotiations with QFs; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative make a filing at the time of PSNH's short and long term avoided cost filings either adopting PSNH's avoided cost estimates or presenting and supporting its own avoided cost estimates; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative file its new Power Requirements Study, or the forecast it is currently using for planning purposes, by November 1, 1989; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative file by November 1, 1989 a protocol for the operation of its controlled water heating load management program, including a plan for testing the system before December 1, 1989; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative file by November 1, 1989 a plan for implementation of its new storage space heating program including its plan for marketing the program to both new and existing customers; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative include in its next least cost planning filing estimates of the impacts of and cost-benefit analyses for its current demand-side program; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative file an interruptible load program no later than November 1, 1989 for implementation as soon thereafter as possible and no later than December 1, 1989, if it is not going to participate in PSNH's program; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative participate in consideration of a collaborative process on demand-side management program design and policy issues in order to facilitate its development and implementation of cost-effective demand-side management; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative provide in its next

least cost planning filing a comprehensive assessment of supply-side options according to clearly identified criteria; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative provide a larger, more legible copy of its transmission map, Attachment IV-2, p. 2 within thirty days of the issuance of this order; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative provide in its next least cost planning filing a detailed plan for developing a basic least cost integrated planning capability by the end of 1990, and include with it a detailed plan for further refining this capability by the end of 1991; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative provide a schedule and designate in its next least cost planning filing the personnel and resources it will use to support and implement its resource planning.

By order of the Public Utilities Commission of New Hampshire this fifth day of October, 1989.

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NH.PUC*10/05/89*[51841]*74 NH PUC 387*Pennichuck Water Works, Inc.

[Go to End of 51841]

74 NH PUC 387

Re Pennichuck Water Works, Inc.

DE 89-088
Order No. 19,556

New Hampshire Public Utilities Commission

October 5, 1989

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

SERVICE, § 210 — Extensions — New service area — Water utility.

[N.H.] A water utility was conditionally authorized to extend its mains and service to a previously unserved area where no other water utility had franchise rights in the area sought and the town government of the area did not object to the extension; it was found that extension of service would result in economic and managerial efficiency.

By the COMMISSION:

ORDER

On May 19, 1989, Pennichuck Water Works, Inc., a water public utility operating under the

jurisdiction of this commission, filed a petition seeking authority pursuant to RSA 374:22 and 374:26 as amended to further extend its mains and service in the Town of Derry, New Hampshire; and

WHEREAS, no other water utility has franchise rights in the area sought and the petitioner submits that the area will be served under its filed tariff for consolidated systems in the area of East Derry, New Hampshire; and

WHEREAS, the Town of Derry has stated by letter from its attorneys dated June 21, 1989, that it will not object to the granting of this franchise; and

WHEREAS, after investigation and consideration, this commission finds that it is in the public good to grant this petition as the granting of this petition will result in economic and managerial efficiency; it is hereby

ORDERED, *Nisi* that Pennichuck Water Works, Inc. be authorized pursuant to RSA 374:22 to extend its mains and service in the Town of Derry, New Hampshire in an area as shown on a map attached to the petition and on file with the commission and described as follows.

A certain parcel of land containing about three hundred and fifteen acres, situated in Derry aforesaid, near what was formerly the Railroad Station known as Hubbards, and lying in part on the Easterly side of the highway leading from said former Railroad Station to East Derry, and bounded and described as follows.

to wit: Beginning at a point on said highway at land formerly of Alice M. Herrick at a stake and stones located about nineteen (19) rods Southeasterly of a cross road running from said road Easterly by the Charles Johnson Farm, so-called; thence Northerly by said Herrick land passing the Southerly side of a small pond hole to a stone wall; thence still Northerly by said wall in a zigzag line and by said Herrick land to land now or formerly of George E. Seavey; thence Easterly by said Seavey land to a stake and stones; thence Northerly by said Seavey land and land formerly of Ordway to a stake and stones at the South-westerly corner of land now or formerly of Benjamin Adams; thence Easterly by said Adams land and by land now or formerly of Horne Brothers to the Northwesterly corner of land now or formerly of John Austin; thence Southerly, Easterly and Northerly around three sides of said Austin land (which is a piece of about ten acres) to said Horne land; thence Easterly by said Horne Brothers land and land now or formerly of Orlando George to the highway leading from Charles H. Jackson's to Orlando George's; thence Southerly by said highway to land conveyed by Joshua G. Hubbard to Charles H. Jackman; thence Westerly and Southerly by said Jackman land in an irregular line to the Northerly boundary of the location of the Nashua & Rochester Railroad; thence about Southwesterly by said

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Railroad location to land conveyed by said Hubbard to Gould Brothers; thence Northerly and Westerly by said Gould Brothers land to the highway first mentioned; thence Northwesterly by said highway to the point of beginning.

ALSO another parcel of wood land situated in said Derry, containing forty acres,

more or less, and bounded and described as follows, to wit: Northerly by land now or formerly of Eugene Kimball; Easterly by land formerly of J.G. Hubbard; Southerly by land now or formerly of George E. Seavey; and Westerly by land of the heirs of devisees of Charles C. Johnson, there measuring ninety-six (96) rods.

ALSO another parcel of land situated in said Derry, and bounded and described as follows, to wit: Commencing at the Northeast corner of the same and at the Southeast corner of land formerly of Nelson Ordway, and running West sixty and one-half (60-1/2) rods, more or less, to land formerly of Alice M. Herrick; thence South twenty and one-half (20-1/2) rods by said Herrick land; thence East sixty and one-half (60-1/2) rods, more or less, by said Herrick land and land formerly of Joshua G. Hubbard to a stake and stones by said Hubbard land; thence by said Hubbard land about twenty and one-half (20-1/2) rods to the bound begun at.

EXCEPTING and reserving 20 acres, more or less, conveyed the Derry Cooperative School District by deed recorded at the Rockingham County Registry of Deeds, Book 2562, Page 0141.

ALSO EXCEPTING a certain parcel of land situate on the Northerly side of Dubeau Drive, so-called, and more particularly described as follows, to wit: Beginning at a concrete bound situate on the Northerly side of Dubeau Drive, and at Lot #7-75-21; thence running North 00° 00´ 59” West 355.66 feet; thence running North 03° 53´ 19” East 99.38 feet; thence turning and running North 26° 02´ 53” West 280.00 feet; thence running North 31° 49´ 50” West 525.37 feet; thence turning and running South 66° 52´ 05” West 307.50 feet; thence turning and running Northwesterly on the arc of a circle with a radius of 1,000.00 feet for a distance, of 47.531 feet; thence running North 40° 37´ 37” West 146.91 feet; thence turning and running North 80° 18´ 2B” East 777.04 feet; thence turning and running South 14° 00´ 49” East 359.59 feet; thence turning and running North 80° 52´ 40” East 236.67 feet; thence turning and running South 12° 14´ 16” East 515.18 feet; thence turning and running South 77° 45´ 44” West 284.31 feet; thence turning and running South 00° 00´ 52” East 400.05 feet to Dubeau Drive; thence turning and running Southwesterly on the arc of a circle with a radius of 1,420.00 feet for a distance of 124.99 feet to the point of beginning.

The above conveyed property includes, among other property, the following:

Twenty-two (22) parcels of land situate in Derry, County of Rockingham, State of New Hampshire, being more particularly described as follows:

Lots 7-75-2, 7-75-5, 7-75-6, -75-7, 7-75-8, 7-75-10, 7-75-11, 7-75-12, 7-75-13, 7-75-14, 7-75-15 being shown on a plan of land entitled Subdivision Plan of Land in Derry, N.H., Lot 7-75 (Phase I) for D.E.A.K. Realty Trust, Scale: 1”50´, July 1987, Campbell-Luger Land Surveyors & Associates, Inc. and filed

with the Rockingham County Registry of Deeds as Plan D-17356.

Lots 7-75-17, 7-75-18 as shown on a plan of land entitled, "Subdivision plat of Land in

Derry, N.H., Lot 7-75 (Phase IIA) for D.E.A.K. Realty Trust, Scale: 1”-50´, July 1987, Campbell-Luger Land Surveyors & Associates, Inc. and filed with the Rockingham County Registry of Deeds as Plan D-17357.

Lots 7-75-19, 7-57-20 and 7-75-21 as shown on a plan of land entitled, "Subdivision Plat of Land in Derry, N.H., Lot 7-75 (Phase IIB) for D.E.A.K. Realty Trust, Scale: 1”50´, July 1987, Campbell-Luger Land Surveyors & Associates, Inc. and filed with the Rockingham County Registry of Deeds as Plan D-17358.

Lots 7-75-23 as shown on a plan of land entitled, "Subdivision Plat of Land in Derry, N.H., Lot 7-75 (Phase IIC) for D.E.A.K. Realty Trust, Scale: 1´=50´, July 1987, Campbell-Luger Land Surveyors & Associates, Inc. and filed with the Rockingham County Registry of Deeds as Plan.D-17359.

Lots 7-75-25 as shown on a plan of land entitled, "Subdivision Plat of Land in Derry, N.H., Lot 7-75 (Phase IID) for D.E.A.K. Realty Trust, Scale: 1”=50´, July 1987, Campbell-Luger Land Surveyors & Associates, Inc. and filed with the Rockingham County Registry of Deeds as Plan D-17721.

Lot 7-75-30 through Lot 7-75-60, inclusive, as shown on plan of land entitled "Flintlock Forest" Subdivision Plan of Land in Derry, N.H., approved by the Derry, New Hampshire Planning Board on December 21, 1988 and recorded in the Rockingham County Registry of Deeds as Plan D-18905, Sheets 1-6.
; and it is

FURTHER 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 6, 1989; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. effect said notification by publication of a 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 October 23, 1989, said publication to be documented by affidavit filed with this office on or before November 13, 1989.

In addition, individual notice shall be given to all known current and prospective customers and Southern New Hampshire Water Company, Inc. and Hampstead Area Water Company by serving a copy of this order to each by first class U.S. mail, postage pre-paid and postmarked on or before October 23, 1989.

FURTHER ORDERED, that such authority shall be effective on November 13, 1989, unless a request for hearing is filed with this commission as provided above or unless the commission orders otherwise.

By order of the Public Utilities Commission of New Hampshire this fifth day of October, 1989.

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NH.PUC*10/06/89*[51842]*74 NH PUC 389*Public Service Company of New Hampshire

[Go to End of 51842]

74 NH PUC 389

Re Public Service Company of New Hampshire

DF 89-133
Order No. 19,559
New Hampshire Public Utilities Commission
October 6, 1989

ORDER authorizing an electric utility that was a debtor in a bankruptcy proceeding to issue up to $50 million in new securities.

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1. SECURITY ISSUES, § 38 — Commission authorization — Factors considered — Public good.

[N.H.] In considering a financing request presented under state statute RSA 369:1 and 4, the commission must, in order to grant approval of an issuance of securities, first make a finding that the amount and objects of the proposed financing will be in the public good; in deciding whether a financing is in the public good, the commission must examine whether the financing request is reasonably to be permitted under all circumstances of the case. p. 392.

2. SECURITY ISSUES, § 44 — Authorization — Factors considered — Interest savings — Issuance costs — Bankruptcy — Debtor electric utility.

[N.H.] In authorizing an electric utility that was debtor in a bankruptcy proceeding to issue new securities to refund its $50 million series E 18% general and refunding mortgage bonds, the commission found that monthly interest savings associated with the refunding during the pendency of the bankruptcy proceeding would in all likelihood exceed issuance costs (which were estimated to include extremely high legal fees as a result of the bankruptcy proceeding); moreover, it was found that the retirement of the series E bonds by a cash payment was not an option available to the utility; the commission noted that its approval of the financing did not

carry with it a finding that the cost of the financing was reasonable for rate-making purposes. p. 393.

3. SECURITY ISSUES, § 105 — Pricing terms — Preapproval — Electric utility.

[N.H.] The commission approved a request by an electric utility for preapproval of the pricing terms of a new securities issue. p. 394.

4. PROCEDURE, § 16 — Protective order — Security issues — Private placement memorandum.

[N.H.] The commission granted a motion by an electric utility for a protective order over a private placement memorandum associated with the issuance of new securities; the protective

order was necessary to ensure the "qualified investor" exemption from registration under the Securities Act of 1933 remained available. p. 395.

APPEARANCES: Sulloway, Hollis & Soden by R. Carl Anderson, Esquire, and Gerald M. Eaton, Esquire for Public Service Company of New Hampshire; Michael W. Holmes, Esquire and Joseph W. Rogers, Esquire for the Office of the Consumer Advocate; Mary C. Hain, Esquire for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On August 1, 1989, Public Service Company of New Hampshire ("PSNH" or "Company") filed its Petition for Authority to Issue Securities to Refund its $50,000,000 Series E 18% General and Refunding Mortgage Bonds due 1989 ("Petition"). A Revised Order of Notice was issued on August 16, 1989, which, *inter alia*, required the submission by PSNH of prefiled testimony and exhibits no later than August 25, 1989 and set a hearing for September 15, 1989.

The Commission held a hearing on the Petition on September 15, 1989, at which one witness for the Company testified and sixteen exhibits were introduced into evidence. The Company witness was its Vice President and Treasurer, George Branscombe.

Summary of the Petition

In its Petition, PSNH is seeking authority pursuant to RSA 369:104 to issue new securities (the "New Securities"), the proceeds of which will be used to refund the Company's $50,000,000 Series E 18% General and Refunding Mortgage Bonds (the "Series E Bonds"). Pursuant to this Commission's prior authorization, the Series E Bonds were issued and sold by PSNH in 1982, with a stated interest rate of 18% per annum, a maturity date of June 15, 1989, and with the benefit of the security afforded by the Company's General and Refunding Mortgage Indenture, dated as of August 1, 1978 (the "G&R Mortgage"), for which Bank of New England, N.A. is the Trustee (the "G&R Trustee"). *See Re PSNH*, 67 NH PUC 352, 379 (1982). As stated in paragraph 8 of the Petition, subject to the prior lien of the Company's First Mortgage dated as of January 1, 1943, the Company's G&R Mortgage encumbers substantially all of the Company's present and future property, tangible and intangible, including franchises.

The terms of the New Securities for which PSNH seeks authorization to issue are described in paragraph 7 of the Petition as follows:

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

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Issue:            Either G&R Mortgage Bonds or G&R
                  "Equivalent" Bonds

Principal Amount: $50,000,000

Interest Rate:    Up to 13%, payable semi-annually
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Maturity:	5 years from date of issuance
Price:	100%
Sinking Fund:	None
Call Right:	At any time on or after the effective date (the "Effective Date") of a confirmed plan of reorganization in the Company's Chapter 11 Case, PSNH may redeem the Securities at its option at par. Prior to the Effective Date the Securities are not redeemable.
Security:	G&R Mortgage or Equivalent

As also stated in the Petition, on January 28, 1988, PSNH filed a voluntary petition for reorganization under Chapter 11 of the federal Bankruptcy Code (Title 11, U.S.C.). PSNH remains a debtor and debtor in possession in the Case No. 88-00043 (the "Chapter 11 Case") before the United States Bankruptcy Court for the District of New Hampshire (the "Bankruptcy Court").

PSNH filed a motion with the Bankruptcy Court on July 20, 1989, seeking the Bankruptcy Court's authorization to issue the New Securities and to satisfy the Series E Bonds. The Bankruptcy Court issued an order on August 11, 1989 (the "Bankruptcy Financing Order") authorizing PSNH to proceed with those transactions, subject to the Bankruptcy Court's subsequent confirming order, to be requested by PSNH following the circulation of definitive documents (other than the G&R Mortgage) evidencing the New Securities to interested parties in the Chapter 11 Case, with opportunity to object. The Bankruptcy Financing Order and the Company's motion seeking the same are each exhibits in this proceeding, respectively, Attachment 1 to Exhibit 1 and Exhibit 16.

Position of the Company

Mr. Branscombe testified that this financing affords the Company the opportunity to reduce substantially its interest costs on $50,000,000 of its secured debt during the pendency of its Chapter 11 Case. Pursuant to an order entered on April 25, 1988 by the Bankruptcy Court, the Company has been making current interest payments on all its outstanding First Mortgage Bonds and G&R Mortgage Bonds (Exhibit 1, p. 4).

Mr. Branscombe stated that although the Series E Bonds matured on June 15, 1989, until they were satisfied they would continue to earn interest at the rate of 18% per annum.

Mr. Branscombe further testified that based upon the independent proposals of three leading investment banking firms, the Company had determined that the Series E Bonds could be refunded by a new issue bonds, with rights identical to the Series E Bonds, except for a lower interest rate and a new maturity date. The Bankruptcy Financing Order provides that the new bonds which are to refund the Series E Bonds will be classified and treated in any plan of reorganization in exactly the same manner as all other bonds issued under the G&R Mortgage prior to the filing of the Chapter 11 Case (Exhibit 1, Attachment 1 at pp. 3-4).

Mr. Branscombe testified that the

investment banking firms of Merrill Lynch, Drexel Burnham Lambert, and Bear Stearns each presented proposals to the Company pursuant to which the Series E Bonds would be refunded by a new series of bonds issued under the Company's G&R Mortgage. Under each proposal, the new bonds would be sold privately to qualified investors, as a "private placement" not requiring registration of the new bonds under the Securities Act of 1933. Bear Stearns and Co., Inc. quoted a private placement fee of 1.25% of the issue amount ($625,000), as compared to quotes of 3.00% ($1,500,000) and 3.50% ($1,750,000) by Merrill Lynch and Drexel Burnham, respectively. The Company accordingly selected the Bear Stearns' proposal as the most competitive. *See* Exhibit 3.

Attachment 2 to Mr. Branscombe's prefiled testimony (Exhibit 1), lists estimated expenses of issuance for the New Securities as follows:

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

1.	Private Placement Fee	$625,000
2.	Fees and Expenses of Trustee	15,000
3.	Legal Services	200,000
4.	Accounting Services	25,000
5.	Miscellaneous	15,000
		$880,000

Mr. Branscombe testified that based on current market conditions, the Company expects that the interest rate for the New Securities will be in the range of 11.5% to 12.0% per annum. The Company's Petition seeks authority to issue the New Securities at a rate not greater than 13.0% per annum.

Mr. Branscombe stated that he was highly confident that the monthly interest savings during the pendency of the Chapter 11 Case resulting from substituting the New Securities for the Series E Bonds would more than cover issuance costs for the New Securities. The monthly reduction in interest costs would be $250,000 if the New Securities are issued at 12% and $208,333 if the New Securities are issued at 13%.

With agreement among the State (represented by the New Hampshire Attorney General), PSNH and its creditors in the Chapter 11 Case on a consensual plan of reorganization, Mr. Branscombe estimated July 1, 1990 as the earliest effective date of a confirmed plan of reorganization. However, Mr. Branscombe testified that as of the hearing date there was no such agreement on a consensual plan of reorganization and that competing plans were being filed with the Bankruptcy Court on that day. Mr. Branscombe stated that consummation of a plan of reorganization could be delayed to July 1, 1992 or later, if no consensual agreement among all qualified negotiating parties in the Bankruptcy Case could be reached.

Position of the Staff and the Consumer Advocate

The Staff did not oppose the Company's position, and made no recommendation of a particular position to the Commission. By cross-examination of Mr. Branscombe, requests for administrative notice, and the introduction of Exhibits 14 and 15, the Staff developed for the Commission's consideration further facts regarding costs of issuance (in particular, that estimated legal expenses in this proceeding were higher than estimated legal expenses in most other

financing by the Company) and regarding the option of retiring the Series E Bonds with cash in light of apparent depreciation on some of the construction projects for which proceeds of the Series E Bonds were available for funding.

The Consumer Advocate also took no position on the Company's position. At the Consumer Advocate's request, exhibits were introduced into evidence showing the pro forma effect of this financing on the Company's cost of long-term debt, computed as of June 30, 1989. If the New Securities are issued at 13% per annum, such cost would decrease from 16.02% to 15.835%; at 12% per annum, to 15.798%. Exhibits 9 and 10.

Commission Analysis

[1] In considering a financing request presented under RSA 369:1 and 4, the Commission must, in order to grant approval of an

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issuance of securities, first make "a finding that the amount and objects of the proposed financing will be in the `public good.'" *Appeal of Conservation Law Foundation*, 127 N.H. 606, 614, 507 A.2d 652 (1986). In deciding whether or not a financing is in the public good, the Commission must examine whether the financing request is "`reasonably to be permitted under all the circumstances of the case.'" *Id.*, quoting *Grafton Etc. Co. v. State*, 77 N.H. 539, 540, PUR1915C 1604, 94 A. 193, 194 (1915). In so deciding the Commission must take "all interests into consideration." *Id.* quoting *Grafton, supra* at 542, 94. A. at 195.

[2] As we will discuss further, given the circumstance of the Company's bankruptcy proceeding, the key issue to decide in this case is whether reductions in interest costs during the pendency of the Chapter 11 Case will exceed issuance costs for the New Securities. The Company evidence supports the finding that this financing will produce overall dollar savings during the pendency of the Company's Chapter 11 Case.

Mr. Branscombe testified that with the consensus of all qualified negotiating parties, he expected that July 1, 1990 would be the earliest effective date for a confirmed plan of reorganization. Assuming that the refunding of the Series E Bonds occurred on November 1, 1989, eight months would pass before consummation on July 1, 1990 of a confirmed plan of reorganization, at which point the effective interest rate on the Series E Bonds, as well as the rate on other outstanding series of G&R Bonds, could be reduced through one or more means available in the plan process provided by the Bankruptcy Code. Exhibit 1 at p. 6; Exhibit 16 at p. 3. No evidence contradicted the July 1, 1990 date presented by Mr. Branscombe, nor his further testimony on the day of the hearing that he believed the July 1, 1990 date could not be met, because no overall consensus had been reached as of September 15 on a plan of reorganization. We find that July 1, 1990 is a reasonable date to use in evaluating the reasonableness of this financing request. Mr. Branscombe's testimony also indicates that this date may slip, possibly by many months.

The savings resulting from lowering interest costs on the $50,000,000 of secured debt can be readily computed. Reducing the interest rate from 18% to 13% per annum reduces monthly interest costs by $208,333 per month. The reduction is $250,000 per month if the rate changes from 18% to 12%. Using the more conservative figure, interest savings over 8 months

(November 1, 1989 — July 1, 1990) would be $1,666,664 as compared to $880,000 of estimated issuance costs. For each month the Chapter 11 Case may continue beyond July 1, 1990, the interest savings will increase.

The Commission recognizes that at $200,000, the "estimated legal fees" component of estimated issuance costs is very high, being one of the highest estimates ever presented to this Commission in financing requests of the Company. Mr. Branscombe testified that the $200,000 estimate for legal fees reflected the existence of complex issues due to the Chapter 11 Case itself and defaults under the Company's First Mortgage and G&R Mortgage. See Exhibit 5. He further testified that the $200,000 estimate could be exceeded, although the expenses of Bear Stearns and the fees of Bear Stearns' counsel may not exceed $165,000 without further approval of the Bankruptcy Court. See Exhibits 4 and 5. We conclude that the estimated costs of issuance reflect the Company's good faith estimate of necessary transactional costs. We agree with the Company that interest savings should more than cover issuance costs of the New Securities.

Of course, one alternative to refunding the Series E Bonds would be to retire them by a cash payment. Exhibits 14 and 15 introduced by Staff indicate that depreciation of some of the construction projects for which the proceeds of the Series E Bonds were available has apparently occurred. However, in this financing case, no evidence refutes the Company's position that during the pendency of its Chapter 11 Case, the Company is legally barred from retiring the Series E Bonds. Mr. Branscombe testified that the Bankruptcy Code does not allow payment of a pre-petition claim, such as the Series E Bonds, prior to or outside of a confirmed plan of reorganization, and that while other creditors did not object to swapping the Series E Bonds for new G&R Bonds at a lower interest rate,

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other creditors would have objected to use of the Company's cash on hand to retire the Series E Bonds. Mr. Branscombe stated that holders of outstanding First Mortgage Bonds or holders of other series of outstanding G&R Bonds would undoubtedly have demanded equal treatment.

If the Company had available to it while in the bankruptcy reorganization the option of using cash to retire the Series E Bonds, then this Commission would inquire further into the cash retirement option, examining, among other things, the Company's need for maintaining cash balances and the expected difference between interest earnings on cash balances and the cost of refunding. However, in its present circumstances, the Commission finds that the evidence establishes that either the Company will continue to pay 18% interest on the Series E Bonds up to consummation of a plan of reorganization, or the Company will be authorized by us to proceed with a transaction designed to reduce interest costs during the pendency of the Chapter 11 Case.

We conclude that in the present circumstances it is in the public good for the Company to proceed with the proposed refunding, since we have found that monthly interest savings during the pendency of the Company's Chapter 11 Case will in all likelihood exceed issuance costs and that the retirement of the Series E Bonds by a cash payment is not an option available to PSNH while its Chapter 11 Case is pending. As has become customary in financing approvals under RSA Chapter 369, we will state that our conclusion that this financing is for the public good does

not carry with it a finding that the cost of the financing is reasonable for ratemaking purposes. *See e.g., Re PSNH*, 70 NH PUC 658, 663 (1985). Under ordinary circumstances we would be inclined to consider the interest income being earned on the company's high level of cash and short-term investments as an offset to the cost of debt. The company stated that on the basis of retaining that cash for financial flexibility that the interest earned on the cash balance would result in a differential of 2% — 4% between interest expense and interest income on the restructured debt.

Type of Mortgage Security and Pricing Approval

[3] Mr. Branscombe testified that the New Securities will most likely be issued as a new series of G&R Bonds, which would be "Series I" Bonds issued pursuant to the Eighth Supplemental Indenture to the G&R Mortgage. However,the Company is also seeking authority to issue the New Securities as instruments separate from the G&R Indenture, but with security rights in the Company's properties the same as a new series of G&R Bonds would have, in case the G&R Trustee should determine and deliver new Series I Bonds. See Exhibit 1 at p. 4 and Exhibit 1, Attachment 1 at p. 3. The Bankruptcy Financing Order authorizes issuing the New Securities as a supplement to the G&R Indenture or with substantially equivalent terms. We will also authorize this flexibility, since the grant of security under RSA 369:2 is the same in each instance.

The Company also asks us to pre-approve the pricing terms set forth in its Petition. Thus, the Commission would authorize the Company to issue the New Securities at an interest rate up to 13%. Prior to issuing the New Securities the Company would be required to file with the Commission a written report with final pricing information. This Report would be filed at least 24 hours prior to the issuance on a subsequent business day of the New Securities.

Mr. Branscombe testified explains that approval of pricing terms up to specified limits will avoid the necessity of a separate "pricing order," which itself would not become final for purposes of issuing valid securities, until the time for motions for rehearing had expired without any such motions being filed or had expired and the Commission had denied any such motions. *See Appeal of SAPL (Part II)*, 125 N.H. 708 (1984). Neither the Staff nor the Consumer Advocate objected to PSNH's request to pre-approve pricing terms up to the stated limit.

After review and consideration, we have decided to grant the Company's request to pre-approve a range of pricing terms without an additional pricing order. Such a procedure has been authorized previously for PSNH and for other electric utilities. *See e.g. Re PSNH*, 70 NH

PUC 787, 811-12 (1985) and *Re New England Power Co.*, 69 NH PUC 625 (1984).

We also note that PSNH has agreed to submit to the Commission and all parties to this proceeding the "definitive documents" which will evidence the New Securities, at the same time those documents are circulated to participants in the Chapter 11 Case in accordance with the Bankruptcy Financing Order.

PSNH Motion for Protective Order

[4] During the course of this proceeding, the Staff specified that it was requesting PSNH to

file a copy of the private placement memorandum to be circulated to potential purchasers of the New Securities, when that document became available. PSNH filed a motion at the hearing for a protective order which would prevent the private placement memorandum and any amendments thereto from becoming available to the public, to ensure that the "qualified investor" exemption from registration under the Securities Act of 1933 remains available. At the hearing counsel for PSNH further specified that the private placement memorandum could become part of the public record in this case, once the offering of the New Securities was closed.

We determine that PSNH should file the private placement memorandum, and any amendments thereto, as part of the record in this DF 89-133, but further order "that such documents shall not become part of the public record in this proceeding until the New Securities are issued. The Commission, Staff and all other parties to this proceeding may review said documents, but until the New Securities are issued, said documents shall not be released to any person not a party to this proceeding without prior notice to PSNH and a further order of 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 pursuant to RSA Chapter 369:1-4, the Commission finds that the proposed financing, upon the terms proposed is consistent with the public good; and it is

FURTHER ORDERED, that pursuant to RSA 369:1, 3 and 4, PSNH be, and hereby is, granted the authority to issue up to $50,000,000 aggregate principal amount of New Securities payable more than 12 months after the date thereof with the terms of the New Securities set forth in the foregoing Report; and it is

FURTHER ORDERED, that pursuant to RSA 369:1-4, PSNH be, and is hereby is, granted the authority to mortgage its property as specified in the foregoing Report and to issue the New Securities either under the G&R Mortgage as a new series of G&R Bonds or instead to issue them apart from the G&R Mortgage but with security rights equivalent to outstanding G&R Bonds; and it is

FURTHER ORDERED that PSNH shall notify the Commission of the final pricing terms of the New Securities on a business day at least 24 hours prior to the issuance and placement, on a subsequent business day, of the New Securities; and it is

FURTHER ORDERED that PSNH shall file with this Commission, and all other parties to this proceeding the "definitive documents" referred to in the Bankruptcy Financing Order discussed in the foregoing Report at the same time such documents are made available to parties in PSNH's Chapter 11 Case; and it is

FURTHER ORDERED, that PSNH shall file with this Commission and all other parties to this proceeding the "private placement memorandum" and any amendment thereto, subject to the protective provisions contained in the foregoing Report; and it is

FURTHER ORDERED that PSNH file with this Commission a detailed statement showing the expenses incurred in accomplishing this financing; and it is

FURTHER ORDERED, that the proceeds from the issuance of the New Securities be used for the purpose of refunding the outstanding Series E Bonds of the Company which matured on June 15, 1989.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1989.

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NH.PUC*10/06/89*[51843]*74 NH PUC 396*Southern New Hampshire Water Company, Inc.

[Go to End of 51843]

74 NH PUC 396

Re Southern New Hampshire Water Company, Inc.

DE 89-172
Order No. 19,561

New Hampshire Public Utilities Commission

October 6, 1989

ORDER suspending tariff revisions intended to modify the main extension policy of a water utility.

RATES, § 248 — Tariff filing — Suspension — Water main extensions.

[N.H.] Tariff revisions intended to modify the main extension policy of a water utility were suspended pending further investigation of the effect of the tariff revisions on the revenue requirement of the utility.

By the COMMISSION:

ORDER

On September 7, 1989 Southern New Hampshire Water Company (hereafter called "Southern" or "the company") filed revisions to its current tariff, NHPUC No. 7 — Water; and

WHEREAS, the proposed pages are intended to modify the company's terms and conditions concerning its main extension policy; and

WHEREAS, the proposed revisions will have an effect upon the company's overall revenue; and

WHEREAS, the tariff pages are proposed for effect on October 5, 1989, and

WHEREAS, a thorough investigation is necessary prior to rendering a decision thereon; it is hereby

ORDERED, that the proposed tariff pages listed below are suspended pending further investigation and decision:

Third revised page 13
Fifth revised page 14
Fifth revised page 15
Fifth revised page 15-A
Fourth revised page 15-B
Fifth revised page 15-C
Fourth revised page 15-D
Fourth revised page 15-E
Original page 15-F
Original page 15-G
Original page 15-H
Original page I
Original page J
Original page K
Sixteenth revised page 16.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1989.

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NH.PUC*10/09/89*[51844]*74 NH PUC 396*US Sprint Communications of New Hampshire, Inc.

[Go to End of 51844]

74 NH PUC 396

Re US Sprint Communications of New Hampshire, Inc.

DE 89-118
Order No. 19,562

New Hampshire Public Utilities Commission

October 9, 1989

ORDER authorizing an interexchange telephone carrier to offer FTS 2000 service to the federal government.

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1. SERVICE, § 449 — Telecommunications — FTS 2000 service — Interexchange telephone carrier.

[N.H.] An interexchange telephone carrier was authorized to provide FTS 2000 service; FTS 2000 service is primarily an interstate long-distance service available only to the federal government and it consists of six categories of service: (1) switched voice service; (2) switched

data service; (3) switched digital integrated service: (4) packet switched service;

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(5) video transmission service; and (6) dedicated transmission service. p. 398.

2. SERVICE, § 449 — Telecommunications — FTS 2000 service — Interexchange carrier.

[N.H.] In authorizing an interexchange telephone carrier to provide FTS 2000 service (which involved the incidental provision of intrastate service) to the federal government, the commission found that (1) the service was necessary to technologically update an existing service for the federal government, and (2) the carrier was managerially, financially and operationally able to provide the service. p. 399.

3. RATES, § 582 — Telecommunications — Long-distance service — FTS 2000 service — Interexchange carrier.

[N.H.] The commission approved the price schedules filed by an interexchange telephone carrier for the provision of FTS 2000 service to the federal government where the price schedules were developed to satisfy the terms of a competitively bid contract award to the carrier by the federal government. p. 399.

APPEARANCES: Cherie R. Kiser, Esq. on behalf of US Sprint Communications of New Hampshire Inc.; John E. Reilly, Esq. on behalf of New England Telephone and Telegraph Company; Frederick J. Coolbroth, Esq. of Devine, Millimet, Stahl & Branch on behalf of Granite State Telephone Company and Merrimack County Telephone Company; 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 US Sprint Communications of New Hampshire Inc., hereinafter US Sprint-NH or Applicant, for authorization to offer, as a public utility, FTS 2000 Service to the federal government on an incidental basis. 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 June 28, 1989 US Sprint Communications Company Limited Partnership ("US Sprint") filed a petition for authorization to provide telecommunications services in New Hampshire. On July 24 by Order No. 19,493, the request for authority to provide service was suspended pending further investigation. On August 2, 1989 Granite State Telephone Company (GST) and Merrimack County Telephone Company (MCT) filed a Petition to Intervene, a Motion to Dismiss, and Objection to Non-Disclosure of Tariff Provisions and to Granting Without a Hearing. On August 3, 1989 US Sprint filed a Motion for Protective Order. On September 8, 1989 the commission issued an Order of Notice establishing an abbreviated procedural schedule. On September 12, 1989 the commission issued Order No. 19,528 (74 NH PUC 302) denying US

Sprint's Motion for Protective Order. On September 21, 1989 US Sprint-NH filed a tariff containing rates and regulations pertaining to Federal Telecommunications Service 2000 (FTS 2000). On September 22, 1989 US Sprint-NH submitted prefiled testimony and on September 27 submitted revised prefiled testimony. A Hearing on the Merits was held on September 28, 1989.

II. *Background*

US Sprint Communications Company Limited Partnership requested authority pursuant to New Hampshire Rev. Stat. Ann. Section 374:22 and 374:26 to provide FTS 2000 services in the State of New Hampshire on June 28, 1989. The petition stated US Sprint's provision of FTS 2000 services to the federal government would constitute Network "B" under the FTS 2000 contract awarded by the United States General Services Administration (GSA).

During staff's investigation, GST and

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MCT submitted a document containing a) a Petition to Intervene, b) a Motion to Dismiss and c) an Objection to Non-Disclosure of Tariff Provisions and to Granting Petition Without a Hearing.

a. In their petition for intervention GST and MCT pointed out they were included in US Sprint's NH tariff by reference to "other participating carriers." They averred US Sprint's application did not clearly identify services US Sprint would require from GST and MCT. During the hearing on September 28, 1989, GST and MCT were granted full intervention status from the bench.

b. The Motion to Dismiss the petition by GST and MCT was filed because US Sprint Communications Company Limited Partnership was not incorporated under the laws of the State of New Hampshire as required by RSA 374:24. On September 13, 1989 US Sprint Communications Limited Partnership became incorporated as US Sprint Communications of New Hampshire Inc. (US Sprint-NH).

c. GST and MCT objected to US Sprint's proposal because US Sprint failed to disclose tariff provisions to the public. The petition alleged US Sprint's proposal to implement a tariff failed to describe the service coverted thereby and that the rates and charges for such services directly contravenes RSA 378:1 and is unlawful. On September 21, 1989 US Sprint-NH filed a tariff including services and price schedules for the provision of FTS 2000. In addition, GST and MCT asserted there had been no determination of who the "interested parties" were in this docket although US Sprint's tariff had identified twelve New Hampshire telecommunications utilities as participating carriers. Since GST and MCT expressed interest and did not express agreement, they requested the commission deny US Sprint's petition for approval without a hearing and requested US Sprint's application be considered only after due hearing as required by RSA 372:26. In response to this motion the Commission scheduled the hearing on the merits.

III. *Positions of the Parties*

US Sprint-NH argued that the commission should approve the petition and the requested

authorization was in the public good for the following reasons among others:

1. FTS 2000 is a unique package of services offered only to agencies of the federal government.

2. FTS 2000 represents the transition of long-distance traffic from an existing system to a replacement system, so there is no adverse impact on local exchange carriers or local service in New Hampshire.

3. FTS 2000 lowers the operational costs of the federal government and gives it a technologically advanced package of telecommunications services, and is therefore, in the public interest.

Staff did not support or oppose the petition but worked to elicit a complete record.

Following the granting of intervention status, GST and MCT declared they were satisfied by US Sprint-NH's recent incorporation and revised tariff filing. In response to a query from GST and MCT, US Sprint agreed that when access was required in an independent's territory, it would be willing to pay access charges to independent telephone companies which mirrored NET'S tariff NHPUC No. 78.

NET did not oppose the petition as long as authority was being granted for the sole purpose of providing FTS 2000 and US Sprint-NH agreed to provide service in accordance with NET's tariff NHPUC No. 78.

IV. *Findings of Fact*

On September 13, 1989, US Sprint was incorporated in the State of New Hampshire as US Sprint Communications of New Hampshire Inc.

[1] FTS 2000 is primarily an interstate long-distance service available only to the federal government. As part of FTS 2000, US Sprint-NH will provide six categories of service: (1) Switched Voice Service; (2) Switched Data Service: (3) Switched Digital Integrated

Service; (4) Packet Switched Service; (5) Video Transmission Service; and (6) Dedicated Transmission Service. US Sprint-NH will also provide National Security Emergency capabilities.

Approximately 40 percent of the federal government's FTS 2000 traffic will be carried by US Sprint. Service will be provided largely over US Sprint's existing network supplemented by other facilities as necessary. Network services and provisions are to be provided to the customer at locations designated as Service Delivery Points which may or may not be federal government premises. US Sprint will obtain a combination of special and switched access from the local exchange carriers.

The service will include on-net to on-net, on-net to off-net, off-net to on-net, and off-net to off-net interstate and intrastate traffic. Calls originating and terminating on the FTS 2000 network are considered on-net to on-net. Calls originating on the FTS 2000 network and terminating outside the network (i.e. a local business) are considered on-net to off-net. Calls originating off the network (i.e. from an official's home) terminating on the network are

considered off-net to on-net. Calls originating off the network (i.e. to another official's home) are considered off-net to off-net.

The majority of FTS 2000 traffic, including all service categories will consist of on-net to on-net traffic. The primary use of this service has been designed for communications between government agencies and locations on the FTS 2000 network.

US Sprint provides interexchange telecommunications service on an interstate basis throughout the United States, and is authorized to provide intrastate service in 40 states. US Sprint also provides international long distance service. US Sprint's network is a 100 percent digital, all fiber-optic network. The facilities to be used in the provision of FTS 2000 are currently in place and being used for the provision of interstate service to New Hampshire customers. US Sprint currently maintains a point-of-presence in Manchester. The capacity of the current transport facilities is adequate for the proposed FTS 2000 service.

The day-to-day management of US Sprint's FTS 2000 offering will be handled by US Sprint's FTS Service Operations Center and Customer Service Office in Herndon, Virginia.

V. *Commission Analysis*

[2] We find 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 *NEW HAMPSHIRE YANKEE ELECTRIC CORPORATION*, DF 84-339, report and order no. 17,690 (June 27, 1985) at 5, we stated our criteria for determining the public good as: 1) the need for the service, and 2) the ability of the applicant to provide the service. In addition, a business must be organized under the laws of the State of New Hampshire to receive the commission's permission. RSA 374:24. The facts demonstrate that the petitioner is organized under the laws of the State of New Hampshire. The facts also show a need for the service. The service is necessary to technologically update an existing service for the federal government.

We find the facilities will be adequate to provide service. We also find US Sprint-NH has shown, through its interstate operations, it is managerially, financially and operationally able to provide service.

[3] Since the price schedules were developed to satisfy the terms of a competitively bid contract awarded to US Sprint by the United States General Services Administration for the exclusive use of the federal government, we approve the price schedules and tariff as filed. Pursuant to RSA 374:15, US Sprint-NH must submit all filings and reports required by the commission for telephone companies doing business in New Hampshire and, pursuant to RSA 363-A:1 *et. seq.* US Sprint-NH must pay all assessments levied by the commission based on the amount of revenues received as a result of doing business in the State of New Hampshire.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing

Report, which is made a part hereof, it is hereby

ORDERED, that US Sprint-NH shall be allowed pursuant to N.H. Rev. Stat. Ann. §§374:24 and 374:26, to offer as a public utility, FTS 2000 Service to the federal government on an incidental basis for the service territory of the entire State of New Hampshire; and it is

FURTHER ORDERED, that the substance of US Sprint's proposed tariff pages, US Sprint-NH Tariff NHPUC No. 1 is approved except that they shall be refiled with an effective date within fourteen (14) days after the date of this order and bearing the following annotation: "authorized by NHPUC Order No. 19,562 in docket DE 89-118, dated October 9, 1989"; and it is

FURTHER ORDERED, that, pursuant to N.H. Rev. Stat. Ann. §§374:15, US Sprint-NH submit all the filings and reports required by the New Hampshire Public Utilities Commission for telephone companies doing business in the State of New Hampshire and that, pursuant to N.H. Rev. Stat. Ann. §363-A:1, *et. seq.*, US Sprint-NH 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 ninth day of October, 1989.

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NH.PUC*10/10/89*[51845]*74 NH PUC 400*W. Edward Remsburg dba Olde County Water System

[Go to End of 51845]

74 NH PUC 400

Re W. Edward Remsburg dba Olde County Water System

DE 89-027
Order No. 19,564

New Hampshire Public Utilities Commission

October 10, 1989

ORDER conditioning the grant of a franchise to the owner of a water system on municipal operation of the system.

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1. CERTIFICATES, § 139 — Transfer — Commission authorization — Statutory considerations — Water franchise.

[N.H.] Pursuant to state statute RSA 38:3 any municipality may take, purchase, lease, or otherwise acquire, maintain, and operate in accordance with the provisions of the statute, one or more suitable plants for the manufacture and distribution of water for municipal use and for the use of its inhabitants and others, and for such other purpose as may be permitted, authorized, or directed by the commission. p. 401.

2. CERTIFICATES, § 139 — Transfer or lease — Commission authorization — Statutory considerations — Water franchise.

[N.H.] Pursuant to state statute RSA 374:30 any public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located within the state, or contract for the operation of its works or system, when the commission shall find that it will be in the public good and shall make an order assenting thereto, but not otherwise. p. 401.

3. CERTIFICATES, § 88 — Grant of franchise — Factors considered — Public good.

[N.H.] State statute RSA 374:26 provides that the commission shall grant a request for a franchise whenever it shall, after due hearing, find that the grant of such a franchise would be in the public good. p. 401.

4. CERTIFICATES, § 73 — Grant of franchise — Conditions and restrictions — Municipal operation.

[N.H.] The grant of a franchise to the owner of a water system was conditioned on the system being operated by the municipality in which the system was located. p. 401.

5. CERTIFICATES, § 139 — Transfer or lease — Commission authorization — Water franchise.

[N.H.] The owner of a water system was

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authorized to lease his franchise and works to a municipality. p. 401.

APPEARANCES: Peter C. Scott, Esq. on behalf of Olde County Water System, 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 February 13, 1989, W. Edward Remsburg d/b/a Olde County Water System (Olde County) filed a petition for authority to establish a water utility in a limited area in the Town of Derry, New Hampshire.

On March 16, 1989, the commission received a letter from the Town of Derry, New Hampshire, indicating that they were negotiating with Mr. Remsburg for the sale of said water system.

On April 6, 1989, the commission received a letter again from the Town of Derry, New Hampshire, indicating that the Town had adopted a master water plan, and that pursuant to said water plan, they were to purchase Olde County.

At a hearing held on April 27, 1989, Mr. Remsburg represented that he and the Town had

essentially finalized the negotiations for the sale of the water system and, therefore, moved for a continuance of the case until said negotiations could be memorialized in written form. The parties agreed to continue the matter until June 5, 1989, by which time Mr. Remsburg was to submit a memorialized negotiation.

At a hearing held on June 5, 1989, the company was unable to produce a memorialized negotiation between itself and the Town. At said hearing the company again moved for a continuance representing that negotiations with the Town were still continuing. At the commission's suggestion, the staff recommended that the matter be continued until June 27, 1989, prior to which time a memorialized negotiation was to be submitted. If, however, no memorialized negotiation was submitted prior to June 27, 1989, a hearing on the merits of the issue of the franchise and temporary rates would take place. On June 23, 1989, pursuant to a request by attorney Peter Scott, on behalf of Olde County Water System, the hearing scheduled for June 27, 1989, was continued until August 15, 1989. The commission informed the petitioner in the letter notifying him of the continuance that this would be the last continuance in the matter.

At a hearing held on August 15, 1989, at 10 o'clock a.m., the petitioner, Olde County, informed the commission that the Town of Derry and Mr. Remsburg had entered into an agreement whereby the Town would lease the distribution system, the well, and the franchise to operate the water system. Thus, Olde County requested permission, pursuant to RSA 38:3 and RSA 374:30, for a conditional franchise and permission to go forward with the lease to the municipality. Staff supported the petitioner's position.

II. *Commission Analysis*

[1-5] Pursuant to RSA 38:3

> Any municipality may take, purchase, *lease*, or otherwise acquire, maintain, and operate in accordance with the provisions of this chapter, one or more suitable plants for the manufacture and distribution of ... water for municipal use and for the use of its inhabitants and others, and for such other purposes as may be permitted, authorized, or directed by the commission .... [emphasis added]

Furthermore, pursuant to RSA 374:30

> Any public utility may transfer or *lease* its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state, or contract for the operation of its works and system located in this state, when the commission shall find that it

> will be for the public good and shall make an order assenting thereto, but not otherwise. [emphasis added]

Thus, pursuant to RSA 38:3 and RSA 374:30, the proposed lease of the distribution system, the well, and the franchise may be permitted with commission approval provided, however that the commission finds that it will be for the public good and make an order assenting to the proposed lease.

RSA 374:26 provides that the commission shall grant such permission (a franchise) whenever it shall, after due hearing, find that such engaging in business construction or exercise of right, privilege or franchise would be for the public good and not otherwise. The commission finds that granting the franchise to W. Edward Remsburg d/b/a Olde County Water System is in the public good. It makes that finding not on the basis of its confidence that W. Edward Remsburg d/b/a Olde County Water has demonstrated his administrative, technical, financial and managerial capability to run the water system, but rather on the basis of the commission's acceptance of the Town of Derry's commitment to operate it as a municipal system. The commission therefore issues a franchise conditioned on that Derry commitment. The commission approves, pursuant to RSA 38:8 and RSA 374:30 the proposed lease between Mr. Remsburg and the Town.

The commission conditions its franchise approval on Derry's operation of the system. If at any time the Town advises of its intent to no longer operate the system then the franchise will be rescinded and a docket will be opened to consider the administrative, technical, financial and managerial capabilities of W. Edward Remsburg d/b/a Olde County Water System to operate the system.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that W. Edward Remsburg d/b/a Olde County Water System be granted a franchise, pursuant to RSA 374:26 for a period of three (3) years more particularly as follows:

A certain group of parcels of and located in the Town of Derry, New Hampshire, known as the Olde County Estate subdivision.

Such group of parcels is more particularly described in a Plan entitled:

"Plan of Land in Derry, New Hampshire as Subdivided for George H. and Robert G. Armstrong, Scale 1” equals 60´, September 1965. Olde County Estate, Robert W. Thorndike, Windham, New Hampshire, Surveyor."

Such plan is filed with the Rockingham County Registry of Deeds as Plan Number 592;

and it is

FURTHER ORDERED, that the proposed lease of the above franchise and water works between W. Edward Remsburg d/b/a Olde County Water System and the Town of Derry, New Hampshire is approved; and it is

FURTHER ORDERED, that should the reversionary interest under the lease come to pass in three (3) years, Mr. Remsburg must appear before this commission in order to establish his unconditional right to a franchise and to establish rates therefore.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1989.

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NH.PUC*10/10/89*[51846]*74 NH PUC 402*Southern New Hampshire Water Company, Inc.

[Go to End of 51846]

74 NH PUC 402

Re Southern New Hampshire Water Company, Inc.

DF 89-180
Order No. 19,565

New Hampshire Public Utilities Commission

October 10, 1989

ORDER *nisi* authorizing a water utility to issue and sell first mortgage bonds and short-term notes.

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SECURITY ISSUES, § 44 — Authorization — First mortgage bonds — Short-term notes — Water utility.

[N.H.] A water utility was conditionally authorized to issue and sell first mortgage bonds and short-term notes the proceeds from which would be used to retire high-cost short-term debt and provide the utility with operating funds to meet capital requirements; it was found that the security issues would reduce the utility's overall cost of debt.

By the COMMISSION:

ORDER

WHEREAS, by petition filed October 3, 1989, Southern New Hampshire Water Company, Inc., (hereafter known as "the company" or "Southern") a corporation duly organized and existing under the law of the State of New Hampshire and operating herein as a water utility under the jurisdiction of this commission, having its principal place of business in the towns of Hudson, Litchfield, Windham, Amherst, Londonderry, Pelham, Sandown, Hooksett, Raymond, Plaistow, Derry and Atkinson, New Hampshire, seeks authority pursuant to the provisions of RSA 369:1, RSA 369:2 and RSA 369:4 to issue and sell for cash equal to the aggregate principal amount thereof, its First Mortgage Bonds Series "I", 9.96% due October 15, 2009, in the aggregate principal amount of $2,000,000 and, pursuant to RSA 369:7 to issue short-term notes not in excess of $4,900,000; and

WHEREAS, the commission in Order No. 19,509 (74 NH PSC 279 [1989]) approved the issuance of Series "H" Bonds; and

WHEREAS, the company now avers that it has the interest coverage necessary to issue additional bonds at a lower interest rate on an expedited basis; and

WHEREAS, the company has arranged for a closing of its Series "I" financing between October 26, 1989 and November 15, 1989; and

WHEREAS, the company submitted the following exhibits in support of its Petition:

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

Exhibit A Balance sheet at August 31, 1989, adjustments
          arising from financing and Pro Forma balance
          sheet giving effect to the financing;

Exhibit B Income statements and adjustments arising from
          financing and Pro Forma income statement giving
          effect to the financing;

Exhibit C Estimated expenses of the Series "I" Bond issue;

Exhibit D Adjusting Entries arising from the Bond issue;

Exhibit E Schedule of earnings available for interest
          charges;

Exhibit F Present and Pro Forma schedule of long-term debt;

Exhibit G Capital structure of costs, actual with Pro Forma
          effect of proposed bond issue;

Exhibit H Commitment Letter from Mellon Bank to Allstate; and
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WHEREAS, the exhibits, the Bond Purchase Agreement, and Ninth Supplemental indenture will not be substantially different from those submitted in connection with the Series "H" financing; and

WHEREAS, the bonds will carry an annual interest rate of 9.96% with a final maturity of October, 2009 with interest payable semi-annually and the financing secured by a mortgage lien on substantially all of the company's utility property; and

WHEREAS, the proceeds from the sale of the bonds will be used to retire a portion of the short-term debt that has been utilized by the company for construction and acquisition of additions, and for improvements to its plant and facilities; and

WHEREAS, the 9.96% interest rate is favorable today given current market conditions and the financing would reduce the overall cost of debt from 11.23% to 10.89%; and

WHEREAS, based upon our review of the petition, we find the proposed financing to be in the public good. The issuance of the bonds will allow the company to replace a portion of the relatively volatile short-term debt with long-term debt having a fixed rate that we find reasonable in light of existing market conditions; and

WHEREAS, the commission also finds that it is in the public good that the company's short-term debt borrowing limit be reduced to $4,900,000 as requested by the company, thereby

providing the company with operating funds to meet capital requirements and for general corporate purposes; it is

ORDERED, *NISI* that Southern is hereby authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its First Mortgage Bonds, Series "I", 9.96% due October 15, 2009, in the aggregate principal amount of $2,000,000; and it is

FURTHER 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 hearing in this matter no later than October 19, 1989; and it is

FURTHER ORDERED, the petitioner notify all persons desiring to be heard by causing an attested copy of this order *NISI* 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 October 12, 1989, said publication to be documented by affidavit filed with this office on or before October 19, 1989; and it is

FURTHER ORDERED, that the proceeds of the issuance and sale of said long-term bonds, shall be applied to Southern's unsecured short-term debt and for other corporate purposes; and it is

FURTHER ORDERED, that Southern may grant a mortgage lien on substantially all of its utility property to secure payment of such bonds; and it is

FURTHER ORDERED, that the expenses reasonably incurred in connection with the issuance and sale of said bonds shall be amortized by Southern, over the life of the bonds, in accordance with generally accepted accounting principles; and it is

FURTHER ORDERED, that finalized copies of the bond purchase agreement, the bond, the supplemental indenture and the resolution of the company's Board of Directors be filed with the commission. A detailed accounting of the final actual issuance costs shall also be filed; and it is

FURTHER ORDERED, that Southern is hereby authorized to have a short-term debt level of $4,900,000; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Southern shall file with this commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said bonds until fully accounted for; and it is

FURTHER ORDERED, that this Order *NISI* shall be effective October 19, 1989 unless a request for hearing is filed with the commission as provided above or unless the commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1989.

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74 NH PUC 405

Re New England Telephone and Telegraph Company, Inc.

DE 89-160
Order No. 19,566

New Hampshire Public Utilities Commission

October 11, 1989

ORDER granting a petition by a local exchange telephone carrier to reclassify exchanges and localities and to establish new rate groups.

SERVICE, § 445 — Telephone — Exchange areas — Reclassification — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to reclassify certain exchanges and localities and to establish new rate groups; the carrier was directed to file compliance tariffs and to recalculate the net revenue effect of rate changes resulting from the reclassification.

By the COMMISSION:

ORDER

WHEREAS, on August 31, 1989 New England Telephone Company (`the Company', or `NET') filed a petition to reclassify the Bristol, Campton, Canaan, Candia, Center Ossipee, Center Sandwich, Claremont, Conway, Derry, Durham, Enfield, Exeter, Farmington, Hanover, Littleton, Meredith, Newport, North Conway, Pelham, Penacook, Pittsfield, Plaistow, Rochester, Rye Beach, South Hampton, Troy, West Chesterfield, Walpole, Warren, West Lebanon and Wolfeboro exchanges; and

WHEREAS, the filing proposed to establish two new rate groups (22 and 23) including corresponding monthly rates for unlimited residence service, and unlimited and measured business service; and

WHEREAS, the filing provides for the reclassification of portions of exchanges and localities servicing some municipalities; and

WHEREAS, the estimated increase in revenue for the first year as a result of this filing is approximately $480,000; and

WHEREAS, the Commission suspended the proposed tariff pages on September 29, 1989 in Order No. 19,551 pending further investigation; and

WHEREAS, the establishment of new rate groups and corresponding monthly rates is a rate design issue, and

WHEREAS, NET's rate design is currently under investigation in docket DR 89-010; it is hereby

ORDERED, that all exchanges and localities listed in the August 31, 1989 filing be reclassified as specified except for the Derry exchange; and it is

FURTHER ORDERED, that the limits of rate group 21 be revised from 150,001-185,000 to 150,001 and over; and it is

FURTHER ORDERED that the Company file compliance tariffs annotated in accordance with PUC Rule 1601.04(b) and designated in accordance with PUC Rule 1601.05(h); and it is

FURTHER ORDERED, the Company recalculate the net revenue effect of rate changes as a result of this order and submit it to the commission with the compliance filing; and it is

FURTHER ORDERED, the Company serve proper notice of rate changes to the public in accordance with PUC Rule 1601.05; and it is

FURTHER ORDERED, the revised tariff pages be effective October 13, 1989

By order of the Public Utilities Commission of New Hampshire this eleventh day of October, 1989.

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NH.PUC*10/11/89*[51848]*74 NH PUC 406*New Hampshire Electric Cooperative, Inc.

[Go to End of 51848]

74 NH PUC 406

Re New Hampshire Electric Cooperative, Inc.

DR 89-167
Order No. 19,567

New Hampshire Public Utilities Commission

October 11, 1989

ORDER authorizing an electric cooperative to revise its tariffs to permit the submetering and discounting of electric space heating load.

RATES, § 354 — Electric — Residential space heating — Submetering — Discount rates.

[N.H.] An electric cooperative was authorized to revise its tariff to permit the submetering and discounting of electric space heating load.

APPEARANCES: Merrill and Broderick by Stephen E. Merrill, Esq., for the New Hampshire Electric Cooperative, Inc.; and Dr. Sarah P. Voll for the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

On September 6, 1989, the New Hampshire Electric Cooperative (NHEC) filed a revision to its Tariff NHPUC No. 14 — Electricity, Original Page 25-A, issued September 1, 1989 to be effective September 15, 1989. The filing proposed to modify Rate DOSH, Residential Service — Optional Storage Space and Water Heating (Separately Metered Heating) by providing the option of submetering existing electric space heating and discounting the charge for all kilowatt-hours recorded on the submeter. The commission suspended the tariff page by order no. 19,537 and held a duly noticed prehearing conference to investigate issues raised by the filing on October 6, 1989. There were no intervenors.

NHEC and staff held an off-the-record conference in which NHEC presented clarifying information regarding the filing. The parties agreed to modifications of the filed tariff pages to better reflect the charges and credits associated with submetering the electric heat load. They also agreed that the submetering option should not be limited to locations with existing electric space heating as the economics of submeters vs. separate wiring and metering could equally apply to new construction. At the re-convened hearing, the parties entered the additional information provided by NHEC into the record. Exhibit 1.

Based on the filing and the explanatory information provided by NHEC, we find the proposed option of submetering and discounting electric space heating, as modified in the prehearing conference, to be in the public good. We will therefore approve the filing and order NHEC to file a compliance tariff page in conformance with the format agreed to by the parties.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed revision of the New Hampshire Electric Cooperative (NHEC) Tariff NHPUC No. 14 — Electricity Original Page 25-A be, and hereby is, approved as modified; and it is

FURTHER ORDERED, that NHEC file a tariff page in compliance with this order designated in accordance with PUC Rule No. 1601.05(h) and annotated in accordance with PUC Rule No. 1601.04(b) effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this eleventh day of October, 1989.

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NH.PUC*10/13/89*[51849]*74 NH PUC 407*New England Telephone and Telegraph Company, Inc.

[Go to End of 51849]

74 NH PUC 407

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,570

New Hampshire Public Utilities Commission

October 13, 1989

ORDER granting, in part, a motion by a local exchange telephone carrier for a protective order.

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1. PROCEDURE, § 16 — Discovery and inspection — Protective order — Local exchange telephone carrier.

[N.H.] A motion by a local exchange telephone carrier (LEC) for a protective order was granted where the motion complied with the requirements for confidentiality set forth in a prior report and order; the commission reserved the rights of all parties and the public to move for production of the protected documents, as well as the right of the LEC to object to such production. p. 408.

2. PROCEDURE, § 16 — Discovery and inspection — Protective order — Incremental cost study — Local exchange telephone carrier.

[N.H.] The commission cannot protect from disclosure information that has already become public information; accordingly, the commission denied a motion by a local exchange telephone carrier for a protective order over an incremental cost study that had already entered the public domain. p. 408.

By the COMMISSION:

In this report and order we consider New England Telephone Company's (NET) September 26, 1989 motion for protective order. This order approves the motion with respect to all requests except the Incremental Cost Study (ICS) and applies the standards set forth in our report and order no. 19,536 (Sept. 19, 1989) (74 NH PUC 307).

I. *The Motion*

On September 26, 1989, NET filed, pursuant to NH Admin. Code Puc 203.04 and report and order no. 19,536, a motion for protective order. This motion requests a protective order for the following items.

A. Filing Requirements

1. Puc 1603.03(b)(1)
2. Puc 1603.03(b)(3)
3. Puc 1603.03(b)(19)
4. Puc 1603.03(b)(20)
5. Puc 1603.03(b)(25)

B. Data Responses

1. PUC Staff, Item 60
2. PUC Staff, Item 84
3. PUC Staff, Item 88
4. PUC Staff, Item 89

5. PUC Staff, Item 273
6. PUC Staff, Item 301
7. PUC Staff, Item 302
8. PUC Staff, Item 335
9. PUC Staff, Item 338
10. PUC Staff, Item 350
11. PUC Staff, Item 353
12. PUC Staff, Item 354
13. PUC Staff, Item 356
14. PUC Staff, Item 360
15. PUC Staff, Item 395
16. PUC Staff, Item 435
17. OCA Set #1, Item 1
18. VOICE Set #1, Item 3
19. VOICE Set #1, Item 13
20. VOICE Set #1, Item 56
21. VOICE Set #2, Item 48
22. VOICE Set #2, Item 53
23. VOICE Set #2, Item 55
24. VOICE Set #2, Item 56
25. VOICE Set #2, Item 60
26. VOICE Set #2, Item 61
27. VOICE Set #2, Item 62

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28. VOICE Set #2, Item 63
29. VOICE Set #2, Item 69
30. VOICE Set #2, Item 74
31. VOICE Set #2, Item 75
32. VOICE Set #2, Item 76

C. Incremental Cost Study

NET asked that we protect from public disclosure its ICS dated August 15, 1989. In its motion, NET argued that the proprietary order no. 19,429 (74 NH PUC 183) granted proprietary treatment to NET's ICS because the usage study data was inherent to the ICS and "so pervasive throughout the ICS that the two studies are inseparable." Therefore, NET contends that the ICS is protected by order no. 19,429. In the alternative, the company seeks proprietary treatment for its ICS in this motion. It argues that the ICS is proprietary because it is financial, commercial, and confidential information. It also argues that the ICS data is incorporated in the company's responses to various data requests and that accordingly those responses should be proprietary. The data requests are PUC Staff, Items 259, 435, 438, 441, 443, 444, and 448; VOICE Set 1, Items 3, 13, and 27; VOICE Set 2, Item 50; Bower & Rohr, Items 1, 2, and 4. NET argues that the ICS contains usage data which is proprietary and that the incremental costs themselves are proprietary and competitively sensitive.

II. *Commission Analysis*

[1, 2] With respect to the filing requirements and the data responses, the motion appears to set forth, in sufficient detail, the requirements for confidentiality set forth in our report and order no. 19,536. Thus, we will allow this information to be protected under the procedures set forth in that order. We will reserve the rights of the parties, the commission staff, or the public to move for production of such confidential information and for NET to object to such production.

Essentially NET argues that the ICS is exempt from public disclosure under the Right-to-Know Law RSA 91-A:5 IV. NET has waived its right to a protective order for the ICS. Under RSA 91-A:4 I, all records of the commission must be available for public inspection during regular business hours. These records may be abstracted, photographed, or photostated. *Id.* NET's ICS was in the public domain from August 15, 1989 to September 26, 1989, before the instant motion was filed. We cannot protect disclosure of information which is already public information.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that NET's September 26, 1989 motion for protective order is granted with respect to the specific filing requirements and data requests; and it is

FURTHER ORDERED, that NET's motion for protective order is denied with respect to the ICS.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 1989.

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NH.PUC*10/17/89*[51850]*74 NH PUC 408*Public Service Company of New Hampshire

[Go to End of 51850]

74 NH PUC 408

Re Public Service Company of New Hampshire

Additional applicant: New Hampshire Speedway Corporation

DR 89-157
Order No. 19,572

New Hampshire Public Utilities Commission

October 17, 1989

ORDER approving a special contract rate for electric service.

RATES, § 321 — Electric — Special contract rate.

[N.H.] The commission approved a special

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contract rate for electric service where special circumstances existed that rendered the terms and conditions of the contract just and consistent with the public interest.

By the COMMISSION:

ORDER

WHEREAS, on September 5, 1989, Public Service Company of New Hampshire, a utility selling electricity under the jurisdiction of this commission, filed with this commission a copy of its Special Contract No. NHPUC — 59 in compliance with the Commission's Rules and Regulations, Chapter PUC 1600, Parts 1601.02(c) and (e) and 1601.04(e), for electrical service to one customer, the New Hampshire Speedway Corporation, under the provisions of Primary General Service Rate GV; and

WHEREAS, such service will require 2.6 miles of existing, single-phase facility to be upgraded to three-phase along Route 106. and terminating at the customers place of business in Loudon, New Hampshire; and

WHEREAS, the Company has estimated that the expected income from energy sales to the customer under the applicable Rate GV will not be sufficient to warrant such an expenditure without a contribution and a revenue guarantee from the New Hampshire Speedway Corporation; and

WHEREAS, the customer shall make a contribution towards the cost of the line extension in the amount of $27,157, subject to final cost adjustment; and

WHEREAS, the parties have agreed to a separate minimum annual revenue guarantee of $25,000 for five years as prescribed in the filed petition; and

WHEREAS, upon investigation and consideration, this commission finds that circumstances exists relative thereto, which render the terms and conditions thereof just and consistent with the public interest; it is

ORDERED, that said contract shall become effective as of September 21, 1989.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1989.

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74 NH PUC 409

Re Integretel, Inc.

DE 89-158
Order No. 19,573

New Hampshire Public Utilities Commission

October 17, 1989

ORDER requiring an agent of a public utility that was engaging in unauthorized operations to appear and show cause why it should not be subject to civil fines or criminal penalties.

FINES AND PENALTIES, § 7 — Unauthorized operations — Show cause order.

[N.H.] An agent of a public utility that was engaging in unauthorized operations was directed to appear and show cause why it should not be subject to civil fines or criminal penalties.

By the COMMISSION:

ORDER

On September 20, 1989, the commission issued an order of notice requiring Integretel, Inc. (Integretel) to appear before the Public Utilities Commission to show cause why it should not be fined for operating as a public utility without authority and for charging rates without authority; and

WHEREAS, in reaction to said order of notice, Integretel contacted the commission and notified it that it was not a public utility as defined in RSA 362:2; and

WHEREAS, relying on the affidavits supplied with said communication the commission

agrees that Integretel is not a public utility pursuant to RSA 362:2; and

WHEREAS, said affidavit states that Integretel is an agent of and facilitating the unauthorized operations of, unknown, unnamed public utilities operating without authority in the state of New Hampshire; and

WHEREAS, RSA 365:42 provides that "[e]very officer and *agent* of any such public utility who shall willfully violate or who procures, aides or abets any violation of this title ... shall be subject to a civil penalty as determined by the commission not to exceed $10,000 for each violation or for each day of continuing violation." [emphasis added]; it is hereby

ORDERED, that the show cause order issued on September 20, 1989 is rescinded; and it is

FURTHER ORDERED, that docket DE 89-158 shall remain open in order to investigate whether or not Integretel or any of its officers or agents should be fined pursuant to the above

referenced statute; and it is

FURTHER ORDERED, that Integretel appear before the commission at a hearing to be held before said public utilities commission at its offices in Concord, 8 Old Suncook Road, Building #1 in said State at one o'clock in the afternoon on the twenty-ninth day of November, 1989 for the purpose of showing cause why it should not be fined pursuant to the above referenced statute or why the matter should not be submitted to the Attorney General for criminal prosecution pursuant to RSA 365:42.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1989.

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NH.PUC*10/18/89*[51852]*74 NH PUC 410*U.S. Sprint Communications of New Hampshire, Inc.

[Go to End of 51852]

74 NH PUC 410

Re U.S. Sprint Communications of New Hampshire, Inc.

DE 89-118
Supplemental Order No. 19,575

New Hampshire Public Utilities Commission

October 18, 1989

ORDER directing independent telephone companies to file access tariffs for use with FTS 2000 service.

RATES, § 588 — Telecommunications — Access charges — Interexchange carrier use of intraLATA facilities — FTS 2000 service — Independent carrier.

[N.H.] Independent telephone companies were directed to file access tariffs for use with FTS 2000 service — an interexchange service involving incidental use of intraLATA facilities — where the interexchange carrier that would provide the FTS 2000 service agreed to pay access charges that would mirror the charges paid to the dominant local exchange telephone carrier for access to its network.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

By order no.19,562 dated October 9, 1989 (74 NH PUC 396), the New Hampshire Public Utilities Commission granted the petition of U.S. Sprint Communications of New Hampshire,

Inc. (U.S. Sprint-N.H.) that it be allowed to offer, as a public utility, FTS 2000 service to the federal government on an incidental basis for the service territory of the entire State of New Hampshire. Previously, in the parallel docket no. DE 89-017 (AT&T

Communications of New Hampshire's petition for permission to offer FTS 2000 to the federal government) New England Telephone (NET) filed tariff revisions to its NHPUC Tariff No. 78, to provide the necessary regulations, rates and charges for intraLATA usage completed over switched access service that has been provided solely for use in connection with FTS 2000 service. After investigation, by order no. 19,505 dated August 15, 1989 (74 NH PUC 276), the commission approved NET's proposed tariff revisions, without prejudice to the rights of any party to raise any issue relating to the provision of access service in connection with FTS 2000 service or otherwise in a subsequent proceeding.

In the instant docket, the Independent Telephone Companies (Independents) noted that no provision had been made for the intraLATA usage completed over the Independents' switched access service for FTS 2000. After consultation with staff and the Independents, U.S. Sprint-N.H. agreed that when access was required solely for the provision of FTS 2000 service in an Independent's territory, it would be willing to pay access charges to the Independents that mirrored NET's tariff NHPUC No. 78. We find this arrangement to be reasonable as it will enable the Independents to utilize on an interim basis the rules, regulations and rates of NET Tariff No. 78 for the provision of switched access service for use with FTS 2000, and provide them with adequate time to develop and file tariffs of their own. We will therefore order the Independents to file concurring tariffs.

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 Independent telephone companies (i.e., Bretton Woods, Chichester, Contel of N.H., Dixville, Dunbarton, Granite State, Kearsarge, Meriden, Merrimack, Union and Wilton) file access tariffs for use with FTS 2000 service and that the tariffs as filed shall concur in New England Telephone tariff NHPUC No. 78; and it is

FURTHER ORDERED, that the Independent telephone companies notify the public 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; and it is

FURTHER ORDERED, that the Independent telephone companies' concurring tariffs be filed no later than November 1, 1989 with an effective date of October 30, 1989 designated and annotated in accordance With Puc Rule No. 1601.04 (b).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1989.

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[Go to End of 51853]

74 NH PUC 411

Re Granite State Electric Company

DR 89-154
Order No. 19,576

New Hampshire Public Utilities Commission

October 18, 1989

ORDER bifurcating a proceeding involving the conservation and load management mechanism of an electric utility into a cost recovery proceeding and a proceeding to investigate incentives for conservation and load management.

CONSERVATION, § 1 — Procedure — Bifurcation — Cost recovery — Incentives — Electric utility.

[N.H.] A proceeding involving the conservation and load management mechanism of an electric utility was bifurcated into a cost recovery proceeding and a proceeding to investigate incentives for conservation and load management.

APPEARANCES: Cynthia Arcate and

Thomas Robinson for Granite State Electric Company; Joseph Rogers for the Consumer Advocate; Mary C.M. Hain and Wynn E. Arnold for the commission staff.

By the COMMISSION:

REPORT REGARDING MOTION TO BIFURCATE AND PROCEDURAL SCHEDULE

Pursuant to an order of notice issued by the commission on September 29, 1989, the commission convened a prehearing conference on Granite State Electric Company's (Granite State) proposed conservation and load management mechanism at approximately 10:00 a.m. on October 13, 1989.

Staff offered a motion to bifurcate Granite State's cost recovery and incentive proposals and to initiate a separate proceeding for a generic investigation of incentives for conservation and load management. None of the parties objected to staff's motion. The commission therefore finds that bifurcating this proceeding is appropriate and reasonable. We will retain consideration of

cost recovery for Granite State's conservation and load management expenditures in this docket, and open a separate docket for a generic investigation of incentives for conservation and load management. A generic investigation involving all of the electric companies will allow us to address the issue of incentives in a comprehensive manner.

The parties also proposed the following procedural schedule:

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


October 23, 1989  Staff and Intervenor Data Requests to
                  Company

November 3, 1989  Company Data Responses

November 17, 1989 Staff and Intervenor Testimony

December 1, 1989  Data Requests to Staff and Intervenors

December 12, 1989 Staff and Intervenor Data Responses

December 15, 1989 Hearing
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The parties indicated that informal, off-the-record technical sessions would also be held.

The commission finds the recommended schedule reasonable and shall adopt it to govern the proceedings in this docket.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proceeding be bifurcated in accordance with the above report; and it is

FURTHER ORDERED, that the docket for a generic investigation of incentives for conservation and load management be designated as DE 89-187 and an order of notice issued therein; and it is

FURTHER ORDERED, that the procedural schedule in the foregoing report shall govern the proceedings in this case

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1989.

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NH.PUC*10/18/89*[51854]*74 NH PUC 413*Mountain High Water and Gas Sales, Inc.

[Go to End of 51854]

Order No. 19,577

New Hampshire Public Utilities Commission

October 18, 1989

ORDER granting, subject to conditions, a franchise to operate as a water public utility and establishing temporary rates.

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1. CERTIFICATES, § 125 — Water — Grant of franchise.

[N.H.] A water company was granted a franchise to operate as a water public utility where the company had provided the commission with the requisite approvals of other state agencies, the town government of the area to be served acquiesced to the formation of the utility, and the company demonstrated that it possessed the managerial, technical, and financial ability to run a water utility; however, grant of the franchise was conditioned on the company acquiring, from their current owner, the water distribution assets necessary to provide the service. p. 413.

2. RATES, § 630 — Temporary rates — Water service.

[N.H.] A water company was authorized to provide service at its proposed temporary rates where no party put forth any reason why the rates should not be granted; however, the commission noted that state statute provided for refund or recoupment of temporary rates in the case of overcollection or undercollection, as the case may be when permanent rates are established. p. 414.

APPEARANCES: William Briggs, Esquire on behalf of Mountain High Water and Gas Sales, Inc.; Kenneth Cargill, Esquire on behalf of the Mountain High Unit Owners Association; Robert B. Lessels, James L. Lenihan and James Nicholson on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On April 24, 1989, Mountain High Water and Gas Sales, Inc. (Mountain High) filed a petition seeking authority to establish a water utility in a limited area of the Town of Bartlett, New Hampshire. By an order of notice dated May 16, 1989, a prehearing conference was scheduled for July 5, 1989. At said prehearing conference the parties stipulated to a procedural schedule setting August 17, 1989 for a hearing on the issue of a franchise and temporary rates. At said hearing the company presented witnesses to justify its franchise and temporary rate request.

II. *Franchise*

[1] Mountain High has provided the commission with the requisite approvals of the Department of Environmental Services, Water Supply and Pollution Control Board and Water

Resources Board pursuant to RSA 374:22,III. Mountain High has further provided the commission with a letter from the Town of Bartlett indicating its acquiescence in the formation of this water utility. Finally, Mountain High has been operating as a water utility since 1985, indicating its managerial, technical and financial ability to run a water company. Thus, pursuant to RSA 374:22, the commission finds it in the public good to grant a water franchise to the Mountain High Water and Gas Sales, Inc.

The commission notes at this time, however, that the record indicates that Mountain High Water and Gas Sales, Inc. does not presently own the assets of the water company but is in the process of acquiring it. Thus, this franchise is conditioned on the acquisition of the water distribution assets from the Mountain

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High Development Corporation.

III. *Temporary Rates*

[2] On the issue of temporary rates Mountain High put forth Exhibit 5 indicating its revenue requirements. The ultimate revenue requirement was $41,100. In light of the fact that the company has 176 customers this computes to a rate of $233.52 per year. As no other party put forward any other temporary rates or any reasons why these rates should not be granted for temporary rates, although certain aspects of Exhibit 5 were questioned, the commission will accept the company's Exhibit 5 for the purposes of temporary rates. However, the commission notes that RSA 378:29 and RSA 378:30 provide for recoupment and refund of temporary rates, respectively, in the case of overcollection or undercollection as the case may be when permanent rates are finally established.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that Mountain High Water and Gas Sales, Inc. be granted a franchise as a water public utility once it has acquired the water distribution assets now owned by Mountain High Development Company in the Town of Bartlett, New Hampshire more particularly described as follows;

> Beginning at the westerly corner of the intersection of West Side Road and Route 302 and proceeding southeasterly S56° 46´ 20” E along land of Chikes for a distance of 449.78 feet, then turning and proceeding northeasterly N42° 37´ 20” E for a distance of 621.13 feet, then, turning and proceeding southeasterly S59° 22´ 00´ E along land of Walter and Pearl Locke for a distance of 178.04 feet, then, turning and proceeding southwesterly S17° 52´ 20” W along land of Richard Badger at Al and Amelia Emery for a distance of 1483.00”, then turning and proceeding westerly S86° 46” 00” W along land of the White Mountain National Forest and Charles Contarino for a distance of 1633.24´ then turning and proceeding northeasterly N16° 23´ 20” E along land of Contarino and Douglas Forbes for a distance of 822.65´ then turning and proceeding northeasterly along the southerly side of Route 302 to the point of beginning;

and it is

FURTHER ORDERED, that Mountain High Water and Gas Sales, Inc. be granted temporary rates in the amount of $233.52 per year subject to the caveats in the foregoing report effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1989.

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NH.PUC*10/18/89*[51855]*74 NH PUC 414*U.S. Sprint Communications Company of New Hampshire, Inc.

[Go to End of 51855]

74 NH PUC 414

Re U.S. Sprint Communications Company of New Hampshire, Inc.

DE 89-118
Supplemental Order No. 19,578

New Hampshire Public Utilities Commission

October 18, 1989

ORDER directing a local exchange telephone carrier to file a compliance tariff deleting all reference to a limited concurrence period from its tariff governing switched access for FTS 2000 service.

SERVICE, § 449 — Switched access — FTS 2000 service — Tariff revision.

[N.H.] A local exchange telephone carrier was directed to file a compliance tariff deleting all reference to a limited concurrence period from its tariff governing switched access for FTS 2000 service for the federal government and customer network services; it was found that the carrier had not offered any evidence in support of the limited time period.

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By the COMMISSION:

SUPPLEMENTAL ORDER

On September 28, 1989 New England Telephone (NET) filed an amendment to its NHPUC Tariff No. 78 governing switched access for FTS 2000 for the federal government and customer network services; and

WHEREAS, the amendment required the cancelling of First Revision to page 1, Tariff

Information, and replacing it with a second revision in order to reflect the concurrence of the following independent telephone companies:

Bretton Woods Telephone Company
Chichester Telephone Company
Contel of New Hampshire
Dixville Telephone Company
Dunbarton Telephone Company
Granite State Telephone Company
Kearsarge Telephone Company
Meriden Telephone Company
Merrimack County Telephone Company
Union Telephone Company
Wilton Telephone Company;

and

WHEREAS, the Second Revision to Page 1, Tariff Information specified a finite concurring period from September 28, 1989 to December 28, 1989; and

WHEREAS, no evidence was offered by NET in support of the limited time period specified in Second Revision to page 1, Tariff Information despite the fact that some Independents may require longer than the three month period to develop their own access charges; and

WHEREAS, with the exception of the specified concurrence period the tariff revision is sound as filed; it is hereby

ORDERED, that all references to a limited concurrence period be deleted from Second Revision, Page 1, Tariff Information; and it is

FURTHER ORDERED, that NET file a Compliance Tariff reflecting this change.

By order of the Public Utilities Commission of New, Hampshire this eighteenth day of October, 1989.

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NH.PUC*10/23/89*[51857]*74 NH PUC 417*New England Telephone and Telegraph Company, Inc.

[Go to End of 51857]

74 NH PUC 417

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,580

New Hampshire Public Utilities Commission

October 23, 1989

ORDER modifying the procedural schedule for a local exchange telephone carrier rate case and

bifurcating the revenue requirement portion of the case from the rate structure and price cap elements of the case.

RATES, § 645 — Procedural schedule — Bifurcation — Local exchange telephone carrier.

[N.H.] The procedural schedule for a local exchange telephone carrier rate case was modified by bifurcating the revenue requirement portion of the case from the rate structure and price cap elements of the case; it was found that the modification would enable the commission to issue a decision on the revenue requirement portion of the case within the 12-month period required by statute while enabling the rate structure and price cap portion to receive more extensive consideration, including the filing of rebuttal testimony.

By the COMMISSION:

REPORT ON MOTION FOR
RECONSIDERATION OF ORDER

This report and order concerns New England Telephone and Telegraph's (NET or company) motion, filed September 15, 1989, for reconsideration of the commission's procedural schedule order (74 NH PUC 293 [1989]). For the reasons set forth below we deny the motion in part, grant the motion in part, and bifurcate the case in order to accommodate the additional information to be filed.

I. *The Motion*

In its motion, NET requests reconsideration of supplemental report and order no. 19,521 regarding the procedural schedule for the period September 23, 1989 through April 3, 1990. NET proposes that the commission amend the schedule to allow the filing of rebuttal testimony on January 10, 1990 and a reply brief on March 12, 1990. Alternately, NET asks that the commission order staff and intervenors to meet with NET to negotiate a revised schedule, without changing the present hearing date, to meet the objectives of filing rebuttal testimony and reply brief. No party has filed an objection to the motion.

NET argues that inasmuch as it has the burden of proof with respect to the positions it presents to the commission, it should be allowed to present prefiled rebuttal testimony regarding the issues raised by the expert witnesses retained by staff and intervenors, such as Dr. Lee Selwyn. It states that the filing of rebuttal testimony will promote efficiency at the hearings and assist the commission. NET contends that rebuttal testimony would allow the company to present its case in a more efficient manner and allow the commission, staff and intervenors an opportunity to review NET's position and response prior to the hearing. NET notes that while rebuttal testimony and reply briefs are not required, parties in major cases have generally been permitted to file rebuttal testimony. Finally, NET avers that the current schedule is adequate to accommodate its request.

II. *Commission Analysis*

NET does not state a basis for our reconsideration. We will consider this a motion for rehearing pursuant to RSA 541:3. We note that rebuttal testimony and reply briefs are not required by the commission's rules or by any statute. The commission has the discretion to determine the appropriate procedural schedule in a given case.

The commission is cognizant that the filing of rebuttal testimony can result in a clearer record and a generally more efficient presentation. However, the commission cannot agree that the current schedule is adequate to accommodate the entry of additional evidence. NET's proposal of January 10, 1990 as the filing date of its rebuttal requires it to file rebuttal prior to receiving staff's data responses and leaves no room before settlement conferences and hearings for even limited discovery on its rebuttal testimony.

In addition to NET's arguments that the presentation of additional fact and interpretation would aid the commission's decision in this complex case, the commission is mindful that the parties have experienced difficulties in adhering to the procedural schedule that has been adopted. The delays in the provision of the

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usage data have led to subsequent delays in the analysis of the cost studies. The company has been unable to produce responses to data requests in the required three week time period, primarily because of the complexity of the issue or concerns over the proprietary nature of the request. The company has not yet filed a version of the National Regulatory Research Institute's peak responsibility methodology, due August 29, 1989, that is satisfactory to staff. As a result of delays in obtaining data from NET, the work of the consultants retained by staff has been delayed.

We find that the above arguments and difficulties apply to the issues of rate structure re-design and price caps, rather than to the issue of revenue requirement, and to the provision of rebuttal testimony rather than of reply briefs. We will therefore bifurcate the instant docket and extend the schedule four months for the rate structure and price cap elements of the case. This extension will enable staff and intervenors to obtain and analyze data from NET necessary for their testimony, and accommodate the filing of, and limited discovery on, rebuttal testimony by NET.

We find that the issues in the revenue requirement aspect of the case are less complex and have resulted in fewer delays in the provision of data. We will not allow rebuttal testimony on those issues. Similarly, we do not find the arguments for reply briefs compelling and will not allow reply briefs for either aspect of the docket.

The revenue requirement portion of the case will be heard and decided within the statutory 12 month period. RSA 378:6 requires that the commission may not suspend a rate schedule for more than 12 months. Bifurcation of rate design issues into either a separate phase of the docket (*e.g., Re Public Service Company of New Hampshire,* DR 79-187, Phase II) or into a separate docket (*e.g., Re New England Telephone and Telegraph Co.,* DR 84-95 and DR 85-182) is a not uncommon practice of the commission when such issues are complex and the proposals are

deserving of extensive consideration in and of themselves. It does not offend the protection against suspension of rate schedules for more than 12 months as long as a decision on the revenue requirement is reached and new tariffs can be filed on the basis of the approved level of revenues.

The procedural schedule adopted by order no. 19,521 (74 NH PUC 293) is therefore modified as follows:

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

Date	*Phase I Revenue Requirement*	*Phase II Rate Structure/ Price Caps*
Nov. 9, 1989*	Final Data Requests to NET	
Nov. 17, 1989	Intervenor Testimony	
Nov. 29, 1989	Data Requests to Intervenors	
Dec. 1, 1989	Final NET Data Responses	
Dec. 8, 1989	Intervenor Data Responses	
Dec. 15, 1989	Staff Testimony	
Dec. 22, 1989	Data Requests to Staff	
Jan. 10, 1990	Staff Data Responses	
Jan. 19, 1990		Final Data Reqsts. to NET
Jan. 22-25, 1990	Settlement Discussions	
Feb. 5-9, 1990	Hearings	
Feb. 16, 1990		NET Data Responses
Feb. 28, 1990	Briefs	
March 2, 1990		Intervenor Testimony
March 9, 1990		Data Req. to Intervenors
March 23, 1990	Decision	
March 30, 1990		Intervenor Data Responses
April 6, 1990		Staff Testimony
April 20, 1990		Data Requests to Staff
May 11, 1990		Staff Data Responses
May 18, 1990		NET Rebuttal Testimony
May 25, 1990		Data Req. on NET Rebut.
June 4, 1990		NET Data Resp. on Rebut.
June 14-18 & 22-27, 1990		Hearings
July 11, 1990		Briefs
August 3, 1990		Decision

*Nov. 10th designated in order no. 19,521 is a state holiday.

Our order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone & Telegraph Company's (NET) motion for reconsideration of the procedural schedule as adopted in order no. 19,521 (74 NH PUC 293 [1989]) as it applies to rebuttal testimony on revenue requirement issues and to reply briefs be, and hereby is, denied; and it is

FURTHER ORDERED, that NET's motion as it applies to rebuttal testimony on rate design and price cap issues be, and hereby is, granted; and it is

FURTHER ORDERED, that the procedural schedule as outlined in the foregoing report be, and hereby is, adopted for the remainder of this docket.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of October, 1989.

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NH.PUC*10/25/89*[51856]*74 NH PUC 415*Quin-Let-Trust

[Go to End of 51856]

74 NH PUC 415

Re Quin-Let-Trust

DE 89-044
Order No. 19,579

New Hampshire Public Utilities Commission

October 25, 1989

ORDER imposing a fine for unauthorized operation of a water utility and requiring the return of fees charged for service.

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1. FINES AND PENALTIES, § 7 — Unauthorized operations — Water utility.

[N.H.] A water company was fined $500 for unauthorized operation where it had failed to respond to requests by the commission staff that the company file for a franchise and rates. p. 417.

2. REPARATION, § 27 — Grounds for allowing — Operation without franchise — Water utility.

[N.H.] A public utility may not charge rates until it has been granted a franchise by the commission; accordingly, a water company that provided service without a franchise was required to return the fees it had collected from customers. p. 417.

3. RETURN, § 50 — Confiscation — Denial of rates — Unauthorized operation — Water utility.

[N.H.] Requiring a water utility that had provided service without a franchise to return all fees collected from customers did not constitute unconstitutional confiscation; it was found that the utility had waived its right to a fair return by failing to obtain a franchise or rate approval from the commission. p. 417.

4. RATES, § 249 — Effective date — Water utility.

[N.H.] Although a water utility was

required to return fees collected for service provided during a period of unauthorized

operation, the utility was authorized to file for a franchise, temporary rates, and permanent rates, and to collect such rates on a prospective basis; the commission found that allowing the utility to collect rates for service provided during the period of unauthorized operation would violate the prohibition against retroactive ratemaking. p. 417.

APPEARANCES: Burnham Quint, *pro se*, on behalf of Quin-Let-Trust; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On March 31, 1989, the staff of the New Hampshire Public Utilities Commission (staff) received a letter from Louise F. Casey of the Wildwood Development in Albany, New Hampshire, indicating that Quin-Let-Trust (Quin-Let) had recently bought North Country Development, an unfranchised public water utility, and increased annual water fees from $85 per year to $200 per year. She was concerned that no public hearing had been held or that state law had been violated by this rate increase. In reaction to said letter staff contacted Quin-Let and cited RSA 362:4 requiring a water system or other public entity which is a public utility to file with the public utilities commission for a franchise pursuant to RSA 374:22 and rates pursuant to RSA Chapter 378 *et seq.* Mr. Lessels further informed the company by his letter that no rates could be charged by the company until a franchise had been issued in accordance with the commission's report and order no. 19,534, DE 88-140 (74 NH PUC 304). That letter was sent out on April 6, 1989. On May 7, 1989, Mr. Lessels sent Quin-Let a second letter reminding Quin-Let of its obligation under various statutes, RSA Chapter 362 through 378, and informed Quin-Let that they should respond within thirty (30) days or face possible sanctions and a show cause hearing for that purpose.

On June 5, 1989, Rhoda Quint, an agent of Quin-Let, called the commission and spoke with Mr. Lessels. She advised Mr. Lessels that she would shortly be making a filing for a franchise. Mr. Lessels then indicated that he received no further correspondence or phone calls from Quin-Let. On July 7, 1989, Mr. Lessels sent Rhoda Quint another letter seeking information regarding the filing she had discussed during their telephone conversation. In reaction to the failure of the company to respond to Mr. Lessels letters, the commission issued order no. 19,495 setting a show cause hearing to show cause why Quin-Let-Trust and its officers should not be fined pursuant to New Hampshire statutes. Said order of notice specifically listed statutory authority for the commission to fine the company.

II. *Findings of Fact*

The commission finds from the evidence presented by customers of the company and by admissions of the parties on the stand at the show cause hearing that Quin-Let-Trust is a public water utility pursuant to RSA 362:2 and RSA 362:4 and, therefore, subject to the jurisdiction of this commission.

The commission further finds that Quin-Let was given ample opportunity to file for a

franchise in this matter and was well aware of its responsibility. The commission further finds that Quin-Let's reasons for not filing for a water franchise are inadequate. When Quin-Let took on the responsibility of a water utility they took on the statutory responsibilities provided by the legislature and they must fulfill those responsibilities or they should not be granted a franchise with the right to charge customers.

III. *Positions of the Parties*

Staff took the position that Quin-Let should be fined $500 for its failure to respond to staff's request that the company file for a franchise and rates pursuant to RSA Chapters 362 through 378. Staff further requested that Quin-Let be required to return the $200 it had

collected from its customers for this year's service. Quin-Let stated no position but we will assume that they objected to the fine provision and the return of the funds.

On hearing staff's request the hearings examiner inquired as to whether or not requiring the company to return the funds that they had collected as rates would be confiscatory. Staff indicated that it would not and would submit a memorandum on the point.

IV. *Commission Analysis*

[1-4] The commission finds that Quin-Let violated RSA 365:41 which provides in pertinent part that "[a]ny public utility which shall violate any provisions of this title ... shall be subject to a civil penalty, as determined by the commission, not to exceed $25,000 ..."

Pursuant to the above statute the commission adopts the recommendation of staff and fines Quin-Let $500. Furthermore, in compliance with RSA 365:41, no part of such fine shall be considered by the commission in fixing any temporary, permanent or emergency rates or charges of Quin-Let.

In regard to the request by staff that Quin-Let be required to return those funds which they have collected as rates in the current year, the commission adopts the opinion in the memorandum of law submitted by staff. That is, in DE 88-140, order no. 19,534 (74 NH PUC 304), the commission ruled that a public utility could not charge rates until it had been issued a franchise by this commission. However, order no. 19,534 did not deal with the question of confiscation. As regards the confiscation argument, N.H. RSA Chapter 362 through N.H. RSA Chapter 378 provide the means by which a company may obtain its constitutionally entitled return on its investment. They are simple requirements with which a company must comply in order to make sure that the rates they are charging are neither confiscatory to the company nor the ratepayers. Thus, there is no confiscation in this case if Quin-Let is required to return this year's charge as they have failed to comply with the simple regulations required to obtain their constitutional rights. In our opinion, they have waived their rights to a fair return during this period as they did not establish a franchise or allow the commission to set the proper rates and revenues they should be allowed to charge and earn during the period for which the charges were made.

Any other conclusion by the commission would result in retroactive ratemaking which the New Hampshire Supreme Court has held unconstitutional. Thus, Quin-Let will be ordered to

return the rates which it has collected during this year. However, Quin-Let is free to file for a franchise, temporary rates and permanent rates this year and may collect from that time forward.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that Quin-Let be fined $500 pursuant to RSA 365:41 and 365:42; and it is

FURTHER ORDERED, that Quin-Let return the $200 fee charged this year to its customers; and it is

FURTHER ORDERED, that Quin-Let file for a franchise within thirty (30) days of the date of this order or be subject to further fines.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of October, 1989.

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NH.PUC*10/26/89*[51858]*74 NH PUC 420*Public Service Company of New Hampshire

[Go to End of 51858]

74 NH PUC 420

Re Public Service Company of New Hampshire

DR 89-159
Order No. 19,584

New Hampshire Public Utilities Commission

October 26, 1989

ORDER *nisi* authorizing an electric utility and an electric cooperative to revise the boundaries of their service territories.

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

[N.H.] An electric utility and an electric cooperative were authorized to revise the boundaries of their service territories to enable the utility to provide service to a customer located in the service territory of the cooperative; it was found that the revision, which had been agreed to by all interested parties, would enable the customer to receive service without unnecessary line extension expense.

By the COMMISSION:

ORDER

WHEREAS, on September 7, 1989, the Public Service Company of New Hampshire (PSNH) filed with this Commission its petition seeking authority to change service territory at the request of the New Hampshire Electric Cooperative, Inc. (NHEC) in a limited portion of Wakefield, New Hampshire; and

WHEREAS, on Oct. 6, 1989, PSNH filed a Supplemental Petition pursuant to NH RSA 365:28 whereby the Commission may alter or modify any order made by it and also pursuant to NH RSA 374:30 seeking authority to transfer service area; and

WHEREAS, NHEC and PSNH each were given authority to serve in limited portions of Wakefield by this Commission as described in NHPUC Map 241 in accordance with Fourth Supplemental Order No. 14,811 and Third Supplemental Order No. 14,810, respectively; and

WHEREAS, the petitioner avers that PSNH and NHEC jointly request that PSNH be allowed to extend its facilities into NHEC service territory in order to furnish service to Mr. Donald McMullin at his residence on Crew Road, Wakefield, New Hampshire; and

WHEREAS, NHEC has offered that it would be appropriate to change the service territory boundary, thus allowing PSNH to serve Mr. McMullin thereby avoiding unnecessary additional line extension expense to the customer; and

WHEREAS, PSNH has existing local distribution facilities which can be extended to provide the requested service; and

WHEREAS, both companies and the customer have agreed that PSNH should provide service; and

WHEREAS, the commission finds that the requested 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 on this matter before the commission no later than November 20, 1989; and it is

FURTHERED ORDERED, that the petitioner 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 November 6, 1989 and documented by affidavit to be filed with this office on or before November 27, 1989; and it is

FURTHER ORDERED, that NHEC 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 365:28 and RSA 374:30, to New Hampshire Electric Cooperative, Inc. and Public Service

Company of New Hampshire to revise the service boundaries as prescribed in the subject petition in the Town of Wakefield, 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 twenty-sixth day of October, 1989.

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NH.PUC*10/27/89*[51859]*74 NH PUC 422*Concord Electric Company

[Go to End of 51859]

74 NH PUC 422

Re Concord Electric Company

Additional applicant: Elektrisola, Inc.

DE 89-124
Order No. 19,586

New Hampshire Public Utilities Commission

October 27, 1989

ORDER approving a special contract rate for electric service.

RATES, § 322 — Electric rate design — Special contract rate — Demand and load.

[N.H.] An electric utility was authorized to provide service at a special contract rate to an electric customer that agreed to maintain its load at or below 1700 kw for the peak period hours in each billing period.

By the COMMISSION:

ORDER

On July 20, 1989 the Concord Electric Company (company) submitted Special Contract No. 3 with Elektrisola, Inc. (Elektrisola) which provided for a load shifting arrangement between the company, in cooperation with its wholesale power supply affiliate, UNITIL Power Corporation, and Elektrisola. Under the proposed contract, Elektrisola will shift a portion of its on-peak load to periods when the UNITIL System has not historically established a system peak; and

WHEREAS, the proposed contract is designed to provide the company with reduced power supply costs, while at the same time enabling Elektrisola to control its electric costs; and

WHEREAS, the terms of the proposed contract provide for a payment of $4.40 per kW per month of load shifted from the peak period to the off-peak period; and

WHEREAS, the payments under the contract in recognition of the value of load shifted from peak to off-peak and are necessitated by the absence of a time-of-use rate in Concord's general rate schedules; and

WHEREAS, under the proposed contract, peak period load control was intended to be enforced with a reliability criteria requiring Elektrisola to maintain its load at or below 1700 kW at least 90% of the peak period hours in each billing period; and

WHEREAS, on September 14, 1989, the commission staff and representatives of the company met to discuss the terms of the proposed contract and staff expressed reservations concerning the provision allowing Elektrisola to exceed the peak period demand of 1700 kW as much as 10% of the peak hours since this would create too great a probability that Elektrisola's load would exceed 1700 kW at the time of the system peak; and

WHEREAS, on October 10, 1989 the company and the commission staff entered into a stipulation intended to address and settle all issues that were raised by staff in its review; and

WHEREAS, the stipulation recommends that the proposed contract be approved for an initial period of six months and thereafter for the next twelve months be amended to add the additional requirement that Elektrisola maintain its load at or below 1700 kW all hours during the months of December, January, and February; and

WHEREAS, the stipulation also provides that failure by Elektrisola to provide reliable load reductions during peak hours will result in forfeiture of the payment for peak period capacity for that month and, additionally, if Elektrisola fails to maintain its load at or below 1700 kW during the hour of the UNITIL annual peak, the contract shall be terminated; and

WHEREAS, on October 10, 1989 the company filed with the commission a revised contract with Elektrisola to reflect the contract modifications contained in the stipulation; and

WHEREAS, upon review of the proposed contract and stipulation the commission finds that, in accordance with RSA 378:18, special

circumstances exist which render departure from the general schedules just and consistent with the public interest; it is hereby

ORDERED, that Special Contract No. 3 as filed on October 10, 1989, 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 October, 1989.

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74 NH PUC 423

Re New England Telephone and Telegraph Company, Inc.

DR 88-205
Order No. 19,587
New Hampshire Public Utilities Commission
October 30, 1989

ORDER approving a flexible rate pricing plan for the "Superpath" interexchange private line services of a local exchange telephone carrier.

RATES, § 534 — Telephone rate design — Special factors — Competition — Flexible pricing.

[N.H.] A local exchange telephone carrier was authorized to introduce, on an experimental basis, a flexible rate pricing plan for its "Superpath" interexchange private line services where (1) the minimum price was not confiscatory, (2) market forces would prevent excessive or extortionate rates, (3) the plan would enable the commission to continue its evaluation of competitive local services, (4) the desirability of maintaining the plan would be reevaluated at the end of the experimental period based on market performance, incremental costs, revenues generated, and costs and revenues reflecting the migration from other interexchange private line services to Superpath, (5) adverse consequences resulting from the plan could be allocated to investors, and (6) the plan would be withdrawn if it did not result in a significant market gain.

By the COMMISSION:

ORDER

On December 12, 1988, New England Telephone and Telegraph Company, Inc. (hereinafter NET or the company) filed a tariff proposing to change the rate structure of Superpath service and introducing enhancements to more closely align the features in the state tariff with those in the Federal Access Tariff; and

WHEREAS, the minimum price in the proposed price range is not confiscatory since according to supporting cost evidence it covers the cost of providing service and adds a contribution; and

WHEREAS, competitive market forces compel the company not to charge excessive or extortionate rates for this service, and;

WHEREAS, introduction of the flexible rate pricing plan for this service will enable the commission to continue its evaluation into competitive local services begun in docket DR 86-229, order no. 18,440 (71 NH PUC 587 [1986]) concerning NET's Quickway service; and

WHEREAS, the flexible rate pricing plan is to be introduced on an experimental basis for

one year only; and

WHEREAS, at the end of the experimental period the company will file complete records of Superpath's market performance, the incremental costs, and total revenues generated by this service, and costs and revenues reflecting the migration from other interexchange private line services to Superpath; and

WHEREAS, at that time the commission will once again evaluate the efficacy of competitive services and the desirability of maintaining the flexible rate pricing plan; and

WHEREAS, the finding that the prices for this service cover the costs may be revisited pending the outcome of dockets DR 85-182 and DR 89-010; it is hereby

Page 423

ORDERED, that NHPUC — No. 75
Part C — Section 2 — Second Revision
of Table of Contents, Page 1
First Revision of Page l
First Revision of Page 2
Original of Page 2.1
Second Revision of Page 3
Second Revision of Page 4
First Revision of Page 5;

be, and hereby is, approved; and it is

FURTHER ORDERED that approval of this flexible rate pricing plan does not automatically allocate to ratepayers revenue shortfalls which may result from this type of pricing and that management must bear the risk that any adverse consequences resulting from this decision may be allocated all or in part to the investors; and it is

FURTHER ORDERED, that NET will file on the effective date of this tariff the total number of Superpath systems in service; and it is

FURTHER ORDERED, that NET will file quarterly marketing reports and a complete record of market performance on an annual basis; and it is

FURTHER ORDERED, that if it is the judgment of the commission that there is an absence of significant market gain as evidenced by a growth rate of less than 30% per year arising from the introduction of the flexible rate pricing plan, then the plan will be withdrawn; and it is

FURTHER ORDERED, that in the event that the commission institutes a form of incentive regulation using price caps, the flexible rate pricing plan will be cancelled.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1989.

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NH.PUC*10/30/89*[51861]*74 NH PUC 424*Hampton Water Works Company

[Go to End of 51861]

74 NH PUC 424

Re Hampton Water Works Company

DR 87-255
Order No. 19,588

New Hampshire Public Utilities Commission

October 30, 1989

ORDER suspending the implementation of a scheduled second step rate increase for water distribution service.

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1. VALUATION, § 223 — Property included or excluded — Incomplete plant.

[N.H.] State statute RSA 378:30a prohibits the inclusion of incomplete plant in rate base. p. 425.

2. RATES, § 595 — Water — Step increase — Suspension.

[N.H.] State statute RSA 378:30a prohibits the inclusion of incomplete plant in rate base; accordingly, where a staff audit revealed that a water utility had included a new well in rate base prior to its completion, a scheduled second step rate increase was suspended pending the submission of verified proof of the completion of the well. p. 425.

By the COMMISSION:

ORDER

On October 3, 1989 Hampton Water Works submitted revisions to its tariff which would implement a second step increase provided for in commission report and supplemental order no. 19,201 (73 NH PUC 81 [1988]); and

[1, 2] WHEREAS, the proposed revisions to its existing tariff are to take effect on

November 1, 1989; and

WHEREAS, staff has audited the filing and has found that plant to be added after September 30, 1989 has been included in rate base; and

WHEREAS, inclusion of the new well prior to its completion would be in violation of RSA 378:30a; it is

ORDERED, suspended until service and verified proof of completion of the well is submitted; and it is

FURTHER ORDERED, that the proposed rates will be allowed to go into effect on the first day of the month following such submission for service rendered on or after that date.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1989.

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NH.PUC*10/31/89*[51862]*74 NH PUC 425*New England Telephone and Telegraph Company, Inc.

[Go to End of 51862]

74 NH PUC 425

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,590

New Hampshire Public Utilities Commission

October 31, 1989

MOTION by local exchange telephone carrier for a protective order covering certain advertising information; denied in part and granted in part.

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1. PROCEDURE, § 16 — Discovery and inspection — Protective order — Local exchange telephone carrier.

[N.H.] A motion by a local exchange telephone carrier (LEC) for a protective order was granted where the motion complied with the requirements for confidentiality set forth in a prior report and order; the commission reserved the rights of all parties and the public to move for production of the protected documents, as well as the right of the LEC to object to such production. p. 426.

2. PROCEDURE, § 16 — Discovery and inspection — Protective order — Public information — Local exchange telephone carrier.

[N.H.] The commission cannot protect from disclosure information that has already become public information; accordingly, the commission denied a motion by a local exchange telephone carrier for a protective order over videos and cassettes of radio and television advertising that had been publicly broadcast. p. 426.

By the COMMISSION:

REPORT ON THE OCTOBER 13, 1989,
MOTION FOR PROTECTIVE ORDER

In this report and order we consider New England Telephone Company's (NET) October 13,

1989 motion for protective order. This order approves the motion with respect to all requests except for the videos and/or cassettes requested in PUC Staff Item 366, and applies the standards set forth in our report and order no. 19,536 (74 NH PUC 307 [1989]).

I. *The Motion*

On October 13, 1989, NET filed, pursuant to NH Admin. Code Puc 203.04 and report and order no. 19,536, a motion for protective order. This motion requests a protective order for the following items.

Data Responses

1. PUC Staff Set #6, Item 343
2. PUC Staff Set #6, Item 366
3. PUC Staff Set #6, Item 384
4. PUC Staff Set #6, Item 385
5. VOICE Set #2, Item 57
6. VOICE Set #2, Item 73
7. VOICE Set #2, Item 78
8. VOICE Set #3, Item 31

II. *Commission Analysis*

[1, 2] The motion conforms with the requirements for confidentiality set forth in our report and order no. 19,536. Thus, we will allow the data responses, with the exception of the videos and/or cassettes requested in PUC Staff Item 366, to be protected under the procedures set forth in that order. We will reserve the rights of the parties and the public to move for production of this confidential information and for NET to object to such production.

NET seeks proprietary treatment for the videos and/or cassettes of its radio and television advertising made in 1987 and 1988. Essentially NET argues that these cassettes and videos are exempt from public disclosure under the Right-to-Know Law RSA 91-A:5 IV. NET has waived its right to a protective order for these cassettes and videos by broadcasting them publicly since 1987 and 1988, before the instant motion was filed. We cannot protect disclosure of information which is already public information.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that NET's October 13, 1989 motion for protective order is granted with respect to the specific data requests except the videos and cassettes requested in Staff Item 366.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1989.

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[Go to End of 51863]

74 NH PUC 426

Re New England Telephone and Telegraph Company, Inc.

DC 88-153
Order No. 19,592

Raymond Historical Society
v.
New England Telephone and
Telegraph Company, Inc.

DC 88-153
Order No. 19,592

New Hampshire Public Utilities Commission

October 31, 1989

ORDER setting a date for a hearing on the issues raised by a motion for rehearing of an order *nisi* that had approved a revised tariff governing the alarm system rates of a local exchange telephone carrier.

RATES, § 649 — Procedure — Rehearing — Order *nisi*.

[N.H.] The commission set a date for a hearing on the issues raised by a motion for rehearing of an order *nisi* that had approved a revised tariff governing the alarm system rates of a local exchange telephone carrier.

By the COMMISSION:

ORDER

By report and order no. 19,317 (74 NH PUC 63 [1989]) the commission required NET to revise its tariff NHPUC No. 75 in order to clarify the definition of residence service rates and file a proposed tariff for a cost based rate for alarm systems; and

WHEREAS, by order no. 19,338 (74 NH

PUC 85 [1989]) the commission denied NET's motion for rehearing and amendment of commission order no. 19,317; and

WHEREAS, NET subsequently filed a revised tariff NHPUC No. 75, Part A, Section 5, Page 1 clarifying residence service rates, and a new tariff provision No. 75, Part A, Section 5, Page

10.1 governing originating only service lines which may apply to automatic dialer alarm systems; and

WHEREAS, in its *NISI* order no. 19,464 (74 NH PUC 233) dated July 10, 1989 the commission approved NET's revised tariff, and ordered that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than July 21, 1989; and

WHEREAS, on July 21, 1989 the office of the Consumer Advocate filed a motion for hearing on the matter on behalf of Raymond Historical Society questioning the justification for treating a nonprofit organization as a business customer as opposed to a residential customer and asserting that New England Telephone had failed to comply with the commission order no. 19,317 to file a proposed tariff for a cost based rate for alarm systems; and

WHEREAS, on August 4, 1989, New England Telephone Company filed its Opposition to Raymond Historical Society's Motion for Hearing attesting that Raymond Historical Society has failed to set forth any new facts or circumstances which would support a motion for rehearing, and further that NET has fully complied with the PUC directive to file a cost based rate for alarm systems; it is hereby

ORDERED, that a hearing on the issues raised in the motion be held on December 5, 1989 at said Public Utilities Commission at 10:00 in the forenoon at its offices at 8 Old Suncook Road, Building #1, Concord, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1989.

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NH.PUC*10/31/89*[51864]*74 NH PUC 427*Pennichuck Water Works, Inc.

[Go to End of 51864]

74 NH PUC 427

Re Pennichuck Water Works, Inc.

DR 87-224
Order No. 19,593

New Hampshire Public Utilities Commission

October 31, 1989

ORDER suspending, pending further investigation, a second step water rate increase provided for by prior order.

RATES, § 597 — Water rated design — Special factors — Step adjustment.

[N.H.] The commission suspended, pending further investigation, a second step water rate increase provided for by prior order.

By the COMMISSION:

ORDER

On October 10, 1989, Pennichuck Water Works, Inc. (Pennichuck), submitted revisions to its tariff which would implement the second step increase provided for in commission report and supplemental order no. 19,213 (73 NH PUC 443 [1988]); and

WHEREAS, the proposed revisions to its existing tariff are to take effect on November 1, 1989; and

WHEREAS, prior to rendering a decision on the supporting documentation concerning the proposed 9.12% annual increase, it is necessary to perform a thorough investigation; and

WHEREAS, the commission staff has conducted an audit which indicates a need for further investigation; it is hereby

ORDERED, that Pennichuck's New Hampshire PUC No. 4-Water 16th Revised Page 21, 19th Revised Page 22, 5th Revised Page 22-a, 19th Revised Page 23, 19th Revised, Page 24, be and hereby are suspended pending further investigation; and it is

FURTHER ORDERED, that a hearing on the issue of the step increase shall be held on the first day of December, 1989 at the commission offices, 8 Old Suncook Road, Building #1, Concord, New Hampshire at 10 o'clock in the forenoon; and it is

FURTHER ORDERED, that the petitioner notify all persons desiring to be heard to appear at said hearing when and where they may be heard on the question of whether the proposed step increase is in the public good by causing an attested copy of this order to be published once in a newspaper having a general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than ten (10) days prior to the hearing; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and N.H. Admin. Rules, Puc Section 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) prior to the hearing.

By order of the Public Utilities Commission of New Hampshire this 31st day of October, 1989.

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Re Tilton and Northfield Aqueduct Company

DE 89-197
Order No. 19,595

New Hampshire Public Utilities Commission

October 31, 1989

ORDER opening an investigation to determine whether a water company has the financial, managerial, and technical expertise to operate a public utility within its franchise area.

CERTIFICATES, § 11 — Powers of state commission — Investigation — Ability to serve — Water utility.

[N.H.] The commission opened an investigation to determine whether a water company that had failed to provide service to certain areas within its franchise area has the financial, managerial, and technical expertise to operate a public utility within its franchise area.

By the COMMISSION:

ORDER

On September 28, 1989, commission Attorney Eugene F. Sullivan, III, received a letter from Jay C. Boynton, Esquire, Attorney for Tilton and Northfield Aqueduct Company (Aqueduct Company) in which he enclosed a newspaper article indicating that a water district would be established in the area of Tilton, New Hampshire, known as Lochmere, through a settlement between a group of residents and an oil company which had allegedly contaminated the wells of said residents. Said letter dated September 28, 1989 requested the position of the New Hampshire Public Utilities Commission (Commission) on the proposed settlement as it established a water district within the franchise of the Tilton and Northfield Aqueduct Company, and how the commission viewed the relationship between the Aqueduct Company and the proposed project; and

WHEREAS, the commission was neither made aware of, nor consulted on, this situation until the September 28, 1989 letter from Attorney Boynton; and

WHEREAS, the commission staff contacted the Attorney General's office and was advised that the Aqueduct Company had been requested to provide service to the area several months before a settlement was proposed; and

WHEREAS, Lochmere is within the Aqueduct Company's franchise area; and

WHEREAS, the commission staff and all parties to the settlement agreement met on October 11, 1989, at the Attorney General's office in order to discuss the Aqueduct Company serving the area; and

WHEREAS, said service would involve no cost to the Aqueduct Company; and

WHEREAS, the Aqueduct Company indicated that it would be unwilling to serve the area unless its proposed financing for a water treatment plant was approved by the commission; and

WHEREAS, the Aqueduct Company has been aware of the inadequacy of its source of supply for at least two (2) years; and

WHEREAS, the Aqueduct Company also

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refused to provide service to the Red Wing Mobile Home Park in the spring of 1989; it is hereby

ORDERED, that an investigation be opened pursuant to RSA 374:22, RSA 374:7 and RSA 374:28 for the commission to examine whether or not Tilton and Northfield Aqueduct Company has the financial, managerial and technical expertise to operate the existing public water utility in its franchise area not only for that area of Tilton known as Lochmere, but also for the entire Tilton and Northfield area and adjacent communities which were granted to it by the Legislature in 1887; and it is

FURTHER ORDERED, that said investigation shall include, but not be limited to, the inability of the Aqueduct Company to obtain the appropriate financing for a treatment plant in order to meet its supply needs; and it is

FURTHER ORDERED, that there shall be a hearing on this issue November 20, 1989 at the commission offices at 8 Old Suncook Road, Concord, New Hampshire at 10:00 o'clock in the forenoon, and that any party wishing to submit testimony on this issue shall submit said testimony by November 15, 1989.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1989.

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NH.PUC*11/01/89*[51865]*74 NH PUC 428*Deer Cove Water Company, Inc.

[Go to End of 51865]

74 NH PUC 428

Re Deer Cove Water Company, Inc.

DE 89-152
Order No. 19,594

New Hampshire Public Utilities Commission

November 1, 1989

ORDER imposing a file on an officer and agent of a water utility for failure to seek a franchise and rate approval.

FINES AND PENALTIES, § 7 — Grounds for imposition — Unauthorized operation — Water utility.

[N.H.] Pursuant to stipulation, an officer and agent of a water utility that was operating without a franchise agreed to pay a fine of $200 and to file the necessary information for a franchise and rates as soon as possible; the agent of the utility, which served only one customer, was under the mistaken belief that he was exempt from public utility regulation.

APPEARANCES: Steven Upton, Esq. on behalf of David Sands, Agent and owner of Deer Cove Water Company, Inc.; and Eugene F. Sullivan III, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On September 12, 1989, the commission issued order number 19,530 (74 NH PUC 303 [1989]) in which David Sands, the reported owner and operator of Deer Cove Water Company, a water utility operating in the town Freedom, New Hampshire, was ordered to appear before the commission to show cause why he should not be fined for his failure to respond to staff's inquiries concerning his failure to seek a franchise and rate approval as a public water utility pursuant to RSA 374:22 and RSA 378:7 respectively. At a hearing held on said issue on September 12, 1989, staff and the company presented a stipulation to the commission in which Mr. Sands admitted to operating a public utility without authority, agreed to pay a fine of $200 and file the necessary information for a franchise and rates as soon as possible. The record indicates that the stipulation was entered into due to the fact that Mr. Sands as agent of Deer Cove Water Company was only serving one customer, a condo association, and was under the mistaken belief that he was exempt from public utility regulation.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing

report; it is hereby

ORDERED, that David Sands as officer and agent of Deer Cove Water Company, Inc. be fined and hereby is fined $200 for a failure to seek a franchise and rate approval pursuant to RSA 374:22 and RSA 378:7 respectively; and it is

FURTHER ORDERED, that Deer Cove Water Company, Inc. through its agent David Sands, file for a franchise and rate approval within the next three (3) months; and it is

FURTHER ORDERED, that Mr. Sands be available to the commission to provide any information that is required for franchising said utility or for determining the rates of the utility.

By order of the Public Utilities Commission of New Hampshire this November 1989.

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[Go to End of 51867]

74 NH PUC 430

Re Northern Utilities, Inc. — New Hampshire Division

DR 89-176
Order No. 19,599

New Hampshire Public Utilities Commission

November 1, 1989

ORDER revising the cost of gas adjustment rate of a natural gas and propane distribution company.

AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Rate revision — Natural gas and propane distributor.

[N.H.] In revising the cost of gas adjustment rate of a natural gas and propane distribution company, the commission considered the rate charged by the company's pipeline supplier, interruptible sales margins, non-product cost, a natural gas commodity pricing error, propane cost increases, storage capacities, and the allocation of gas volumes.

APPEARANCES: LeBoeuf, Lamb & Leihy & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; Mary Jean Newell, Assistant Finance Director and George McCluskey, Utility Analyst for the commission staff.

By the COMMISSION:

REPORT

On October 2, 1989 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 Sixteenth Revised Page 24, Sheet No. 1, Superseding Fifteenth Revised Page 24, N.H.P.U.C. No. 7 providing a 1989-90 Winter Cost of Gas Adjustment (CGA) effective November 1, 1989. This cost of gas adjustment is a credit of $(0.1405) per therm.

An Order of Notice was issued setting the date of the hearing as of October 24, 1989 at 10:00 A.M. at the commission office in Concord, New Hampshire.

During the hearing the following issues were discussed: Tennessee Gas Pipeline rates; Interruptible sale margin; winter related non-product costs; natural gas commodity pricing error;

propane cost increase; Portland and Newington storage capacities; Granite State Pipeline's supply to Pease Air Force Base.

An error in calculating the purchased natural gas commodity portion was discussed. The Company had combined November and December and used the December unit cost which was a higher amount. Company Witness

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Ferro stated that a correction would cause a reduction of $0.0002 per therm.

Company Witness Ferro testified that the cost of propane used in the filing had increased from $3.7213 to $3.7965 per MMBTU. This adjustment would cause an increase of $0.0002 per therm.

As these two adjustments effectively wash each other no revision to the tariff will be required. The adjustments will be taken care of in the reconciliation at the end of the period.

In its filing the company reported an interruptible sales profit of $38,187 for the period May 1, 1989 through April 30, 1990. Commissioner Ellsworth stated that the issue of interruptible pricing should be taken up in discussions between staff and the Company. The Commissioner went on to say that, if after these discussions, the issue is unresolved, then staff should provide the commission with recommendations as to how the Company's pricing practices should be revised.

With regard to the ultimate destination of the Granite State Pipeline volumes currently earmarked for Pease Air Force Base, Commissioner Ellsworth gave notice to the Company that the issue is of substantial interest to the commission. He asked that the commission be informed of the Company's decision prior to any formal filing to this or any other regulatory agency.

Witness Ferro was asked about the propane storage facilities at Portland and Newington. The witness stated that the capacities were Portland 60% and Newington 40% of the total storage. The cost of the two locations is average and transportation is charged accordingly.

Our order will issue accordingly.

ORDER

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

ORDERED, that Sixteenth Revised Page 24, Sheet 1, Superseding Fifteenth Revised Page 24, of N.H.P.U.C. No. 7 — Gas providing for a cost of gas adjustment of $(0.1406) per therm, be, and hereby is, approved; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that the over/under collection of Northern Utilities, Inc. — New Hampshire Division adjustment will accrue interest at the Prime Rate reported in the *Wall Street Journal*. 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 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. 16,524 (68 NH PUC 461 [1983]); and it is

FURTHER ORDERED, that the Company meet with staff at a time convenient to both parties to discuss the pricing of interruptible sales gas; and it is

FURTHER ORDERED, that the Company keep the commission informed of its intentions regarding the allocation of the Pease Air Force Base Pipeline volumes if and when Pease ceases to be a direct customer of Granite State Pipeline.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1989.

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NH.PUC*11/02/89*[51868]*74 NH PUC 431*Eastman Sewer Company, Inc.

[Go to End of 51868]

74 NH PUC 431

Re Eastman Sewer Company, Inc.

DS 88-117
Order No. 19,600

New Hampshire Public Utilities Commission

November 2, 1989

ORDER granting a franchise to operate a sewer utility.

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1. CERTIFICATES, § 125 — Sewer utility — Grant of franchise — Fitness.

[N.H.] An application for a franchise to operate a sewer utility was granted where the applicant, through its management contract with

Page 431

a company experienced in the operation of a sewer utility, demonstrated that it had the financial, technical, and managerial expertise to run a sewer company. p. 433.

2. SEWER — Rules and regulations — Mapping — Waiver.

[N.H.] A sewer utility was granted a waiver of rules requiring it to provide a map of its entire system to the commission where the utility indicated that it could not provide a map of service pipes running from customers' houses to its main. p. 433.

3. PAYMENT, § 58 — Security for payment — Deposits — Sewer utility.

[N.H.] The commission denied a request by a sewer utility for waiver of deposit regulations; it was found that the utility had not provided any justification for a waiver. p. 433.

4. PAYMENT, § 67 — Security for payment — Liens — Sewer utility.

[N.H.] A sewer utility was authorized to place liens on the property of customers who do not pay their bills. p. 433.

5. DAMAGES, § 1 — Liability disclaimer — Tariff provision — Sewer utility.

[N.H.] A sewer utility was directed to include in its tariff a clear statement that it would be liable for its own negligence; however, the utility was permitted to disclaim liability for consequential damages. p. 433.

APPEARANCES: David Marshall, Esq. on behalf of Eastman Sewer Company, Inc.; and Eugene F. Sullivan, III on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On March 13, 1989, Eastman Sewer Company, Inc. (Eastman) filed a petition seeking authority to establish a sewage disposal utility in a limited area in the Town of Grantham, New Hampshire. By an order of notice dated March 13, 1989, a prehearing conference was scheduled for June 7, 1989. By order no. 19,438 the commission established a procedural schedule and on September 21, 1989 at 10 o'clock a.m., a hearing on the merits of the petition was held. Eastman took the position that the petition should be granted. The company also requested certain waivers from the requirements of the recently adopted sewer rules. These requests are as follows;

(1) The company requests a waiver from the provision which requires the company to provide the commission with a map of its entire system. The company indicated that it could not provide a map of the service pipes from the customers house out to the street, where it intersects with the company's main.

(2) The company requested a waiver from the deposit regulations.

(3) The company requested they be allowed to place a lien on the customers' property for unpaid bills.

Staff took no position regarding the issue of the granting of a franchise and merely made inquiries into the fitness of the company to operate a public sewage utility.

Staff did object to the waiver from the rules as regards to the deposit regulations, the lien provision and a provision in the tariff that provides for an exclusion of liability.

II. *Findings of Fact*

Eastman has been in existence for approximately fifteen (15) years and providing service to several hundred residence of the Eastman development which is a four season residential and recreational community located in Grantham, New Hampshire.

In 1986, the legislature, by an amendment to RSA Chapter 362:2 for the first time made

sewer companies public utilities. Since 1986 Controlled Environment Corporation (CEC), the record owner of the assets of the utility has been in negotiations on and off with various potential or prospective purchasers including the Eastman Community Association. The conversations with prospective buyers did not come to fruition and, thus, CEC re-negotiated a long-term lease with Eastman. Eastman has a long-term lease with CEC whereby the lease provides for a discharge of a substantial indebtedness which Eastman owes CEC. It further provides for a long-term leasing arrangement which will last until February 9, 2027. Under the lease Eastman is responsible for any work, repairs, corrections, improvements and modifications to the sewage system at its own expense. Furthermore, Eastman may, at its election, purchase the leased premises at the expiration of the term of the lease in 2027 with all improvements thereon whether made by lessor or lessee upon payment of $1 to CEC and an assumption of all liabilities of the company.

Eastman currently employs Hanslin Management, Inc. to oversee the operation of the sewage utility. Said organization has been running the sewer utility since its inception with little or no complaints. However, the company has accumulated a substantial debt of approximately $300,000 during the course of its existence. Most of this a payable to CEC under the terms of the lease. However, said debt has been forgiven under the terms of the amended lease. The company indicated that its current rate levels were insufficient to cover the lease payments.

The commission further finds that the company owns a dam which is not a necessary asset for the sewer company.

III. *Commission Analysis*

[1-5] The commission finds that Eastman, through its management contract with Hanslin Management, Inc., has the financial, technical and managerial expertise to run a sewer company.

The sewer rules are waived to the extent that the company does not need to provide a map showing the service pipe from the customers' house out to the street where it intersects with the company's main.

In regard to the request for waiver from the deposit requirements, said request is denied. The company has provided no justification that would alleviate the need to follow the sewer rule deposit requirement. Furthermore, the commission is going to grant the company the request that it be allowed to place liens on the property of customers who do not pay their bills. This will alleviate the need for a deposit waiver, as requested by the company.

In regard to the tariff provision excluding liability, the commission finds the exclusion from liability could be misleading to a customer as it is now stated. The company should clearly state that it will be liable for its own negligence. However the company may exclude consequential damages.

The commission further notes that it will grant a franchise to Eastman based on its lease arrangement with CEC as said lease is akin to a long term mortgage and is merely characterized as a lease. However, the commission is not ruling on the reasonableness or the prudency of the base. Any such judgement must be made in a rate case.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that Eastman Sewer Company, Inc. is granted a franchise to operate a sewer utility in that area delineated in Exhibit #5 in this docket; and it is

FURTHER ORDERED, that Eastman Sewer Company, Inc.'s request for waivers from the sewer rules are granted and denied as stated in the attached report; and it is

FURTHER ORDERED, that Eastman Sewer Company, Inc. file a rate case within the next twelve months.

By order of the Public Utilities Commission of New Hampshire this second day of November, 1989.

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NH.PUC*11/06/89*[51869]*74 NH PUC 434*Northern Utilities

[Go to End of 51869]

74 NH PUC 434

Re Northern Utilities

DR 89-170
Order No. 19,602

New Hampshire Public Utilities Commission

November 6, 1989

ORDER approving a special contract for interruptible gas sales to a customer with alternative fuel capability.

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1. RATES, § 381 — Natural gas — Special factors — Alternative fuels — Interruptible sales.

[N.H.] Interruptible gas sales rates for customers with alternative fuel capability should be set no lower than necessary to cause the customer to use gas and in no event should be set below the utility's incremental cost; although such pricing results in a sharing of interruptible margin, the emphasis is on maximizing the benefits to firm ratepayers. p. 435.

2. RATES, § 381 — Natural gas — Special factors — Alternative fuels — Interruptible sales.

[N.H.] The commission approved, as consistent with the public interest, a special contract for interruptible gas sales to a customer with alternate fuel capability notwithstanding its concern that the margin between fuel oil prices and gas prices might narrow to such an extent that the benefit to firm ratepayers might decrease considerably, and despite the fact that utility did not require the customer to make a capital contribution to cover the cost of additional distribution

system required to make supply available. p. 435.

3. RATES, § 381 — Natural gas — Special factors — Alternative fuels — Interruptible sales.

[N.H.] Although it approved a special contract for interruptible gas sales to a customer with alternate fuel capability, the commission denied the utility a return on investment in additional distribution system required to supply the customer; the commission found that under its interruptible gas sales policy, the cost of the additional distribution system should have been financed by the customer. p. 435.

By the COMMISSION:

REPORT

I. *Introduction*

On September 25, 1989 Northern Utilities (Northern) filed a petition for expedited approval of two special interruptible gas sales contracts with Gold Bond Building Products (Gold Bond) of Portsmouth, New Hampshire. Gold Bond is a wallboard manufacturer that currently burns No. 2 fuel oil in its dryer operations and No. 2 residual fuel oil in its mill operations. These contracts provide Gold Bond with an incentive to acquire gas burning capability and Northern with an opportunity to sell gas at a price above its incremental cost. Gold Bond would become Northern's largest interruptible customer.

Following discussions between staff and Northern, revised pages of these contracts were filed with the commission on October 24, 1989.

II. *Interruptible Sales Policy*

By report and order no. 19,181 in DR 88-083 the commission approved a stipulation between Northern, staff and the Consumer Advocate detailing the terms under which Northern would be allowed to enter into interruptible gas sales agreements. One of the provisions in that stipulation bars Northern from negotiating interruptible sales agreements that result in gas being sold at a price below incremental cost. The stipulation also includes a provision requiring a new interruptible customer to be assessed a capital contribution to recover all distribution system investment costs directly incurred in providing the interruptible service. It was understood by the parties to the stipulation that any capital investment incurred on the

customer side of the meter would be financed by the customer. The interruptible customer would then recover these investment costs through a negotiated share in the margin between alternative fuel and gas prices. Firm ratepayers would receive the balance.

III. *Gas Sales Contracts*

In its petition Northern contends that to acquire gas burning capability in its dryer and mill operations, Gold Bond will have to invest in equipment, piping and control systems presently estimated to cost $448,000. To supply the gas, Northern estimates that distribution system improvements of $180,000 are needed. Northern proposes to finance the distribution system

improvements without the benefit of a contribution from Gold Bond. In its September 25th filing, the gas supply contract for the dryer operation (Exhibit No. 1) was drawn up such that both the Gold Bond investment and the distribution system improvement would be fully amortized prior to firm customers receiving a share in the interruptible margin. The contract was subsequently revised to raise the floor price from incremental cost to incremental cost plus 25¢ per MMBTU (Exhibit 1.1). This change ensures that firm ratepayers receive some benefit from any sale.

This contract, which commences January 1, 1990, has an initial term of five years and three months. Until such time as Gold Bond recovers its capital investment, during the period April 1st through October 31st, Northern will provide Gold Bond with a discount of up to $1.59 per MMBTU off the No. 2 fuel oil posted price expressed in $ per MMBTU. During the period November 1st through March 31st, no discount will be offered.

After Gold Bond has recovered its capital investment the interruptible sale price will be reset to equal the No. 2 fuel oil posted price expressed in $ per MMBTU. However, the margin between the sale price and the floor price will not be credited to firm ratepayers as is usually the case, but instead will be used to pay off Northern's investment (Exhibit 3).

After both Gold Bond and Northern have recovered their investments, Gold bond will receive, during April 1st through October 31st, a discount of up to $0.59 per MMBTU off the posted price of No. 2 fuel oil and firm ratepayers will be credited the remainder. In all three periods the floor price is set at incremental cost plus 25¢ per MMBTU.

With regard to the gas sales contract for the mill operations (Exhibit No. 2) Northern proposes to discount the No. 6 posted price by 9% during April 1st through October 31st. During the period November 1st through March 31st, no discount will be offered. This contract also has an initial term of five years and three months.

IV. *Commission Analysis*

[1-3] The commission's approval of the stipulation in DR 88-083 enhanced Northern's ability to negotiate interruptible sales agreements with customers that have alternative fuel capability. In such cases, the price should be set no lower than necessary to cause the customer to use gas and certainly not below the utility's incremental cost. Although this pricing mechanism results in a sharing of interruptible margin, the emphasis is on maximizing the benefits to firm ratepayers.

The utility's negotiating position is perhaps less certain when it comes to supplying a customer that is faced with a capital investment to obtain gas burning capability. In this situation a rational customer would use the prospect of future margins resulting from his investment as a lever to obtain advantageous pricing terms. The skill of the utility in overcoming the customers' apparent strong bargaining position can be measured by the share of the interruptible margin obtained for firm ratepayers.

The terms and conditions for the mill operations contract (displacing No. 6 fuel oil) are reasonable and uncontroversial and we will approve them.

The gas supply contract for the dryer operation comprises three distinct periods. During the first period Gold bond recovers its total capital investment (dryer and mill operations) by retaining all but 25¢ per MMBTU of the margin between the No. 2 fuel oil posted price and

Northern's incremental supply costs. Based on

current fuel oil and gas prices, Northern estimates that Gold Bond will recover its investment sometime early in the 1991 off-peak season (April 1st through October 31st). Because firm ratepayers are assured of the first 25¢ per MMBTU of any margin, we find that this portion of the contract is consistent with the requirements that firm ratepayers share in the benefits. However, we are concerned about approving an open ended arrangement that allows Gold Bond to recover all capital investments incurred on its side of the meter. We will therefore approve recovery of up to the current estimate (i.e., $448,000) and require Northern to justify to the commission any additional expenditures.

During the second period Northern recovers its investment in the distribution system by retaining all but 25¢ per MMBTU of the margin. This investment will be paid off sometime during the second half of the 1991 off-peak season. Again, because firm ratepayers are assured of a share in the margin, we find this second portion of the contract to be consistent with established policy. However, we must deny Northern's request that it be allowed to earn a return on this investment.

DR 88-083 requires that interruptible customers, in this case Gold Bond, be assessed a capital contribution to cover the cost of making a supply available. In approving that requirement, the commission had two principles in mind. The first was cost responsibility, i.e., customers demanding services that require capital additions should put up the necessary finance. The second was cost minimization. By requiring the customer to finance the capital addition, firm ratepayers would not incur the cost of a return on capital since the utility's capital would not be employed. Because Northern is proposing to relieve Gold Bond of its financial responsibility, the first principle is violated. Our primary concern, however, is with violation of the second principle and its resulting impact on firm ratepayers.

To allow Northern to earn a return on its investment would extend the capital recovery period and hence eat into the third period. The result is that Gold Bond and firm ratepayers fund the return. Moreover, there is evidence to suggest that the proposed 59¢ per MMBTU discount to Gold Bond is in excess of that currently being offered to existing No. 2 fuel oil interruptible customers and hence the burden of funding the return falls largely to firm ratepayers. This is unacceptable.

In period three the interruptible margin is shared between firm ratepayers and Gold Bond. Since the floor price is now set 25¢ per MMBTU above incremental cost, firm ratepayers will receive the first share of any margin. The next 59¢ per MMBTU, to the extent it exists, will go to Gold Bond. Firm ratepayers will be credited the remainder.

Based on the existing differential between No. 2 fuel oil and gas prices (about $1.40 per MMBTU), it would appear that Gold Bond would receive its full discount with sufficient left over to reward firm ratepayers. However, we are concerned that over the life of the contract the margin between fuel oil and gas prices will narrow to such an extent that firm ratepayer's share of the benefits will fall considerably. Our concern stems in part from an expectation that the nationwide growth in demand for gas will bring the current excess of supply over demand more

into balance resulting in higher gas prices. If this increase in gas prices is not matched by a corresponding increase in fuel oil prices, then the margins flowing to firm ratepayers will be reduced. This risk could have been reduced, if not totally avoided, if Northern had insisted that the benefits to firm ratepayers be established through its application of a fixed percentage factor to the interruptible margin.

But for the 25¢ per MMBTU increase in the floor price, the potential payoff would be too far in the future to justify a just and reasonable finding. It should not be forgotten that natural gas is available for interruptible sales only because firm ratepayers pay the pipeline demand charges that make possible interstate natural gas transportation. It is also firm ratepayers who, through the non-gas component of their rates, provide the distribution system that transmits the gas from the pipeline delivery points to the end users. To put it another way, firm ratepayers are the owners of a valuable asset and this commission, as the guardian of

Page 436

their interests, cannot give it away.

In summary, we believe that the proposed dryer contract provides Gold Bond with an investment opportunity that involves little or no risk of not recovering its costs and a lower risk than firm ratepayers of not achieving cost savings. Notwithstanding this view, we believe the contract meets the minimum requirements necessary to make a finding in the public interest. We will therefore approve the contract. However, we do not believe that the terms and conditions are sufficiently favorable from the firm ratepayers standpoint to warrant a reward for Northern in the form of a return on an investment that under DR 88-083 should have been financed by the interruptible customer.

That is not to say that this commission is opposed to incentives for utility ingenuity and industry. Rather, we believe that utility incentives should be linked to the benefits received by firm ratepayers, not interruptible customers. We will entertain proposals in future filings that meet this criterion.

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 special contracts between Northern Utilities and Gold Bond Building Products are approved; and it is

FURTHER ORDERED, that Northern file with the commission a monthly report detailing the volumes sold to Gold Bond, the sale prices, the customer's alternative fuel price, the utility's floor price, the discounts received (margins earned) and the unamortized capital investment; and it is

FURTHER ORDERED, that in the event the contracts are terminated prior to Northern recovering its investment, the unamortized portion of that investment shall not be added to the utility's rate base; and it is

FURTHER ORDERED, that Northern notify the commission prior to negotiations or

discussions with Gold Bond to amend the terms of these contracts.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1989.

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NH.PUC*11/06/89*[51870]*74 NH PUC 437*Wormser Engineering, Inc. and Martin Energy, Inc.

[Go to End of 51870]

74 NH PUC 437

Re Wormser Engineering, Inc. and Martin Energy, Inc.

DR 86-001
Order No. 19,603

New Hampshire Public Utilities Commission

November 6, 1989

ORDER requiring a small energy producer to appear and show cause why its long-term rate filing should not be rescinded.

COGENERATION, § 24 — Rates — Long-term order — Recision.

[N.H.] A small energy producer that failed to attain commercial operation by the date specified its rate petition was directed to appear and show cause why its long-term rate filing and interconnection agreement should not be rescinded.

By the COMMISSION:

ORDER

WHEREAS, on February 19, 1987, the commission granted Wormser Engineering, Inc. and Martin Energy, Inc. (Wormser) a 20 year long term rate by order no. 18,576 (72 NH PUC 67) pursuant to *Re Small Energy Producers and Cogenerators*, docket DE 83-62 and report and order number 17,838 (71 NH PUC 753, 69 PUR4th 365 [1985]) (DR 85-215); and

WHEREAS, Wormser's approved petition specified that the project would attain commercial operation during power year 1988, which ended August 31, 1988; and

WHEREAS, the latest on-line date available pursuant to DR 85-215 is August 31, 1989; and

WHEREAS, the commission has not been presented with any suitable basis to relieve Wormser of its obligation to bring its facility on-line no later than August 31, 1989; it is

therefore

ORDERED that Wormser appear before the commission at its offices at 8 Old Suncook Road, Building #1, Concord, New Hampshire at 10:00 a.m. on the eighth day of December, 1989 to show cause why approval of its long term rate filing, including the interconnection agreement and rates set forth on the long-term worksheet should not be rescinded; and it is

FURTHER ORDERED, that all direct testimony and exhibits be prefiled with the commission on or before Dec. 1, 1989.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1989.

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NH.PUC*11/06/89*[51871]*74 NH PUC 438*Pine View Acres

[Go to End of 51871]

74 NH PUC 438

Re Pine View Acres

DE 89-201
Order No. 19,604

New Hampshire Public Utilities Commission

November 6, 1989

ORDER exempting the operator of a water system from public utility status.

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1. PUBLIC UTILITIES, § 121 — Water — Service to less than 10 customers — Exemption from public utility status.

[N.H.] State statute RSA 362:4 provides that if a water system supplies less than 10 customers, the commission may grant an exemption from public utility status. p. 438.

2. PUBLIC UTILITIES, § 121 — Water — Exemption from public utility status.

[N.H.] A water system that provided service to nine customers was granted an exemption from public utility status; the operator of the system was directed to inform the commission if the system expands to provide service to ten or more customers. p. 438.

By the COMMISSION:

ORDER

[1, 2] WHEREAS, Pine View Acres which operates a central water system in Alton, New Hampshire, by a letter filed October 11, 1989, seeks exemption from the provisions of RSA

362:4, for service provided to nine customers in the Town of Alton, New Hampshire; and

WHEREAS, RSA 362:4 provides, *inter alia*, that if a 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 statues be, and hereby is, granted to Pine View Acres, for water service provided in the Town of Alton; and it is

FURTHER ORDERED, that Pine View Acres shall notify this Commission if at some future time it shall expand its water system to service ten or more customers.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1989.

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NH.PUC*11/07/89*[51872]*74 NH PUC 438*Gunstock Glen Water Company

[Go to End of 51872]

74 NH PUC 438

Re Gunstock Glen Water Company

DR 89-015
Order No. 19,605

New Hampshire Public Utilities Commission

November 7, 1989

ORDER adopting a stipulated increase in rates for water distribution service.

Page 438

1. RETURN, § 26.4 — Cost of equity — Stipulation — Water utility.

[N.H.] The commission adopted a stipulation authorizing a water utility to recover a 10% rate of return on equity. p. 439.

2. RATES, § 595 — Water rate design — Stipulation.

[N.H.] Pursuant to a stipulation, a water utility was authorized to recover its revenue requirement through a flat rate; however, the utility agreed to install meters within one year and to implement a meter rate consisting of a customer charge and a consumption rate. p. 439.

3. RATES, § 595 — Water rate design — Stipulation — Step increase.

[N.H.] Pursuant to stipulation, a water utility was authorized to adjust its rates to reflect additions to its fixed plant and fees that result from the Safe Drinking Water Act; the step

adjustment was accepted subject to the caveat that any adjustment would go into effect as a temporary rate pending review and audit of the costs reported by the company. p. 440.

APPEARANCES: Bernice Paradise on behalf of Gunstock Glen Water Company; Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On March 9, 1989, Gunstock Glen Water Company, Inc. (Gunstock Glen or the Company), serving a limited area in the Town of Gilford, New Hampshire, filed proposed rate schedules and supporting documents which would have resulted in an increase in annual water revenues of $8,855 or a 126% annual increase in revenues.

On April 3, 1989, the commission issued order no. 19,357 suspending the tariff pages submitted by the Company, increasing their annual revenues, setting a hearing for May 22, 1989 on the issue of temporary rates and a prehearing conference. On May 3, 1989 the commission issued order no. 19,391 continuing the prehearing conference and temporary rate hearing to June 8, 1989.

On July 7, 1989, the commission issued order no. 19,549 (74 NH PUC 345) setting a schedule for the duration of the proceeding and increasing temporary rates by 50%.

Throughout the proceedings the parties engaged in discovery and met for further consultation several times for the purposes of narrowing issues and reaching a proposed stipulation. On September 19, 1989, a hearing was held at the commission offices in which the parties presented a stipulation which would result in an annual increase of revenues of $6,399 or a 91% increase in rates.

II. *Stipulation of the Parties*

[1, 2] The stipulation agreed to the following components:

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

Rate base           $41,931
Rate of return
(overall)           10.44%
Return on equity    10.00%
Revenue requirement 13,401
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In regard to rate structure, the Company and Staff agreed that the Company would be allowed to charge a flat rate of $239.30 per year to net its fixed charge. The Company further agreed to install meters within one (1) year of the effective date of this order requiring a meter rate consisting of a customer charge of $37.83 and a consumption rate per one hundred cubit feet of $2.29 designed to meet the revenue requirements of the Company.

Staff and the Company stipulated to a methodology for temporary rate recruitment as follows: as the Company had been making a

fixture charge up until this rate case, and the Company shall now be charging a flat rate until meters are installed, temporary rates and the recruitment thereof shall be calculated on a flat rate basis and the fixture charge shall be disregarded for the purposes of temporary rates and permanent rates from hereon. It was further agreed that in the case of customers taking service after the effective date of the temporary rates that the surcharge will be prorated for such customers actual usage during the recruitment.

In regards to rate case expense, the parties agreed that the recovery of the actual rate case expense shall be obtained through a surcharge on quarterly bills over a two (2) year period. The Company was required to file actual rate case expenses within thirty (30) days of the date of this order for commission review and approval. The Company has already complied with this request.

The parties also agreed to a step adjustment in light of the fact that the Company would be installing meters, a substantial capital investment for a company with a limited capital base, and due to the fact that there would be some known, but not yet measurable, expenses for implementing the Safe Drinking Water Act. In that regard, the Company and Staff agreed that the Company is entitled to file for an adjustment in its rate base and expenses to reflect additions to its fixed plant and fees that result from the Safe Drinking Water Act, and that as a result of said adjustment, the Company is entitled to adjust its rates to reflect the additions stated above completed and in service to the customers within one (1) year of this report and order, with staff review of the additions to fixed capital and customer base.

It was further agreed, that the Company would be allowed to supply actual consumption figures for a recalculation of the rate structure at that time as consumption figures were estimated due to the fact that the Company currently has no meters.

IV. *Commission Analysis*

The commission adopts the stipulation of the parties as it finds the rate increase to be just and reasonable pursuant to RSA 378:8.

In regard to the rate case expenses which were submitted for our review, the Company submitted $3,212.01 in rate case expenses for the services of Daniel D. Lanning. We believe this amount should be reduced to $3,068.26 as the record reveals some of these costs related to a preceding docket dealing with a financing issue. Thus, the final amount which shall be surcharged over two (2) years is $3,406.36.

[3] In regard to the step adjustment, the commission will accept the step adjustment subject to the caveat that any adjustment will go into effect as a temporary rate until Staff and the commission have had a full opportunity to review or audit the Company to ensure that all the costs reported by the Company are reasonable, prudent and actual.

Our order will issue accordingly,

ORDER

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

ORDERED, that the stipulation of the parties is accepted subject to the caveats set forth in the preceding order; and it is

FURTHER ORDERED, that the Company submit tariff pages in compliance with this order.

By order of the public utilities commission of New Hampshire this seventh day of November, 1989.

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NH.PUC*11/07/89*[51873]*74 NH PUC 440*Southern New Hampshire Water Company, Inc.

[Go to End of 51873]

74 NH PUC 440

Re Southern New Hampshire Water Company, Inc.

DE 88-163
Order No. 19,606

New Hampshire Public Utilities Commission

November 7, 1989

ORDER dismissing, without prejudice, a petition for an exemption from a local zoning ordinance.

Page 440

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

[N.H.] In determining whether to exempt a proposed public utility structure from local zoning regulation the commission must consider: (1) the suitability of the location chosen for the utility structure, (2) the physical character of the uses in the neighborhood, (3) the proximity of the site to residential development, (4) the relative advantages and disadvantages from the standpoint of public convenience and welfare, (5) whether other and equally serviceable sites are reasonably available by purchase or condemnation which would have less impact on the local zoning scheme, (6) whether any reasonable injury to abutting or neighboring owners can be minimized by reasonable requirements relating to the physical appearance or positioning of the structure. p. 441.

2. ZONING — Local ordinances — Petition for exemption — Water utility construction.

[N.H.] A petition by a water utility for an exemption from a local zoning ordinance in order to construct a water tower was dismissed as unripe where the utility had not yet obtained the approval of its board of directors or worked out a final financing plan. p. 442.

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 New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On November 1, 1988 Southern New Hampshire Water Company, Inc. (Southern) 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 water 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, financing for the construction, or obtained permission from its parent company to go forward with the project.

In report and order 19,262 (73 NH PUC 509 [1988] the commission rejected an immediate hearing on the issue of the exemption and set up a procedural schedule. The company orally requested a continuance from the schedule and a hearing on the matter was scheduled for August 29, 1989.

Southern took the position that the petition for exemption should be granted. Staff objected to the exemption at the present time as the company was not prepared to go forward with construction for at least two years. Staff's objection was based on the standards set out in *Re Milford Water Works,* 126 N.H. 127 (1985). Basically, staff's objection was that the tank would not be constructed until 1992 and any abutters in the area, as it is currently under construction, would not have the opportunity to come in and voice any concerns they might have over the Barrett Hill Tank.

II. *Commission Analysis*

[1] In *Re Milford Water Works,* 126 N.H. 127 (1985) the New Hampshire Supreme Court set out seven basic requirements for an exemption pursuant to RSA 674:30, III. Those six criteria are as follows: (1) the suitability of the location chosen for the utility structure; (2) the physical characters of the uses in the

neighborhood; (3) the proximity of the site to residential development; (4) its relative advantages and disadvantages from the standpoint of public convenience and welfare; (5) whether other and equally serviceable sites are reasonably available by purchase or condemnation which would have less impact on the local zoning scheme; (6) whether any

reasonable injury to abutting or neighboring owners can be minimized by reasonable requirements relating to the physical appearance to the structure, adequate lot size, front and rear setback, as well as appropriate sideline regulating, the positioning of the structure on the lot and the proper screening of the facility by trees, evergreens, or other suitable means.

[2] These criteria are all questions which the abutters to this project should be given the opportunity to address as the abutters are not yet present and will not be present until the time of the construction of the Barretts Hill Tank the commission finds it appropriate to follow staff's suggestion and dismiss this case without prejudice as it finds that the case is not yet ripe.

Furthermore, from an examination of the transcript, the commission has determined that the company has not yet obtained the approval of its Board of Directors nor has it worked out a financing plan as these issues will not come before the Board until the company is prepared to go forward with the plan in the year prior to construction.

This merely reinforces our decision that the issue is not ripe. Thus the petition will be dismissed without prejudice.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that this petition be dismissed without prejudice for those reasons set forth in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this seventh day of November, 1989.

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NH.PUC*11/07/89*[51874]*74 NH PUC 442*Plymouth State College

[Go to End of 51874]

74 NH PUC 442

Re Plymouth State College

DE 89-206
Order No. 19,607

New Hampshire Public Utilities Commission

November 7, 1989

ORDER setting a hearing on the issue of whether a college was operating a a public utility without authority.

PUBLIC UTILITIES, § 117 — Telephone — Regulatory status — Imposition of access fee.

[N.H.] The commission scheduled a hearing on the issue of whether a college was operating as a public utility without authority by virtue of its charging students a $15 access fee for the use of toll free 800 numbers and intrastate long distance service.

By the COMMISSION:

ORDER

On or about April 13, 1989 the Consumer Assistance Department of the New Hampshire Public Utilities Commission ("commission") received a complaint from a student at Plymouth State College (Plymouth) regarding a $15 access fee for the use of toll free 800 numbers and intra-state New England Telephone long distance telephone service; and

WHEREAS, the staff of the commission contacted Plymouth State College and advised them that they were a public utility pursuant to RSA 362:2; and

WHEREAS, the University System's general counsel stated that the college system in Plymouth is not a "public utility" as defined in RSA 362:2 and RSA 374:2 but is rather a private utility; and

WHEREAS, the commission is unaware of any precedent in statute or case law in New

Hampshire for a private utility; it is hereby

ORDERED, that a hearing be held at the commission offices at 8 Old Suncook Road at ten o'clock in the forenoon on December 14, 1989 in order for the commission to determine whether or not Plymouth State College is operating a public utility without authority and charging rates therefore without authority; and it is

FURTHER ORDEREO, that pursuant to RSA 541-a:17 N.H. Admin. Rules, PUC Section 230.02, any parties seeking to intervene in said proceeding shall submit a motion to intervene with a copy three days prior to the hearing.

By order of the Public Utilities Commission of New Hampshire this seventh day of November, 1989.

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NH.PUC*11/07/89*[51875]*74 NH PUC 443*Public Service Company of New Hampshire

[Go to End of 51875]

74 NH PUC 443

Re Public Service Company of New Hampshire

DR 89-171
Order No. 19,608

New Hampshire Public Utilities Commission

November 7, 1989

ORDER authorizing an electric utility to revise its interruptible service rate.

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1. RATES, § 322 — Electric rate design — Demand and load — Interruptible service — Credits.

[N.H.] An electric utility was authorized to revise its interruptible service rate to provide partial credit to customers for excess interrupted demand when the average amount of interruption exceeds their average load. p. 444.

2. ELECTRICITY, § 4 — Load management — Least-cost planning — Interruptible service.

[N.H.] The development of an interruptible electric service rate was found to be an important step in the implementation of a cost-effective, least-cost integrated resource plan for an electric utility. p. 445.

3. RATES, § 322 — Electric rate design — Demand and load — Interruptible service — Sharing of cost savings.

[N.H.] In an order authorizing an electric utility to revise its interruptible service rate, the commission approved the concept of sharing any net cost saving resulting from the rate offering between stockholders and nonparticipant ratepayers; nevertheless, the commission reserved a final decision on the issue of sharing for an upcoming generic investigation of whether the direct incentives or benefits of demand-side management should flow to stockholders or ratepayers. p. 445.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Joseph Rogers, Esq. for the Office of the Consumer Advocate; Wynn E. Arnold, Esq., Acting General Counsel, for the Commission Staff.

By the COMMISSION:

REPORT

I. Procedural History

On September 18, 1989, Public Service Company of New Hampshire (PSNH or company) filed proposed revisions to Rate WI in the form of Second Revised Pages 69 and 70 and Original Page 71, to become effective December 1, 1989. At PSNH's request, PSNH representatives informally met with the commission staff and the Office of the Consumer Advocate (OCA) on October 2, 1989 in order to elicit comment on PSNH's filing. On October 6, 1989, the commission issued Order No. 19,557 which scheduled a pre-hearing conference for November 3, 1989 in order to address the proposed tariff changes. On October 17, the

commission *sua sponte* issued Order No. 19, 574 which established a hearing schedule in order to ensure that the issues would be resolved prior to the proposed effective date of December 1. The parties to the October 2, 1989 meeting met again on October 30, 1989 in an attempt to reach agreement on Rate WI issues.

On November 2, 1989, the company, staff and Consumer Advocate filed with the commission a document (Exh. 1) entitled "Recommendation of the Parties for Resolution of this Proceeding" which disposes of all issues in this case, save for the one discussed hereafter regarding the mechanism for sharing the savings. Also on November 2, 1989 the commission staff filed testimony and exhibits supporting the principles on which it based its recommendations. A hearing on the merits of the proposed resolution was held on November 3.

II. Positions of the Parties

PSNH

In its filing on September 18, 1989 (Exh. 2) PSNH proposed two revisions to Rate WI: (1) a provision to provide partial credit to customers for Excess Interrupted Demand when average amount of interruption exceeds their designated load; and (2) a provision to apply the Participation Incentive Credit to customers' bills in the second succeeding month after the current calendar month, rather than the immediately succeeding month.

PSNH also proposed to maintain its annual credit level at $54 per kw. PSNH's rationale as stated in Exhibit 2 was that its full avoided cost of $85.12 per kw (including adjustments for equivalent capacity benefit) should be discounted by 32% to account for risk and reduced further by $7.78 per kw for administrative and opportunity costs.

Staff and OCA

The staff and OCA took the position that the annual credit level should be increased from $54 per kw to $65 per kw. The staff's proposed credit level was based on the framework and methodology that it developed to provide for the consistent application of standards and principles in its evaluation of the recent interruptible rate filings by three New Hampshire electric utilities. The staff maintained that the company substantially overstated its down-ward risk adjustment, and, in addition, should not be allowed to reduce the amount of the credit by administrative and opportunity costs if they cannot be demonstrated to be incremental. The staff and OCA supported the two tariff changes involving the Excess Interrupted Demand credit and application of the Participation Incentive Credit.

Additionally, because of the Company's retention of approximately $400,000 in net savings during 1988-1989 for the benefit of stockholders rather than non-participants, the staff took the position that for 1989-90, the company should be required to share the net savings equally between stockholders and reinvestment in Rate WI or some other program to benefit non-participants. The OCA initially took the position that the company should not be allowed to retain any net savings for the benefit of stockholders.

III. Recommendation of the Parties

[1] Exhibit 1 contains the stipulated recommendations of the parties.

The parties recommend approval of the tariff changes involving the Excess Interrupted

Demand Credit and application of the Participation Incentive Credit, both as proposed by PSNH. The parties also recommend that the full Interrupted Demand Credit level for customers taking service under the one-hour notification option be increased to $21.00 per kw per month, or $63.00 per kw an annual basis.

The recommendations made by the parties also provide for a comprehensive settlement of all other issues, except, as noted above, for the specific mechanism to be used for the sharing of benefits as discussed in Section VII of the agreement. The additional provisions provide for special treatment for customers commencing service after December 1, approval of the form contracts for customers with temperature sensitive loads, establishment of a method for determination of savings and benefits under Rate WI,

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filing and reporting requirements for 1990-1991, and a request for expedited approval.

With regard to the sharing of benefits, the parties recommend that the benefits be shared equally between PSNH and its customers. The agreement provides that residential customers shall receive a pro rata share of the overall customer benefit according to the proportion of residential kwh sales to total retail sales. The specific manner in which the benefits will be returned to customers will be the subject of a separate supplemental set of recommendations to be filed with the commission by November 30, 1989. The parties are currently considering several options in returning benefits to customers.

IV. Commission Analysis

[2, 3] The commission believes that the development and offering of Rate WI is an important first step in the implementation of a cost-effective, least cost integrated resource plan for PSNH.

The commission finds that the agreement among the parties embodied in the "Recommendations of the Parties for Resolution of this Proceeding. is supported by the evidence and is just and reasonable. We therefore accept it for resolution of this case subject to the following analysis and comments.

Based upon staff's analysis of PSNH's costs and circumstances, and the application of the standards and principles being used to evaluate the interruptible rate filings of all New Hampshire electric utilities, the commission finds that the proposed lower credit of $63 per kw for PSNH (vis-a-vis the staff's recommended level of $76 per kw for UNITIL) is not unwarranted since PSNH is offering only a three month, stand-alone program. However, in addition to the filing and reporting requirements contained in the settlement agreement, the commission will require that PSNH explore and report on the feasibility of developing and offering a complementary year-round NEPOOL-approved interruptible program.

The commission will approve the concept of sharing of benefits between stockholders and non-participant ratepayers without prejudice or precedent to its upcoming generic investigation of the issue of whether direct incentives or benefits should flow to stockholders as a result of demand-side programs. In this connection, the commission takes administrative notice of the fact that neither the stockholders of UNITIL or Granite State will benefit from their proposed interruptible rate filings. Our decision regarding the specific mechanism for PSNH is deferred

until the parties file a recommendation.

With regard to the deduction of administrative costs in the calculation of the proposed credit, the commission finds that the exclusion of such costs as provided for in the settlement is appropriate unless they can be shown to be incremental to amounts recovered through base rates.

Finally, the commission endorses the provision in the settlement agreement that the company file its plan for 1990-91 no later than July 1, 1990. This should avoid the unfortunate circumstance now confronting the company where its only substantive demand-side program has been impaired as a result of its marketing efforts having been placed on hold. Nonetheless, the commission encourages the company to strive to exceed last year's participation and load relief levels. The commission greatly prefers to see the company compensate New Hampshire businesses for load reductions rather than making higher payments for imported purchased power.

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 this Proceeding be, and hereby is, 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, 1989.

By order of the Public Utilities Commission of New Hampshire this seventh day of November, 1989.

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NH.PUC*11/09/89*[51876]*74 NH PUC 446*New England Telephone and Telegraph Company, Inc.

[Go to End of 51876]

74 NH PUC 446

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,609

New Hampshire Public Utilities Commission

November 9, 1989

ORDER granting a motion for a protective order.

PROCEDURE, § 16 — Discovery and inspection — Protective order — Confidential information — Local exchange telephone carrier.

[N.H.] The commission granted a motion by a local exchange telephone carrier for a protective order where the motion conformed with the requirements for confidentiality set forth in a prior report and order.

By the COMMISSION:

REPORT ON THE NOVEMBER 2, 1989,
MOTION FOR PROTECTIVE ORDER

In this report and order we consider New England Telephone Company's (NET) November 2, 1989 motion for protective order. This order approves the motion with respect to all requests and applies the standards set forth in our report and order no. 19,536 (74 NH PUC 307 [1989]).

I. *The Motion*

On November 2, 1989, NET filed, pursuant to NH Admin. Code Puc 203.04 and report and order no. 19,536, a motion for protective order. This motion requests a protective order for the following items.

Data Responses

1. PUC Staff Set #6, Item 361
2. PUC Staff Set #6, Item 370
3. VOICE Set #2, Item 50
4. VOICE Set #3, Item 15
5. VOICE Set #3, Item 48
6. MCI Set #1, Item 109
7. Filing Requirement 1603.03(b)22

Concerning data request 361, NET only requests proprietary treatment for that portion of its response which discusses marketing efforts employed for its customer calling service and optional calling plans. In response to question 370, NET only requests confidentiality for the names of customers participating in seminars and courses and the associated fees.

II. Commission Analysis

The motion conforms with the requirements for confidentiality set forth in our report and order no. 19,536. Thus, we will allow the data responses to be protected under the procedures set forth in that order. For data responses 361 and 370, we grant confidentiality only for the marketing efforts for customer calling service and optional calling plans, and the names of customers participating in seminars and courses and the associated fees. We will reserve the rights of the parties and the public to move for production of this confidential information and for NET to object to such production.

Our order will issue accordingly,

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that NET's November 2, 1989 motion for protective order is granted.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 1989.

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NH.PUC*11/09/89*[51877]*74 NH PUC 447*Locke Lake Water Company, Inc.

[Go to End of 51877]

74 NH PUC 447

Re Locke Lake Water Company, Inc.

DR 89-205
Order No. 19,610

New Hampshire Public Utilities Commission

November 9, 1989

ORDER directing a water utility to appear and show cause why the commission should not open a docket to investigate the reasonableness of its rates.

RATES, § 32 — Powers of state commissions — Investigation of reasonableness — Show cause order — Water utility.

[N.H.] A water utility that appeared, based upon an analysis of its annual report, to be earning an excessive rate of return was directed to appear and show cause why the commission should not open a docket to investigate the reasonableness of its rates.

By the COMMISSION:

ORDER

On or about March 31, 1988 Locke Lake Water Company, Inc. (Locke Lake) submitted its 1988 Annual Report; and

WHEREAS, staff analysis indicated Locke Lake was earning a rate of return of 21.33%; and

WHEREAS, in its most recent rate case Locke Lake was authorized to earn a rate of return of 11.25% (see Docket DR 85-287, order no. 18,300 [71 NH PUC 362 (1986)]); and

WHEREAS, by letter dated September 12, 1989 Locke Lake was requested to inform staff of the New Hampshire Public Utilities Commission of any unusual circumstances that would justify such earnings and which would negate the need for a proceeding to examine a rate reduction; and

WHEREAS, Locke Lake's attorneys have responded to said request indicating that they believe the company is entitled to more compensation; and

WHEREAS, the company has not filed a rate case for said purpose; it is hereby

ORDERED, that Locke Lake and its officers appear before this commission on the eleventh day of December, 1989 at ten o'clock in the forenoon to show cause why the commission should not open a docket to investigate whether the rates and charges currently demanded by Locke Lake are unjust and unreasonable pursuant to the provisions of RSA 378:7.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 1989.

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NH.PUC*11/15/89*[51878]*74 NH PUC 447*Claremont Gas Corporation

[Go to End of 51878]

74 NH PUC 447

Re Claremont Gas Corporation

DR 89-185
Order No. 19,611

New Hampshire Public Utilities Commission

November 15, 1989

ORDER requiring a propane distributor to resubmit its winter cost of gas adjustment filing and imposing fines for failure to comply with filing requirements and commission directives.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 59 — Practice and procedure — Filing requirements — Compliance with commission directives — Fines and penalties — Cost of gas adjustment.

[N.H.] A propane distributor that missed the deadline for filing its winter cost of gas adjustment and failed to comply with directives concerning the appropriate conversion factor, and lost and unaccounted for gas factor to be used in calculating its cost of gas adjustment rate was advised of state statutes that permit the imposition of civil fines and criminal penalties

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for failure to comply with commission directives and filing requirements. p. 448.

2. FINES AND PENALTIES, § 6 — Grounds for imposition — Violation of commission orders — Noncompliance with filing requirements — Propane distributor.

[N.H.] A propane distributor that failed to comply with cost of gas adjustment clause filing requirements and failed to comply with directives concerning the appropriate conversion factor, and lost and unaccounted for gas factor to be used in calculating its cost of gas adjustment rate was fined $1000; moreover, the company was warned that it would be fined an additional $100

for each day beyond November 30, 1989 that it remained in noncompliance. p. 448.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Cost of gas adjustment — Lost and unaccounted for gas — Propane distributor.

[N.H.] In a cost of gas adjustment proceeding, a propane distributor was directed to file with the commission outstanding lost and unaccounted for gas reports and to file a study that determines the proper amounts of lost and unaccounted for gas to be charged to utility and nonutility operations. p. 448.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 53 — Cost of gas adjustment — Over/undercollections — Propane distributor.

[N.H.] In a cost of gas adjustment proceeding, a propane distributor was directed to file with the commission outstanding (over)/undercollection reports. p. 448.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 23 — Cost of gas adjustment — Storage — Propane distributor.

[N.H.] In a cost of gas adjustment proceeding, a propane distributor was directed to meet with commission staff to discuss the appropriate level of compensation for propane storage. p. 448.

APPEARANCES: Joseph Broomell for the Company; Eugene F. Sullivan, III, Esquire, Mary Jean Newell, Assistant Finance Director and George McCluskey, Utility Analyst, for the Commission.

By the COMMISSION:

REPORT

I. Procedural History

On October 5, 1989, having no Cost of Gas Adjustment filing, commission staff wrote to the Claremont Gas Corporation (Claremont or the Company) to remind them of the commission's October 1 deadline for said filings and asked for the submission by October 11, 1989.

On October 9, 1989, the commission issued an Order of Notice in the absence of a filing directing the Company to make its filing by October 13, 1989.

On October 16, 1989 Claremont Gas Corporation, a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission certain revisions on 125th Revision, Page 12-2, Superseding 124th Revision Page 12-2 N.H.P.U.C. No. 9 — Gas tariff providing for a 1989/1990 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1989. The Cost of Gas Adjustment is a surcharge credit of $(0.0758) per therm excluding the franchise tax.

At a hearing held on October 27, 1989, the commission heard evidence on the following issues; missed reporting requirements; missed filing due dates; noncompliance with commission orders; propane storage service; combined utility and non-utility gas records.

II. Commission Analysis

[1-5] Docket DS 81-277, order no. 15,138 (66 NH PUC 378) dated September 30, 1981 discusses various reports required by this commission. In that order Claremont was fined for failure to file up to date reports and the commission imposed an additional fine for failure to file monthly reports for June and July, 1981.

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N.H. Admin. Rules, Puc 509 lists all of the forms required to be filed by all gas utilities. In light of said requirement the Company is advised again of the following New Hampshire laws;

> RSA 374:15 Filing. Every public utility shall file with the commission reports at such times, verified by oath in such manner, and setting forth such statistics and facts, as may be required by the commission.
>
> RSA 374:17 Neglect to Report. If any public utility shall neglect or refuse to make and file any report within a time specified by the commission, or shall neglect or refuse to make specific answer to any question lawfully asked by the commission, it shall forfeit to the state the sum of one hundred dollars for each day it shall continue to be in default with respect to such report or answer, unless it shall be excused by the commission from making such report or answer, or unless the time for making the same shall be extended by the commission.
>
> RSA 365:41 penalty, Against party. Any public utility which shall violate any provision of this title, or fails, omits or neglects to obey, observe or comply with any order, direction or requirement of the commission, shall be guilty of a felony.

In Docket DR 89-059, order no. 19,393, (74 NH PUC 141 [1989]) the Company was ordered by the commission to (a) submit a revised tariff utilizing the .915 conversion factor by May 5, 1989; (b) to comply with commission policy and file future cost of gas adjustments in a timely manner; (c) for purposes of the summer cost of gas adjustment period, to use an 8% factor for lost and unaccounted for gas; (d) to undertake a study to determine the proper amount to be charged to utility and non-utility operations; (e) to file monthly (over)/under collection reports and monthly lost and unaccounted for gas reports and the 1989 Summer Cost of Gas Adjustment reconciliation within two months of completion of the summer period; and (f) interest was applied at a rate of 10% on its (over)/under collection.

The Company did not comply with a major part of order 19,393. The Winter 1989-1990 Cost of Gas Adjustment was not filed in a timely manner. The initial filing was due on October 1, 1989. A letter from staff to the Company (October 5, 1989) as well as an order of Notice (October 9, 1989) was sent to remind the Company that the filing had not been received. The filing was received October 16, 1989, too late to meet the commission rules and regulations relating to the requirements for public notice.

The Company did not supply the Commission with a study to determine the proper amounts of lost and unaccounted for gas to be charged to utility and non-utility operations. It instead used an 8% factor in the instant filing without the benefit of a study. While the 8% factor is identical to that used by the Company in its previous Summer CGA tariff, it has no basis for support. It was the commission which directed the 8% factor in the earlier docket based on its

dissatisfaction with the Company's failure to produce an accurate accounting of this issue. It set the 8% factor on the basis that it was an average of the unaccounted for calculations of the other jurisdictional gas companies having similar characteristics. It did not, and does not, accept that factor as an appropriate proxy for this or any future proceeding.

In addition, the Company did not file monthly (over)/under collection reports and monthly lost and accounted for gas reports. Furthermore, the cost of gas adjustment tariff is not at the Claremont, New Hampshire office. That office was advised verbally by its owners that the cost of gas adjustment rate was a surcharge credit of $(0.1172) per therm. N.H. Admin. Rules, Puc 1601.02(b) requires that the tariff shall be kept readily available in each office where applications of service are received.

In order 19,393, the Company was put on notice that "In the future, the commission will not waive its rules so readily and ... that the commission will expect the Company to meet its requirements." The Company clearly failed to heed the commission's warning in the instant case. Pursuant to RSA 365:41, the commission will fine the Company one thousand dollars ($1000.00) for its failure to comply with the commission's Rules and Regulations Part 1600

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and commission order no. 19,393, and we give the Company until November 30, 1989 to file all of the outstanding reports that we require. The Company will be fined pursuant to RSA 374:17 one hundred dollars ($100.00) for each day thereafter that the Company continues to be in default. This latter fine shall be in effect if any outstanding items required in Order No. 19,393 have not been received by that date.

In response to staff questions Mr. Broomell stated that the Claremont affiliate, Synergy Corporation, a non-regulated propane retailer, obtained propane storage service from the utility. In return for this service Synergy paid the utility $200 per month, or about 0.3¢ per gallon withdrawn based on current annual usage. Based on the through-put rates charged by other utilities for the same type of service we find this rate to be below current market value. We will therefore order the company to meet with staff to discuss the issue of propane storage and a more appropriate level of compensation to be paid to the company by Synergy for use of the company's storage tank.

Furthermore, the Company purchased gas for both utility and non-utility operations; however, storage tanks are dedicated to each entity. It appears from the records on file at the commission and from data received in an audit that Claremont purchases propane from Synergy and carries the inventory for both the utility and Synergy's non-utility operation. The utility should not have to invest in inventory to supply gas to an affiliated non-utility company; especially when that affiliate has its own storage tanks. In the future Claremont will be required to carry its own inventory on its regulated books and the affiliated non-utility operation should finance its own inventory. There will also be separate accounting for each of those entities and proper allocations shall be made for any affiliated costs.

Finally, the tariff page submitted by the Company has an incorrect tariff page identification by using 125th Revision, Page 12-2 which is the Summer 1989 Cost of Gas Adjustment tariff page. The Tariff must be refiled with the correct revision identification.

Our order will issue accordingly.

ORDER

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

ORDERED, that 125th Revision Page 12-2, NHPUC No. 9-Gas, issued October 11, 1989 for effect November 1, 1989 is rejected; and it is

FURTHER ORDERED, that Claremont Gas Corporation must submit a revised tariff utilizing the correct tariff page identification, and a recalculation of the interest using the Prime Rate reported in the *Wall Street Journal* on the first day of the month preceding the first month of each quarter (re: Report and Order docket DR 88-41 Order No. 19,076 [73 NH PUC 196 (1988)]); and it is

FURTHER ORDERED, that Claremont Gas Corporation file the outstanding lost and unaccounted for gas reports with this commission on or before November 31, 1989; and it is

FURTHER ORDERED, that Claremont Gas Corporation file the outstanding monthly (over)/under collection reports with this commission on or before November 30, 1989; and it is

FURTHER ORDERED, that Claremont Gas Corporation file the study that determines proper amounts of lost and unaccounted for gas to be charged to utility and non-utility operations with this commission on or before November 30, 1989; and it is

FURTHER ORDERED, that Claremont Gas Corporation be fined one thousand dollars ($1,000.00) for the past defaults and one hundred dollars ($100.00) per day for each day after November 30, 1989 that the Company continues to be in default. This fine shall be in effect for any of the outstanding items listed in the foregoing report; and it is

FURTHER ORDERED, that Claremont Gas Corporation meet with staff to discuss the issue of propane storage and a more appropriate level of compensation; and it is

FURTHER ORDERED, that staff report to the commission in writing its findings in this matter prior to the summer cost of gas proceeding; and it is

FURTHER ORDERED, that Claremont Gas Corporation keep its utility and non-utility

purchases, inventories, and records separate and file accordingly with this Commission; and it is

FURTHER ORDERED, that Claremont Gas Corporation have tariffs at its Claremont, New Hampshire office as required by the N.H. Admin. Rules, Puc 1601.12(b); and it is

FURTHER ORDERED, that Claremont Gas Corporation resubmit its Cost of Gas Adjustment filing by November 29, 1989.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1989.

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[Go to End of 51879]

74 NH PUC 451

Re Tilton and Northfield Aqueduct Company

DE 89-197
Order No. 19,612

New Hampshire Public Utilities Commission

November 15, 1989

ORDER granting a motion to quash subpoenas served on commission employees.

WITNESSES, § 2 — Power to subpoena — Parties to commission proceedings — Depositions.

[N.H.] Subpoenas served by a party to a water franchise investigatory proceeding compelling commission employees to appear and give deposition testimony were quashed where (1) there did not appear to be any statutory authority for a party to a commission proceeding to independently compel persons to appear for depositions, (2) the subpoenas were not timely served, (3) the party serving the subpoenas did not demonstrate a compelling need for deposition testimony, (4) the subpoenaed employees asserted the attorney-client, attorney work product, and governmental privileges, and (5) two of the subpoenaes employees would be made available to testify at scheduled hearings.

By the COMMISSION:

ORDER

WHEREAS, on November 13, 1989, subpoenas issued by attorneys for Tilton and Northfield Aqueduct Company (Tilton & Northfield) were served on Robert Lessels and Eugene Sullivan, III, and on November 14, 1989 Eugene Sullivan, Jr. was informed that a subpoena was served on him, commanding their attendance at depositions to be held in Franklin at 9:00 a.m. on November 15, 1989; and

WHEREAS, Eugene Sullivan, Jr. is Finance Director of the New Hampshire Public Utilities Commission (PUC); Robert Lessels is a water engineer employed by the PUC; and Eugene Sullivan, III is one of the PUC's attorneys; and

WHEREAS, on November 14, 1989, the Attorney General of the State of New Hampshire filed Motions to Quash Deposition Subpoenas relative to these matters; and

WHEREAS, as the deposition cites RSA 516:4 as authority for issuing these deposition notices; and

WHEREAS, RSA 516:4 authorizes any justice or notary to issue writs for witnesses "to give

depositions in any matter or cause in which the same may be lawfully taken," and thus, the subpoenas are valid only if there is authority to compel depositions in proceedings before the PUC; and

WHEREAS, although RSA 365:10 and RSA 365:11 authorize the PUC to subpoena witnesses to appear in any proceeding or examination instituted before or conducted by it, there does not appear to be authority for a party to independently compel persons to appear for depositions; and

WHEREAS, even assuming that there exists authority for a party to issue subpoenas for depositions, subpoenas are subject to being quashed if they are unreasonable; and

WHEREAS, Superior Court Rule 38 provides that no notice to the adverse party of the taking of depositions shall be deemed reasonable unless served at least three days, exclusive of the day of service and the day on which they

are to be taken, and here, although the PUC's notice of hearing is dated October 31, 1989, the subpoenas were not served until November 13th and 14th for depositions to be held on November 15, thus, only one day's notice and two days notice, respectively, was given of the depositions; and

WHEREAS, Robert Lessels, Eugene Sullivan, Jr. and Eugene Sullivan, III are all public employees, the time and energies of public officials should be conserved for the public's business to as great an extent as may be consistent with the ends of justice in particular cases (*Gomez v. City of Nashua,* 126 FRD. 432 (D.N.H. 1989)); and

WHEREAS, Tilton and Northfield have not demonstrated a compelling need for deposition testimony of these public employees (*See Alex v. Jasper Wyman & Son*, 115 FRD 156, 158 (D.Me. 1986)); and

WHEREAS, Mr. Sullivan, III as an attorney for the PUC, has asserted the attorney-client privilege and the attorney work product privilege (*See* Superior Court Rule 35(b)(2); N.H. Rules Evid. 502); and

WHEREAS, Robert Lessels, Eugene Sullivan, Jr. and Eugene Sullivan, III also assert the governmental privilege protecting the mental process of government decision makers (*See Gomez, supra.*); and

WHEREAS, Robert Lessels and Eugene Sullivan, Jr. will be available to testify at the hearing scheduled on November 20 and Eugene Sullivan, III, given his role as PUC counsel, will not be available to testify; it is hereby

ORDERED, that the Attorney General's Motions to Quash Deposition Subpoenas are hereby granted and said subpoenas are hereby quashed.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1989.

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[Go to End of 51880]

74 NH PUC 452

Re Southern New Hampshire Water Company, Inc.

DE 88-187
Order No. 19,613

New Hampshire Public Utilities Commission

November 15, 1989

ORDER approving a special contract for water service.

SERVICE, § 191 — Water main extensions — Special contract — Burden of cost — Customer contributions — Additional customers.

[N.H.] The commission approved a special contract between a water utility and a developer whereby customers who took service after the developer had run the mains from which they took service were required to pay a contribution to the developer for his initial investment.

APPEARANCES: Larry Eckhaus, Esquire, on behalf of Southern New Hampshire Water Company, Inc.; Eugene F. Sullivan, III, Esquire, on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

This docket was initiated through a customer complaint concerning certain hook-up charges purportedly being charged by Southern New Hampshire Water Company, Inc. (Southern) to a company known as Leyfield Associates. Although said complaint was determined to be unfounded by both Southern and Leyfield Associates, it came to staff's attention that Southern had entered into a special contract with Leyfield Associates which had never been formally submitted to the commission.

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A hearing on the issue of the special contract was held on October 10, 1989. Both Southern and the Staff agreed that the situation was a special contract and that there were circumstances making a variation from the tariff just and reasonable under the circumstances.

II. *Findings of Fact*

Southern entered into a contract with Leyfield Associates in mid 1980's. That contract was

disapproved by the commission in Docket DR 85-245, Report and Order No. 18,444 (71 NH PUC 588 [1986]). Upon disapproval of that contract it was renegotiated between Southern and Leyfield Associates whereby Leyfield Associates, a developer, would receive certain refund provisions from homeowners or developers that hooked into the system after the line had been run out to the development being developed by Leyfield Associates.

Both Staff and the Company felt that it was just, reasonable and equitable for those people who came in after the developer had run the mains and took advantage of the mains to pay some contribution or refund to the developer for his initial investment. Although the tariff does not provide for such refunds, the Company has submitted revised tariff pages which would accommodate such situations in the future. In light of the Company's actions in revising its schedules, and the feeling of the commission that it is only equitable that an individual or developer taking advantage of a main paid for by another individual or developer pays some contribution towards the cost of running that main, we will accept the special contract.

Pursuant to RSA 378:18, a special contract shall be granted when special circumstances exist which render a departure from the general schedules just and reasonable. Based on the above discussion, the commission feels that those criteria have been met.

Our order will issue accordingly.

ORDER

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

ORDERED, that the special contract between Southern New Hampshire Water Company and Leyfield Associates is approved.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1989.

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NH.PUC*11/17/89*[51881]*74 NH PUC 453*Tilton and Northfield Aqueduct Company

[Go to End of 51881]

74 NH PUC 453

Re Tilton and Northfield Aqueduct Company

DE 89-197
Order No. 19,614

New Hampshire Public Utilities Commission

November 17, 1989

ORDER rescinding a prior order that had initiated an investigation into the franchise rights of a water utility.

CERTIFICATES, § 125 — Water — Franchise rights — Investigation of failure to serve.

[N.H.] The commission rescinded a prior order initiating an investigation into the franchise rights of a water utility where the motivation for the investigation was removed by the utility's agreement to provide service to a development within its franchise area.

By the COMMISSION:

On October 31, 1989 the Public Utilities Commission (commission) issued order no. 19,595 (74 NH PUC 429) which initiated an investigation into the franchise rights of the Tilton and Northfield Aqueduct Company (Aqueduct Company). On November 7, 1989 the Aqueduct Company filed a motion in which it requested the commission reconsider said order. This report and order will address said motion.

I. *History*

On September 28, 1989, the commission received a letter from the Aqueduct Company in

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which it enclosed a newspaper article indicating that a water district would be established in that area of Tilton, New Hampshire known as Lochmere through a settlement between a group of homeowners, the Department of Environmental Services (D.E.S.), represented by the Attorney General's Office, and an oil company which had allegedly contaminated the wells of said homeowners. The letter requested the position of the commission on the proposed settlement as it established a water district within the franchise area of the Aqueduct Company, and how the commission viewed the relationship between the Aqueduct Company and the proposed project. This was the first time the commission was made aware of the situation and immediately contacted the Attorney General's office to determine what was occurring and to assert the franchise rights of the Aqueduct Company.

The commission was informed by the Attorney General's office that officials of the D.E.S. had contacted the Aqueduct Company several months prior to the settlement and the company would not commit to serve. Correspondence from the Aqueduct Company states that the Aqueduct Company was given four days in order to commit to serve and justifiably felt this was not an adequate amount of time to analyze the situation.

The commission then requested through its staff, that a meeting be held between the parties at the Attorney General's office to discuss the possibility of the Aqueduct Company serving the Lochmere homeowners. A meeting was held with the representatives of the commission, the Aqueduct Company, the Attorney General's office and the D.E.S.

At said meeting the Aqueduct Company stated that it was willing to serve the Lochmere area if the financing plan to develop new sources of supply it had filed with the commission was accepted. The Attorney General's office stated that it must have a firm commitment within two (2) weeks of this meeting, for settlement purposes.

During the course of the next two weeks staff and the Aqueduct Company met but could not

come to agreement on the proposed financing plan.

The Attorney General's office notified the commission, approximately two weeks after the initial meeting with the aforementioned parties, that the Aqueduct Company had refused to serve the Lochmere area due to the commission's failure to accept their proposed financing. In response to the Attorney General's notification the commission on October 31, 1989 issued order no. 19,595.

Since the issuance of said order the Aqueduct Company, in a letter dated November 13, 1989, has agreed to serve the Lochmere area and through a meeting with staff, has agreed to withdraw its financing petition and work with the staff toward a more appropriate means of meeting its supply needs.

II. *Commission Analysis*

In light of the above, the commission will rescind order no. 19,595 as the company has agreed to serve Lochmere and work with the commission staff toward the goal of achieving a more appropriate financing plan to meet its source needs.

However, the commission directs the Aqueduct Company to appear at the commission offices at 8 Old Suncook Road, Concord, New Hampshire at 10:00 o'clock in the forenoon on the twentieth day of November, 1989 pursuant to RSA 374:4 to inform the commission as to whether or not the facts as stated above are correct and to commit to formulating a plan to meet the supply and service needs of its franchise area which shall be presented to the commission within two months of the date of this order.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Tilton and Northfield Aqueduct Company appear at the commission offices on the Twentieth of November, 1989 to comply with the attached report.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of November, 1989.

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NH.PUC*11/17/89*[51882]*74 NH PUC 455*Pennichuck Water Works

[Go to End of 51882]

74 NH PUC 455

Re Pennichuck Water Works

DR 87-224
Order No. 19,615

New Hampshire Public Utilities Commission

November 17, 1989

ORDER authorizing a water utility to implement a step increase for capital improvements.

RATES, § 595 — Water rate design — Special factors — Capital improvements — Step increase.

[N.H.] A water utility was authorized to implement a step increase for all capital improvements, exclusive of capital improvements associated with a special contract for service provided to a municipality; the commission scheduled a hearing on the issue of whether a further step increase was warranted for capital improvements associated with the special contract.

By the COMMISSION:

ORDER

On October 10, 1989 Pennichuck Water Works, Inc. (Pennichuck or company), submitted revisions to its tariff which would implement the second step provided for in commission report and order no. 19,213 in docket DR 87-224 (73 NH PUC 443 [1988]); and

WHEREAS, the proposed revisions to its existing tariff were to take effect on November 1, 1989; and

WHEREAS, on October 31, 1989 order no. 19,593 (74 NH PUC 427) was issued suspending the proposed revisions to the company's tariff; and

WHEREAS, the Consumer Advocate, Pennichuck and the staff met on November 1, 1989 to discuss a possible resolution of the issues in the step increase; and

WHEREAS, the parties agreed on all issues, except whether the commission, in approving Pennichuck's special contract with the Town of Milford in docket DR 87-167 report and order no. 19,127, intended that the company's investment associated with the contract be included in rate base; and

WHEREAS, in its filing made on October 10, 1989 in this docket, the company included the cost of the Milford line in its rate base, based on its interpretation of the commission's report and order no. 19,027; and

WHEREAS, staff and the Consumer Advocate disagree with this interpretation; and

WHEREAS, the parties have agreed that the company may implement a step increase for all capital improvements excluding the Milford line; and

WHEREAS, on November 17, 1989 the company filed revised tariff pages consistent with the agreement of the parties; it is hereby

ORDERED, that, the company's revised tariff pages numbered Sixteenth Revised Page 21, Nineteenth Revised Page 22, Fifth Revised Page 22-A, and Nineteenth Revised Pages 23 and 24, shall be effective for service rendered on and after November 1, 1989; and it is

FURTHER ORDERED, that the hearing scheduled in this docket for December 1, 1989 shall be limited to the consideration of the clarification of report and order no. 19,027 in docket DR

87-161; specifically: (1) whether or not the commission intended that the company's investment associated with its contract with the Town of Milford would be included in the company's rate base and if the commission determines that it intended such investment to be included in the company's rate base, the company will be entitled to a further step increase effective with all service rendered on and after November 1, 1989 consistent with the commission's report and order no. 19,213 in docket DR 87-224: or, (2) whether the commission intended that the company's investment associated with its contract with the Town of Milford would be excluded from the company's rate base: or, (3) whether the commission did not form such an intention with respect to inclusion or exclusion of rate base.

By order of the Public Utilities

Commission of New Hampshire this seventeenth day of November, 1989.

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NH.PUC*11/20/89*[51883]*74 NH PUC 456*New England Telephone of New Hampshire

[Go to End of 51883]

74 NH PUC 456

Re New England Telephone of New Hampshire

Additional parties: Contel of Maine, Steven Jacovino, and Corrine Jacovino

DE 89-208
Order No. 19,617

New Hampshire Public Utilities Commission

November 20, 1989

ORDER authorizing an in-state local exchange telephone carrier to initiate service to two persons actually residing within the territory of an out-of-state telephone carrier.

SERVICE, § 209 — Extensions — Local exchange telephone service — Extraterritorial service.

[N.H.] A New Hampshire local exchange telephone carrier was authorized to provide service to two customers residing in the service territory of Contel of Maine where all parties agreed with the arrangement, the United States Department of Justice did not object to the arrangement or express any federal antitrust concerns, the point of connection with customer-owned facilities would be in New Hampshire, and the service would be discontinued as soon as Contel of Maine is able to provide the customers with exchange telephone service from Maine.

By the COMMISSION:

ORDER

WHEREAS, Steven and Corrine Jacovino, Contel of Maine, New England Telephone Company of New Hampshire, (NET-NH) and the Maine Public Utilities Commission (the Parties) have reached agreement concerning the provision of telephone service by NET-NH to Steven and Corrine Jacovino, who reside within the service territory of the Continental Telephone Company of Maine; and

WHEREAS, for this agreement to become binding, the parties seek the approval of the New Hampshire Public Utilities Commission; and

WHEREAS, the United States Department of Justice does not object to the proposal or otherwise express any concern with respect to Federal Anti Trust considerations; and

WHEREAS, the point of connection with the customer owned facilities will be in New Hampshire and thus Steven and Corrine Jacovino will be considered customers of New England Telephone Company of New Hampshire; and

WHEREAS, this service will be for three years only and will be discontinued as soon as Contel can provide the customer with exchange telephone service from Maine; it is hereby

ORDERED, that the proposed establishment of service between Steven and Corrine Jacovino and New England Telephone Company of New Hampshire be and hereby is approved.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 1989.

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NH.PUC*11/28/89*[51884]*74 NH PUC 456*National Telephone Services

[Go to End of 51884]

74 NH PUC 456

Re National Telephone Services

DE 89-146
Order No. 19,619

New Hampshire Public Utilities Commission

November 28, 1989

ORDER imposing a fine on a telephone services company for unauthorized provision of intrastate, intraLATA telephone service.

Page 456

1. PUBLIC UTILITIES, § 10 — Regulation and control — Jurisdiction — State commission —

Incidental provision of intrastate, intraLATA telephone service.

[N.H.] A telephone services company that leased facilities for the operation of a communications system within the state of New Hampshire and charged customers for intrastate, intraLATA telephone calls was subject to the jurisdiction of the commission notwithstanding the fact that less than 2% of the calls carried by the company were intraLATA calls. p. 457.

2. FINES AND PENALTIES, § 7 — Grounds for imposition — Unauthorized operations — Intrastate, intraLATA telephone service.

[N.H.] A telephone services company that provided intrastate, intraLATA telephone services without a franchise or authorized rates was fined $1,500. p. 457.

APPEARANCES: Brad Mutschelknaus, Esquire, General Counsel of National Telephone Services; Eugene F. Sullivan, III, Esquire on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

I. *Procedural History*

On September 6, 1989 the Consumer Assistance Department of the New Hampshire Public Utilities Commission (commission) received the second complaint from a customer who had been charged for intrastate, intra-LATA telephone services by National Telephone Services (NTS). On September 20, 1989 the commission issued an order of notice setting a show cause hearing for October 10, 1989 requiring NTS to show cause why it should not be fined for failure to file for a franchise pursuant to RSA 374:22 and for rates pursuant to RSA Chapter 378 as it met the definition of a public utility as defined in RSA 362:2. Said hearing was subsequently continued to October 23, 1989.

II. *Position of the Parties*

NTS took the position that it was not a public utility pursuant to RSA 362:2 as it did not "own, manage, or operate communication plant or facilities in the State of New Hampshire" (Transcript p. 6). Relying on a Fourth Circuit opinion which held that it was not reasonable to separate interstate traffic for regulatory purposes from intrastate traffic where the calls appearing in the system were *de minimis*. NTS further argued that to the extent that if NTS ever completed any calls within the State of New Hampshire, it was always a very small number of calls or *de minimis* and thus not subject to commission jurisdiction. Staff took the position, based on the testimony of the company's witness, Heather B. Gold, that the company was a public utility pursuant to RSA 362:2 as Ms. Gold admitted that the company leased facilities for the operation of a communications system within the State of New Hampshire and further that the Fourth Circuit Decision in North Carolina was inapplicable here in New Hampshire as this was the First Circuit and the issue had never been decided by the United State Supreme Court.

III. *Findings of Fact*

[1, 2] Staff presented testimony which showed that the company had facilitated and charged customers for intrastate, intra-LATA telephone calls. In a late filed exhibit the company

provided the commission with evidence to the effect that up until the first of July the company did make and charge for intrastate, intra-LATA communications within the State of New Hampshire[1(5)] . Furthermore, in a letter from James F. Brian, Director of Regulatory Affairs for National Telephone Services, addressed to Mary Anne Lutz of the Consumer Assistance Department, the company admitted that less than 2% of NTS's calls originating in New Hampshire were intra-LATA.

The company indicated through the testimony of Ms. Gold that as of July 1, 1989 it had

installed technology that would prevent such occurrences from happening in the future. The late filed exhibit referred to previously, indicates that no intrastate, intra-LATA calls have taken place since July 1, 1989. (See Footnote 1).

IV. *Commission Analysis*

The commission finds that NTS when it provided intrastate, intra-LATA service in the State of New Hampshire, was subject to our jurisdiction. Specifically, RSA 362:2 states that "the term public utility shall include every corporation, company, association, joint stock association, partnership and person, their lessees...". As NTS leases equipment from others to provide service, it is subject to RSA 362:2, and, therefore, our jurisdiction. In regard to the company's argument concerning the Fourth Circuit Court's decision we find this inapplicable in the First Circuit. Furthermore, we disagree with any holding that would deprive this commission of jurisdiction over intrastate, intra-LATA telephone calls and the charges made therefore.

Inasmuch as NTS has violated the statutory provisions of New Hampshire Revised Statutes Annotated Chapters 362 through 378, the commission fines the company fifteen hundred dollars ($1,500) pursuant to RSA 365:.41.

We trust that NTS will prevent such franchise and rate infringements from occurring in the future.

Our order will issue accordingly.

ORDER

ORDERED, that National Telephone Services pay a fine of Fifteen Hundred Dollars ($1,500) for providing intrastate, intra-LATA service within the State of New Hampshire without submitting itself to the jurisdiction of the New Hampshire Public Utilities Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of November, 1989.

FOOTNOTE

1

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

Month	*Calls*	See letter of NTS dated
January	238	November 14, 1989.
February	224	
March	274	

April	316
May	311
June	220
July	0
August	0

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[Go to End of 51885]

74 NH PUC 458

Re Exeter and Hampton Electric Company

DE 89-131
Order No. 19,620

Re Concord Electric Company

DE 89-136
Order No. 19,620

New Hampshire Public Utilities Commission

November 29, 1989

ORDER dismissing, without hearing, petitions by electric utilities for waivers from winter termination rules.

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1. PROCEDURE, § 29 — Disposal of issues — Summary judgment.

[N.H.] The commission has authority to grant summary judgment when there is no genuine issue of material fact requiring formal hearing. p. 459.

2. PAYMENT, § 33 — Denial of service — Winter termination rules — Waiver — Electric utilities.

[N.H.] Petitions by electric utilities for waivers from winter termination rules were dismissed without hearing where (1) the utilities had been placed on notice that the grant of future waivers was unlikely, and (2) the commission found that it would be a waste of time

Page 458

to hold hearings on the petitions inasmuch as it had determined that waiver of winter termination rules would not be in the public interest. p. 459.

By the COMMISSION:

RULING ON STAFF'S MOTION FOR

SUMMARY JUDGMENT OR IN THE
ALTERNATIVE TO DISMISS THE
PETITIONS OF EXETER AND HAMPTON
ELECTRIC COMPANY AND CONCORD
ELECTRIC COMPANY FOR WAIVERS FROM
THE WINTER TERMINATION RULES

I. *Procedural History*

On August 2, 1989, Exeter and Hampton Electric Company filed for a waiver from N.H. Admin. Rules, Puc 303.08(k)(2), (3), (6) of the winter termination rules. Thereafter Concord Electric Company (the Companies) filed a similar motion.

On October 4, 1989, the commission issued report and order 19,554 in Docket DE 89-082 (74 NH PUC 372). In response to the commission's order in Docket De 89-082, the staff filed a motion for summary judgment or in the alternative to dismiss the petitions of the Companies for waivers from the winter termination rules. In response to staff's motions, the Companies filed motions in opposition to the Staff's motions and requested hearings on their requests for waivers from the rules in order to implement its electric service protection program (ESP).

II. *Commission Analysis*

[1, 2] In 1983, the commission issued supplemental order 16,656 (68 NH PUC 566) relating to winter termination policies and expressed an interest in considering requests for waivers when the waivers included serious alternatives. In response, the Companies requested and received such waivers for five (5) years in order to implement their ESP program.[1(6)]

The commission granted the last waiver in order no. 19,119 indicating at the time that the granting of future waivers was "unlikely" but that it intended to open a generic docket to review the winter termination rules.

On June 5, 1989, the commission opened a generic proceeding in Docket DE 89-082 to examine the winter termination rules. The stated purpose of that docket was to consider the efficacy, efficiency and justice of the winter termination rules and whether future waivers from the rules should be considered or the rules should be amended to allow for those programs which had been granted waivers in the past.

The commission issued said order to avoid the possibility of an oral rulemaking. The commission believed that it should either revise its rules to accommodate programs that had been granted waivers over such long periods of time or that such long-term waivers should no longer be allowed.

Between July and October, 1989, the parties conducted extensive discovery and technical conferences. In reliance on the information that was filed through said discovery and the information contained in the Consumer Assistance office files, the commission issued order no. 19,554 wherein the commission, based on the results of said information, rescinded its order establishing a procedural schedule and further closed docket DE 89-082 specifically stating that "the WTR [winter termination rules] as currently formulated operate in a fashion that is generally efficacious, administratively efficient and just and that has not caused undue hardship to individual utility customers."

On October 11, 1989, the staff of the commission filed a motion for summary judgment or in the alternative dismissal of the petitions of the Companies for waivers from the above-cited rules. Staff based its motion on the fact that the commission had found the winter termination rules as they currently exist to operate in a fashion that is efficacious, efficient and just. Staff further based its motion on the fact that the Companies had been put on notice in docket DE 88-111, order no. 19,119 that future waivers from the rules were "unlikely".

The Companies' objection to staff's motion for summary judgment was based on the

fact that there was a material issue of fact and that staff could not prevail as a matter of law. The Companies further asserted that the commission's position in its order in docket DE 89-082 closing said docket was not dispositive of this case.

In New Hampshire, summary judgment exists primarily to expedite litigation by allowing the adjudicative body to "pierce the pleadings and assess the proof ... in order to determine [whether] there is a genuine issue of material fact requiring a formal ... [hearing] ... of the action". *Community Oil Company v. Welch,* 105 N.H. 320, 321 (1964). "It is an excellent device to make possible the prompt disposition of controversy on their merits without a ... [hearing] ..., if, in essence, there is no real dispute as the salient facts or if only a question of law is involved". *New Hampshire York Company v. Titus Construction Company,* 107 N.H. 223, 224, 225 (1966). "The procedure merely obviates waste and accelerates an action already begun." *Chemical Insecticide Corporation v. State,* 108 N.H. 126 (1967). The purpose of summary judgment is to separate "what is formal or pretended in denial or averment from what is genuine or substantial so that only the latter may subject a ... [party] ... to the burden of a ... [hearing] ...". *Nashua Trust Company v. Sardonis,* 101 N.H. 166, 168 and 169 (1957).

The commission finds that based upon the above stated principles of law there is no genuine issue of material fact in this case. The commission has made its findings in docket DE 89-082, order no. 19,554. Furthermore, the Companies were put on notice during last year's proceedings in docket De 88-111, (Order No. 19,119), that future waivers are unlikely. To hold a hearing on this issue would merely result in a waste of the commission's and the parties' time. The commission's decision not to amend its rules when it has fully examined the ESP program during the past five years and the generic docket opened to investigate a change to the winter termination rules, has closed the issue. Thus, there is no need for a hearing on the issue.

Furthermore, in report and order no. 19,554, in docket DE 89-082, the commission set up a procedure by which companies could communicate with their customers in order for the commission to analyze whether or not programs, such as ESP, may in fact, be necessary and may, in fact, require a re-analysis. At this time, however, the commission does not think that such a waiver would be in the public interest to either the consumers or the utilities.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that staff's motion for summary judgment is granted and dockets DE 89-131 and DE 89-136 be and hereby are closed.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1989.

FOOTNOTES

[1]Concord Electric has only received such waivers since 1986.

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NH.PUC*11/30/89*[51886]*74 NH PUC 460*Chichester Telephone Company

[Go to End of 51886]

74 NH PUC 460

Re Chichester Telephone Company

DE 89-204
Order No. 19,621

New Hampshire Public Utilities Commission

November 30, 1989

ORDER suspending the custom calling services tariff of an independent telephone company pending receipt of corrected cost and revenue projections.

SERVICE, § 449 — Telephone — Customer calling — Tariff suspension — Independent telephone company.

[N.H.] The custom calling services tariff of an independent telephone company was

Page 460

suspended pending receipt of corrected cost and revenue projections.

By the COMMISSION:

ORDER

WHEREAS, on November 3, 1989, Chichester Telephone Company ("the Company") filed a petition under Tariff Supplement Number 1 to NHPUC No. 3, to offer Custom Calling Services, an entirely new service, for effect on December 2, 1989; and

WHEREAS, Staff investigation revealed a number of errors in the supporting analysis, concerning projected revenues and the forecast annual revenue requirement; it is hereby

ORDERED, that the following tariff pages of Chichester Telephone Company:

NHPUC No. 3 — Telephone, Tariff Supplement No. 1, Index, Third Revised Sheet 1
Section 3, Original Sheets 3B through 36.

be and hereby are suspended pending the receipt of corrected cost and revenue projections for the service.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 1989.

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NH.PUC*11/30/89*[51887]*74 NH PUC 461*New England Telephone and Telegraph Company, Inc.

[Go to End of 51887]

74 NH PUC 461

Re New England Telephone and Telegraph Company, Inc.

DR 89-202
Order No. 19,622

New Hampshire Public Utilities Commission

November 30, 1989

ORDER authorizing a local exchange telephone carrier to revise its tariff governing the provision of message telephone service to disabled persons.

RATES, § 534 — Message telephone service — Service to disabled customers — Tariff revision.

[N.H.] A local exchange telephone carrier was authorized to revise its tariff governing the provision of message telephone service (MTS) to disabled persons so as to extend a reduction in MTS dial-to-station rates to agencies that provide voice relay to certified residence customers.

By the COMMISSION:

ORDER

On November 1, 1989 New England Telephone ("the Company") filed a petition seeking to revise its NHPUC Tariff No. 75, Part A, Section 9, Third Revision of page 9, governing the provision of message telecommunications service for disabled persons; and

WHEREAS, the aforementioned tariff revision proposed to extend a reduction in message telecommunications service dial station-to-station rates to agencies which provide voice relay to certified residence customers; and

WHEREAS, the revenue effect from this filing will be de minimus; it is

ORDERED that the NHPUC Tariff No. 75, Part A, Section 9, Third Revision of page 9, be and hereby is approved.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 1989.

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NH.PUC*12/04/89*[51888]*74 NH PUC 461*Pennichuck Water Works, Inc.

[Go to End of 51888]

74 NH PUC 461

Re Pennichuck Water Works, Inc.

DF 89-194
Order No. 19,628

New Hampshire Public Utilities Commission

December 4, 1989

ORDER *nisi* authorizing a water utility to issue and sell unsecured debt.

Page 461

SECURITY ISSUES, § 44 — Authorization — Sale of unsecured debt — Water utility.

[N.H.] A water utility was conditionally authorized to issue and sell $3 million in unsecured debt, the proceeds from which would be used to pre-finance a new storage tank, mains, and equipment necessary to maintain efficient service in its franchise area and to refinance existing indebtedness.

By the COMMISSION:

ORDER

WHEREAS, on October 26, 1989 Pennichuck Water Company Inc. (the Company) filed with this commission for authority to issue and sell three million dollars ($3,000,000) of unsecured debt; and

WHEREAS, the Company has determined that is necessary to construct a new storage tank together with the mains and equipment, in order to maintain efficient service in its franchise area; and

WHEREAS, the Company plans to refinance $1,423,500 of existing indebtedness by

reducing an existing tax exempt bond, bearing a current interest rate of 10.25 percent, held by Indian National Bank, dated September 15, 1985, through the Nashua Industrial Development Authority; and

WHEREAS, the Company has obtained a loan commitment from General Electric Fleet Services in the total amount of $3,000,000; and

WHEREAS, the financing will be accomplished by the issuance of up to $3,000,000 of unsecured tax-exempt bonds by the Industrial Development Authority of the State of New Hampshire having a maturity date of 2019, with interest fixed for five years at an interest rate of 7.85 percent; and

WHEREAS, the bonds are subject to tender for purchase by the Company on December 1, 1994 and if the bondholder elects to tender the bonds for purchase, the Company may elect to remarket the bonds at its option for a period of one, five, ten, fifteen, twenty or twenty-five years before further adjustment in accordance with market conditions; and

WHEREAS, a portion of the proceeds will result in the pre-financing of a new storage tank and mains and equipment; and

WHEREAS, the estimated annual savings in interest costs will amount to $34,000; and

WHEREAS, the Commission finds that the proposed financing is in the public good; it is hereby

ORDERED *NISI*, that the Company may issue it's unsecured indebtedness in the amount of three million dollars to General Electric Fleet Services; and it is

FURTHER ORDERED, that the interest rate during the first 5 year term of the loan is to be 7.85%; and it is

FURTHER ORDERED, that the commission's approval of this financing shall not affect the necessity in docket DE 89-137 or any subsequent dockets dealing with the same issue for condemnation of land in order to construct a proposed water tower; and it is

FURTHER ORDERED, that the company may remarket its debt at the end of five years, and that the Company will be required to file a remarketing report with the Commission on a business day at least 48 hours prior to the time that each interest rate and term adjustment becomes effective; and it is

FURTHER ORDERED, that any interest earned on the pre-financed portion of the issue be applied to the cost of the project; and it is

FURTHER ORDERED, that the company publish this order in a newspaper having general circulation in that portion of the state which it serves; and it is

FURTHER ORDERED, that on or about January first and July first of each year the Company shall file with this commission a detailed statement duly sworn to by its treasurer showing the disposition of the proceeds of said indebtedness herein authorized until the whole of said proceeds have been accounted for; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard on this matter no later than December 11, 1989; and it is

FURTHER ORDERED, that this order

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NISI will be effective on December 12, 1989 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 fourth day of December, 1989.

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NH.PUC*12/05/89*[51889]*74 NH PUC 463*Gunstock Glen Water Works Company

[Go to End of 51889]

74 NH PUC 463

Re Gunstock Glen Water Works Company

DE 89-067
Order No. 19,629

New Hampshire Public Utilities Commission

December 5, 1989

ORDER *nisi* authorizing a water utility to reorganize its business structure by transferring its franchise, works and system to new corporate entity that would commence business as a public utility in the area presently served by the transferor.

CONSOLIDATION, MERGER, AND SALE, § 18 — Approval — Water utility.

[N.H.] A water utility was conditionally authorized to reorganize its business structure by transferring its franchise, works and system to new corporate entity that would commence business as a public utility in the area presently served by the transferor.

By the COMMISSION:

ORDER

On March 9, 1989, Gunstock Glen Water Co., a proprietorship, filed a petition pursuant to RSA 374:30 seeking authority to transfer its franchise, works and system to the Gunstock Glen Water Company, Inc.; and

WHEREAS, on May 15, 1989, the commission issued order no. 19,405 (74 NH PUC 163) approving said request *NISI*; and

WHEREAS, the company failed to publish said order; and

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

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

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit a written request for a hearing in this matter no later than December 29, 1989; and it is

FURTHER ORDERED, that Gunstock Glen Water Co. effect said notification by publication of an attested copy of this order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than December 19, 1989 and designated in an affidavit to be made on a copy of this order and filed with this office on or before January 4, 1990. In addition, individual notice shall be given to all known current and prospective customers by serving a copy of this order to each by first class U.S. Mail, postage prepaid and postmarked on or before December 19, 1989; and it is

FURTHER ORDERED, *NISI* that Gunstock Glen Water Company is authorized to reorganize its business structure by transferring its franchise, works and system, used and useful, to Gunstock Glen Water Co., Inc.; and it is

FURTHER ORDERED, that Gunstock Glen Water Company is hereby authorized to discontinue operations as a public utility; and it is

FURTHER ORDERED, that Gunstock Glen Water Company, Inc. is hereby authorized to commence business as a public utility in limited area of the Town of Gilford, presently served by the Gunstock Glen Water Co. as granted in DE 74-100 and Order No. 11,583 (59

NH PUC 290 [1974]).

FURTHER ORDERED, that such authority shall be effective on January 4, 1990 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 fifth day of December, 1989.

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NH.PUC*12/05/89*[51890]*74 NH PUC 464*Public Service Company of New Hampshire

[Go to End of 51890]

74 NH PUC 464

Re Public Service Company of New Hampshire

DF 89-195
Order No. 19,631

New Hampshire Public Utilities Commission

December 5, 1989

ORDER authorizing an electric utility to arrange for the issue and sale of pollution control revenue bonds and to take all action necessary for such issuance, including entry into a loan agreement with the New Hampshire Industrial Development Authority.

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1. SECURITY ISSUES, § 44 — Authorization — Factors considered — Public utility financings

[N.H.] In considering a financing request under RSA 369, the commission must, in order to grant approval of an issuance of securities, first make a finding that the amount and objects of the proposed financing will be in the public good; in deciding whether or not a proposed financing is in the public good, the commission must examine whether the financing request is reasonably to be permitted under all circumstances of the case. p. 468.

2. SECURITY ISSUES, § 44 — Authorization — Factors considered — Tax-exempt financings.

[N.H.] Generally, tax-exempt financings by public utilities are to be encouraged, as such financings will lower the average weighted interest rate upon long-term debt; nevertheless, the commission must examine the reasonableness of all financings by a public utility, including tax-exempt financings. p. 468.

3. SECURITY ISSUES, § 58 — Purposes and subjects — Pollution control revenue bonds — Electric utility.

[N.H.] An electric utility was authorized to arrange for the issue and sale of pollution control revenue bonds and to take all action necessary for such issuance, including entry into a loan agreement with the New Hampshire Industrial Development Authority and the issuance and pledge to the trustee for the holders of the bonds of an equal principal amount of the utility's new general and refunding mortgage bonds; the utility was directed to notify the commission of the final pricing terms of the revenue bonds and to file a report on any remarketing terms before they become effective. p. 468.

APPEARANCES: Sulloway, Hollis & Soden by R. Carl Anderson, Esquire, and Gerald M. Eaton, Esquire, for Public Service Company of New Hampshire; Michael W. Holmes, Esquire, and Joseph W. Rogers, Esquire, for the Office of the Consumer Advocate; Eugene F. Sullivan, Finance Director, for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On October 27, 1989, Public Service Company of New Hampshire ("PSNH" or "Company") filed its "Petition for Authority (i) to Issue up to $112,500,000 of Securities in Connection with a

(ii) in connection with said PCRB Financing to Refund up to $112,500,000 of outstanding Secured Term Loans." The Commission issued an Order of Notice on November 2, 1989, which *inter alia*, required newspaper publication by PSNH of the Order of Notice not later than November 9, 1989 and set a hearing for November 22, 1989. Evidence of said publication was filed by the Company in this docket on November 22, 1989.

The Commission held a hearing on the Petition on November 22, 1989, at which one witness for the Company testified and 12 exhibits were introduced into evidence. The Company witness was its Senior Vice President-Finance and Treasurer, George Branscombe.

The Company filed an Amendment to Petition on November 20, 1989. The Commission accepted the amendments, which did not broaden the scope of the hearing, at its November 22 hearing. Hereinafter, references to the petition will be to the Petition, as amended by the Amendment to Petition.

Summary of the Petition

In its Petition, PSNH is seeking authority pursuant to RSA 369:1-4 to allow it to receive the proceeds of the issuance of up to $112,500,000 Solid Waste Disposal and Pollution Control Revenue Bonds (the "Revenue Bonds") by the New Hampshire Industrial Development Authority ("IDA").

Subject to compliance with applicable provisions of federal and state law, the IDA may issue tax-exempt bonds to finance the construction of "qualifying facilities" by private corporations. Interest on such bonds is exempt from the federal income tax, except for certain alternative minimum taxes, and is also exempt from certain state taxes, and, accordingly, the interest rate on tax-exempt bonds will be lower than the rate would be if interest on the same bonds were "taxable."

The IDA will loan the proceeds of the issuance of its Revenue Bonds to PSNH to reimburse PSNH for prior expenditures on "qualifying facilities" at Seabrook Station Unit 1, consisting of certain solid waste disposal and pollution control facilities, as detailed in Exhibit 10. The obligation of the Company to repay the IDA will be contained in a loan agreement between the IDA and the Company and will be evidenced and secured by a new series of the Company general and refunding mortgage bonds up to $112,500,000 in principal amount (the "New G&R Bonds"). The payment terms of the New G&R Bonds will mirror all of the payment terms of the Revenue Bonds. The IDA will assign to the trustee of the Revenue Bonds (for the benefit of the holders thereof) the repayment obligation of PSNH to the IDA. Repayment of the Revenue Bonds will not be the obligation of the IDA or the State of New Hampshire. Instead, the New G&R Bonds will be the source of payment and security for the Revenue Bonds.

After using the proceeds of the Revenue Bonds to reimburse itself for its expenditures on the "qualifying facilities" at Seabrook Station, the Company will then apply all of the reimbursed funds toward refunding certain outstanding variable rate secured loans (the "Secured Term Loans").

The Secured Term Loans to be refunded are the following loans, each of which were authorized by the Commission's Report and Order No. 17,766, issued on July 19, 1985 in DF 85-234 (reported at *Re PSNH*, 70 NH PUC 658 [1985]):

(a) $22,500,000 principal amount owing to certain domestic bank lenders, for which Morgan Guaranty Trust Company of New York and The First National Bank of Boston are agents (the "Domestic Term Loan");

(b) $45,000,000 principal amount owing to certain "Eurodollar" lenders, for which Orion Royal Bank Limited is agent (the "Eurodollar Term Loan"); and

(c) $45,000,000 principal amount owing to PruLease, Inc. under a nuclear fuel lease and security agreement (the "PruLease Financing").

Each of the Secured Term Loans bears interest either at the "base" (or "prime") rate of The First National Bank of Boston plus 1/4% or at the London Interbank Offered Rate (LIBOR) plus 1.75%. The average weighted interest rate

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on the Secured Term Loans was 10.78% as of October 1, 1989 (Exhibit No. 1, p.5).

Since January 28, 1988, the Company has been a debtor in possession in a reorganization case under Chapter 11 of the federal Bankruptcy Code (the "Chapter 11 Case") pending before the United States Bankruptcy Court for the District of New Hampshire (the "Bankruptcy Court"). Pursuant to an order entered on April 25, 1988 by the Bankruptcy Court, PSNH has been making current interest payments on all its loans secured either by its First Mortgage or its General and Refunding Mortgage Indenture. (Exhibit 1, p.14). Because the Secured Term Loans are secured by a pledge of the Company's Series H General and Refunding Mortgage Bonds, the Company has been paying current monthly interest on the indebtedness evidenced thereby. Subject to the lien of the Company's First Mortgage, the Company's General and Refunding Mortgage Indenture dated as of August 15, 1978, encumbers, subject to the exceptions contained therein, substantially all of the Company's present and future property, tangible and intangible, including franchises.

The terms of the Revenue Bonds (and the corresponding terms of the New G&R Bonds) are to be as follows:

Principal Amount: Up to $112,500,000

Interest Rate: For the initial Rate Period of 3 years, the Bonds will bear interest at a variable rate equal to a percentage (not greater than 86%) of the Prime Rate of Shawmut Bank, N.A., Trustee (the "Prime Rate") in effect from time to time during the initial Rate Period. Said percentage will be determined at the time of pricing and not be greater than 86%.

Thereafter the Bonds will bear interest for a period of one year or multiples of one year at either a fixed rate for that period or a variable rate equal to a percentage of the Prime Rate in effect from time to time for that period. The company will elect the duration of the Rate Period(s) and whether the interest rate for a particular Rate Period

will be fixed or variable. The fixed rate and the variable rate as a percentage of the Prime Rate will be determined at the beginning of each Rate Period by a remarketing Agent selected by the Company.

The rate for any Rate Period, including the initial Rate Period, may not exceed 14%.

Interest Payment Dates: Semiannual payments on June 1 and December 1, when the interest rate is fixed, and monthly on the first business day of each month when the interest rate is variable.

Maturity: December 1, 2019

Price: 100%

Sinking Fund: None

Optional Redemption: The Bonds will be subject to Optional Redemption in whole or in part at par plus accrued interest on the first day of each new Rate Period. The Bonds will also be subject to Optional Redemption at certain prices not in excess of 102% of par plus accrued interest during Rate Periods with a duration of more than 5 years.

Security: New G&R Mortgage Bonds

Reorganization Modification of Security Option: If the General and Refunding Mortgage Indenture under which the New G&R Bonds will be issued is cancelled or modified as part of a confirmed plan of reorganization then, on the effective date of the confirmed plan, the Company may substitute for the New G&R Bonds a like principal amount of mortgage bonds which are given to the other holders of G&R Bonds or, if mortgage bonds are not given to other holders of G&R Bonds, the Company may substitute for the New G&R Bonds a like principal amount of mortgage bonds as to which the book value of the assets securing such bonds is at least 1.5 times the total amount of indebtedness secured by such assets. The substitute bonds must be identical to the New G&R Bonds in amount, maturity, redemption and interest payment terms.

Reorganization Call Right: On the effective date of a confirmed plan of reorganization in the Company's Chapter 11 Case (and within 90 days thereafter), the PCRBs may be redeemed at par.

We will further discuss the proposed terms

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of the Revenue Bonds in the "Commission Analysis" section of this Report. We will refer to this proposed financing as the "Revenue Bond Financing."

Position of the Parties

A. *The Company's Position.* In his prefiled testimony (Exhibits 1 and 2) and in his testimony at the November 22, 1989 hearing, Mr. Branscombe emphasized two principal benefits of the proposed tax-exempt Revenue Bond Financing: first, the long-term benefits of lower costs resulting from financing $112.5 million on a tax-exempt basis, and, second, a reduction in current interest costs estimated at $164,000 per month during the pendency of the Chapter 11

Case. Mr. Branscombe stated that in the Company's view these benefits more than offset incurring expenses of issuance of $2,161,250, which the Company estimated as follows:

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

Fee of Underwriter:	$1,657,500
Fees of Trustees:	$ 25,000
Fee of N.H. Industrial Development Authority:	$ 93,750
Legal Services:	$ 345,000
Miscellaneous:	$ 10,000
Total	$2,161,250

Mr. Branscombe testified that the Company's estimate of the present value of maintaining $112.5 million of its capital structure on a "tax-exempt" basis, as compared to on a "taxable" basis, was approximately $20,000,000, discounted at 10%, measured from the end of the initial 3 year Rate Period to maturity (27 years). He further testified that all objections to the proposed Revenue Bond Financing raised by the parties to the Chapter 11 Case had been resolved, and this indicated that the parties to the Chapter 11 Case agreed that the proposed transaction was economically justified. On November 27, 1989, the Company filed as late-filed Exhibit 13 the Order of the Bankruptcy Court dated November 27, 1989 which approved the proposed transaction.

With respect to reduced interest costs during the pendency of the Chapter 11 Case, Mr. Branscombe gave the following example. He testified that the proposed underwriter had advised the Company that it expects the percentage of the Prime Rate (which will determine the variable rate in effect during the initial 3 year Rate Period ending November 30, 1992) to be in the range of 75% to 86% of the Prime Rate at the time of pricing, based upon current market conditions. He testified that the effective weighted average interest rate on the Secured Term Loans (the "Composite Rate") was 10.78% as of October 1, 1989. Assuming that (1) the Composite Rate and the Prime Rate remain at their respective October 1, 1989 levels of 10.78% and 10.50% at time of pricing and continue unchanged thereafter and (ii) that the Revenue Bonds are issued at 86% of said Prime Rate, resulting in an interest rate of 9.03%, then monthly interest costs during the course of the Chapter 11 Case would be reduced $164,062 per month. Using the same assumptions, if issuance costs did not exceed the Company's estimate of $2,161,250, interest savings would cover issuance expenses in about 13-1/2 months after the Revenue Bonds were issued, if the Company remains in reorganization for that length of time.

B. *Position of Other Parties*

Neither the Staff nor the Consumer Advocate took a position on the Company's request in this proceeding. The Staff submitted a number of data requests which elicited further details regarding issuance costs and regarding the nature of prior expenditures by the Company on the "qualifying facilities." The Staff also questioned how "remarketing" would be supervised by the Commission. The Consumer Advocate cross-examined Mr. Branscombe regarding the fees of the underwriter and at the hearing had Mr. Branscombe confirm that the Secured Term Loans had no prepayment penalties. We will consider the propriety of "underwriting fees" and our supervision of future "remarketing" of the Revenue Bonds, in the "Commission Analysis" section of this Report.

Status of Other Approvals

Mr. Branscombe testified that the IDA approved the issuance of the Revenue Bonds at its November 14, 1989 meeting and that the Governor and Council will act on the recommendations of the IDA on December 6, 1989. (Exhibit 2, p.2) Approval of the proposed Revenue Bond Financing was obtained from the Bankruptcy Court on November 27, 1989. See late-filed Exhibit No. 13, filed by the Company on November 27, 1989.

Commission Analysis

[1-3] In considering a financing request presented under RSA 369, the Commission must, in order to grant approval of an issuance of securities, first make "a finding that the amount and objects of the proposed financing will be in the `public good'" *Appeal of Conservation Law Foundation,* 127 N.H. 606, 614, 507 A.2d 652 (1986). In deciding whether or not a financing is in the public good, the Commission must examine whether the financing request is "`reasonably to be permitted under all the circumstances of the case.'" *Id.,* quoting *Grafton Etc. Co. v. State,* 77 N.H. 539, 540, 94 A. 193, 194 (1915). In so deciding the Commission must also take "all interests into consideration." *Id.* quoting *Grafton, supra* at 542, 94. A. at 195.

Generally, tax-exempt financings by a public utility are to be encouraged, as such financings will lower the average weighted interest rate upon long-term debt. *See, Re New England Power Company,* 73 NH PUC 216 (1988), where a one and one-half percentage point (1-1/2%) differential was expected on a tax-exempt financing as against a "taxable financing." Mr. Branscombe testified that while issuance costs for "tax-exempt" financings are generally higher than for "taxable" financings, due to the need for further documentation and an opinion of nationally recognized bond counsel as to the securities, qualification for tax-exempt treatment under the law, the present value of future interest savings would exceed such issuance costs many times over. While we agree that future interest savings will more than offset issuance costs, we must examine the reasonableness of such costs in all financings by a public utility, including "tax-exempt" financings.

In this case, the Company proposes to retain Goldman, Sachs & Co. to underwrite the issue of the Revenue Bonds to qualified investors on a firm commitment basis. The Company has negotiated an underwriting fee of 1.5% of the issuance amount, or $1,687,500 for an issue of $112.5 million of Revenue Bonds. Out of this amount, Goldman, Sachs must pay the fees and expenses of counsel to the IDA, its own counsel, and engineers who report on the "qualifying facilities" to bond counsel. The Company estimated these fees, which have been paid directly by the Company in previous tax exempt financings, at $200,000. (Exhibit 2, p.5) In addition, Goldman, Sachs is paying its own expenses.

Mr. Branscombe testified that the Company had not solicited competing bids, because there was inadequate time to do so, since the financing was required to close before the end of calendar year 1989. "Carryforward" allocations by the IDA (discussed further below) upon which the financing is principally based expire at the end of 1989. Mr. Branscombe further testified that he believed the fee to Goldman, Sachs was comparable in range to the private placement fee reached through bid solicitations in DF 89-133, where Bear, Stearns would be

paid a fee of 1.25% of the $50 million issue amount plus its expenses and fees and expenses of its counsel, subject to a limit of $150,000 upon such fees and expenses payable by the Company. *See Re PSNH,* 74 NH PUC 389 (1989) (Mr. Branscombe further testified that the refunding of the Company's $50 million Series E 18% G&R Bonds authorized in DF 89-133 was scheduled for closing on November 28, 1989, with the refunding being accomplished by $50 million series I 11% G&R Bonds.) The Company also submitted as Exhibit 8 a list of underwriting fees of Goldman, Sachs for utility pollution control issues during 1989. The "underwriting spread" for these issues ranged from .0375 to 1.750%.

The Company also proposes to retain Goldman, Sachs as its "remarketing" agent, subject to mutual agreement on the fee for remarketing. As set forth in our prior summary of the terms of the PCRBs, the Company may at the beginning of each "Rate Period" after the

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initial 3 year rate period, determine the length of the subsequent rate period in any multiple of one year up to the remaining number of years to maturity. Thus, the second rate period could range from 1 year to 27 years. After the duration of the "Rate Period" is established, the remarketing agent sets a new interest rate. Such new interest rate, which may not exceed a cap of 14% per annum, must be the rate which, in the determination of the remarketing agent, will result as nearly as practicable in the market value of the Revenue Bonds on the date of such rate determination having a value equal to 100% of the principal amount of the outstanding Revenue Bonds. The Company will determine whether the new interest rate will be a fixed or floating rate.

Prior to such interest rate determination, the holders of the Revenue Bonds must either (i) tender their bonds, in which case such holders will be paid the principal amount of the tendered bonds plus accrued interest up to the interest rate adjustment date, or (ii) give written notice that they intend to retain the Revenue Bonds, subject to the new term and new interest rate which will go into effect on the adjustment date.

Goldman, Sachs will be paid its expenses for remarketing and a fee based upon the principal amount of bonds tendered for payment and, consequently, "remarketed." Mr. Branscombe testified that the remarketing fee would vary depending upon the type of security and rate period selected by the Company for the next "Rate Period," as well as the degree of effort needed for the successful resale of the bonds. In current market conditions, he estimated that the fee would range between .5% and 1.5% of the bonds actually remarketed. Assuming the Company chose to remarket the Revenue Bonds in 1992 for an additional three year interest rate period, Mr. Branscombe estimated that the remarketing fee would be approximately 1.0% of the bonds actually remarketed (not the outstanding principal amount), subject to the mutual approval of the fee at that time by the Company and Goldman, Sachs as remarketing agent.

As in DF 89-133 and its other recent financings, the Company is seeking prior approval of the interest rate of the Revenue Bonds (and the corresponding rate of the New G&R Bonds pledged to the Trustee of the Revenue Bonds) up to a specified maximum. This method of proceeding avoids the need for a separate "pricing order," which would not become final for purposes of issuing valid securities until the twenty day rehearing period under RSA 541:3 has

expired without any motions being denied by the commission. *See Appeal of SAPL Part II*, 125 N.H. 708, 721 (1984). For the initial 3 year rate period, subject to an overall interest rate cap of 14% per annum, the variable interest rate will be equal to a percentage, not in excess of 86%, of the Prime rate of Shawmut Bank, N.A., the Trustee for the holders of the Revenue Bonds, in effect from time to time. Thus, if said Prime Rate is 10.50% at time of pricing, the beginning variable interest rate would not be greater than 9.03% per annum. The Company has agreed to submit to the Commission prior to the closing of the proposed Revenue Bond Financing a written report containing final pricing information. Such "pricing report" is to be submitted to the Commission and all parties to this Docket DF 89-195 on a business day at least 24 hours prior to the closing on a subsequent business day of the proposed Revenue Bond Financing.

The Staff has pointed out that the interest rate and term of the Revenue Bonds can be substantially changed at the beginning of each "Rate Period," subject to a maximum interest rate cap of 14% per annum. In essence, there is a "repricing" at the commencement of each subsequent "Rate Period". As discussed previously, the remarketing agent is required to set a new rate which will allow the Revenue Bonds to trade at par at the time of such rate determination. Accordingly, the setting of the new interest rate will be market driven. However, just as at the time of initial pricing, we believe the Company must advise the Commission, its Staff and other parties of the remarketing terms, including fees of the remarketing agent.

Given that remarketing will take place at future points in time, when the Staff and other parties will not likely have recently focused upon the terms of the Revenue Bonds, we will require that the Company file a "remarketing"

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report with the Commission, Staff and all parties hereto on a business day at least 48 hours prior to the time of each interest rate and term adjustment become effective. Said "remarketing report" must include the term of the new "Rate Period," the new interest rate and the terms of compensation of the remarketing agent. We note that we approved a tax-exempt financing with "remarketing" provisions in *Re New England Power Co., supra.* That financing set a limit of an interest rate not in excess of 14 percent on variable rates and not in excess of 10 percent for a permanent fixed interest rate.

We believe that it is desirable for the Company to utilize carryforward allocations of private activity bond limits which would otherwise go unused. In this regard, Mr. Branscombe testified that the proposed Revenue uses $97,000,000 of available 1986 carryforward allocations of private activity bond limits totaling $121,850,000, which expire at the end of 1989. (Exhibit 2, p.2). Without completion of the proposed Revenue Bond Financing, the full amount of these allocations would expire unused at the end of 1989. Generally, the State's annual limit for private activity revenue bonds of $150,000,000 is a valuable resource which is allocated by state law among the various competing constituencies for lower cost "tax-exempt" funding. See RSA 162-M. It is in the public good to utilize the State's private activity bond limit for each calendar year as fully as possible.

We also not that while interest savings during the pendency of the Company's Chapter 11 Case will not be as large on a monthly basis as in DF 89-133, the proposed Revenue Bond

Financing is structured to result in lower interest costs, while the Chapter 11 Case is pending. As noted, Mr. Branscombe estimated interest savings at approximately $164,000 per month, assuming that the initial variable rate was priced at 9.03% per annum.

However, we believe that the principal benefit of this financing is the lower interest rate in future years associated with tax-exempt debt, which benefit we discussed at the outset of our "Commission Analysis." Mr. Branscombe testified that he believed that upon its reorganization the Company will have long-term mortgage debt in its capital structure. We agree that it is preferable for as large a part of such debt to be supported on a tax-exempt basis as is possible. Mr. Branscombe further testified that in response to the requests of other reorganization plan proponents in the Chapter 11 Case, the terms of the proposed Revenue Bond Financing, as we have summarized them, give the Company and other plan proponents the option of leaving the Revenue Bonds in place or refunding them. If left in place, the requirements of the "Reorganization Modification of Security Option," as previously summarized, would have to be met. If refunded, under present law a refunding could be completed on a tax-exempt basis, provided that necessary regulatory approvals were obtained. Such approvals would include approval by the IDA and the Commission of the terms of the refunding securities.

We conclude that in all the applicable circumstances it is in the public good for the Company to proceed with the proposed Revenue Bond Financing. As has become customary in financing approvals under RSA Chapter 369, we will state that our conclusion that this financing is for the public good does not carry with it a finding that the cost of the financing is reasonable for ratemaking purposes. *See e.g., Re PSNH,* 70 NH PUC 658, 663 (1985).

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 Chapter 369:1-4, the Commission finds that the proposed financing, upon the terms proposed, is consistent with the public good; and it is

FURTHER ORDERED, that pursuant to RSA 369:1, 3 and 4, PSNH be, and hereby is, granted the authority to arrange for the issue and sale of $112,500,000 aggregate principal amount of Revenue Bonds payable more than 12 months after the date thereof with the terms of the Revenue Bonds set forth in the foregoing Report and to take all actions necessary for such issuance of Revenue Bonds, including but not limited to entry into a loan agreement with

the Industrial Development Authority of the State of New Hampshire and the issuance and pledge to the Trustee for the holders of the Revenue Bonds of an equal principal amount of the Company's New G&R Bonds payable more than 12 months after the date thereof with the terms set forth in the foregoing Report; and it is

FURTHER ORDERED, that pursuant to RSA 369:1-4, PSNH be, and hereby is, granted the authority to mortgage its properties and franchises as specified in the foregoing Report; and it is

FURTHER ORDERED that PSNH shall notify the Commission of the final pricing terms of

the Revenue Bonds on a business day at least 24 hours prior to the issuance and sale, on a subsequent business day, of the Revenue Bonds; and it is

FURTHER ORDERED that PSNH shall file with this Commission, and all other parties to this proceeding, a report of the "remarketing terms," as required in the foregoing Report, to be filed on a business day at least 48 hours prior to the time the "remarketing terms" become effective, said report to be filed in connection with each "remarketing" which may occur, as required in the foregoing Report; and it is

FURTHER ORDERED that PSNH file with this Commission a detailed statement showing the expenses incurred in accomplishing this financing; and it is

FURTHER ORDERED, that the proceeds from the issuance of the Revenue Bonds be used for the purpose of refunding the outstanding Secured Term Loans, as defined in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 1989.

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NH.PUC*12/07/89*[51891]*74 NH PUC 471*S/G Propane of New Hampshire, Inc.

[Go to End of 51891]

74 NH PUC 471

Re S/G Propane of New Hampshire, Inc.

DE 89-236
Order No. 19,633

New Hampshire Public Utilities Commission

December 7, 1989

ORDER opening a docket to investigate the operation of a propane/air gas system and directing the operator to immediately initiate all necessary steps to place its plant into full winter operating mode.

GAS, § 5 — Equipment — Propane/air gas system — Operational problems.

[N.H.] Where equipment problems associated with the operation of a propane/air gas system created doubt as to whether customer demand could be met, the commission opened a docket to investigate the operation of the system and directed the operator to (1) immediately initiate all necessary steps to place its plant into full winter operating mode, (2) provide round-the-clock manning of its plant to ensure that any further equipment malfunctions would be detected and corrected quickly, (3) provide daily briefings to the commission's engineering staff on the progress of corrective actions, and (4) perform a complete assessment of plant and equipment maintenance practices and provide the commission with a written report on improvements to be

made.

By the COMMISSION:

ORDER

This docket is opened by the Commission to investigate S/G Propane of New Hampshire, Inc.'s operation of the Claremont propane/air gas system. On December 5, 1989 the New Hampshire Public Utilities Commission was

notified by its Gas Safety Engineer that operational problems had occurred in the Claremont system of S/G Propane. Preliminary investigation revealed both equipment failures which prevent satisfactory operation of the plant and shortage of available propane supply.

The Gas Safety Engineer of the New Hampshire Public Utilities Commission has advised that additional shipments of propane on December 6, 1989 resolved the immediate supply problem, but equipment problems had not been resolved. The plant was unable to operate in its winter operating mode and the delivery of gas to customers was significantly limited by the summer operating mode. Additional deliveries were made by operating a manual backup system only after emergency repairs were made to the manual system itself.

This situation was confirmed by company representatives to the Commission's Chief Engineer on December 6, 1989. In spite of over 24 hours of intense effort by available company staff, the Commission's Gas Safety Engineer and others, the equipment problems appear to persist and it is impossible to predict whether satisfactory plant operation has been assured. There is a risk that customer demands may not be met.

Based on the foregoing, the Commission finds that an emergency situation exists.

In response to these conditions the Commission finds it appropriate to issue this Emergency Order to S/G Propane requiring immediate attention and corrective action as follows:

1. The Company shall immediately initiate all necessary steps to place the plant into full winter operating mode.

2. The Company shall provide round-the-clock manning of the plant by trained operating staff to ensure that any further malfunctions are detected and corrected quickly.

3. The Company management shall provide daily telephone briefings to the Commission's engineering staff on the progress of corrective actions.

4. Upon completion of immediate corrective actions, the Company shall perform a complete assessment of plant equipment and maintenance practices and provide a written report to the Commission no later than January 1, 1990 on the improvements to be made so that a recurrence of these emergency conditions is prevented.

5. The company shall appear at a hearing to be held on December 14, 1989 at 1:30 p.m. in the offices of the Public Utilities Commission, 8 Old Suncook Road, Concord,

New Hampshire to report on their resolution of the emergency situation and to show cause why they should not be fined in accordance with RSA 374:7-a.

6. The company shall provide notice to the public of the hearing by one time publication of this notice in a newspaper having general circulation in Claremont, New Hampshire no later than December 12, 1989.

7. The emergency round the clock manning and the daily telephone briefings shall be continued until the company is advised by the Commission's engineering staff that these measures may be discontinued because the plant has been returned to a normal winter operating condition.

By order of the Public Utilities Commission of New Hampshire this seventh day of December, 1989.

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NH.PUC*12/11/89*[51892]*74 NH PUC 472*Concord Electric Company

[Go to End of 51892]

74 NH PUC 472

Re Concord Electric Company

Additional petitioner: Exeter and Hampton Electric Company

DR 89-189
Order No. 19,634

New Hampshire Public Utilities Commission

December 11, 1989

ORDER approving the interruptible load programs and related standard contracts of two electric utilities.

RATES, § 322 — Electric rate design — Interruptible load programs — Standard contracts.

[N.H.] In approving the interruptible load

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programs and related standard contracts of two electric utilities, the commission found that the programs were an important first step in the implementation of cost-effective, least-cost integrated resource plans for the companies.

APPEARANCES: Elias G. Farrah, Esq. and Paul B. Dexter, Esq. for Concord Electric Company and Exeter & Hampton Electric Company; Eugene F. Sullivan III for the commission staff.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On October 16, 1989, Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter") filed a petition, and supporting testimony and exhibits of Mark H. Collin, pursuant to RSA 378:1 and 378:18, for approval of interruptible load programs and related standard contracts. Concord and Exeter ("the companies") also sought an expedited review by the Commission to allow them to begin offering standard agreements under the proposed Firm Interruptible Program and Special Interruptible Program to their largest customers by November 1, 1989.

On October 20, 1989, the Commission issued an Order of Notice scheduling a prehearing conference for October 31, 1989 and waiving the 13 day notice requirements of N.H. Admin. Code Puc § 201.05. Following the prehearing conference, the parties entered into a stipulation disposing of all issues in this case. On November 27, 1989, the commission held a hearing on the merits of the "Stipulation and Agreement" Exhibit 1).

II. *POSITIONS OF THE PARTIES*

Staff has developed a framework and methodology for evaluating the recent interruptible rate filings by three New Hampshire electric utilities (DR 89-171, Exhibit 4). Staff uses this framework and methodology to ensure that it consistently applies certain standards and principles in its review and evaluation of the utilities interruptible rate filings.

In reviewing Concord and Exeter's filings and supporting exhibits MHC-1, 2 and 3, staff took issue with only two aspects of the companies' proposal:

1. the use of an average loss adjustment factor on page 1 of exhibit MHC-3; and

2. the use of an annual average load factor on exhibits MHC-2 and 3 for determining the customer's eligibility to participate in the interruptible load program and for calculating the customer's contracted interruptible load and demonstrated interrupted load.

Other than these two issues, staff generally agreed with and supported the filing.

Subsequent to the prehearing conference, an additional minor issue emerged. During the prehearing conference on October 31, 1989, Concord and Exeter confirmed that the only metering capability necessary for eligibility in an interruptible load program approved and accepted by NEPOOL under NEPEX CRS-16 is a time-of-use meter capable of providing an hourly interval level listing. Staff proposed that the companies amend their proposed standard contracts (Attachments B, C, D and E, to exhibit MHC-3) to require commission approval if the cost of any additional metering, telemetering and/or automatic controls are to be borne by the participating customer.

III. *RECOMMENDATION OF THE PARTIES*

The parties recommend approval of Concord and Exeter's interruptible load program and related standard contract with credit of $76.40 per KW subject to the following three

modifications:

1. The Distribution Energy Loss Adjustment, as shown on Exhibit MHC-3, page 1 of 3, shall be increased to 9.45 percent reflecting an estimate of an appropriate marginal energy loss factor. This adjustment and

resulting changes are shown on a Revised Exhibit MHC-3, page 1-3.

2. In determining the customer's eligibility to participate in the interruptible load programs and for calculating the customer's Contracted Interruptible Load and Demonstrated Interrupted Load, a Peak Period Load Factor rather than an annual load factor shall be utilized. The peak period load factor shall be calculated as the individual customer's average load factor during the Companies' on-peak time periods in the billing months of January and August of the preceding program year. This modification and resulting changes are reflected on Revised Exhibits MHC-1 and -2.

3. The standard agreements shall be modified to provide for express commission approval of any additional payments required from customers for additional metering, telemetering as well as automatic control.

The recommendations of the parties also provide for filing and reporting requirements and a request for expedited approval.

IV. *COMMISSION ANALYSIS*

The commission believes that the development and offering of interruptible load programs and related standard contracts by Concord and Exeter an important first step in the implementation of a cost-effective, least cost integrated resource plan for the companies. We are impressed by their initial effort and encourage them to strive to achieve their goal of 3 MW of load which we acknowledge to be ambitious.

Pursuant to RSA 378:18, which controls this docket, the commission finds that the agreement among the parties embodied in the "Stipulation and Agreement" is well supported by the evidence; is just and reasonable and is in the public interest as required by RSA 378:18. We therefore accept it for resolution of this case.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Stipulation and Agreement of the parties be, and hereby is, approved effective as of December 1, 1989; and it is

FURTHER ORDERED, that the company will file compliance tariffs annotated in accordance with N.H. Admin. Code, pursuant to 1601.04 (6).

By order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1989.

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NH.PUC*12/11/89*[51893]*74 NH PUC 474*EnergyNorth Natural Gas, Inc.

[Go to End of 51893]

74 NH PUC 474

Re EnergyNorth Natural Gas, Inc.

DE 89-151
Order No. 19,635

New Hampshire Public Utilities Commission

December 11, 1989

ORDER authorizing a natural gas local distribution company to increase its controlled attachment policy ceiling.

SERVICE, § 339.1 — Gas — Conservation of supply — Controlled attachment ceiling.

[N.H.] A local distribution company (LDC) was authorized to increase its controlled attachment ceiling for new customers and for additional usage for existing customers from 50 Mcf per day to 100 Mcf per day; the commission found that an increase in gas supplies available to the LDC warranted an increase in the controlled attachment ceiling.

APPEARANCES: Jacqueline Fitzpatrick, Esq. for EnergyNorth Natural Gas, Inc. and Mary Hain, Esq. for the Public Utilities Commission and its staff.

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By the COMMISSION:

REPORT

I. *Procedural History*

On August 23, 1989 EnergyNorth Natural Gas, Inc. (Company), filed proposed revisions to NHPUC Tariff No. 1 — Gas, to be effective August 23, 1989. First Revised Page 24 would relieve prospective residential space and water heating customers of the need to provide a capital contribution for main extensions less than 100 ft. First Revised Page 34 would increase the Controlled Attachment Policy ceiling for new customers and for additional usage for existing customers from 50 Mcf per day to 100 Mcf per day.

On September 14, 1989 the commission issued order no. 19,532 setting a prehearing conference for October 17, 1989 to address procedural matters regarding the proposed tariff changes. On October 17, 1989 the company withdrew from consideration in this docket First Revised Page 24, stating that it intended to refile this revision at some later date along with more

general changes to the portion of its tariff contribution in aid of construction. Since there were no intervenors in the case the commission moved directly to address the merits of First Revised Page 34.

II. *Positions of the Parties*

A. EnergyNorth

The company's witness stated that the existing limit of 50 Mcf per day was set in the late seventies when the industry was going through a period of gas supply curtailment. Although EnergyNorth's supplies are no longer curtailed the company has, until recently, been unable to obtain new firm capacity, thus preventing an increase in the ceiling.

In 1984, the New England Customer Group (of which EnergyNorth is a member) entered into an agreement with Tennessee Gas Pipeline to construct new firm capacity. That agreement will provide the company with a 26 percent increase in daily deliverability beginning in the winter of 1989/90 as well as an increase in annual supplies. This enhanced deliverability has enabled the company to propose an increase in the controlled attachment ceiling.

With regard to the new proposed ceiling the company stated that it preferred to follow a conservative strategy designed to maximize its ability to meet its service obligations. A limit of 100 Mcf per day is considered to be consistent with that objective. However, the company did state its intention to petition the commission for a further increase in the ceiling if and when additional new pipeline supplies become available.

B. Staff

Staff agreed with the company that the improved supply situation warrants an increase in the controlled attachment ceiling and that 100 Mcf per day is a reasonable first step.

III. *Commission Analysis*

We find that the changed supply situation justifies a less restrictive limit on supplies for new demands. Moreover the proposed increase in the controlled attachment ceiling is just and reasonable and in the public interest. We will therefore approve the tariff change.

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 First Revised Page 34 be hereby approved.

By order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1989.

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Re Main Street Hydro Associates — Salmon Brook

DR 85-189
Order No. 19,636

New Hampshire Public Utilities Commission

December 11, 1989

ORDER rescinding a long-term rate order for an abandoned hydroelectric facility.

COGENERATION, § 24 — Rescission of rate order — Hydroelectric facility — Abandonment.

[N.H.] A long term rate order for a proposed hydroelectric facility was rescinded, upon notification to the commission that the project had been abandoned.

By the COMMISSION:

ORDER

WHEREAS, On May 31, 1985, Main Street Associates, Inc. (MSHA) filed a long term rate petition for its 90 KW Hydroelectric facility on the Salmon Brook in Nashua and submitted amendments to its filing on June 16, 1985, July 8, 1985 and July 26, 1985; and

WHEREAS, in order number 17,811, the petitioner was granted a 12 year rate order pursuant to *Re Small Energy Producers and Cogenerators*; 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, the long term rate filing specified a 1987 commercial online date; and

WHEREAS, on December 2, 1988, the commission staff received an updated status report signed by the developer stating that he had abandoned the project; it is therefore

ORDERED, that the approval of the long term rate petition for Salmon Brook be, and hereby is, rescinded.

By order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1989.

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NH.PUC*12/12/89*[51895]*74 NH PUC 476*Rosebrook Water Company, Inc.

[Go to End of 51895]

74 NH PUC 476

Re Rosebrook Water Company, Inc.

DF 89-065
Order No. 19,637

New Hampshire Public Utilities Commission

December 12, 1989

ORDER *nisi* authorizing water utility to borrow monies.

SECURITY ISSUES, § 44 — Authorization — Utility borrowing — Water utility.

[N.H.] A water utility was authorized to borrow $65,000 at an interest rate of 2% above the Bank of Boston prime rate for a five-year term, with payments of principle and interest monthly, and the financing to be secured by the utility's present and future property.

By the COMMISSION:

ORDER

WHEREAS, the Rosebrook Water Company, Inc. ("the Company") a water utility operating under the jurisdiction of this commission, by a petition filed April 21, 1989 seeks authority under the provisions of RSA 369:1 to borrow an amount not exceeding $65,000; and

WHEREAS, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the commission acts on this

petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit in writing a request for a hearing this matter no later than January 4, 1990; and it is

FURTHER ORDERED, that the company effect said notification by publication of an attested copy of this order once, in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than December 27, 1989; and designated in an affidavit notice shall be given to all current and prospective customers by serving a copy of this order to each by first class U.S. mail, postage prepaid, and postmarked on or before December 27, 1989; and it is

FURTHER ORDERED, *NISI* that the company be authorized pursuant to RSA 369:1 to borrow $65,000 at an interest rate of two percent above the Bank of Boston prime rate for a five-year term with payments of principle and interest monthly. Such financing to be secured by the Company's present and future property, tangible and intangible, including franchises as security for the borrowed funds; and it is

FURTHER ORDERED, that such authority shall be effective on January, 11, 1990, 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 December, 1989.

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NH.PUC*12/12/89*[51906]*74 NH PUC 521*New Hampshire Electric Cooperative, Inc.

[Go to End of 51906]

74 NH PUC 521

Re New Hampshire Electric Cooperative, Inc.

DR 89-245
Order No. 19,656

New Hampshire Public Utilities Commission

December 12, 1989

ORDER establishing a 5.5% rate surcharge for an electric cooperative.

RATES, § 630 — Temporary rate surcharge — Subject-to-refund conditions — Escrow account — Electric cooperative.

[N.H.] State statute RSA 362-C directed the commission to establish a 5.5% temporary rate surcharge for an electric cooperative, with the surcharge revenues held in escrow pending the filing of a rate plan and its approval by the commission; in the event that a permanent rate plan is not approved by the commission within 90 days following the date on which a bankruptcy plan for its wholesale supplier becomes effective, the cooperative must repay the escrowed funds.

APPEARANCES: Office of the Attorney General by Harold T. Judd, Esquire; Business and Industry Association by John J. Lahey, Esquire of Vena, Truelove & Lahey; New Hampshire Electric Cooperative by Stephen E. Merrill, Esquire of Merrill & Broderick; Office of the Consumer Advocate by Michael W. Holmes, Esquire; and Staff of the New Hampshire Public Utilities Commission by Wynn E. Arnold, Esquire.

By the COMMISSION:

REPORT

I. *Procedural History*

On January 28, 1988, Public Service Company of New Hampshire ("PSNH"), an electric public utility organized under the laws of the State of New Hampshire, filed a voluntary petition with the United States Bankruptcy Court, District of New Hampshire (the "Bankruptcy Court") for protection under Chapter 11 of the Bankruptcy Code and has since operated its business as a

debtor-in-possession under the protection of the Bankruptcy Court in Docket No. 88-00043.

On November 22, 1989, the Governor and Attorney General of the State of New Hampshire (State) and Northeast Utilities Service Company (NUSCO) executed an agreement which was amended on December 5 and December 12 of 1989 (the "Rate Agreement") and which establishes certain commitments by the State of New Hampshire and NUSCO relating to electric rates, energy supply and the reorganization of PSNH.

On November 28, 1989, the State of New Hampshire by and through the Attorney General filed with the commission a petition to place in effect as of January 1, 1990 a temporary rate increase for PSNH.

On November 28, 1989, the commission issued an order of notice in DR 89-219 that a hearing on the merits of the State's temporary rate petition would be held on December 18, 1989.

On December 14, 1989, the General Court of the State of New Hampshire duly convened in a special session and passed HB 1-FN, which establishes a new statute, RSA 362-C, directing the commission to establish temporary rate

increases of 5.5 per cent for PSNH and the New Hampshire Cooperative, Inc. (NHEC) effective January 1, 1990 and authorizing the commission to determine whether the Rate Agreement for PSNH is consistent with the public good and to take such action as may be appropriate to implement the Rate Agreement notwithstanding any other provision of law.

On December 18, 1989, the Governor of the State of New Hampshire signed HB 1-FN into law.

On Monday, December 18, 1989, the commission held a hearing in docket no. DR 89-219 to establish a temporary rate surcharge for PSNH pursuant to the enactment of RSA 363-C:4. Report and order no. 19,655 in docket no. DR 89-219 which is being issued simultaneous)y with our companion decision in this proceeding, orders PSNH, *inter alia*, to implement a temporary 5.5 percent surcharge effective for service rendered after January 1, 1990 subject to possible repayment. Report and order no. 19,655 also provides an extensive recitation of the background and procedural history of docket no. DR 89-219, including the recent enactment of RSA 362-C.

As noted above, RSA 362-C also directed the commission to establish a similar temporary rate surcharge for NHEC to be held in escrow pending the filing by NHEC of a rate plan and its approval by the commission. Because of this, the hearing held on December 18 which had been noticed by the commission to address the temporary surcharge for PSNH was expanded to include the merits of a temporary rate surcharge for NHEC. At the hearing held on December 18, the commission bifurcated the proceeding to separately address implementation of temporary rates for PSNH and NHEC and opened this docket no. DR 89-245 for the purpose of addressing temporary rates for the NHEC.

The parties and commission staff met extensively prior to the December 18, 1989 hearing and developed documents and agreements recommending procedures to implement the temporary rate increase for PSNH and NHEC. During the afternoon of the hearing on December 18 the State orally presented the parties' recommendations regarding NHEC tariffs, the escrow

account and agent, record-keeping and repayment requirements, the relationship between the temporary rate and NHEC's fuel adjustment charge, the bill insert, New Hampshire State tax and the Nuclear Decommissioning Financing Fund. The commission reserved exhibits for the filing of final documents.

In accordance with the representations of the Office of the Attorney General, on December 20, 1989, NHEC filed with the commission proposed revised tariff pages numbered 19, 20, 23, 25, 25A, 28, 29, 30, 31 and 33 of NHPUC No. 14 — Electric in order to implement the temporary rate increase. Also on December 20, the NHEC filed the following proposed accompanying materials:

1. Revised testimony of Frederick C. Anderson regarding the proposed rate increase with Attachment A showing the calculation of the proposed new tariff rates.

2. The NHEC Proposal for Escrow of Temporary Rates.

3. An explanation of the calculation of surcharge amount.

4. An explanation of the method of surcharge proration.

5. The language, for the insert to be included with all member's bills rendered during January 1990 and the language for the explanatory statement on each month's bill during which the surcharge in effect.

6. A copy of the SETTLEMENT TERM SHEET describing the agreement between Northeast Utilities and NHEC.

On December 22, NHEC filed its proposed "bingo sheet" (Exhibit 7) illustrating the effect of the temporary rate surcharge of the NHEC's annual revenues and the associated change in revenues derived for each rate class. The estimated increase in annual revenue is $2,505,264 including the N.H. Franchise Tax.

On December 21, the Office of the Attorney General filed with the commission a letter summarizing NHEC's filing of December 20 and anticipated filing of December 22 and recommending that NHEC's materials enumerated above be identified as Exhibits 1 through 7.

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Further, accompanying the Attorney General's letter of December 21, were the following proposed additional three exhibits:

Exhibit No. 8. A certified copy of RSA 362-C.

Exhibit No. 9. A copy of the letter of the State Treasurer accepting the appointment as escrow agent.

Exhibit No. 10. The "Agenda Letter" from the Office of the Attorney General, dated December 15, 1989 as amended to remove materials unrelated to NHEC.

An additional hearing on implementation of temporary rates for NHEC was held in this docket on December 27, 1989.

During this hearing, the parties summarized the materials that had been developed and filed in order to implement their recommendations. Two additional exhibits were identified at the

hearing:

Exhibit 11: Stipulated Recommendations of the Parties.

Exhibit 12: Tariff Supplement — Temporary 5.5 Percent Surcharge Effective January 1, 1990, Subject to Repayment.

Exhibit No. 1 was amended orally at the hearing to eliminate Attachment A and the question and answer at the top of page 5 of Mr. Anderson's testimony.

Also at the hearing, revisions to Exhibits 3, 4, 5 and 7 were agreed to and were identified as Exhibits 3A, 4A, 5A and 7A for refiling.

During the afternoon of December 27, 1989 Exhibits 3A, 4A, 5A, 7A, 11 and 12 were late-filed with the commission.

II. *Waiver of Notice Requirements*

As noted in the foregoing procedural history, the hearing held on December 18 in docket no. DR 89-219 was noticed for the purpose of establishing a temporary rate surcharge for PSNH. Subsequent to the commission's issuance of the order of notice, the pending legislation was amended to also require a temporary rate increase for NHEC to be made effective on January 1, 1990.

In view of the fact that the temporary rate increase is mandated by RSA 362-C:7, and because NHEC is a cooperative, i.e., owned by its constituents, and because the temporary rate increase is subject to repayment, we hereby waive the notice requirements of PUC 203.01.

We further note that the Board of Directors of NHEC through their counsel received notice of the proposed implementation of the 5.5 percent temporary increase.

We also have taken notice of the fact that the press release issued by the Executive Director on December 14 indicated that the hearing to be held on December 18 would also include the matter of temporary rates for NHEC.

III. *Recommendations of the Parties*

At the hearings in this docket held on the afternoon of December 8 and December 27, the Office of the Attorney General summarized and presented the recommendations of the parties which addressed the following issues:

A. Tariffs

On December 27, the parties amended their earlier recommendation regarding tariff pages and now recommend that the commission implement the temporary rate increase by inserting a new single page in NHEC's current tariff which would provide for a 5.5 per cent surcharge to current rates, exclusive of the currently effective fuel charge rate of 1.258¢ per kwh as well as miscellaneous charges for line extensions, service charges, late charges and transformer rentals. Exhibit 12.

Exhibits 3A and 4A contain an illustration of the methods prepared by NHEC for calculation of the surcharge amount and for prorating bills for service rendered on and after January 1, 1990.

B. Escrow Account

The parties filed recommendations for escrow of NHEC's temporary rate ("New Hampshire Electric Cooperative, Inc's proposal for escrow of temporary rates"). Exhibit 2.

These escrow recommendations provide that NHEC revise its billing programs for service rendered on and after January 1, 1990 to reflect the revised tariffs and calculate and transfer the revenues associated with the surcharge to the escrow account within 20 days after the last day of each month. Upon written notification by the commission that approval of a permanent rate plan has occurred, the escrow fund shall be disbursed to NHEC for inclusion in income and use by NHEC. After disbursement of the escrow fund to NHEC, the interest earned from the interest bearing accounts for such funds shall be applied by NHEC as a credit to NHEC's fuel surcharge mechanism then in effect.

In the event that a permanent rate plan is not approved by the commission within 90 days following the date on which a bankruptcy plan for PSNH becomes effective, NHEC shall repay such funds, when released by the escrow agent, as the commission shall by order direct.

The parties recommend that the Treasurer of the State of New Hampshire be designated as the escrow agent. The treasurer has accepted the appointment and has specified that the funds will be invested only in obligations of the United States Government by its agencies. Exhibit No. 8.

C. Record Keeping Requirements/Repayment.

Mr. Anderson's testimony filed on December 20 generally describes NHEC's plans for record keeping and repayment to ratepayers should that become necessary. Exhibit 1. It implicitly commits NHEC to making customer-specific refunds based upon actual amounts collected under the temporary surcharge. Any unclaimed funds associated with customers having left NHEC's system are proposed to be refunded through the fuel surcharge or turned over to Project Help.

D. Fuel Cost and Purchased Power Cost Adjustments

As noted previously, the parties have recommended that the temporary rate increase be implemented as a 5.5 percent surcharge on current rates, exclusive of fuel surcharges and miscellaneous revenues. Exhibit 12. As a consequence of NHEC's agreement not to apply the 5.5 percent surcharge to the fuel charge of 1.258¢/kwh, it has been recommended by the parties that NHEC may, upon approval by the commission, adjust its rates during the pendency of the hearing related to NHEC's proposed rate plan under the provisions of its tariff for Fuel Cost Adjustment and Purchased Power Cost Adjustment. Any over or under recoveries of fuel costs or purchased power costs for NHEC during the interim period will be reconciled in the normal course or as the commission shall direct in its final order resolving NHEC's permanent rate plan.

The parties also agreed that the test power at Seabrook during the pendency of the permanent rate proceedings will not reduce fuel costs; rather the impact of Seabrook will be reflected in fuel costs only after the regulatory in-service date of Seabrook.

E. Bill Insert

In its filing of December 27, NHEC submitted a proposed bill insert and wording for the bill message. Exhibit 5A. The bill insert will be included in the January bill. The temporary surcharge will be separately identified and the bill message will appear on each succeeding bill while the surcharge is in effect.

F. New Hampshire State Taxes

The parties agreed that New Hampshire State Taxes will not be added to customer bills in addition to the temporary surcharge since they are already incorporated in NHEC's billing rates.

G. Nuclear Decommissioning Financing Fund

The parties recommend that at such time as Seabrook receives a full power license, the commission should request that the parties provide proposals for meeting the requirements of RSA 162-F:10.

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H. Rate Plan for NHEC

Under RSA 362-C:7, the commission is authorized to approve a rate plan for NHEC provided that the commission finds such a rate plan to be consistent with the public good and that it results in no greater costs and risks to NHEC's members than those resulting for ratepayers of PSNH under any rate plan approved by the commission for PSNH.

The parties have agreed that NHEC shall use its best efforts to file its proposed rate plan with the commission no later than April 15, 1990.

IV. *Commission Analysis*

The parties have submitted as Exhibit 8 a certified copy of Chapter 1 (HB 1) of the 1989 Special Session entitled "An Act relative to authorizing public utilities commission approval of the plans for the reorganization of Public Service Company of New Hampshire and prohibiting utilities from transporting radioactive waste into New Hampshire for disposal in New Hampshire". Under the Act, RSA 362-C:7 directs that "notwithstanding any other provision of law, the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of the New Hampshire Electric Cooperative, Inc., to be held in escrow in the manner provided in RSA 362:4". In addition to the legislative mandate for the temporary rate increase for NHEC we also take notice of the following events as supporting a temporary rate increase, subject to repayment.

In late 1987 and early 1988 the Rural Electrification Administration (REA), the Federal Financing Bank (FFB) and the National Rural Utilities Cooperative Finance Corporation (CFC) ceased all financing to NHEC for the Seabrook Project and for normal distribution system construction projects. Because NHEC was unable to meet Seabrook payments and normal construction project costs without this financing, in January 1988 NHEC suspended Seabrook payments and all principal and interest payments to lenders pending a resolution of the financing problems.

Since the cash generated by operations continued to satisfy NHEC's requirements for normal distribution system construction projects, NHEC was able to continue to build and upgrade line

equipment to meet member needs. NHEC would not have been able to meet these normal construction requirements had NHEC not suspended NHEC loan payments.

In summer 1988, REA agreed to resume funding for NHEC's Seabrook payments, and presently NHEC is current on payments for the project except for disputed payments to the Coalition for Reliable Energy.

NHEC has been negotiating with REA, FFB and CFC in an attempt to restructure its debt in a plan acceptable to all parties.

In 1988, Public Service Company of New Hampshire, the supplier of 90 percent of NHEC's power, declared bankruptcy. Soon thereafter, NHEC entered into negotiations with PSNH regarding all future aspects of its relationship with PSNH, including responsibility for NHEC's power supply and obligations of both parties under Seabrook-related agreements.

On December 1, 1989 (amended December 6, 1989), NHEC and Northeast Utilities Service Company (NUSCO) entered into an agreement summarized in a Settlement Term Sheet (Exhibit 6) specifying the principles to be used for settling all claims by NHEC against PSNH, subject to NU's acquisition of PSNH.

These principles encompass non-discriminatory transmission access and pricing, a life of unit power sales agreement, NUSCO and PSNH support for a comprehensive settlement of the issues relating to NHEC's Seabrook associated debt, an option for NHEC to obtain additional power resources from the NU system, and a commitment from NUSCO and PSNH to assist NHEC in exploring opportunities to increase operational efficiency, reduce operational costs, and improve customer service.

Given the legislative mandate regarding temporary rates, the issues before the commission in this docket involve the technicalities of the implementation of the temporary surcharge for NHEC rather than consideration of whether the ensuing rates are just and reasonable. The

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legislation reserves this latter question to any proceedings on proposed permanent rates. Meanwhile, the revenues derived from the surcharge shall be escrowed pending a determination by the commission that the rate plan to be proposed and filed by NHEC by April 15, is in the public good and the trajectory of rates is just and reasonable. Absent such a finding, the monies collected under the surcharge will be returned to ratepayers as provided in the escrow agreement.

We find that the parties have addressed most of the technical issues and our analysis will follow the order of the presentation of recommendations of the parties.

A. Tariffs

We find the narrative description of the supplemental tariff page as submitted on December 27 (Exhibit 12) to be acceptable. We find that the Temporary Surcharge has been appropriately submitted as Tariff Supplement No. 1, Original Page 1. Under Admin. Rule Puc 1601.05(m)(l)(d) tariff supplements are used "to establish a temporary modification of an existing tariff" and the use of this format underlines the temporary nature of the surcharge, pending our findings regarding permanent rates. We also find that Exhibits 3A and 4A reflect the

methods agreed to for calculating the surcharge and for prorating bills based on the number of days in the billing cycle.

B. Escrow Account

We find the recommendations of the parties for escrow of NHEC temporary rates to be reasonable and similar to the escrow agreement proposed by the parties for PSNH. Exhibit 2. We approve the appointment of the State Treasurer as the Escrow Agent and appreciate the responsiveness of the Treasurer in this matter. Exhibit 9.

C. Record Keeping
Requirements/Repayment

We find the general plan for repayment proposed by NHEC to be reasonable. We find it appropriate that the refunds be made on a customer specific basis in light of the deferment of findings of public good and the justice and reasonableness of rates to a subsequent proceeding. Nonetheless, we will require NHEC to file with the commission a detailed refund plan similar in detail to that proposed for PSNH on or before January 15, 1990.

We note that the interest accrued on the escrowed monies would not be repaid on a customer specific basis but flowed through the fuel charge as a credit. We find this unusual in the normal context of temporary rates, but not unreasonable.

We will order NHEC to maintain the necessary records implicit in its commitment to make customer specific refunds, and remind NHEC that calculations of the potential refunds due customers who leave the system should be made at the time their accounts are closed. We will also require NHEC to turn over any unclaimed funds to Project Help.

D. Fuel Charge and Purchased Power Cost Adjustments.

We find that the recommendations of the parties that the 5.5 percent surcharge to current rates exclude the currently effective fuel charge of 1.258¢/kwh is reasonable since any proposed change in fuel charges and purchased power costs will be subject to the review and further order of this commission. We note that this will reduce the impact of the surcharge on customer bills to approximately 4.73 percent. Any over or under recoveries of fuel and purchased power costs will be reconciled in the normal course in the manner directed by this commission in its final order resolving NHEC's proposed rate plan.

The reconciliation will include recognition of PSNH unit outages and the commercial operation of Seabrook if it occurs in the period.

We interpret the parties' agreement regarding the relationship between the fuel cost adjustment (FCA) and Seabrook as indicated in this paragraph. The test energy generated at Seabrook during power ascension between the date of issuance of a full power operating license and the commercial operating date shall

be accounted for by charging the cost of fuel consumed to the Seabrook work order and crediting the replacement cost recovered through the FCA to the Seabrook work order. The Seabrook work order shall reflect a pro rata share of the capital costs for Seabrook contained in

Section 2: Seabrook Understandings of the November 22, 1989 Agreement. After the commercial operation date, the cost of fuel consumed at Seabrook will be reflected in the actual FCA cost incorporated in the reconciliation referred to above.

E. Bill Insert

We have reviewed the proposed bill insert and wording of the bill message (Exhibit 5A) and will approve the wording of the bill message. We take note that it has been revised to state that interest on the escrowed funds would also be returned to customers if a permanent rate plan is not approved by the commission.

F. New Hampshire State Taxes

We find the parties' recommendation that New Hampshire State taxes not be added to customer bills in addition to the temporary surcharge to be correct. State taxes are already incorporated in the existing billing rates and therefore provision for additional taxes is automatically included in the surcharge which is a percentage increase on the existing billing rates, exclusive of the fuel charge. (Exhibit 3A)

G. Nuclear Decommissioning Financing Fund

We accept the recommendation of the parties that the commission request proposals in compliance with the requirements of RSA 162-F:10 at such time as Seabrook receives its full power license.

H. Accounting

In accordance with the proposed rate plan and the requirements of RSA 362-C:4, NHEC is required to segregate the temporary rate surcharge funds and to place those funds in escrow pending disposition in the manner provided in the agreement or in an alternative rate plan. In order to segregate the temporary rate increase NHEC will be required to account for the surcharge revenues by debiting revenue account 449.1, Provision for Rate Refunds. The liability for the refunds and the associated interest income will be accumulated in a balance sheet account 229, Provision for Rate Refunds until such time as it is determined that a refund is required or the plans are approved.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1989.

ORDER

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

ORDERED, that New Hampshire Electric Cooperative, Inc. (NHEC) be, and hereby is, authorized to implement a temporary 5.5 percent surcharge in accordance with the foregoing report effective for service rendered on or after January 1, 1990 subject to possible repayment; and it is

FURTHER ORDERED, that all amounts billed under this temporary surcharge shall be accounted for and transferred to an escrow account held by the State Treasurer in accordance with the foregoing report; and it is

FURTHER ORDERED, that NHEC maintain appropriate records to permit repayment if

necessary on a customer specific basis and that NHEC file a detailed repayment plan on or before January 15, 1990; and it is

FURTHER ORDERED, that the fuel charge revenues be implemented in accordance with the foregoing report; and it is

FURTHER ORDERED, that the bill message as proposed and the bill insert as modified in the foregoing report be, and hereby are, approved; and it is

FURTHER ORDERED, that NHEC file the temporary 5.5 percent surcharge tariff as a Supplemental Tariff in accordance with the foregoing report and with Admin. Rule Puc 1601.05(m).

Our order will issue accordingly.

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Exhibit No. 1

BEFORE THE PUBLIC UTILITIES
COMMISSION STATE OF NEW HAMPSHIRE

DOCKET NO. DR 89-245

PREPARED TESTIMONY OF FREDERICK C.
ANDERSON DIRECTOR OF FINANCE AND
ADMINISTRATION NEW HAMPSHIRE
ELECTRIC COOPERATIVE
DECEMBER 20, 1989

Q. Please state your name and address.

A. My name is Frederick C. Anderson. My business address is RFD 4, Box 2100, Plymouth, New Hampshire.

Q. What is your position with the Cooperative?

A. I am the Director of Finance and Administration, a position I have held since January 1988. Prior to that I held the position of Assistant Director of Budgets and Finance.

Q. Would you describe your duties as Director of Finance and Administration.

A. My duties as Director of Finance and Administration include responsibilities for planning and preparation of budgets, financial forecasts and loan applications for capital requirements. I am also responsible for the general management of the office including the following departments:

1) Accounting
2) Billing and Credit
3) Purchasing
4) Secretarial
5) Data Processing

6) Administrative Services and Personnel

My duties also include responsibility for retail rate making and providing financial analysis assistance to the Director of Power Supply and the Directors of Engineering and Operations.

Q. What experience did you have prior to joining the Cooperative?

A. Prior to my employment at the Cooperative I worked for the Rural Electrification Administration (REA) in Washington, DC in the Technical Accounting Staff. In this position I was responsible for providing technical advice and assistance to agency and REA borrower personnel concerning the interpretation and application of accounting policies and procedures. I was employed by the Rural Electrification Administration for over seven (7) years.

Q. Please state your educational background and professional qualifications.

A. I graduated from Merrimack College with a B.S. degree in Accounting in 1974. I received a Master of Science in Taxation from Southeastern University in 1978. I have attended Utility Depreciation Schools sponsored by Western Michigan University. I am a Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Q. Have you previously testified before this Commission?

A. Yes. I have testified before this Commission on a number of occasions related to rates and financings.

Q. What is the purpose of your testimony in this case?

A. The purpose of my testimony is to provide the Commission with the proposals for implementing the provisions of HB 1 FN as amended as it affects New Hampshire Electric Cooperative, Inc.

Q. HB 1 FN provides for a 5.5% increase in Cooperative rates effective January 1, 1990. In the proposed rates filed by the Cooperative how has this increase been calculated?

A. With the exception of fuel charges and miscellaneous charges for line extensions, service charges, etc., we have taken each component of our current effective tariff and increased them by 5.5%.

Q. Are these changes included in your proposed tariff and summarized on Attachment A?

A. Yes.

Q. How do you propose to handle your Fuel Adjustment Clause?

A. The 5.5% surcharge will not be added to the fuel charge component of our kWh rates. By not applying the surcharge to the fuel component, it has been agreed that the Cooperative still has available the provisions of the tariff for

Fuel Cost Adjustment and Purchased Power Cost Adjustment.

We plan to continue our current fuel adjustment clause as a flow-through mechanism. We are currently refunding an overcollection of fuel charges but that has had no impact on the computation of the 5.5% increase since it is a non-revenue item. The overcollection was set up as

a liability to our members and the refund is reducing the liability.

If our current projections are correct we would not anticipate a change in the fuel charge until next November. We are confident that we will reach an agreement on a rate plan by that time. If we do reach agreement, I would assume the handling of fuel charges will be part of any settlement.

Q. HB 1 FN provides that this temporary rate surcharge be held in an escrow account. Who do you propose to be the escrow agent for these funds?

A. The escrow agent will be the Treasurer of the State of New Hampshire. Please see attached "NHEC PROPOSAL FOR ESCROW OF TEMPORARY RATES".

Q. Are the computer programs in place to handle this accounting for the temporary rate surcharge?

A. No. At the present time the programs to do this type of refund are not written. However we have handled this type of refund in the past and we do not believe it will be any problem. If a refund were necessary we would anticipate showing the refund as a credit on members bills.

The only problem we have experienced in the past is how to handle members that have left our system before the refund is made. The last time we held separate funds aside to refund to anyone making a claim in a certain period. We would propose to handle these members in a like manner. Any unclaimed funds at the end of a specified period could be flowed through our fuel adjustment clause or turned over to our Project Help for needy members.

Q. Does this conclude your testimony.

A. Yes.

Exhibit No. 2

NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.'S PROPOSAL FOR ESCROW OF TEMPORARY RATES

1. At such time as the Commission shall establish temporary rates for the New Hampshire Electric Cooperative (Coop) in accordance with the Rate Agreement established in docket No. Dr 89-245 and pertinent sections of legislation resulting from Special Session House Bill No. 1-FN, the Commission should consider, as part of its order, including the following provisions:

a. The Coop shall immediately make appropriate revisions to its customer service billing programs for service rendered on and after January 1, 1990 to reflect the revised tariffs approved in this proceeding, and shall collect the temporary rates so authorized in accordance with good utility collection practices. Revenues from January, 1990 billing cycles shall be prorated for the purpose of the following subparagraph based upon the number of days in each cycle that the temporary rates were in effect.

b. At the end of each month, commencing with January, 1990, and prior to closing the books for that month, the Coop shall determine the portion of that month's revenues that was derived from the temporary rate surcharge and transfer such amount from revenues (on the income statement) to revenues subject to refund (on the balance sheet). As soon

thereafter as possible, but in any event within 20 days after the last day of each such month, the Coop shall transfer cash monies equivalent to revenues subject to refund determined in accordance with this subparagraph to the Escrow Agent identified in paragraph 2.

c. The Escrow Agent shall deposit amounts transferred to it by the Coop under subparagraph b. into an Escrow Fund. Said amount shall be in a separate, interest bearing account.

d. The Escrow Fund shall be held in escrow by the Escrow Agent until the

Commission provides written notification to the Escrow Agent that approval of a permanent rate plan pursuant to RSA 362-C:6 has occurred, and the Commission shall, upon that occurrence, direct the Escrow Agent to disburse the Escrow Fund to the Coop for inclusion in income and use by the Coop. In the event that a permanent rate plan pursuant to RSA 362-C:6 does not occur, the Coop shall dispose of such funds, when released by the Escrow Agent, as the Commission shall by order direct.

e. After disbursement of the Escrow Fund to the Coop, interest earned on such Funds shall be applied by the Coop to reduce charges to be recovered from ratepayers under the fuel recovery mechanism then in effect, or, if there are not sufficient charges to offset such interest, it shall be applied to create or enlarge existing credits to ratepayers under such mechanism.

f. In the event that the conditions precedent to the establishment of this temporary rate as set forth in RSA 362-C do not occur and the Commission reasonably determines that such conditions cannot occur, the Commission shall so certify in writing to the Coop and the Escrow Agent. Unless the Coop or the Attorney General disputes such certification and so notifies the Escrow Agent, thirty days from the date of such certification the Escrow Agent shall disburse the Escrow Fund to the Coop which shall dispose of such funds, including interest, as the Commission shall by order direct.

2. The Escrow Agent shall be the Treasurer of the State of New Hampshire.

3. The Escrow Agent: (i) shall not be bound by any agreement or contract other than the provisions of this order of the Commission, and its only duties hereunder are to hold, invest and dispose of the Funds as directed herein; (ii) shall be entitled to rely on the advice of its counsel as to the interpretation of its responsibilities hereunder; (iii) shall not be liable for other than its own gross negligence or willful misconduct; (iv) shall not be responsible for the loss or diminution of the Funds or of any interest thereon resulting from the investment of the Funds, provided that such Funds are invested in accordance with the standards specified by the Escrow Agent as part of its written acceptance under subparagraph (viii) hereof, which are incorporated herein by reference; (v) may unconditionally rely on written notices and instructions received from the Commission or, in the case of subparagraph 1.f herein, from the Coop or the Attorney General, without liability therefor and without the need for any investigation or verification of the authority for or validity of such notices or the facts and circumstances giving rise to such notices; (vi) shall not be obligated to disburse any of the Funds in the event of any continuing

dispute with respect to their disbursement hereunder until final determination of such dispute by a court of competent jurisdiction, nor shall the Escrow Agent be required to commence any action as to such dispute by interpleader or otherwise; (vii) shall not be entitled to any fee for its service as Escrow Agent hereunder, but may be reimbursed for its reasonable expenses incurred in connection with the fulfillment of its duties hereunder as the Commission, in the reasonable exercise of its discretion, shall determine upon application of the Escrow Agent; and (viii) shall accept the conditions of this order in writing prior to commencing its duties hereunder and shall include with such acceptance the standards for investment of the Funds that it intends to apply.

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This replaces Exhibit No. 4

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Exhibit No. 6

NEW HAMPSHIRE ELECTRIC
COOPERATIVE (NHEC)
NORTHEAST UTILITIES SERVICE
COMPANY (NUSCO)

SETTLEMENT TERM SHEET

December 1, 1989
(amended December 6, 1989)

The parties agree to pursue good faith negotiations to conclude agreements that will implement the following principles as settlement of all claims by New Hampshire Electric

Cooperative, Inc. against Public Service Company of New Hampshire (PSNH). The agreements which result shall be subject to the approval of the board of directors of each party, the Rural Electrification Administration (REA), and the State of New Hampshire, and their implementation shall be subject to NU's acquisition of PSNH.

NHEC and NUSCO also agree to investigate areas where the sharing of corporate programs can result in lower costs or improved service to the NHEC members.

1. The parties agree that, in connection with the acquisition by Northeast Utilities of Public Service Company of New Hampshire ("PSNH"), NHEC and NU will enter into an Integrated Transmission and Interconnection Agreement ("Integrated Agreement") whereby NU agrees to provide transmission service to meet the full requirements of the New Hampshire Electric Cooperative to serve its retail load, for power purchases and sales, and to take advantage of services available through the New England Power Pool ("NEPOOL") on the same basis as NU's New Hampshire operating company, at rates calculated on the transmission system embedded cost. Such Integrated Transmission Agreement shall include rights to use NU's non-New Hampshire Transmission facilities with access and pricing for NHEC's use of such facilities that is similar to those available to NU for the benefit of its New Hampshire operating subsidiary. The intended result is equal ability for NHEC and NU New Hampshire to engage in similar power brokering transactions with other entities. The Integrated Agreement shall also provide for coordinated system planning and appropriate credits from any transmission facilities provided by NHEC for PSNH's use.

The term of the Integrated Agreement shall be twenty five years, and from year to year thereafter, subject to termination after the initial term or any extension thereof on five year's advance written notice, provided, however, that NU shall provide transmission services with respect to NHEC entitlements purchased under the Power Sale Agreement defined below for the duration of of such entitlements. In the event that the Integrated Agreement is terminated by NU in accordance with the terms of the agreement, NU agrees to provide alternative transmission service on similar terms and conditions accepted by the appropriate regulatory authorities.

NUSCO will provide assistance to NHEC if so requested to establish the data acquisition and telemetering facilities and services necessary for NHEC to operate as a stand alone member of NEPOOL.

2. The parties agree to enter into a life of unit Power Sale Agreement, pursuant to which NU agrees to sell and NHEC agrees to buy entitlements to the capacity and energy of existing and committed units owned by PSNH or to which PSNH has,entitlements, including a share of qualifying facilities (QF's), at rates calculated on an embedded cost of service basis (not adjusted for any premium associated with NU's acquisition of PSNH) with respect to each such unit and entitlement. The percentage of NHEC's entitlement shall be a proportionate share of the current and committed PSNH and NHEC capacity and entitlements as a percent of the aggregate NEPOOL Capability Responsibilities of the two parties. The amount of the entitlement in any individual unit will be negotiated by the parties so as to provide a mix of units designed to fit the specific needs of NHEC at a cost that takes into account a

value for NHEC's own Seabrook investment such that the cost of production to be borne by NHEC's members is similar to the cost of production borne by PSNH retail customers. The duration of the Power Sale Agreement with respect to each PSNH or NU unit and entitlement shall be for the life of each such unit and for the duration of each such entitlement. In the event that NU proposes to extend a unit's life beyond its scheduled retirement date, NHEC may within 45 days after notification of such proposed life extension elect to continue to purchase its entitlement in that unit.

The parties also agree to explore other power supply arrangements which would allow NHEC to preserve the benefits of cost-based service from the power supply resources of PSNH that now serve or are planned and committed to serve the loads of NHEC and that allows NHEC independence in future power supply decisions. Such arrangements may include but not be limited to partial requirements or contract demand services or a blend of such services and unit entitlements.

3. NHEC shall use its best efforts to negotiate a comprehensive settlement of the issues of its Seabrook associated debt. If requested by NHEC, NUSCO and PSNH shall take reasonable steps to support NHEC's efforts. In consideration for the arrangement contemplated by this agreement and payment for 10 years of interest on and one-seventieth of principal per year of an amount of FFB debt service based on the excess of value used for NHEC's Seabrook Debt over the NHEC Seabrook investment level determined in paragraph 2 hereof, the Seabrook "buy-back" agreement between parties shall be terminated, NHEC will release PSNH of any Seabrook associated liability, will terminate any Seabrook associated litigation, and will withdraw any and all Seabrook related claims filed in the Bankruptcy Court relating to the PSNH Chapter 11 reorganization.

4. For a period of ten years, NU will offer NHEC capacity entitlements from the NU system to meet NHEC's additional resource requirements. NU shall also offer NHEC an opportunity to participate, on the same terms and conditions as are available to NU's New Hampshire operating company, in any long-term capacity purchase opportunities afforded to the NU operating companies by other utilities.

5. NU, PSNH and NHEC shall use their best efforts to explore opportunities to increase operational efficiency, reduce operational costs, and improve customer service. Such cost effective opportunities may involve contract services, territory swaps, or other mutually agreeable services while recognizing and respecting the unique character and independence of the respective utilities.

6. The parties mutually pledge their best efforts to accomplish the passage of legislation necessary to achieve this agreement, NU agrees to provide technical support for NHEC's efforts to negotiate a rate agreement with the State.

This settlement term sheet with NUSCO is not exclusive and does not preclude NHEC from discussing similar issues and entering similar agreements with other parties.

N.H. ELECTRIC COOPERATIVE, INC.
By: Jon A. Bellgowan
General Manager

NORTHEAST UTILITIES SERVICE COMPANY
By: Robert E. Busch
Senior Vice President

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Chapter 1

HOUSE BILL AMENDED BY THE SENATE

SPECIAL SESSION

HB 1-FN

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand
nine hundred and ninety

AN ACT
relative to authorizing public
utilities commission approval
of the plan for the reorganization
of Public Service Company of New
Hampshire and prohibiting utilities from transporting radioactive waste into New Hampshire for disposal in New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1:1 New Chapter; Reorganization of Public Service Company of New Hampshire. Amend RSA by inserting after-chapter 362-B the following new chapter:

CHAPTER 362-C

REORGANIZATION OF PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE

362-C:1 Declaration of Purpose and Findings. The legislature finds that:

I. The health, safety and welfare of the people of the state of New Hampshire and orderly growth of the state's economy require that there be a sound system for the furnishing of electric service.

II. The bankruptcy of the state's largest electric utility, Public Service Company of New Hampshire, has threatened the adequacy, reliability and cost of electric service.

III. The present and predicted growth in electric service demands in the state of New Hampshire requires a prompt resolution of the bankruptcy and reorganization of Public Service Company of New Hampshire.

IV. For the reasons stated in paragraphs I-III, the public utilities commission should be authorized to determine whether a proposed agreement relating to the reorganization of Public Service Company of New Hampshire and, upon receipt of required regulatory approvals, the acquisition of Public Service Company of New Hampshire by Northeast Utilities, would be consistent with the public good and whether the rates for electric service to be established in connection with the reorganization are just and reasonable and should be approved.

V. In addition, the public utilities commission should be authorized to determine whether to implement a similar rate plan for the New Hampshire Electric Cooperative, Inc., in order to avoid a bankruptcy by that utility.

362-C:2 Definitions. In this chapter:

I. "Agreement" means the agreement dated as of November 22, 1989, as amended through December 14, 1989, executed by and between the governor and attorney general of the state of New Hampshire, acting on behalf of the state of New Hampshire, and Northeast Utilities Service Company, acting on behalf of its parent Northeast Utilities.

II. "Alternative reorganization plan" means a plan of reorganization filed in the Public Service Company of New Hampshire bankruptcy case, other than the NU plan.

III. "Commission" means the public utilities commission established in RSA 363.

IV. "NU plan" means the amended plan of reorganization filed in December of 1989, by Northeast Utilities Service Company which provides for the resolution of the outstanding creditor claims and equity security interests of Public Service Company of New Hampshire in the Public Service Company of New Hampshire bankruptcy case.

V. "Public Service Company of New Hampshire bankruptcy case" means the proceeding pending before the United States Bankruptcy Court for the District of New Hampshire (Case No. 88-00043) for the reorganization of Public Service Company of New Hampshire under Chapter 11 of the Bankruptcy Code.

362-C:3 Action by the Commission. The commission is authorized, after hearing, in one

or more proceedings to be initiated and completed during the pendency of the Public Service Company of New Hampshire bankruptcy, to determine whether the implementation of the agreement would be consistent with the public good. If the commission so finds, it shall, notwithstanding any other provision of law, establish and place into effect the levels of rates, fares, or charges and the fuel and purchased power adjustment clause to be maintained for Public Service Company of New Hampshire, or its successor, in accordance with, and during the time periods set forth in, the agreement; then the commission shall initiate such other proceedings, hold such other hearings and take such other actions as may be necessary to implement the provisions of the agreement.

362-C:4 Establishment of Temporary Rates. Notwithstanding any other provision of law, the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of Public Service Company of New Hampshire, or its successor, in accordance with the agreement. The incremental increase in revenues resulting from the temporary rate surcharge shall be ordered segregated and held in escrow by an escrow agent approved by the commission pending disposition in the manner provided in the agreement or in an alternative reorganization plan approved by the commission pursuant to RSA 362-C:5.

362-C:5 Alternative Reorganization Plans. The authorization granted to the commission in RSA 362-C:3 shall extend to any alternative reorganization plan which the commission affirmatively finds will resolve the Public Service Company of New Hampshire bankruptcy case and will result in the same or lower costs and risks to ratepayers and the same or greater benefits to the state as those resulting from the NU plan and the agreement both during the time periods in which rates increases are prescribed in the agreement and thereafter.

362-C:6 Finality of Approval. If the commission takes final action under RSA 362-C:3 or RSA 362-C:5 to approve the agreement and to fix the rates for Public Service Company of New Hampshire or its successor in the manner prescribed in the agreement, or to approve and implement an alternative reorganization plan, or both, the commission shall not thereafter issue any order or process which would alter, amend, suspend, annul, set aside or otherwise modify such approval or result in the fixing of rates other than in the manner prescribed in the agreement or the approved alternative reorganization plan.

362-C:7 Rate Plan for the New Hampshire Electric Cooperative, Inc. Notwithstanding any other provision of law, the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of the New Hampshire Electric Cooperative, Inc., to be held in escrow in the manner provided in RSA 362-C:4. The commission is further authorized to approve a rate plan proposed by the New Hampshire Electric Cooperative Inc., provided that it finds such a rate plan to be consistent with the public good and that it results in no greater costs and risks to members of the cooperative than those resulting for ratepayers of Public Service Company of New Hampshire under the agreement. If the commission approves such a rate plan and fixes permanent rates under such plan, the revenues collected under the temporary rate surcharge shall be paid over to the New Hampshire Electric Cooperative, Inc. If no such rate plan is approved within 90 days following the date on which a bankruptcy rate plan for Public Service Company of New Hampshire becomes effective, the temporary rate surcharge shall terminate and the revenues collected under such surcharge shall be refunded to customers. An order of the commission approving a rate plan under this section shall have the same finality as that provided in RSA 362-C:6 for approval orders relating to Public Service Company of New Hampshire.

362-C:7-a Transportation of Low-Level and High-Level Radioactive Waste for Disposal Prohibited. Notwithstanding any law or rule to the contrary, no utility shall transport into the state of New Hampshire any low-level or high-level radioactive waste, as defined in Article II of RSA 125-E:1, the Northern New England Low-Level Radioactive Waste Management Compact, for disposal in New Hampshire.

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362-C:8 Rate Design. Notwithstanding any law or rule to the contrary, during the fixed rate term of the approved agreement or plan the commission shall not cause the allocation of base rate revenue responsibility among residential, commercial, industrial and municipal customers in effect on September 15, 1989, for the electric customers, serviced by Public Service Company of New Hampshire or its successor, to change without legislative approval of the commission's finding that such revenue responsibility allocation is unjust or unreasonable.

362-C:9 Modifications in Agreement or Plan. Any modifications to an approved agreement or plan, including its exhibits, made in accordance with such agreement or plan, which potentially could increase rates, fares or charges shall, in addition to any requirements set forth in such agreement or plan, require the approval of the legislature.

362-C:10 Wholesale Customers. Nothing in the agreement or plan approved by the commission under this chapter shall restrict access to Public Service Company of New Hampshire's (PSNH), or its successor's, power supply and transmission resources for PSNH's, or its successor's, existing New Hampshire firm wholesale and transmission utility customers.

1: 2 New Subdivision; Public Utilities Commission Approval Required for Certain Purchases. Amend RSA 374 by inserting after section 56 the following new subdivision:

Purchase of Capacity

374:57 Purchase of Capacity. Each electric utility which enters into an agreement with a term

of more than one year for the purchase of generating capacity, transmission capacity or energy shall furnish a copy of the agreement to the commission no later than the time at which the agreement is filed with the Federal Energy Regulatory Commission pursuant to the Federal Power Act or, if no such filing is required, at the time such agreement is executed. The commission may disallow, in whole or part, any amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest.

1:3 Effective Date. This act shall take effect upon its passage.

Approved December 18, 1989

Effective December 18, 1989

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THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
DR 89-245

New Hampshire Electric Cooperative,
Inc. Temporary Rates

STIPULATED RECOMMENDATIONS
OF THE PARTIES

Introduction

On December 14, 1989, the New Hampshire General Court passed legislation which

provided, in part, that "the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of the New Hampshire Electric Cooperative, Inc ...". Special Session House Bill No. 1-FN. The Governor signed the legislation into law on December 18, 1989[1(7)] . In anticipation of passage of the legislation, the Commission scheduled a public hearing for December 18, 1989 for the purpose of establishing the Temporary Rate Surcharge. During the hearing, certain parties[2(8)] reached agreement as to the appropriate scope of the docket and resolution of all relevant issues. Upon motion of the office of the Attorney General, the docket was expanded to include the establishment of a Temporary rate surcharge for the New Hampshire Electric Cooperative, Inc. ("NHEC"). During the hearing, all matters concerning NHEC were transferred to DR 89-245.

At the hearing these parties recommended that this proceeding be resolved through issuance by the Commission of an Order accepting and approving a stipulated Agreement of the parties.

Recommendations

In support of this recommendation, these parties present the following documents and respectfully request that they be accepted as exhibits in this docket.

These exhibits are presented pursuant to the agreement and direction of the Commission.

Exhibit No. 1 Prepared testimony of Frederick C. Anderson on behalf of NHEC, as edited during the hearing on December 27, 1989. This exhibit consists of 5 pages.

Exhibit No. 2 NHEC's proposal for Escrow of Temporary Rates. This exhibit consists of 4 pages.

Exhibit No. 3 NHEC's calculation of surcharge. This exhibit consists of 2 pages and is offered for informational purposes only as it is superceded by Exhibit No. 3-A.

Exhibit No. 3-A NHEC's calculation of surcharge, as amended during the hearing on December 27, 1989.

Exhibit No. 4 NHEC's explanation of the method of surcharge proration. This exhibit is superceded by Exhibit 4-A.

Exhibit No. 4-A NHEC's method of proration, as amended during the hearing on December 27, 1989.

Exhibit No. 5 NHEC's proposed bill insert. This exhibit is superceded by Exhibit No. 5-A.

Exhibit No. 5-A NHEC's bill insert, as amended to meet the concerns of the commissioners.

Exhibit No. 6 A copy of the Settlement Term Sheet of the agreement between NHEC and Northeast Utilities. This 3 page Exhibit is offered for informational purposes only, and it is the understanding of the parties that the inclusion of this agreement in the record does not constitute approval by the Commission or acceptance by the parties.

Exhibit No. 7 NHEC's Tariff No. 14, Supplement No. 1, as filed on December 22, 1989. This Exhibit is superceded by Exhibit No. 7-A.

Exhibit No. 7-A NHEC's Tariff No. 14, Supplement No. 1 (the so-called "Bingo Sheet"), as amended during the hearing on December 27, 1989. This Exhibit consists of 2 pages.

Exhibit No. 8 A certified copy of RSA 362-C.

Exhibit No. 9 Letter from the State Treasurer accepting the appointment as escrow agent.

Exhibit No. 10 The "Agenda Letter" from the Office of the Attorney General, as amended to be specific to this docket.

Exhibit No. 11 The Stipulated Recommendations of the Parties.

Exhibit No. 12 NHEC's Supplement No. 1

to the Tariff for electric service. This Exhibit consists of 2 pages.

It is the agreement of the parties that any rate plan for NHEC pursuant to RSA 362-C:7 will be for the period of January 1, 1990 forward and that the amounts collected by the temporary surcharge will be subject to refund. Also, the parties agree that the 5.5% temporary surcharge should be applied to the base rates of NHEC, and the fuel charges should be added to members' bills after the surcharge has been applied. The parties agree that this approach avoids the possibility of penalizing the NHEC in the event that the charges for purchased power increase during the period of the temporary surcharge if in effect.

It is the agreement of the parties that New Hampshire State taxes (item 7 of the Agenda) will not be added to customer bills in addition to the temporary surcharge. Further, it is the recommendation of the parties that at such time as Seabrook receives a full power license, the Commission should request that the parties provide proposals for meeting the requirements of RSA 162-F:10 (Nuclear Decommissioning Financing Funds).

Conclusion

Pursuant to these recommendations, the parties respectfully pray for an order of the Commission which:

1. Pursuant to RSA 541-A:17 I and II (Supp.), grants the Petition and Motions to Intervene of New Hampshire Electric Cooperative, Inc., The Business and Industry Association of New Hampshire;

2. Accepts these documents as full exhibits;

3. Accepts these Stipulated Recommendations of the Parties;

4. Pursuant to RSA 362-C:4, authorizes New Hampshire Electric Cooperative, Inc. to alter its tariff and begin collecting the temporary surcharge on service rendered on and after January 1, 1990;

5. Directs New Hampshire Electric Cooperative, Inc. to file compliance tariff pages in accordance with the Commission's order;

6. Directs New Hampshire Electric Cooperative, Inc. to establish an account for Revenues Subject to Refund, collect the temporary surcharge, and pay such sums over to the Treasurer of the State of New Hampshire, pursuant to the Recommendations of the Parties for Escrow of PSNH Temporary Rates; (Exhibit 4) and

7. Orders such further relief as may be just and equitable.

The aforementioned parties have authorized the Office of the Attorney General to represent to the Commission that they concur on these recommendations. A letter memorializing this authorization, signed by all of the aforementioned parties, will be filed with the Commission as soon as practical. We request that this letter be accepted as Attachment A to these stipulations (which will be Exhibit 11 in this docket).

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John P. Arnold
Attorney General

Harold T. Judd
Assistant Attorney General
Civil Bureau
25 Capitol Street
Concord, New Hampshire 03301
(603) 271-3658

Exhibit 12

N.H.P.U.C. NO. 14 - ELECTRICITY

NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.

SUPPLEMENT NO. 1

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TARIFF

for

ELECTRIC SERVICE

Applicable in Various towns and cities in New Hampshire, served in whole or in part. (For detailed description, see Service Area)

TEMPORARY 5.5 PERCENT SURCHARGE EFFECTIVE JANUARY 1, 1990, SUBJECT TO REPAYMENT

Effective with all bills rendered on and after January 1, 1990, for the portion of the electric service taken on and after January 1, 1990, each bill rendered shall be equal to the sum of the bill amount as computed under the applicable rate of this tariff, plus 5.5 percent of said amount exclusive of any fuel charge cost adjustment ($.01258/kWh), fuel charge over-recovery credit ($.00172/kWh), service charges, late charges, line extension surcharge, or transformer rental.

Prorating of bills on and after January 1, 1990, shall be based on the number of days that the temporary surcharge is in effect, and based on the assumption that energy use is the same on each day of the billing period.

The additional amounts collected pursuant to this temporary surcharge provision shall be

subject to possible repayment, and shall be deposited and retained in an escrow account in accordance with the provisions of the NHPUC Order No. ___ Dated December ___, 1989, in Docket No. 89-245.

Issued: December 26, 1989
Effective: January 1, 1990

Issued by: Jon Bellgowan
Title: *Manager*

FOOTNOTES

[1] RSA 362-C.

[2]As stated at the public hearing on December 27, 1989, the following parties agree to these stipulations: The Commission Staff, The Business and Industry Association, The Consumer Advocate, The Office of the Attorney General and the New Hampshire Electric Cooperative, Inc.

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NH.PUC*12/14/89*[51896]*74 NH PUC 477*Tilton and Northfield Aqueduct Company

[Go to End of 51896]

74 NH PUC 477

Re Tilton and Northfield Aqueduct Company

DR 89-064
Order No. 19,639

New Hampshire Public Utilities Commission

December 14, 1989

ORDER approving a stipulated increase in rates for water distribution service.

RATES, § 595 — Water utility — Stipulation — Single block tariff.

[N.H.] A stipulation was approved in a water rate case, resulting in a 46.35% rate increase, a single block consumption rate, and a graduated customer charge for commercial and industrial customers, depending on meter and/or service pipe size.

APPEARANCES: Jay C. Boynton, Esquire on behalf of Tilton and Northfield Aqueduct Company; Eugene F. Sullivan, III, Esquire on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On May 26, 1989 Tilton and Northfield Aqueduct Company (Aqueduct Company) serving limited areas of the Towns of Tilton and Northfield, New Hampshire filed proposed rate schedules and supporting documents which would result in an increase in annual water revenues of $121,401 or a 55.31 per cent increase. On June 23, 1989 the commission issued order no. 19,436 suspending the company's late filing and setting a prehearing conference and temporary rate hearing for August 30, 1989. On

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September 12, 1989 the commission issued report and order no. 19,531 granting a temporary rate increase of 10.11% and setting a schedule for the duration of the proceeding. Throughout the proceeding the parties engaged in discovery and met in further consultation several times for the purposes of narrowing issues and reaching a proposed stipulation. On November 7, 1989 a hearing was held on the issue of the permanent rate increase at which the company and staff presented a stipulation.

II. *Stipulation of the Parties*

The parties agreed to the following terms:

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

Rate Base	$396,371
Overall Rate of Return	12.01%
Return on Equity	11.09%
Annual Revenue Increase	$101,742
Revenue Requirement	$321,244

The parties agreed that the company would revise its tariff to a single block consumption rate and that commercial and industrial customers will be charged a graduated customer charge depending on meter and/or service pipe size. The customer charge will not include any consumption allowance; all consumption will be billed in accordance with a single block.

It was further agreed by the company and staff, by oral stipulation made at the hearing modifying the written stipulation, that the company be allowed to bill for the difference between the revenue level finally approved and the revenue level provided for in the company's temporary rates as authorized by order no. 19,531 by a charge in its January billing. Thus the company will recoup its temporary rate deficiency by charging the permanent rate approved in this order in its January billing period covering the October 1, thru December 31, 1989 quarter. The company further stated that they would collect the temporary rate recoupment from September 12 to October 1 by a surcharge over a one-year period if it was economically feasible to do so. If not, the company stated that it would forego temporary rate recoupment for that period. It was further agreed that in the case of customers taking service after the effective date of the temporary rate the surcharge will be prorated for such customer actual usage during the recoupment period. Finally, the parties agreed that rate case expenses shall be amortized over a

two-year period at a level of $3,000 per year.

III. *Commission Analysis*

The commission adopts the stipulation of the parties as just and reasonable pursuant to RSA 378:7. The company requested a 55.31% increase, the stipulation results in a 46.35% annual increase. The commission bases its finding of reasonableness on the testimony and exhibits of the parties placed on file.

The order will issue accordingly.

ORDER

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

ORDERED, that the stipulation of the parties is accepted, as modified orally at the hearing on the merits and delineated in the foregoing report, and the company shall institute rates in accordance therewith; and it is

FURTHER ORDERED, that the company shall file revised tariff pages annotated with this commission order number, reflecting a rate structure to coincide with the Stipulation Agreement which is made a part of this report and order; and it is

FURTHER ORDERED, that a tariff supplement be filed specifying the recoupment of the difference between temporary and permanent rates for the period September 12, 1989 thru September 30, 1989 should the company decide to collect for this period.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of December, 1989.*(9)

FOOTNOTE

*Commissioner Linda G. Bisson has recused herself at the request of the petitioner.

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[Go to End of 51897]

74 NH PUC 479

Re Connecticut Valley Electric Company, Inc.

DR 89-240
Order No. 19,640

New Hampshire Public Utilities Commission

December 14, 1989

ORDER *nisi* approving a proposed reduction in rates for electric service.

RATES, § 321 — Electric rate design — Error in revenue requirement calculation — Rate reduction — Temporary credit surcharge.

[N.H.] Due to a computational error in an electric utility's revenue requirement calculation, it was necessary to implement a permanent rate reduction and an increase in the utility's temporary credit surcharge in order to comply with a stipulation limiting the return on equity to 13% for the 12 months ending December 31, 1989.

By the COMMISSION:

ORDER

WHEREAS, Connecticut Valley Electric Company, Inc. (Company), an electric utility operating in the state of New Hampshire, filed on December 13, 1989 a letter motion for expedited consideration and approval of proposed revisions to NHPUC Tariff No. 5 — Electricity, to be effective January 1, 1990; and

WHEREAS, the proposed revisions would a) amend the tariff filed October 16, 1989 such that the revised pages comply with the rate redesign stipulation in DR 88-121 and b) reduce rates to certain rate classes; and

WHEREAS, the proposed rate reductions will be implemented through 1) a $153,162 per year permanent reduction in base rates and 2) a $282,985 increase in the temporary credit surcharge; and

WHEREAS, the permanent rate reduction is necessary to correct a computational error in Connecticut Valley's revenue requirement calculation in DR 88-121; and

WHEREAS, the increase in the temporary credit surcharge will allow the company to comply with a second stipulation DR 88-121 limiting the return on equity to 13% for the 12 months ending December 31, 1989; and

WHEREAS, in compliance with the first stipulation in DR 88-121, and report and order no. 19,411 (74 NH PUC 165 [1989]) approving the stipulation, the foregoing revenue reductions will apply in the first instance to large industrial rate classes T and GV and the water heating rate class O; and

WHEREAS, rate component reductions have been designed so as to minimize the bill impacts of the rate redesign and to bring prices closer to marginal cost; and

WHEREAS, the company requested waiver of the 30 day tariff publication requirements of rule 1601.05; and

WHEREAS, after review and consideration the Commission finds the proposed rate reductions to be just and reasonable and in the public interest; and

WHEREAS, the commission also finds that Connecticut Valley's ratepayers should be afforded an opportunity to file comments and/or request an opportunity to be heard in the proposed tariff revisions; it is hereby

ORDERED *NISI*, that the proposed revisions are approved; and it is

FURTHER ORDERED, that Connecticut Valley 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 the company provides services, said publication to be no later December 18, 1989 and designated in an affidavit to be made on a copy of this order and filed with the commission within seven days after said publication; and it is

FURTHER ORDERED, that any interested party may request an opportunity to be heard in this matter provided that the request is

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made on or before December 28, 1989; and it is

FURTHER ORDERED, that the proposed tariff revisions shall be effective January 1, 1990 unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of December, 1989.

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NH.PUC*12/15/89*[51898]*74 NH PUC 480*Kearsarge Telephone Company

[Go to End of 51898]

74 NH PUC 480

Re Kearsarge Telephone Company

DR 89-069
Supplemental Order No. 19,642

New Hampshire Public Utilities Commission

December 15, 1989

ORDER approving a stipulated increase in rates for local exchange telephone service.

RATES, § 532 — Telephone rate design — Stipulation — Local exchange carrier.

[N.H.] A stipulation was adopted in a local exchange telephone carrier rate case, establishing an overall rate of return on equity of 9.79%, and a rate structure under which compliance tariffs shall: (1) apply the approved rate increase across-the-board to all rate classes except pay stations, service order charges, and the feature portion of custom calling; (2) fold the touchtone rate into the basic service rate; (3) eliminate the employee discount for all employees except those employees on 24-hour call; and (4) eliminate the business two-party service and keep the two-party service as an option for residential customers.

APPEARANCES: Dom S. D'Ambruoso, Esquire of Ransmeier and Spellman for Kearsarge Telephone Company 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 Kearsarge Telephone 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 June 16, 1989, Kearsarge Telephone Company ("Kearsarge") filed with the commission proposed revisions to First Revised sheet 2 of its Tariff No. 7 — Telephone, to be effective July 16, 1989, 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 gross annual revenues of $103,455, or approximately a 3.51% increase in present adjusted revenues. This petition was based upon a test year ending March 31, 1989.

The petition also requested temporary rates, pursuant to the provisions of RSA 378:27, at existing rate levels during these proceedings and until permanent rate levels were established. By its order no. 19,440 (July 27, 1989), 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 August 24, 1989. A duly noticed hearing on the matter of temporary rates was held on August 24, 1989. Report and order no. 19,525 (74 NH PUC 297) dated September 11, 1989 was issued fixing Kearsarge's current rates as temporary rates effective with all service rendered on and after September 16, 1989.

Pursuant to the procedural schedule set forth in the report accompanying order no. 19,525, the parties engaged in discovery and met in consultation on October 30, 1989 for the purpose of narrowing issues. Kearsarge had filed its testimony and exhibits along with its

petition for permanent rates on June 16, 1989, and supplemented this filing with the testimony of Michael A. Pandow on August 16, 1989. On October 27, 1989, staff member ChristiAne Mason filed testimony and exhibits relative to rate base, revenue requirement and operating expense levels, and thereafter filed revisions to her testimony and exhibits on October 31, 1989. The staff found a total revenue deficiency of $76,725. Staff member Merwin Sands filed testimony relative to rate of return on October 27, 1989, recommending a return on common equity of 11.50% and a 9.79% return on total capital. Subsequent to the conference to narrow issues held on October 30, 1989, staff member Leszek Stachow filed testimony on November 21, 1989, and exhibits explaining the stipulated rate structure.

As a result of the filing of testimony and exhibits, the exchange of data requests and responses, and the settlement conference of October 30, 1989, the parties entered into an

agreement on all issues.

II. *Stipulation Agreement*

The parties agreed to the level of test year operating revenues, expenses, rate base and rate of return. The agreed overall adjusted test year utility net operating income was $518,949. The agreed total rate base upon which Kearsarge should be allowed to earn a return is $5,827,705. The parties have stipulated to an overall rate of return of 9.79%.

Kearsarge agreed to file a compliance tariff providing for the stipulated rate increase of $84,953, these tariff pages to be filed after the commission issues an order approving the stipulation.

The parties agreed that Kearsarge shall be allowed to collect the revenue deficiency between the temporary rates as allowed by order no. 19,525 (74 NH PUC 297 [1989]) and the permanent rates in accordance with RSA 378:29, by means of a surcharge applied to all customer bills. The surcharge shall recoup the amount over a six-month period commencing with service rendered on December 16, 1989 or the date of this order, whichever comes last.

The parties agreed to a rate structure under which the compliance tariffs shall: 1) apply the approved rate increase across-the-board to all rate classes except pay stations, service order charges, and the feature portion of custom calling, 2) fold the touchtone rate into the basic service rate, 3) eliminate the employee discount for all employees except the following categories who need phone service because they are on twenty-four hour call — installation-repair people, splicers, linemen, the central office technical supervisor, and the supervisor responsible for service repairs, and 4) eliminate the business two party service and keep the two party service as an option for residential customers.

The agreed resulting across-the-board increase is 20%. It would have the following effect on rates.

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


ResidenceCurrentIncreaseStipulated

Andover    $6.90  $1.40  $8.30
Boscawen   $6.90  $1.40  $8.30
New London $7.60  $1.55  $9.15
Salisbury  $6.20  $1.25  $7.45
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All of the residential two-party rate increases would be approximately $.80 or $.85.

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 $84,953, will be

effective with service rendered on and after December 16, 1989 or the date of this order, whichever is last.

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. 3, is hereby approved by the commission; and it is

FURTHER ORDERED, that Kearsarge Telephone Company Tariff No. 7 — Telephone, suspended by order no. 19,440 (June 27, 1989), is hereby rejected; and it is

FURTHER ORDERED, that Kearsarge Telephone Company shall file revised tariff pages to recover an increase in gross revenues of $84,953, through the rate schedules as set forth in the Stipulation Agreement marked as Exhibit 3; and it is

FURTHER ORDERED, that such revised tariff pages shall bear the effective date of the date of this report and order or December 16, 1989, whichever is last, and shall bear all further designations as set forth in this Commission's Tariff Filing Rules; and it is

FURTHER ORDERED, that Kearsarge Telephone Company shall collect the revenue deficiency between the temporary rates as allowed by order no. 19,525 dated September 11, 1989, and the permanent rates as allowed in this report and order, by means of a surcharge applied to all customer bills for service rendered on and after the date of this order or December 16, 1989, whichever is last; and it is

FURTHER ORDERED, that Kearsarge Telephone Company shall file a tariff supplement calculating the temporary rate surcharge and providing for its recoupment for a period of six (6) months commencing with service rendered on and after December 16, 1989, or the date of this order, whichever is last.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of December, 1989.

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NH.PUC*12/15/89*[51899]*74 NH PUC 482*Chichester Telephone Company

[Go to End of 51899]

74 NH PUC 482

Re Chichester Telephone Company

DR 89-070
Supplemental Order No. 19,643

New Hampshire Public Utilities Commission

December 15, 1989

ORDER approving a stipulated increase in rates for local exchange telephone service.

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1. RETURN, § 111 — Independent telephone carrier — Stipulation.

[N.H.] Pursuant to stipulation, an overall rate of return of 11.50% was adopted for an independent local exchange telephone carrier. p. 483.

2. RATES, § 532 — Telephone rate design — Stipulation — Independent local exchange carrier.

[N.H.] A stipulation adopted in an independent local exchange telephone carrier rate case authorized the carrier to file compliance tariffs providing for a rate increase of $25,528; the compliance tariffs must (1) apply the approved rate increase across-the-board to business and residence rate classes only, (2) fold the touchtone rate into the basic service rate, and (3) convert business one party lines into key system trunk lines. p. 483.

APPEARANCES: Dom S. D'Ambruoso, Esquire of Ransmeier and Spellman for Chichester Telephone Company; Kenneth Traum, for the Consumer Advocate; and Mary C.M. Hain, Esquire for the Staff of the New Hampshire Public Utilities Commission ("commission").

By the COMMISSION:

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REPORT

This report addresses proposed revisions to Chichester Telephone 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. This report and order does not approve the withdrawal of two-party and four-party rates.

I. *Procedural History*

On June 16, 1989, Chichester Telephone Company ("Chichester") filed with the commission proposed revisions to Fifth Revised sheet 1 of its Tariff No. 3 — Telephone, to be effective July 16, 1989, providing for various changes in the terms and conditions of service in Tariff No. 3 and providing for a rate increase calculated to yield an increase in gross annual revenues of $25,528 or approximately a 4.68% increase in present adjusted revenues. This petition was based upon a test year ending March 31, 1989.

The petition also requested temporary rates pursuant to the provisions of RSA 378:27 at existing rate levels during these proceedings and until permanent rate levels were established. By its order no. 19,441 (June 27, 1989), 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 August 24, 1989. A duly noticed hearing on the matter of temporary rates was held on August 24, 1989 at the commission. Report and order no. 19,526 dated September 11, 1989 was issued fixing Chichester's current rates as temporary rates effective with all service rendered on and after September 16, 1989.

Pursuant to the procedural schedule set forth in the Report accompanying order no. 19,526 (74 NH PUC 298 [1989]), the parties engaged in discovery and met in consultation on October 31, 1989 for the purpose of narrowing issues. Chichester had filed its testimony and exhibits along with its petition for permanent rates on June 16, 1989. The company's exhibits developed an additional revenue requirement of $59,374 as compared to their petition requesting authorization for $25,528. The staff filed testimony and exhibits relative to rate base, revenue requirement and operating expense levels on October 20, 1989. These exhibits and revisions demonstrated a revenue deficiency of $29,723 and a recommendation that the $25,528 revenue increase be granted. The staff filed testimony on October 27, 1989, recommending an 11.50% return on equity and an overall return of 11.50%.

As a result of the filing of testimony and exhibits, the exchange of data requests and responses, and the settlement conference of October 31, 1989, the parties entered into an agreement on all issues.

II. *Stipulation Agreement*

[1, 2] The parties stipulated to the level of test year operating revenues, expenses, rate base and rate of return. The agreed overall adjusted test year utility net operating income was $79,924. The agreed total rate base upon which Chichester should be allowed to earn a return is $851,928. The parties have stipulated to an overall rate of return of 11.50%.

Chichester agreed to file a compliance tariff providing for the stipulated rate increase of $25,528, these tariff pages to be filed after the commission issues an order approving the stipulation.

The parties also stipulated to the following rate design. The compliance tariff shall: 1) apply the approved rate increase across-the-board to business and residence rate classes only, 2) fold the touchtone rate into the basic service rate, and 3) convert thirty-three (33) business one party lines to thirty-three (33) key system trunk lines. In its next rate proceeding, Chichester will investigate the feasibility of local measured service because the settlement allows Chichester to move exclusively to one party service.

The across-the-board increase is 27%. It produces the following residential rates:

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

Service	*Existing*	*Increase*	*Stipulated*
1 party	$6.55	$1.80	$8.35
2 party	$5.60	$1.55	$7.15
4 party	$4.90	$1.35	$6.25

The parties agreed that Chichester shall be allowed to collect the revenue deficiency between the temporary rates as allowed by order no. 19,526 and the permanent rates by means of a surcharge applied to all customer bills. The surcharge shall recoup the amount over a six-month period in accordance with RSA 378:29. The rates shall be effective as of the date of this order or

December 16, 1989, whichever comes last.

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 $25,528 will be effective with service rendered on and after December 16, 1989 or the date of this order, whichever comes last. We recognize that after Chichester converts to digital switching on December 9, 1989, Chichester plans to file a tariff to withdraw two-party and four-party service. This report and order does not approve the withdrawal of two-party and four party rates.

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. 2, is hereby approved by the commission; and it is

FURTHER ORDERED, that the commission does not approve the withdrawal of two-party and four-party rates at this time; and it is

FURTHER ORDERED, that Chichester Telephone Company Tariff No. 3 — Telephone, suspended by order no. 19,441 (June 27, 1989), is hereby rejected; and it is

FURTHER ORDERED, that Chichester Telephone Company shall file revised tariff pages to recover an increase in gross revenues of $25,528, through the rate schedules as set forth in the Stipulation Agreement marked as Exhibit 2; and it is

FURTHER ORDERED, that such revised tariff pages shall bear the effective date of the date of this report and order or December 16, 1989, whichever comes last, and shall bear all further designations as set forth in this Commission's Tariff Filing Rules; and it is

FURTHER ORDERED, that Chichester Telephone Company shall collect the revenue deficiency between the temporary rates as allowed by order no. 19,526 (74 NH PUC 298) dated September 11, 1989, and the permanent rates as allowed in this report and order, by means of a surcharge applied to all customer bills for service rendered on and after the date of this order or December 16, 1989, whichever comes last; and it is

FURTHER ORDERED, that Chichester Telephone Company shall file a tariff supplement calculating the temporary rate surcharge and providing for its recoupment for a period of six (6) months commencing with service rendered on and after December 16, 1989 or the date of this order, whichever comes last.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of December, 1989.

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[Go to End of 51900]

74 NH PUC 485

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,644

New Hampshire Public Utilities Commission

December 19, 1989

ORDER directing a local exchange telephone carrier to file all requests for confidentiality within two weeks of its receipt of data requests.

PROCEDURE, § 16 — Discovery and inspection — Requests for confidentiality — Timing — Local exchange telephone carrier.

[N.H.] In the interests of ensuring that a local exchange telephone carrier rate proceeding would be presented promptly, the commission directed the carrier to file all requests for confidentiality within two weeks of its receipt of data requests.

By the COMMISSION:

ORDER

WHEREAS, on September 19, 1989, the commission issued its report and order no. 19,536 which created standards applicable to requests for confidentiality; and

WHEREAS, said report and order requires New England Telephone to file its requests for confidentiality within three (3) weeks of receiving data requests (*i.e.* the date on which data responses are due); and

WHEREAS, said three week time frame has delayed the discovery process within the procedural time frames in this docket; and

WHEREAS, the simple identification of requested data as being confidential should not require three weeks to accomplish; and

WHEREAS, records at the commission indicate that the average response time of NET to staff data requests has been approximately 5 weeks, 554 of 674 responses have exceeded the 3 week time limit; and there are currently 50 data request responses not received 3 weeks after being sent to NET; and

WHEREAS, 39 out of the 674 NET responses to data requests have resulted in petitions for confidentiality; and

WHEREAS, said purportedly confidential responses are complex, voluminous and require

much time to analyze both regarding their confidential nature and regarding their substantive input to the issues in the docket; and

WHEREAS, on October 23, 1989, the commission issued report and order no. 19,580 (74 NH PUC 417) establishing procedural schedules for the revenue requirement issue, and for the rate design and price cap issues; and

WHEREAS, on October 27, 1989, Patrick Duffy, Vice President, N.H. of New England Telephone Company, by letter to the commissioners of the public utilities commission, with copies to the parties, expressed his concern that New England Telephone be allowed to present its case promptly and without further delay; and

WHEREAS, the commission wishes to allow New England Telephone to present its case as promptly as possible; it is hereby

ORDERED, that New England Telephone shall henceforth file all requests for confidentiality within two (2) weeks of its receipt of data requests.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1989.

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NH.PUC*12/21/89*[51901]*74 NH PUC 486*Public Service Company of New Hampshire

[Go to End of 51901]

74 NH PUC 486

Re Public Service Company of New Hampshire

DR 89-148
Order No. 19,646

New Hampshire Public Utilities Commission

December 21, 1989

ORDER denying a motion for reconsideration of a prior order determining that a full evidentiary proceeding was not required on the question of whether an electric utility was required to purchase, at the rates in a long-term rate order, capacity and energy in excess of the amount specified in that rate order.

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1. COGENERATION, § 24 — Rates — Long-term rate order — Purchases in excess of amount specified.

[N.H.] The question of whether an electric utility is required to purchase, at the rates prescribed in a long-term rate order, energy and capacity in excess of the amount specified in the long-term rate order, is a narrow and specific question of legal interpretation and therefore does not require a full evidentiary hearing. p. 489.

2. PROCEDURE, § 7 — Determination of preliminary questions — Evidentiary proceedings.

[N.H.] The determination of a narrow and specific question of legal interpretation does not require the commission to conduct a full evidentiary proceeding. p. 489.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On August 24, 1989 Public Service Company of New Hampshire (PSNH) filed a Motion for Clarification regarding payments to small power producers and cogenerators (qualifying facilities or QFs) for energy and capacity in excess of the levels of energy and capacity specified in their long term rate orders.

On September 27, 1989 the commission issued an order of notice in the instant docket making all qualifying facilities parties. The order of notice found that the motion for clarification raised only issues of legal interpretation and therefore did not require an investigation of factual evidence. It scheduled the filing of initial legal memoranda on the issues for October 25, 1989 and reply memoranda for November 8, 1989.

On October 17, 1989, Alexandria Power Associates, Bio-Energy Corporation, Bridgewater Steam Power Company, Hemphill Power & Light Company, Pinetree Power, Inc., Pinetree Power — Tamworth, Inc., Timco, Inc. and Whitefield Power & Light Company (the biomass producers) filed a motion to amend the procedural schedule that asked for 1) a hearing on factual evidence; and 2) in the event that motion was denied, an extension in the schedule for filing legal memoranda from October 25, 1989 to November 15, 1989 for the initial memoranda and from November 8, 1989 to December 6, 1989 for the reply memoranda.

On October 27, 1989 the commission issued order no. 19,585 denying the motion for an evidentiary hearing and granting in part the motion for an extension of time. The commission ordered initial legal memoranda to be filed by November 15, 1989 and reply memoranda by November 29, 1989.

On November 13, 1989, the biomass producers filed an objection and motion for reconsideration of the commission's order no. 19,585. Given the proximity of this filing to the date that initial legal memoranda were due, the commission notified the parties of which the commission was aware that they should not file their memoranda until the commission ruled on the motion for reconsideration. At the present time the procedural schedule is suspended.

II. POSITIONS OF THE PARTIES

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A. *PSNH's Motion for Clarification*

In its August 24, 1989 motion for clarification PSNH sought "a ruling from the Commission clarifying whether PSNH is required to purchase, at the rates prescribed in a long-term rate

order, energy and capacity in excess of the amount specified in the SPP's [small power producer's] rate filing."

PSNH indicated that its confusion regarding the rates at which it is obligated to purchase QF power stems from two sources: 1) the weight to be accorded the PUC audit value and 2) the effect of the statutory definition of a small power production facility on PSNH's obligations. PSNH notes that the question to the commission remains "with respect to the rates prescribed in a long term rate order, is a small power producer limited to the level of generation it specified in its rate filing?"

PSNH states that it has limited its examination regarding this matter to the largest, non-hydro facilities because these facilities have the greatest monetary impact and because hydro facilities' production is generally limited by the potential of a particular site.

B. *The Biomass Producers*

On October 17, 1989, the biomass producers filed a Motion to Amend the Procedural Schedule to provide for a hearing on factual evidence and extensions in the deadlines for filing of legal memoranda. On November 13, 1989, after the commission denied the motion for a hearing and granted the extensions in part, the biomass producers filed an objection and motion for reconsideration. The November 13th motion reiterated concerns raised in the biomass producers' October 17th motion.

The biomass producers' motions characterize PSNH's question as a request for "an investigation into certain issues regarding the relationship of the capacity audit of a small power producer or cogenerator ("SPP") to the size level specified in the long term rate filing of the particular SPP."

The biomass producers cite the following factual issues and data relating to QF project size that in their view warrant investigation in this docket:

> 1) an inquiry into the purpose and intent of the representations contained in Intervenors' rate petitions;
>
> 2) presentation of evidence with respect to the differing representations as to size found in the rate petitions, ... in the individual interconnection agreements, and in the interconnection studies, and the relationship between these differing statements of size;
>
> 3) presentation of evidence as to the extent of any differences between the gross ... and net output of a facility and ... [its] significance;
>
> 4) presentation of evidence as to the actual extent, if any, of variations between the size of the facilities as represented in the rate petitions, interconnection agreements and interconnection studies and the audit values ... and the relationship between the audit value and other representations of size; and
>
> 5) an inquiry into the need for determination of the extent to which reasonable variations in facility size will be permitted, and the basis for any such determination.

The biomass producers base their November 13th objection and request for reconsideration of the commission's denial of the request for discovery and hearing proceedings on the following arguments:

1) The docket is a "contested case" within the meaning of RSA 541 A:1,III, and as such must be resolved through an adjudicative proceeding.

2) Before the commission can take administrative notice of the data which the biomass producers averred was relevant to the case, the data must be identified and the parties afforded an opportunity to contest it.

3) An adequate opportunity to contest or examine the data requires that the biomass producers be afforded an opportunity to rebut it by presenting additional factual evidence and by examining and cross-examining witnesses.

4) The commission's order deprives the

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biomass producers of the opportunity to examine PSNH on factual issues the biomass producers see as relevant to the case, including factual allegations they understand PSNH to have made in its original motion.

5) Discovery, examination and hearing are warranted on five subsidiary issues.

6) Commitments in the PSNH bankruptcy proceeding and the Thanksgiving holiday warrant the full amount of extension requested in their first motion.

7) The commission should provide a service list of the parties in the docket.

III. COMMISSION ANALYSIS

A. *The PSNH Motion for Clarification*

The original question PSNH asked the commission in its August 24, 1989 motion is "whether PSNH is required to purchase, *at the rates prescribed in a long-term rate order,* energy and capacity in excess of the amount specified in the SPP's rate filing." (Emphasis added.) This is the question before the commission. We emphasize the phrase "at the rates prescribed in a long-term rate order" because, as discussed below, there seems to be some confusion about the issue before the commission. We have not been asked whether PSNH is required to purchase energy and capacity from QFs in excess of the amount specified in the QF's rate filings; we have been asked whether PSNH is required to purchase that excess at the long term rate order rates.

PSNH originally asked its question only with respect to the largest non-hydro facilities. However, as our order of notice indicated, we believe it appropriate to respond to the question generically for all QFs to forestall any continued or future confusion on this issue with respect to smaller and/or hydro facilities. If by their nature these facilities cannot provide capacity and energy in excess of the amounts in their rate orders because of limitations imposed by the physical constraints of their sites, then they will, *de facto,* be unaffected by the commission's findings in the instant docket.

In the order of notice the commission found PSNH's motion for clarification to raise only issues of legal interpretation and therefore no hearing for investigation of factual evidence was necessary. Our finding was based on our understanding of the specific, narrow question PSNH raised — whether it was obligated to purchase QF capacity and energy, at long term rate order

rates, if this capacity and energy was in excess of the amount specified in the long term rate order. We set a very reasonable schedule for the filing of legal memoranda on what is a question of legal interpretation. The parties were allowed four weeks for preparation and filing of the initial memoranda and then two weeks for the filing of reply memoranda, if they felt them necessary.

B. *The Biomass Producers' Motions*

In their October 17th motion the biomass producers characterized the question asked by PSNH more broadly, as a request for "an investigation into certain issues regarding the relationship of the capacity audit ... to the size level specified in the long term rate filing of the particular SPP."

We reiterate that this is not what PSNH asked the commission. PSNH's question was narrower and more specific. It is PSNH's question to which the commission is required to respond, not the question as characterized by the biomass producers. We are explicitly discussing this point in this report because we believe it may be the source of some confusion regarding the scope of this docket and whether it encompasses any factual issues, as opposed to issues of legal interpretation. The commission notes that the biomass producers appear to mischaracterize PSNH's question further, stating, "The ultimate question raised by PSNH concerns whether or not a SPP is limited, by its rate order, to the level of generation it specified in its rate filing." We reiterate our point above: the question is not whether PSNH is obligated to purchase the excess; nor is it whether the rate order of an SPP generating in excess of the rate order amount is at risk even for the specified size. Rather it is whether PSNH is obligated to purchase the excess at the long term rate order rate.

On October 27, 1989, in order no. 19,585,

the commission denied the biomass producers' motion for hearing on factual evidence, reiterating our view that the issues in this proceeding are a matter of legal interpretation. We also noted that we could take administrative notice of all of the data and information the biomass producers cited as the facts on which hearings should be held. Further, we granted in part the biomass producers request for extensions for filing the legal memoranda, allowing an additional three weeks for the filing of both the initial and reply memoranda.

While order no. 19,585 is clear on its face, we will take this opportunity to address the biomass producers' points individually in an effort to make our views even clearer. We will then respond to their November 13th objection and motion for reconsideration.

The biomass producers ask that the commission investigate the purpose and intent of the representations made in the SPPs' rate petitions. The commission does not view "purpose and intent" as facts but rather as matters of legal interpretation.

As we indicated in the order denying the motion for a hearing, the information and data on representations of project size are part of the record in the rate order dockets and already on file at the commission. We can take administrative notice of them if necessary. We would agree that if we had been asked to settle a dispute, pursuant to RSA 362:A-5, between PSNH and a

particular QF selling it power the information cited would be relevant and a hearing on it appropriate. However, that is not the question before us.

We are being asked to clarify a threshold question for all QFs selling power to PSNH under long term rate orders. *If* the commission finds that PSNH is not obligated to purchase excess capacity and energy at the long term rate order rates, and a QF and PSNH cannot agree on whether the QF is selling excess capacity and energy (or staff petitions us to investigate such a question), then an investigation and adjudicatory hearing into the particular circumstances of the QF in question would be appropriate. Until we have addressed this threshold matter, it is not only premature but inappropriate to attempt to answer questions about particular QFs.

Some of the biomass producers' concerns may relate to PSNH's description of staff's letter to SES Concord. The letter stated

> The maximum output of the facility that would be entitled to the capacity and energy rates authorized by these orders would be 13.2 MW (11 MW + 20%). Any output greater than that would, in staff's view, be entitled only to Public Service of New Hampshire's (PSNH) short-term capacity and energy rates or whatever other rate you could negotiate with PSNH.

Staff further indicated that if SES Concord disagreed with its interpretation of the rate order, SES Concord should seek formal clarification from the commission. SES Concord did not do that. Instead, PSNH sought clarification generally, not specifically with respect to SES. While PSNH included information on seven individual QFs in attachments to its motion, the commission does not interpret its motion to be asking it to rule specifically on their status.

The biomass producers also raise the differences between gross and net output as an issue. The issue currently before us is which was meant, either as specified in the rate filings or as generally defined by the governing generic rate orders. These orders, petitions and documents are already on file at the commission. The biomass producers can argue the extent to which the difference between gross and net output is relevant to the question before us in their legal memoranda.

The issue of the extent to which the commission should allow any variations in facility size is not one of fact but of legal interpretation. It also can be argued in legal memoranda.

In the November 13th motion, the biomass producers state that this proceeding is a contested case and not allowing a full adjudicative proceeding deprives them of their rights while allowing PSNH to present allegations of fact and the commission to rely on undisclosed and unexplained information in its records. Most of the points in that motion speak to this question.

[1, 2] The commission regards the

proceeding as a contested case pursuant to RSA 541-A:1,III; however, as we discussed above, there are no facts requiring adjudication. Further, the data and information that the commission would rely on is record evidence in the rate petition proceedings. It is unnecessary to have a hearing to present this information to the commission because we already have it. As the data and information are on file and are public information, they cannot be regarded as

undisclosed.

In addition, the data and information in question consist of documents to which both PSNH and the biomass producers have agreed (e.g., interconnection agreements) or to which the biomass producers have had input (e.g., capacity audits and their own rate petitions). If the biomass producers now want to contest that data and information, this should be the subject of separate proceedings specific to individual QFs. It would not be appropriate or feasible to consider such disputes in this proceeding.

The biomass producers also object to the commission's denial in part of their request for additional time for reply memoranda. As the timing of the motion for reconsideration makes this issue moot, we will not speak to it here. Our order will contain a revised procedural schedule.

Lastly, the biomass producers requested a service list. By letter of November 15, 1989, the commission distributed the service list to all the parties listed. Since that time Howard Moffett of the law firm of Orr & Reno, Concord, New Hampshire, has asked staff that he be added to the service list. The commission has done so and by this report so notifies the other parties.

For the reasons outlined above, the commission denies the biomass producers' motion for reconsideration. We reiterate our view that the current proceeding addresses a very narrow and specific question of legal interpretation and therefore does not require a full evidentiary proceeding. The question before us is whether PSNH is required to purchase, at the rates in a QF's long term rate order, capacity and energy in excess of the amount specified in that rate order.

C. *Procedural Schedule*

The commission requires all interested parties to file initial legal memoranda on this question by January 19, 1990 and reply memoranda three weeks thereafter on February 9, 1990.

Our order will issue accordingly.

ORDER

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

ORDERED, that the biomass producers' objection and motion for reconsideration of the commission's order no. 19,585 be, and hereby is, denied; and it is

FURTHER ORDERED, that all interested parties file legal memoranda on the question before the commission, as described in the foregoing report, in accordance with the schedule therein.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of December, 1989.

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NH.PUC*12/21/89*[51902]*74 NH PUC 490*Quin-Let Trust

[Go to End of 51902]

Re Quin-Let Trust

DE 89-044
Order No. 19,648

New Hampshire Public Utilities Commission

December 21, 1989

ORDER directing a water company to appear and show cause why it should not be subjected to criminal prosecution or civil penalties for failure to comply with a prior order.

FINES AND PENALTIES, § 6 — Grounds for imposition — Violation of commission order — Water company.

[N.H.] A water company that failed to comply with a prior commission order directing it to pay a fine, refund fees charged to customers, and apply for a franchise was directed to appear and show cause why it should not be

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subjected to criminal prosecution or civil penalties.

By the COMMISSION:

ORDER

On July 27, 1989 the commission issued order no. 19,495 ordering that Quin-Let Trust and its officers appear before the commission on August 22, 1989 at 10:00 a.m. to show cause why they should not be subjected to criminal prosecution or civil penalties or other sanctions prescribed by law for failure to subject itself to the jurisdiction of the Public Utilities Commission as they were operating a public water utility without authority; and

WHEREAS, on August 22, 1989 the commission held a hearing on the issue; and

WHEREAS, on October 25, 1989 the commission issued order no. 19,579 (74 NH PUC 415), ordering Quin-Let Trust to pay a fine of $500 pursuant to RSA 365:41 and RSA 365:42 and further ordering that Quin-Let Trust return $200 fee charged this year to its customers, and finally ordering Quin-Let to file for a franchise within thirty days of the date of this order; and

WHEREAS, on November 24, 1989 the commission had not yet received a petition for a franchise; and

WHEREAS, the commission has not received the $500 fine from Quin-Let Trust; it is hereby

ORDERED, that Quin-Let Trust and its officers, beneficiaries or trustees appear before this commission on the 6th day of March, 1990 at 10:00 A.M. in the forenoon at the commission offices at 8 Old Suncook Road, to show cause why they should not be subjected to criminal prosecution or civil penalties up to $25,000 pursuant to the provisions to the New Hampshire

Statutes RSA 365:41, RSA 365:42, RSA 374:41 et seq., RSA 374:17 or other sanctions prescribed by law for its failure to comply with the commission's report and order no. 19,579 dated October 25, 1989.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of December, 1989.

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NH.PUC*12/22/89*[51903]*74 NH PUC 491*Claremont Gas Corporation

[Go to End of 51903]

74 NH PUC 491

Re Claremont Gas Corporation

DR 89-185
Second Supplemental Order No. 19,652

New Hampshire Public Utilities Commission

December 22, 1989

ORDER denying a motion for reconsideration and extending the deadline for a gas distributor to file a lost and unaccounted for gas study.

AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Energy cost clauses — Indirect costs — Lost and unaccounted for gas.

[N.H.] A gas distributor was directed to perform a lost and unaccounted for gas study notwithstanding its claim that amendments to its gas supply and reporting procedures rendered the study unnecessary.

By the COMMISSION:

REPORT

On November 29, 1989 Claremont Gas Corporation (Claremont) moved that the commission rehear its report and order No. 19,611 (74 NH PUC 447).

Claremont contends that the commission imposed fine of one thousand dollars ($1,000) is inappropriate based on the testimony given at the hearing and, therefore, requests reconsideration. The company's motion contains no new facts that would cause us to amend our finding and, in fact, implies that we simply reconsider the testimony upon which the original order was based. We will deny the request.

Claremont also contends that because it

has amended its gas supply and reporting procedures so as to isolate non-utility operations, there is now no need to perform the lost and unaccounted for gas study. However, Claremont fails to adequately explain why separation of the utility and non-utility operations removes the need for a study that identifies the sources of lost or unaccounted for gas on the utility system. Accordingly, we are not persuaded by the Claremont argument and we will require Claremont to comply with our order requiring the study, except that the due date will be extended to January 31, 1990. The commission's staff remains available to assist the company in developing an appropriate strategy to meet our objectives.

We will suspend that portion of order relative to the imposition of the $100 per day fine, and reconsider its appropriateness based on the company's demonstration of compliance with our orders by January 31, 1990.

Our order will issue accordingly.

SECOND SUPPLEMENTAL ORDER

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

ORDERED, that Claremont's motion for rehearing is denied; and it is

FURTHER ORDERED, that Claremont file with the commission its lost and unaccounted for gas study no later than January 31, 1990. Failure to comply with this deadline may result in a one hundred dollar ($100) per day fine for every day thereafter that the company continues to default; by.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 1989.

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NH.PUC*12/27/89*[51904]*74 NH PUC 492*Northern Utilities

[Go to End of 51904]

74 NH PUC 492

Re Northern Utilities

DR 89-170
Order No. 19,653

New Hampshire Public Utilities Commission

December 27, 1989

ORDER denying a motion for rehearing of a prior order that denied a natural gas distributor a return on its investment in new distribution facilities required to serve a special contract customer.

VALUATION, § 234 — Property excluded — Gas distributor — Facilities required to serve special contract customer.

[N.H.] The commission denied a motion for rehearing of a prior order denying a natural gas distributor a return on its investment in new distribution facilities required to serve a special contract customer; however, the commission allowed the distributor a further opportunity to present written arguments on the narrow issue of why the commission should grant a return on the investment.

By the COMMISSION:

REPORT

On November 27, 1989 Northern Utilities (Northern) moved that the commission rehear its report and order no. 19,602 (74 NH PUC 434). Northern requests that the commission schedule a hearing and/or oral argument with respect to its motion. Northern has filed a petition notwithstanding its earlier plea that time is of the essence and request for expedited consideration and approval.

Northern's motion for rehearing of our November 27, 1989 report and order presents no new facts that would cause us to reverse our

decision to deny the return on investment. In addition, because Northern's petition requested and received expedited consideration of its September 25, 1989 filing we will deny the request for hearing and/or oral argument. However, we will allow Northern a further opportunity to present written arguments on the narrow issue of why the commission should grant a return on its investment.

We will deny Northerns's request to modify our finding that Northern justify to the commission expenditures by Gold Bond in excess of $448,000. This condition is necessary to enable the commission to ensure that the terms and conditions of special contracts are just and consistent with the public interest. Should Northern convince the commission that all expenditures are just and in the public interest then Gold Bond's discount in phase one will continue until its costs are fully recovered.

Finally, it was not the intent of the commission to preclude Northern from having discussions with Gold Bond about the approved contracts or, for that matter, about the possible shape of any new contracts. However, it was our intention to preclude Northern from making any firm and binding offer, prior to commission review, that would amend or continue the approved contracts. We will therefore modify our order to read that any contractual commitments entered into by Northern shall be expressly conditioned upon and subject to commission review and any reliance thereon prior to commission review and approval is at the risk of the customer.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report on Motion for a Rehearing and Request for Hearing and/or Oral Argument, which is made a part hereof, it is hereby

ORDERED, that the motion is denied; and it is

FURTHER ORDERED, that Northern file written arguments in support of its position no later than January 19, 1990.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of December, 1989.

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NH.PUC*12/28/89*[51905]*74 NH PUC 493*Public Service Company of New Hampshire

[Go to End of 51905]

74 NH PUC 493

Re Public Service Company of New Hampshire

DR 89-219
Order No. 19,655

New Hampshire Public Utilities Commission

December 28, 1989

ORDER establishing a legislatively-mandated temporary rate surcharge for the retail services of an electric utility operating as a debtor-in-possession under the protection of a federal bankruptcy court.

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1. BANKRUPTCY — Electric utility — Temporary rate surcharge — Legislatively-mandated rate.

[N.H.] State statute RSA 362-C:4 directed the commission to establish a 5.5% temporary rate surcharge to be made effective on January 1, 1990, for the retail rates of Public Service Company of New Hampshire — an electric utility operating as a debtor-in-possession under the protection of a federal bankruptcy court; the legislation reserved consideration of whether the ensuing rates were just and reasonable for a proceeding to establish permanent rates. p. 497.

2. RATES, § 630 — Temporary rate surcharge — Subject-to-refund conditions — Escrow account — Electric utility.

[N.H.] Revenues derived from a legislatively-mandated temporary rate surcharge for the retail services of an electric utility operating as a debtor-in-possession under the protection of a federal bankruptcy court were escrowed pending a determination by the commission that the acquisition of the utility by another utility, or some other reorganization plan, would be in the public good and that the

trajectory of rates would be just and reasonable. p. 497.

APPEARANCES: Northeast Utilities by Eve Oyer, Esquire and Thomas Rath, Esquire of Rath, Young, Pignatelli & Oyer and Robert P. Knickerbocker, Esquire; Office of the Attorney General by Harold T. Judd, Esquire; Business and Industry Association by John J. Lahey, Esquire of Vena, Truelove & Lahey; Bio-Energy Corporation, *et. al.* by Paul A. Savage, Esquire of Brown, Olson & Wilson; Public Service Company of New Hampshire by Martin L. Gross, Esquire of Sulloway, Hollis & Soden; New Hampshire Electric Cooperative by Stephen Merrill, Esquire of Merrill & Broderick; Office of the Consumer Advocate by Michael Holmes, Esquire; John V. Hillberg; and Staff of the New Hampshire Public Utilities Commission by Wynn E. Arnold, Esquire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On January 28, 1988, Public Service Company of New Hampshire (PSNH) filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code and since that date has operated as a debtor-in-possession under the protection of the United States Bankruptcy Court for the District of New Hampshire (Court). On September 15, 1989, four competing plans of reorganization were filed with the Court: a PSNH stand-alone company proposal by PSNH management, and three acquisition/merger plans by Northeast Utilities (NU), New England Electric System (NEES) and United Illuminating (UI). The plans were subsequently amended on October 25, 1989. On November 1, 1989, NEES withdrew its acquisition proposal. On November 9, 1989, a committee of New Hampshire citizens announced the development of a proposal for a stand-alone reorganization of PSNH and in a related announcement, PSNH and NEES agreed to explore the formulation of a series of management agreements. All proposals incorporated a provision for a temporary rate increase of 5.5 percent effective January 1, 1990.

On November 22, 1989, the Governor and the Attorney General, on behalf of the State of New Hampshire (the State), entered into an agreement with NU intended to resolve the reorganization proceedings (the November 22, 1989 Agreement). The State also announced that it would enter into a similar agreement with any other party which could produce a plan that would resolve the bankruptcy. In order to resolve the bankruptcy, however, any alternative plan would require the support of the creditors and shareholders similar to the support accorded the NU plan at the time of the November 22, 1989 Agreement.

Recognizing that under existing statutes the New Hampshire Public Utilities Commission (commission) lacked the authority to approve the rate increases envisioned by the four reorganization proposals, the New Hampshire Legislature considered in special session proposed legislation to amend RSA 362. In the Declaration of Purpose (RSA 362-C:1) the legislature found, in pertinent part, that:

I. The health, safety and welfare of the people of the state of New Hampshire and

orderly growth of the state's economy require that there be a sound system for the furnishing of electric service.

II. The bankruptcy of the state's largest electric utility, Public Service Company of New Hampshire, has threatened the adequacy, reliability and cost of electric service.

III. The present and predicted growth in electric service demands in the state of New Hampshire requires a prompt resolution of the bankruptcy and reorganization of Public Service Company of New Hampshire.

Accordingly, the bill, *inter alia*, authorized the commission to determine after hearing whether the November 22, 1989 Agreement and the subsequent acquisition of PSNH by NU "would be consistent with the public good and

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whether the rates for electric service to be established in connection with the reorganization are just and reasonable and should be approved." Should the commission find that the acquisition was in the public good and the rates would be just and reasonable, the commission shall:

... notwithstanding any other provision of law, establish and place into effect the levels of rates, fares, or charges and the fuel and purchased power adjustment clause to be maintained for Public Service Company of New Hampshire, or its successor, in accordance with, and during the time periods set forth in, the agreement. RSA 362-C:3.

Meanwhile, the commission (pursuant to RSA 362-C:4) was instructed to establish a 5.5 percent temporary rate surcharge effective on January 1, 1990 for the PSNH retail revenues and to segregate and place the resulting revenues in escrow with an escrow agent approved by the commission. The proposed legislation also extended the same authorization to any alternative reorganization plan which the commission affirmatively finds will resolve the bankruptcy and results in the same or lower costs and risks to ratepayers and the same or greater benefits to the state as the NU plan. Further, it directed the commission to establish a similar temporary rate surcharge for the New Hampshire Electric Cooperative (NHEC) to be held in escrow pending the filing by NHEC of a rate plan and its approval by the commission.

The legislation was enacted by the New Hampshire General Court on December 14, 1989 and was signed into law by the Governor on December 18, 1989.

In anticipation of the passage of enabling legislation, on November 28, 1989, the state petitioned the commission to place into effect a 5.5 percent temporary surcharge to PSNH's retail rates effective January 1, 1990. In response, the commission issued an order of notice opening the instant docket and scheduling a hearing on the merits for December 18, 1989.

On December 13, 1989, PSNH management withdrew its plan for reorganization on a stand-alone basis. Subsequently, UI also withdrew its proposal. Therefore, at the present time, there is a single plan, the acquisition proposal by NU, before the Court and the commission.

The parties and commission staff met extensively prior to the December 18, 1989 hearing and developed documents and a settlement agreement recommending procedures to implement the temporary rate increases. At the hearing, the state presented the parties' recommendations

regarding the NHEC, tariffs, the escrow account and agent, record-keeping requirements, the relationship between the temporary rate and PSNH's energy cost recovery mechanism (ECRM), the bill insert, New Hampshire state tax and the Nuclear Decommissioning Financing Fund. The commission reserved exhibits for the filing of final documents.

At the December 18, 1989 hearing, the commission bifurcated the case to address separately implementation of the temporary rates for PSNH and the NHEC and opened docket no. DR 89-245 for the latter.

II. RECOMMENDATIONS OF THE PARTIES

On behalf of the parties, the state submitted the Stipulated Recommendations of the Parties (Stipulation) and 12 exhibits which addressed the following issues:

A. Tariffs

The parties recommend that the commission implement the temporary rate increase by accepting and approving Page 15-A of PSNH Tariff No. 31 entitled "Temporary 5.5 Percent Surcharge Effective January 1, 1990, Subject to Repayment." Exhibit 9. The parties also submitted a revised Table of Contents to PSNH Tariff No. 31. Exhibit 6.

B. Escrow Account

The parties have filed "Recommendations of the Parties For Escrow of PSNH Temporary Rates" (Escrow Recommendations). Exhibit 4. The Escrow Recommendations provide that

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PSNH revise its billing programs for service rendered on and after January 1, 1990 to reflect the revised tariffs and calculate and transfer the revenues associated with the surcharge to the escrow agent within 20 days after the last day of each month. If the rates have not been made permanent by July 1, 1990, a separate Supplemental Escrow Fund will be established. The Escrow Recommendations, as further explained in footnote 4 of the Stipulation, specify the conditions under which the Escrow Fund and the Supplemental Escrow Fund are disbursed either to PSNH as a stand-alone entity or as a subsidiary of NU, or to the ratepayers as the commission shall by order direct. The escrowed revenue will be held in interest bearing accounts and the interest earned applied to the fuel recovery mechanism(s) then in effect. The parties recommended that the Treasurer of the State of New Hampshire be designated as the Escrow Agent. The Treasurer has accepted the appointment and has specified that the monies shall be invested only in obligations of the United States Government or its agencies. Exhibit 5.

C. Record Keeping Requirements/Repayment

The parties submitted a Repayment Provision (Exhibit 11) which provides, *inter alia*, that:

> in the event repayments are to be made, the amount of repayment for each customer shall be equal to the aggregate amount of the Temporary Rate Surcharge billed to that customer, or such lower amount as may be ordered by the NHPUC as a result of an Alternative Reorganization Plan approved by the NHPUC.

The Repayment Provision specifies the time period within which repayment occurs, the

treatment of customers owing outstanding balances and of those who have left the system, and customer notification. It implicitly assumes that PSNH will maintain records concerning the surcharge on a customer-specific basis such that in the event this commission requires that the revenues collected under the surcharge be repaid to customers, customers can be refunded the actual amounts collected from them during the period of the surcharge.

D. ECRM

The parties filed, as Exhibit 3, The Recommendations of the Parties for the Calculation of ECRM (ECRM Recommendations) and revised tariff pages relating to ECRM (Exhibits 7 & 8). The ECRM Recommendations provide that the existing ECRM component of 3.664¢/kwh be established as a temporary ECRM component to be in effect until June 30, 1990 and that on or after July 1, 1990 a grand reconciliation be made for the entire period of July 1, 1989 through June 30, 1990. It specifies the steps to be taken in the reconciliation and the post July 1, 1990 treatment of the reconciliation depending on whether or not the First Effective Date has occurred. The intent of the ECRM Recommendations is that the scope of the scheduled December 28, 1989 ECRM hearing will be limited to adopting the temporary ECRM rate of 3.664¢/kwh and setting the short-term energy and capacity rates for Qualifying Facilities. The parties also agreed that test power at Seabrook Station will not reduce the ECRM costs; rather the impact of Seabrook will be reflected in ECRM costs only after the regulatory in-service date of Seabrook. The parties made no recommendations regarding the ECRM data requests that were outstanding at the time of the December 18, 1989 hearing.

E. Bill Insert

The parties submitted a proposed bill insert and wording for the bill message. The insert will be included in the bills sent by PSNH to its customers in January, 1990. The amount of the temporary surcharge, as it applies to each customer will be separately identified and the bill message will appear on each succeeding bill while the surcharge is in effect.

F. New Hampshire State Taxes

The parties agreed that New Hampshire

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State Taxes will not be added to customer bills in addition to the temporary surcharge.

G. Nuclear Decommissioning Financing Fund

The parties recommend that at such time as Seabrook receives a full power license, the commission should request that the parties provide proposals for meeting the requirements of RSA 162-F:10.

III. COMMISSION ANALYSIS

[1, 2] The parties submitted as Exhibit 1 a certified copy of Chapter 1 (HB 1) of the 1989 Special Session entitled "An Act relative to authorizing public utilities commission approval of the plans for the reorganization of Public Service Company of New Hampshire and prohibiting utilities from transporting radioactive waste into New Hampshire for disposal in New

Hampshire". Under the Act, RSA 362-C:4 directs that "notwithstanding any other provision of law, the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of Public Service Company of New Hampshire". Given this legislative mandate, the issues before the commission involve the technicalities of the implementation of the temporary surcharge rather than consideration of whether the ensuing rates are just and reasonable. The legislation has reserved this latter question to the proceedings on the permanent rates. Meanwhile, the revenues derived from the surcharge shall be escrowed pending a determination by the commission that the acquisition of PSNH by NU, or some alternative plan, is in the public good and the trajectory of rates is just and reasonable. Absent such a finding, the monies collected under the surcharge will be returned to ratepayers as provided in the escrow agreement. The temporary surcharge of 5.5% is estimated to produce an increase in annual revenues of $31,318,913 (Exhibit No. 10).

We find that the parties have addressed most of the technical issues and our analysis will follow the order of the presentation of recommendations of the parties.

A. Tariffs

We find the narrative description of the tariff page as submitted to be acceptable. However, we find that the Temporary Surcharge would be more appropriately submitted as Tariff Supplement No. 7, Original Page 1. Under Admin. Rule Puc 1601.05(m)(1)(d), tariff supplements are used "to establish a temporary modification of an existing tariff" and the use of this format underlines the temporary nature of the surcharge, pending our findings regarding permanent rates. Therefore, we will require PSNH to file a revised tariff page for the surcharge and also a revised Table of Contents.

We will not approve the revised tariff pages related to ECRM filed as Exhibits 7 & 8 in this docket. The commission has before it an ECRM proceeding (docket no. DR 89-212) and final tariff pages incorporating the findings in both dockets will be approved in DR 89-212.

B. Escrow Account

We find the provisions of the Recommendations of the Parties For Escrow of PSNH Temporary Rates" to be reasonable and in accord with the November 22, 1989 Agreement. We approve the appointment of the State Treasurer as the Escrow Agent and appreciate the responsiveness of the Treasurer in this matter.

C. Record Keeping
Requirements/Repayment

We find the Repayment Provision submitted by the parties to be reasonable. We find it appropriate that the refunds be made on a customer specific basis in light of the deferment of findings of public good and the justice and reasonableness of rates to a subsequent proceeding. We note that the interest accrued on the escrowed monies would not be repaid on a customer specific basis but flowed through the applicable fuel recovery mechanism. We find this unusual in the normal context of temporary rates, but not unreasonable. We will order PSNH to maintain the necessary records, and remind PSNH that calculations of the potential refunds due customers who leave the system

should be made at the time their accounts are closed.

D. ECRM

We will approve the establishment of the existing ECRM rate of 3.664¢/kwh as a temporary ECRM component to be in effect until June 30, 1990 with a grand reconciliation made for the entire July 1, 1989 — June 30, 1990 period on or after July 1, 1990. The reconciliation will include recognition of unit outages and the commercial operation of Seabrook if it occurs in the period.

We note that the Stipulation intends to narrow the issues to be presented by the parties at the ECRM hearing on December 28, 1989. We do not interpret the Stipulation as limiting commission authority to investigate issues appropriately addressed in the ECRM proceeding at the December 28, 1989 hearing or subsequently.

We interpret the parties' agreement regarding the relationship between ECRM and Seabrook as follows. The test energy generated at Seabrook during power ascension between the date of issuance of a full power operating license and the commercial operating date shall be accounted for by charging the cost of fuel consumed to the Seabrook work order and crediting the replacement cost recovered through ECRM to the Seabrook work order. The Seabrook work order shall reflect and incorporate the capital costs for Seabrook contained in Section 2: Seabrook Understandings of the November 22, 1989 Agreement. After the commercial operation date the cost of fuel consumed at Seabrook will be reflected in the actual ECRM cost incorporated in the grand reconciliation on or before July 1st and shall not serve to reduce ECRM from the temporary level prior to that time.

E. Bill Insert

We have reviewed the proposed bill insert and wording of the bill message and will approve the wording of the bill message. However, we will direct that the first paragraph of the bill insert be modified as follows to reflect that the temporary rate increase was required by all reorganization plans and may be a component of any alternative plan to be filed in our subsequent proceeding:

> Public Service Company of New Hampshire entered voluntary bankruptcy on January 28, 1988. The various proposals advanced for the reorganization of PSNH incorporated a provision for a temporary rate increase effective January 1, 1990. With the support of the executive branch of the New Hampshire state government, the state legislature last month endorsed the imposition of a temporary rate surcharge to facilitate resolution of the bankruptcy.

F. New Hampshire State Taxes

We find the parties' recommendation that New Hampshire State Taxes not be added to customer bills in addition to the temporary surcharge to be correct. State Taxes are already incorporated in the existing rates and therefore provision for additional taxes is automatically included in the surcharge which is a percentage increase on the existing rates.

G. Nuclear Decommissioning Financing Fund

We accept the recommendation of the parties that the commission address compliance with the requirements of RSA 162-F:10 at such time as Seabrook receives its full power license.

H. Accounting

In accordance with the proposed rate plan and the requirements of RSA 362-C:4, PSNH, the company, is required to segregate the temporary rate surcharge funds and to place those funds in escrow pending disposition in the manner provided in the agreement or in an alternative rate plan. In order to segregate the temporary rate increase the company will be required to account for the surcharge revenues by debiting revenue account 449.1, Provision for Rate Refunds. The liability for the refunds and the associated interest income will be accumulated in a balance sheet account 229, Provision for

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Rate Refunds, until such time as it is determined that a refund is required or the plans are approved.

Our order will issue accordingly.

ORDER

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

ORDERED, that Public Service Company of New Hampshire (PSNH) be, and hereby is, authorized to implement a temporary 5.5 percent surcharge effective for service rendered on or after January 1, 1990 subject to possible repayment; and it is

FURTHER ORDERED, that all amounts billed under this temporary surcharge shall be accounted for and transferred to an escrow account held by the State Treasurer in accordance with the foregoing report; and it is

FURTHER ORDERED, that PSNH maintain appropriate records to permit repayment if necessary on a customer specific basis; and it is

FURTHER ORDERED, that the establishment of a Temporary Energy Cost Recovery Mechanism and reconciliation of the period July 1, 1989 — June 30, 1990 on or after July 1, 1990 be implemented in accordance with the foregoing report; and it is

FURTHER ORDERED, that the bill message as proposed and the bill insert as modified in the foregoing report be, and hereby are, approved; and it is

FURTHER ORDERED, that the following tariff pages of NHPUC No. 31 — Electricity — Public Service Company of New Hampshire

2nd Revised Page 1;
5th Revised Page 13,
6th Revised Page 14, and
Original Page 15-A

be, and hereby are, rejected and that PSNH file revised tariff pages 13 and 14 regarding ECRM pursuant to this order and the final order in DR 89-212 and file the temporary 5.5 percent surcharge tariff as Supplemental Tariff No. 7 in accordance with the foregoing report and with

Admin. Rule Puc 1601.05(m).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1989.

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CHAPTER 1

HOUSE BILL AMENDED BY THE SENATE

SPECIAL SESSION HB 1-FN STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand nine hundred and ninety

AN ACT

relative to authorizing public utilities commission approval of the plan for the reorganization of Public Service Company of New Hampshire and prohibiting utilities from transporting radioactive waste into New Hampshire for disposal in New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1:1 New Chapter; Reorganization of Public Service Company of New Hampshire. Amend RSA by inserting after chapter 362-B the following new chapter:

CHAPTER 362-C

REORGANIZATION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

362-C:1 Declaration of Purpose and Findings. The legislature finds that:

I. The health, safety and welfare of the people of the state of New Hampshire and orderly growth of the state's economy require that there be a sound system for the furnishing of electric service.

II. The bankruptcy of the state's largest electric utility, Public Service Company of New Hampshire, has threatened the adequacy, reliability and cost of electric service.

III. The present and predicted growth in electric service demands in the state of New Hampshire requires a prompt resolution of the bankruptcy and reorganization of Public Service Company of New Hampshire.

IV. For the reasons stated in paragraphs I-III, the public utilities commission should be authorized to determine whether a proposed agreement relating to the reorganization of Public Service Company of New Hampshire and, upon receipt of required regulatory approvals, the acquisition of Public Service Company of New Hampshire by Northeast Utilities, would be consistent with the public good and whether the rates for electric service to be established in connection with the reorganization are just and reasonable and should be approved.

V. In addition, the public utilities commission should be authorized to determine whether to implement a similar rate plan for the New Hampshire Electric Cooperative, Inc., in order to avoid a bankruptcy by that utility.

362-C:2 Definitions. In this chapter:

I. "Agreement" means the agreement dated as of November 22, 1989, as amended through December 14, 1989, executed by and between the governor and attorney general of the state of New Hampshire, acting on behalf of the state of New Hampshire, and Northeast Utilities Service Company, acting on behalf of its parent Northeast Utilities.

II. "Alternative reorganization plan" means a plan of reorganization filed in the Public Service Company of New Hampshire bankruptcy case, other than the NU plan.

III. "Commission" means the public utilities commission established in RSA 363.

IV. "NU plan" means the amended plan of reorganization filed in December of 1989, by Northeast Utilities Service Company which provides for the resolution of the outstanding creditor claims and equity security interests of Public Service Company of New Hampshire in the Public Service Company of New Hampshire bankruptcy case.

V. "Public Service Company of New Hampshire bankruptcy case" means the proceeding pending before the United States Bankruptcy Court for the District of New Hampshire (Case No. 88-00043) for the reorganization of Public Service Company of New Hampshire under Chapter 11 of the Bankruptcy Code.

362-C:3 Action by the Commission. The commission is authorized, after hearing, in one or more proceedings to be initiated and completed during the pendency of the Public Service Company of New Hampshire bankruptcy,

to determine whether the implementation of the agreement would be consistent with the public good. If the commission so finds, it shall, notwithstanding any other provision of law, establish and place into effect the levels of rates, fares, or charges and the fuel and purchased power adjustment clause to be maintained for Public Service Company of New Hampshire, or its successor, in accordance with, and during the time periods set forth in, the agreement; then the commission shall initiate such other proceedings, hold such other hearings and take such other actions as may be necessary to implement the provisions of the agreement.

362-C:4 Establishment of Temporary Rates. Notwithstanding any other provision of law, the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of Public Service Company of New Hampshire, or its successor, in accordance with the agreement. The incremental increase in revenues resulting from the temporary rate surcharge shall be ordered segregated and held in escrow by an escrow agent approved by the commission pending disposition in the manner provided in the agreement or in an alternative reorganization plan approved by the commission pursuant to RSA 362-C:5.

362-C:5 Alternative Reorganization Plans. The authorization granted to the commission in RSA 362-C:3 shall extend to any alternative reorganization plan which the commission

affirmatively finds will resolve the Public Service Company of New Hampshire bankruptcy case and will result in the same or lower costs and risks to ratepayers and the same or greater benefits to the state as those resulting from the NU plan and the agreement both during the time periods in which rates increases are prescribed in the agreement and thereafter.

362-C:6 Finality of Approval. If the commission takes final action under RSA 362-C:3 or RSA 362-C:5 to approve the agreement and to fix the rates for Public Service Company of New Hampshire or its successor in the manner prescribed in the agreement, or to approve and implement an alternative reorganization plan, or both, the commission shall not thereafter issue any order or process which would alter, amend, suspend, annul, set aside or otherwise modify such approval or result in the fixing of rates other than in the manner prescribed in the agreement or the approved alternative reorganization plan.

362-C:7 Rate Plan for the New Hampshire Electric Cooperative, Inc. Notwithstanding any other provision of law, the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of the New Hampshire Electric Cooperative, Inc., to be held in escrow in the manner provided in RSA 362-C:4. The commission is further authorized to approve a rate plan proposed by the New Hampshire Electric Cooperative Inc., provided that it finds such a rate plan to be consistent with the public good and that it results in no greater costs and risks to members of the cooperative than those resulting for ratepayers of Public Service Company of New Hampshire under the agreement. If the commission approves such a rate plan and fixes permanent rates under such plan, the revenues collected under the temporary rate surcharge shall be paid over to the New Hampshire Electric Cooperative, Inc. If no such rate plan is approved within 90 days following the date on which a bankruptcy rate plan for Public Service Company of New Hampshire becomes effective, the temporary rate surcharge shall terminate and the revenues collected under such surcharge shall be refunded to customers. An order of the commission approving a rate plan under this section shall have the same finality as that provided in RSA 362-C:6 for approval orders relating to Public Service Company of New Hampshire.

362-C:7-a Transportation of Low Level and High-Level Radioactive Waste for Disposal Prohibited. Notwithstanding any law or rule to the contrary, no utility shall transport into the state of New Hampshire any low level or high-level radioactive waste, as defined in Article II of RSA 125-E:1, the Northern New England Low-Level Radioactive Waste Management Compact, for disposal in New Hampshire.

362-C:8 Rate Design. Notwithstanding any law or rule to the contrary, during the fixed rate term of the approved agreement or plan the

commission shall not cause the allocation of base rate revenue responsibility among residential, commercial, industrial and municipal customers in effect on September 15, 1989, for the electric customers, serviced by Public Service Company of New Hampshire or its successor, to change without legislative approval of the commission's finding that such revenue responsibility allocation is unjust or unreasonable.

362-C:9 Modifications in Agreement or Plan. Any modifications to an approved agreement

or plan, including its exhibits, made in accordance with such agreement or plan, which potentially could increase rates, fares or charges shall, in addition to any requirements set forth in such agreement or plan, require the approval of the legislature.

362-C:10 Wholesale Customers. Nothing in the agreement or plan approved by the commission under this chapter shall restrict access to Public Service Company of New Hampshire's (PSNH), or its successor's, power supply and transmission resources for PSNH's, or its successor's, existing New Hampshire firm wholesale and transmission utility customers.

1:2 New Subdivision; Public Utilities Commission Approval Required for Certain Purchases. Amend RSA 374 by inserting after section 56 the following new subdivision:

Purchase of Capacity

374:57 Purchase of Capacity. Each electric utility which enters into an agreement with a term of more than one year for the purchase of generating capacity, transmission capacity or energy shall furnish a copy of the agreement to the commission no later than the time at which the agreement is filed with the Federal Energy Regulatory Commission pursuant to the Federal Power Act or, if no such filing is required, at the time such agreement is executed. The commission may disallow, in whole or part, any amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest.

1:3 Effective Date. This act shall take effect upon its passage.

Approved December 18, 1989

Effective December 18, 1989

THE ATTORNEY GENERAL
CIVIL BUREAU
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

EXHIBIT NO. 2
December 15, 1989

Mr. Wynn E. Arnold
Secretary
Public Utilities Commission
8 Old Suncook road
Concord, New Hampshire 03301

Re: *Temporary Rate*
Docket No. DR 89-219:

Dear Secretary Arnold:

On Monday, December 18, 1989, the Commission is to hold a public hearing to establish a temporary rate surcharge for Public Service Company of New Hampshire ("PSNH"). This

Docket was established in anticipation of enactment of legislation requiring such a surcharge to be effective on January 1, 1990 (Special Session HB 1-FN). Because this matter is being considered under somewhat unusual circumstances, it seems appropriate for this office to propose a list of matters to be considered at the hearing on December 18, 1989. The following is that proposed list.

1. Tariffs. It will be necessary for the Commission to establish how the 5.5% temporary increase for PSNH will be calculated and applied to the tariffs.

2. Escrow Account. The legislation provides that the monies collected by the 5.5% temporary rate increases be held in escrow. It will be necessary for the Commission to establish the formula for identifying the sum to be paid into the escrow accounts by PSNH the record keeping requirements to be met and the mechanics of such payments, e.g. when will payments be made (daily, weekly, monthly?); how will the sums be transferred; what filing

Page 503

requirements are appropriate.

3. Escrow Agent. It will be necessary for the Commission to designate either the escrow agent for each escrow account or, alternatively, the process for designation of each escrow agent. Also, it would be appropriate to establish some guidance for investing the escrowed funds because the November 22, 1989 Agreement (as defined by HB 1-FN), which will be the focus of a permanent rate inquiry for PSNH, provides for the application of interest earned on the escrowed funds. (*see*; Agreement Section 5(i), page 12.)

4. Record Keeping Requirements. In the event that a refund of the funds in escrow is ordered by the Commission, it will be necessary for the Commission to determine how the refunds would be calculated and made. It would be appropriate to make that determination on December 18, 1989, and establish the corresponding record keeping requirements so the PSNH can make appropriate arrangements for the collection and storage of the necessary billing data.

5. ECRM Data Requests. The Commission should establish a schedule for the PSNH responses to the outstanding data requests regarding the Shiller outage and other ECRM related matters. It is our recommendation that the Commission not limit ECRM Data Requests to those presently outstanding.

6. Bill Insert. The Commission may wish to establish a procedure for approving the bill insert and any other explanation of the temporary rate increase that is provided to ratepayers by PSNH.

7. New Hampshire State Taxes. It will be appropriate for the Commission to determine whether the temporary rate increase for PSNH is subject to New Hampshire State Taxes.

8. Nuclear Decommissioning Financing Fund. Pursuant to RSA 162-F:19, payment to the nuclear decommissioning financing fund is to commence in the first full month of operation of Seabrook. Similarly, the per kilowatt hour charge is to appear as a separate item on customer bills. It will be appropriate for the Commission to determine whether a procedure to address this contingency should be established as a part of this Docket or deferred and considered in the subsequent permanent rate case. It is the recommendation of this office that this matter be

deferred.

9. Scope of the Docket. It is the recommendation of this office that this Docket be limited to the matters listed above and that a separate Docket be established to consider all other matters relating to the reorganization of PSNH. This would be consistent with Section 362-C:3 of HB FN-1.

Respectfully submitted,

John P. Arnold
Attorney General

Harold T. Judd
Assistant Attorney General

HTJ/jrm
cc: Service List
Stephen Merrill, Esq.

EXHIBIT NO. 3

THE STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DR 89-219

Public Service Company of New Hampshire Temporary Rates

RECOMMENDATIONS OF THE PARTIES FOR CALCULATION OF ECRM

In furtherance of the proposal made by certain parties in this proceeding(10)

EXHIBIT NO. 14

* , these parties recommend that the Commission adopt the following procedure for the calculation, and eventual reconciliation, of the Energy Cost Recovery Mechanism ("ECRM").

(A) The existing ECRM component for PSNH be established as a temporary ECRM component to be in effect until June 30, 1990.

(B) On or after July 1, 1990, a grand reconciliation be made for the period of July 1, 1989 through June 30, 1990.

(C) In calculating the grand reconciliation, the following steps would be taken:
(1) The Company will record ECRM revenue for accounting purposes each month during the period from July 1, 1989 to June 30, 1990, determined by multiplying the temporary ECRM rate of 3.664¢/kwh by actual retail kwh sales.
(2) Actual ECRM costs incurred by the Company will be determined by the commission, subject to the usual and customary review by the commission for reasonableness.
(3) The difference between actual ECRM revenue and actual ECRM costs will be calculated. Actual ECRM revenue for this period will be equal to retail kwh's sold multipled by the currently effective ECRM rate of 3.664¢/kwh. Actual ECRM cost will reflect the actual cost as defined in

(2).
(4) In the event the merger First Effective Date (as defined by the Agreement as defined in RSA 362-C) occurs on or before July 1, 1990, the final reconciliation for PSNH will be billed under the Fuel and Purchased Power Adjustment Clause which, pursuant to the Agreement, is to replace ECRM. (see: Agreement, Exhibit C).
(5) In the event the First Effective Date does not occur on or before July 1, 1990, the final reconciliation for PSNH will be applied to the ECRM and the ECRM will stay in effect.

It is the intent of the aforementioned parties that with the adoption of this procedure, the ECRM hearing scheduled for December 28, 1989 will be limited to adopting the temporary ECRM (as identified in (A)) and setting the Qualifying Facility rate for Small Power Producers.

Further, the parties agree that ECRM costs will not be reduced as a result of test power runs at the Seabrook station, and that the impact of Seabrook will be reflected in ECRM costs after the regulatory in-service date of Seabrook.

The undersigned is authorized by the aforementioned parties to submit this recommendation on their behalf.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By their attorneys

John P. Arnold
Attorney General

Harold T. Judd
Assistant Attorney General
Civil Bureau
25 Capitol Street
Concord, New Hampshire 03301
(603) 271-3658

Dated: December 21, 1989

EXHIBIT NO. 4

Revised 12/20/89

RECOMMENDATIONS OF THE PARTIES FOR ESCROW OF PSNH TEMPORARY RATES

1. At such time as the Commission shall establish temporary rates for Public Service Company of New Hampshire (PSNH) in accordance with the Rate Agreement between Northeast Utilities Service Company (NUSCO) and the Governor and Attorney General, Docket No. DR 89-219 and legislation resulting from Special Session House Bill No. 1-FN, the Commission should consider, as part of its order, including the following provisions:

a. PSNH shall immediately make appropriate revisions to its customer service billing programs for service rendered on and after January 1, 1990 to reflect the revised tariffs

approved in this proceeding, and shall collect the temporary rates so authorized in accordance with good utility collection practices. Revenues from January, 1990 billing cycles shall be prorated for the purpose of the following subparagraph based upon the number of days in each cycle that the temporary rates

were in effect.

b. At the end of each month, commencing with January, 1990, and prior to closing the books for that month, PSNH shall determine the portion of that month's revenues that was derived from the temporary rate surcharge and transfer such amount from revenues (on the income statement) to revenues subject to refund (on the balance sheet). As soon thereafter as possible, but in any event within 20 days after the last day of each such month, PSNH shall transfer cash monies equivalent to revenues subject to refund determined in accordance with this subparagraph to the Escrow Agent identified in paragraph 2.

c. Commencing with the month of July, 1990, if the temporary rates have not yet been made permanent by the Commission by virtue of the occurrence of the First Effective Date (as defined in the Rate Agreement), PSNH shall continue to comply with the segregation and booking of revenues and payment to the Escrow Agent required in the previous subparagraph, but shall specifically identify to the Escrow Agent such funds as relate to periods commencing in July, 1990 for payment into the Supplemental Escrow Fund as referred to in the following subparagraph.

d. The Escrow Agent shall deposit amounts transferred to it by PSNH under subparagraph b into an Escrow Fund and amounts transferred and identified under subparagraph c, if any, into a Supplemental Escrow Fund, each of which Funds shall be separate, interest bearing accounts as to which interest earned shall be separately accounted for and added to and held as part of the respective Fund.

e. The Supplemental Escrow Fund shall be held in escrow by the Escrow Agent until NUSCO provides written notification to the Commission that the First Effective Date (as defined in the Rate Agreement) has occurred, in which event the Commission shall direct the Escrow Agent to disburse the Supplemental Escrow Fund to PSNH for inclusion in income and use by PSNH.

f. The Escrow Fund shall be held in escrow by the Escrow Agent until NUSCO provides written notification to the Commission that, after the First Effective Date, either: (i) the Acquisition Effective Date (as defined in the Rate Agreement) has occurred, or (ii) that the Termination Date (as defined in the Rate Agreement) has occurred, in either of which events the Commission shall direct the Escrow Agent to disburse the Escrow Fund to PSNH for inclusion in income and use by PSNH.

g. After disbursement of the Supplemental Escrow Fund or Escrow Fund to PSNH, interest earned on such Funds shall be applied by PSNH to reduce charges to be recovered from ratepayers under the fuel recovery mechanism(s) then in effect, or, if there are not sufficient charges to offset such interest, it shall be applied to create or

enlarge existing credits to ratepayers under such mechanism(s).

h. In the event that the First Effective Date does not occur and the Commission reasonably determines, after notice to the Bankruptcy Court, that such date cannot occur because of failure of a condition precedent or expiration of time for such date to occur without possible extension under the Northeast Utilities Plan of Reorganization of PSNH, the Commission shall so certify in writing to PSNH, NUSCO and the Escrow Agent. Unless NUSCO, PSNH or the Attorney General disputes such certification and so notifies the Escrow Agent, thirty days from the date of such certification the Escrow Agent shall disburse both the Escrow Fund and Supplemental Escrow Fund to PSNH which shall dispose of such funds, including interest, as the Commission shall by order direct.

2. The Escrow Agent shall be the Treasurer of the State of New Hampshire.

3. The Escrow Agent: (i) shall not be bound by any agreement or contract other than the provisions of this order of the Commission, and its only duties hereunder are to hold, invest and dispose of the Funds as directed herein; (ii) shall be entitled to rely on the advice of its counsel as to the interpretation of its

Page 506

responsibilities hereunder; (iii) shall not be liable for other than its own gross negligence or willful misconduct; (iv) shall not be responsible for the loss or diminution of the Funds or of any interest thereon resulting from the investment of the Funds, provided that such Funds are invested in accordance with the standards specified by the Escrow Agent as part of its written acceptance under subparagraph (viii) hereof, which are incorporated herein by reference; (v) may unconditionally rely on written notices and instructions received from the Commission or, in the case of notice of dispute of certification as provided for in subparagraph 1.h herein, from NUSCO, PSNH or the Attorney General, without liability therefor and without the need for any investigation or verification of the authority for or validity of such notices or the facts and circumstances giving rise to such notices; (vi) shall not be obligated to disburse any of the Funds in the event of any continuing dispute with respect to their disbursement hereunder until final determination of such dispute by a court of competent jurisdiction, nor shall the Escrow Agent be required to commence any action as to such dispute by interpleader or otherwise; (vii) shall not be entitled to any fee for its service as Escrow Agent hereunder, but may be reimbursed for its reasonable expenses incurred in connection with the fulfillment of its duties hereunder as the Commission, in the reasonable exercise of its discretion, shall determine upon application of the Escrow Agent; and (viii) shall accept the conditions of this order in writing prior to commencing its duties hereunder and shall include with such acceptance the standards for investment of the Funds that it intends to apply.

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EXHIBIT NO. 6

NHPUC NO. 31 — ELECTRICITY 2nd Revised Page 1
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE Superseding 1st Revised Page 1

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Issued: December —, 1989 Issued by: W.T. Frain, Jr.

Effective: January 1, 1990 Title: Vice President

Issued in compliance with NHPUC Order No. —
dated December —, 1989 in Docket No. DR 89-219.

EXHIBIT NO. 7

NHPUC NO. 31 — ELECTRICITY

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

5th Revised Page 13
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Terms and Conditions

that date; provided that when an eligible customer who has been receiving the discount deceases, a surviving spouse who would otherwise be eligible for the discount will be deemed to be an eligible customer.

The covered provisions shall include all provisions relating to rates and charges under the applicable rates (including the customer charge and any meter charge) except for charges for service at locations served on a short-term basis, charges under the provision entitled "Service Charge", or charges corresponding to minimum bills rendered pursuant to line extension guarantees or surcharges.

The applicable rates are Residential Service Elderly Customer Rate D-EC and Residential Service Optional Time-of-Day Rate D-OTOD. The discount may also be received on bill amounts computed under Load Controlled Service Rate LCS or Controlled Off-Peak Electric Water Heating Service Rate COPE when service taken thereunder is in conjunction with service taken under an applicable rate. Bill amounts computed under provisions of Residential Service Standard Rate D shall not
receive the Elderly Customer Discount under any circumstances.

15. CONDITIONS UNDER WHICH THIS TARIFF IS MADE EFFECTIVE

The Company submitted Tariff NHPUC No. 31 in its original form for filing with the New Hampshire Public Utilities Commission in compliance with the Commission's Report and Order No. 18,726 dated June 29, 1987 in Docket No. DR 86-122 to be effective on and after July 1, 1987. The Energy Cost Recovery Mechanism (ECRM) component included in all energy (kilowatt-hour) charges of each rate in that Tariff was 3.177 cents per kilowatt-hour. That was the level of the ECRM component approved by the Commission for the six month period ending December 31, 1987 in its Order No. 18,734 dated June 30, 1987, in Docket No. DR 87-94.

The rates of this Tariff were revised every January 1st and July 1st subsequent to the initial effective date of this Tariff to reflect ECRM components approved by the Commission. On July 1, 1989, a set of revised pages became effective in compliance with Order No. 19,456 dated June 30, 1989 in Docket No. DR 89-091, incorporating an ECRM component of 3.664 cents per kilowatt-hour in all rates.

Effective on January 1, 1990, the rates of this Tariff are being further revised to incorporate the temporary 5.5 percent surcharge approved by the Commission to allow implementation of the first step of the Northeast Utilities

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

Issued: December —, 1989 Issued by: W.T. Frain, Jr.

Effective: January 1, 1989 Title: Vice President

Issued in compliance with NHPUC Order No. —
dated December —, 1989 in Docket No. DR 89-219

EXHIBIT NO. 8

NHPUC NO. 31 — ELECTRICITY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

6th Revised Page 14
Superseding 5th Revised Page 14
Terms and Conditions

Rate Plan. (See Page 15-A of this Tariff.) In

accordance with the provisions of the Stipulated Recommendations of the Parties approved by the Commission by its Order No. — dated December —, 1989, in Docket No. DR 89-219, the ECRM component will temporarily remain at the previously approved level of 3.664 cents per kilowatt-hour, and a reconciliation of the difference between actual ECRM revenue and actual ECRM costs for the period from January 1, 1990 through June 30, 1990 will occur on or after July 1, 1990.

16. RATE REVISIONS TO APPROPRIATELY REFLECT THE FRANCHISE TAX ON GROSS RECEIPTS

a. *Method of Adjusting Retail Rates*.

Pursuant to the imposition of a new franchise tax on the gross receipts of electric utilities, the rates to be in effect under this Tariff shall include an allowance for the franchise tax. This allowance shall consist of two separate parts: first, for the portion of gross receipts which relates to non-energy costs; and second,
for the portion of gross receipts which relates to energy costs. The amount of the first part shall be established during the course of the normal rate level setting process of the Commission. An amount for the second part shall be included in rates in accordance with the provisions of this section.

Energy costs are included within the basic energy (kilowatt-hour) charges of this Tariff in accordance with Commission Order No. 15,486 dated February 10, 1982. Under the procedures established by that Order, rate levels are normally adjusted every six months after hearings, to reflect a newly-determined Energy Cost Recovery Mechanism (ECRM) component for the prospective six-month period. In order that rate levels appropriately reflect the amount of franchise tax on gross receipts that relates to the energy component of costs, the Company will adjust, at the time the Commission directs a change to the ECRM component, the basic energy charges of its rates to include an amount equal to the allowed ECRM component multiplied by the franchise tax rate factor of 1.010101.

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

Issued: December —, 1989 Issued by: W.T. Frain, Jr.

Effective: January 1, 1989 Title: Vice President

Issued in compliance with NHPUC Order No. —
dated December —, 1989 in Docket No. DR 89-219.

EXHIBIT NO. 9

NHPUC NO. 31 — ELECTRICITY PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Original Page 15-A
Temporary Surcharge

TEMPORARY 5.5 PERCENT SURCHARGE
EFFECTIVE JANUARY 1, 1990,
SUBJECT TO REPAYMENT

Effective with all monthly bills rendered based on two successive meter readings, the latter of which is taken on or after January 1, 1990, and for the portion of the electric service taken on and after January 1, 1990, and with all monthly bills to municipalities for Outdoor Lighting Service under Rates ML and ML-HPS for the calendar months of January, 1990 and later, each bill rendered shall be equal to the sum of the bill amount as computed under the applicable rate of this Tariff NHPUC No. 31, plus 5.5 percent of said amount exclusive of any service charges, returned check charges, late payment charges, line extension surcharges, charges for temporary services or apparatus rentals. This temporary surcharge will not be applied to the credit amounts paid to

customers under the provisions of Winter Interruptible Service and Use of Customer Standby Generation Rate WI. Prorating of bills for the January billing cycle to determine the portion of service taken on or after January 1, 1990 shall be done based on the number of days in the billing cycle that the temporary surcharge is in effect, and based on the assumption that energy use is the same on each day of the billing cycle.

The additional amounts collected pursuant to this temporary surcharge provision shall be subject to possible repayment. All amounts billed under this temporary surcharge provision shall be deposited and retained in an escrow account in accordance with the provisions of NHPUC Order No. — dated December —, 1989, in Docket No. DR 89-219.

The temporary surcharge rate of 5.5 percent is designed to operate in conjunction with the level of tariff rates in effect on September 15, 1989 including an Energy Cost Recovery Mechanism (ECRM) Component of 3.664 cents per kilowatt-hour, and to continue to operate in conjunction with such level of tariff rates regardless of any changes in ECRM or any similar rate component.

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

Issued: December —, 1989 Issued by: W.T. Frain, Jr.

Effective: January 1, 1989 Title: Vice President

Issued in compliance with NHPUC Order No. —
dated December —, 1989 in Docket No. DR 89-219.

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EXHIBIT NO. 10 (cont.)

REPORT OF PROPOSED RATE CHANGES

Footnotes

**Includes data for all residential customers including customers served under Rates D-EC, D-OTOD, LCS, COPE, and D-TL Pilot Program.

***Includes data for General Service Rate G customers served under Rates LCS and COPE.

****Includes data for customers served under Rate ML-HPS.

*****Includes 12,623 residential or general service accounts with private area lights billed under Rate ML. These accounts are not included in the total average number of customers.

Delta Present rate revenue data is based on the revised rates of Tariff NHPUC No. 31 effective on September 15, 1989. Revenues in this column reflect, for the full twelve month period, the ECRM component of 3.664 cents per KWH effective on and after July 1, 1989, in compliance with NHPUC Report and Order No. 19,456 in Docket No. DR 89-091.

DeltaDelta Proposed rate revenue data reflects, for the full twelve month period, a temporary surcharge of 5.5 percent over the present rate revenues column. The additional amounts collected pursuant to this temporary surcharge provision are subject to possible repayment. This change in rates is being made in compliance with NHPUC Report and Order No. — in Docket No. DR 89-219.

EXHIBIT NO. 11

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION
NHPUC DOCKET NO. DR 89-219

TEMPORARY RATES

REPAYMENT PROVISION
INTRODUCTION

The amounts billed pursuant to the temporary rate increase in this docket are to be placed in escrow. The revenues collected are subject to repayment under the terms of the Rate Plan and

RSA 362-C. Repayments would occur if ordered by the NHPUC as a result of the inability of the Northeast Utilities Reorganization Plan to achieve the First Effective Date, and in the absence of any NHPUC approved Alternative Reorganization Plan.

DEFINITIONS

Rate Plan — The November 22, 1989 Agreement, as amended through December 14, 1989, executed by and between the Governor and Attorney General of the State of New Hampshire and Northeast Utilities Service Company.

First Effective Date — As defined in the Rate Plan.

Alternate Reorganization Plan — As defined in RSA 362-C.

Temporary Rate Surcharge — As defined in RSA 362-C:4, and as implemented by the provision on Page 15-A of Tariff NHPUC No. 31 of PSNH.

Temporary Rate Surcharge Period — The period from January 1, 1990 to the termination date of the Temporary Rate Surcharge as ordered by the NHPUC.

ARTICLE I

In the event repayments are to be made, the amount of repayment for each customer shall be equal to the aggregate amount of the Temporary Rate Surcharge billed to that customer, or such lower amount as may be ordered by the NHPUC as a result of an Alternative Reorganization Plan approved by the NHPUC.

ARTICLE II

The repayments described in Article I above will be credited to customers' bills commencing thirty (30) days from the date that the Commission orders the temporary surcharge to terminate, with the following exceptions:

1) Customers who have been inactive (not receiving a bill) within the Temporary Rate Surcharge period;

2) Customers who have had billing adjustments within the Temporary Rate Surcharge period;

3) Customers who have received multi-month bills within the Temporary Rate Surcharge period;

4) Customers who have relocated within the Temporary Rate Surcharge period; and

5) Customers who have changed rate classes within the Temporary Rate Surcharge period.

Repayments to customers included in any of the exception categories above require manual intervention and will be completed within 120 days of the date the repayment amount is known.

ARTICLE III

In the case of all customers with outstanding balances owed to PSNH (including but not limited to customers who have left the system, customers who have changed their type of service

during the Temporary Rate Surcharge period, customers who have moved within the PSNH system during the Temporary Rate Surcharge period, customers whose accounts have been terminated, and customers whose bill amounts have been written off as uncollectible) any repayment due the customer shall first be applied to the outstanding balance owed.

ARTICLE IV

Repayment amounts credited to a customer's bill shall not exceed the amount billed in the month, or months, that the repayment is made and any unrepaid amount shall be carried forward to the next monthly bill of the customer.

ARTICLE V

Checks shall be mailed to only those customers who have left the PSNH system, provided the amount owed equals or exceeds one dollar ($1.00). Amounts less than one dollar owed to customers who have left the PSNH system shall be donated to the Neighbor Helping Neighbor Fund unless the customer specifically requests the repayment within one year. Customers requesting repayments of less than one dollar will receive a repayment in postage stamps rather than a check. Customers shall have no right to repayments after one year (*i.e.*, checks returned to PSNH by the Post Office, checks not cashed within six months and repayment amounts less than one dollar not claimed by the customer), and all unclaimed amounts shall be donated to the Neighbor Helping Neighbor Fund.

ARTICLE VI

Customers who do not take service during the Temporary Rate Surcharge period will not receive a repayment.

ARTICLE VII

A written explanation of the repayment and any associated rate changes shall be provided to each customer during the first billing cycle that repayments begin. Customers who have left the PSNH system and receive repayments by check will receive the same repayment information as that provided to active customers.

Draft copies of repayment notices will be provided to the NHPUC Staff for review.

ARTICLE VIII

Amounts to be repaid shall be released from escrow to PSNH for the purpose of making repayments no later than the time that PSNH first issues repayments to customers.

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Temporary Surcharge on Rates Effective January 1, 1990

Public Service of New Hampshire entered voluntary bankruptcy on January 28, 1988. Various proposals have been advanced for reorganization of PSNH. With the support of the executive branch of the New Hampshire state government and the endorsement of the state

legislature last month, one of these proposals, the plan of Northeast Utilities (NU), is being implemented to resolve the bankruptcy.

As part of the implementation of the bankruptcy reorganization plan, legislation was enacted which directed the New Hampshire Public Utilities Commission (NHPUC) to establish a 5.5 percent temporary surcharge to apply to the bills for all service rendered on and after January 1, 1990. The amounts collected under the surcharge will be held in escrow by the Treasurer of the State of New Hampshire and be subject to possible repayment. The surcharge will apply to all customer, meter, demand and energy charges, or in the case of outdoor lighting service, to the amount of the monthly price per light. The surcharge will not be applied to service charges, returned check charges, late payment charges, line extension surcharges, charges for temporary service or apparatus rentals. The surcharge will not be applied to the credit amounts paid to customers under the Winter Interruptible Service Rate WI.

Bills for the January billing cycle will be prorated so that the temporary surcharge will apply only to the portion of electric service taken on or after January 1. The prorating shall be based on the assumption that energy use is the same on each day of the billing cycle.

As a result of the prorating of bills for the January cycle, it will not be possible for PSNH to show full billing detail on the January bills of residential and General Service Rate G customers.

Bill Message

(After First Month)

As a result of the plan for the bankruptcy reorganization of PSNH, a 5.5 percent temporary surcharge has been added to monthly bills as of January 1, 1990.

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THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DR 89-219

Public Service Company of New Hampshire
Temporary Rates

ERRATA SHEET

In footnote four on pages three and four of the original Stipulated Recommendations of the Parties, all references to Section 3 of the Escrow Agreement should be amended to refer to Section 1 of the Escrow Agreement.

Footnote four, as corrected, should read as follows:

[4]The Escrow Agreement refers to the "First Effective Date" and the "Termination Date", which are terms of art in the Rate Agreement signed by Northeast Utilities and the Attorney General and referenced in RSA 3620C. While the Rate Agreement has been provided to all parties and the Commission, a brief explanation of the use of these terms in the Escrow Agreement may be helpful to those who are not familiar with the document.

Section 1(e) contains the first reference to "First Effective Date" under the Agreement. The First Effective Date is the date on which PSNH emerges from bankruptcy as a reorganized entity which may occur before the merger with Northeast Utilities ("NU"). It is projected that the First Effective Date will be on or before July 1, 1990. (see: Agreement, Paragraph 1, page 2.) The "Acquisition Effective Date", which is referenced in Section 1(f), is the date on which of PSNH becomes subsidiary of NU. This could occur on the First Effective Date or at a later date. (See: Agreement, Paragraph 1, page 3.)

The "Termination Date" referred to in Section 1(f) is the date on which it is determined that the merger of PSNH and NU will not occur. (See: Agreement, Paragraph 3, page 3.) If this occurs PSNH would continue as a stand-alone entity. Under Section 1(f) if the merger fails after PSNH emerges from bankruptcy, the escrowed funds would be released to PSNH. Under Section 1(h) if the Commission determines that the first step of the reorganization plan will not occur (i.e., PSNH being reorganized and emerging from bankruptcy) the escrow fund is to be dissolved and the funds with interest are to be dispersed as the Commission orders.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys

John P. Arnold
Attorney General

Harold T. Judd
Assistant Attorney General
Civil Bureau
25 Capitol Street
Concord, New Hampshire 03301
(603) 271-3658

EXHIBIT NO. 14

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DR 89-219

Public Service Company of New Hampshire
Temporary Rates

STIPULATED RECOMMENDATIONS

OF THE PARTIES

Introduction

On December 14, 1989, the New Hampshire General Court passed legislation which provided, in part, that "the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of Public Service Company of New Hampshire...". Special Session House Bill No. 1-FN. The Governor signed the legislation into law on December 18, 1989[1(11)] in anticipation of passage of the legislation, the Commission scheduled a public hearing for

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December 18, 1989 for the purpose of establishing the Temporary Rate Surcharge. During the hearing, certain parties[2(12)] reached agreement as to the appropriate scope of the docket and resolution of all relevant issues.[3(13)] At the hearing these parties recommended that this proceeding be resolved through issuance by the Commission of an Order accepting and approving the addition of Page 15-A to PSNH's Tariffs No. 31 (entitled "Temporary 5.5 Percent Surcharge Effective January 1, 1990, Subject to Repayment").

Recommendations

In support of this recommendation, these parties present the following documents and respectfully request that they be accepted as exhibits in this docket.

These exhibits are presented pursuant to the agreement and direction of the Commission.

Exhibit No. 1. A certified copy of RSA 362-C.

Exhibit No. 2. The "Agenda Letter" from the Office of Attorney General, dated December 15, 1989, as amended to remove the discussion of the Energy Cost Recovery Mechanism ("ECRM") and the New Hampshire Electric Cooperative, Inc.

Exhibit No. 3. The Recommendation of the Parties for the Calculation of ECRM.

Exhibit No. 4. Recommendations of the Parties for Escrow of PSNH Temporary Rates.[4(14)] This exhibit responds to the items 2 and 3 of the agenda.

Exhibit No. 5. Letter from the State Treasurer accepting the appointment as escrow agent. The letter is dated December 20, 1989.

Exhibit No. 6. Second Revised Page 1 to PSNH Tariff No. 31 (Table of Contents).

Exhibit No. 7. Fifth Revised Page 13 to PSNH Tariff No. 31 (Explanation of the Temporary ECRM).

Exhibit No. 8. Sixth Revised Page 14 to PSNH Tariff No. 31 (continuation of Temporary ECRM explanation).

Exhibit No. 9. Original page 15-A to PSNH Tariff No. 31 (calculation of the Temporary 5.5 percent rate surcharge).

Exhibit No. 10. Report of Proposed Rate Changes for PSNH. This two page exhibit qualifies

the revenue impact of the temporary surcharge, as requested by the commission. This is the so-called "Bingo Sheet".

Exhibit No. 11. Repayment Provision for PSNH. This three page exhibit provides the mechanism for the repayment of the monies held in escrow, including interest, should that become necessary. This exhibit provides the means for insuring that customer's specific refunds can be made and responds to item 4 of the Agenda.

Exhibit No. 12. The proposed bill insert and message to be printed on each customer's bill. The insert and the message are intended to explain the temporary surcharge to the customer. This exhibit responds to item 5 of the Agenda.

It is the agreement of the parties that New Hampshire State taxes (item 7 of the Agenda) will not be added to customer bills in addition to the temporary surcharge. Further, it is the recommendation of the parties that at such time as Seabrook receives a full power license, the Commission should request that the parties provide proposals for meeting the requirements of RSA 162-F:10 (Nuclear Decommissioning Financing Funds).

Conclusion

Pursuant to these recommendations, the parties respectfully pray for an order of the Commission which:

1. Pursuant to RSA 541-A:17 I and II (Supp.), grants the Petition and Motions to Intervene of Northeast Utilities Service Company, Public Service Company of New Hampshire, The Business and Industry Association of New Hampshire, Bio Energy Corporation, *et al.*, SES Concord, and John Victor Hillberg;

2. Grants the Motion *Pro Hac Vice* of Attorney Oyer to permit the practice of Attorney Robert Nickerbocker.

3. Accepts these documents as full exhibits;

4. Accepts these Stipulated Recommendations of the Parties;

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5. Pursuant to RSA 362-C:4, authorizes Public Service Company of New Hampshire to alter its tariff and begin collecting the temporary surcharge on service rendered on and after January 1, 1990;

6. Directs Public Service Company of New Hampshire to file compliance tariff pages in accordance with the Commission's order;

7. Authorizes a temporary ECRM component of 3.664 cents per kilowatt hour to be effective from January 1, 1990 through June 30, 1990 as proposed in the Recommendation of the Parties for Calculation of ECRM (Exhibit 3);

8. Directs Public Service Company of New Hampshire to establish an account for Revenues Subject to Refund, collect the temporary surcharge, and pay such sums over to the Treasurer of the State of New Hampshire, pursuant to the Recommendations of the Parties for Escrow of PSNH Temporary Rates; (Exhibit 4) and

9. Orders such further relief as may be just and equitable.

The aforementioned parties have authorized the Office of the Attorney General to represent to the Commission that they concur on these recommendations. A letter memorializing this authorization, signed by all of the aforementioned parties, will be filed with the Commission as soon as practical.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John P. Arnold
Attorney General

Harold T. Judd
Assistant Attorney General
Civil Bureau
25 Capitol Street
Concord, New Hampshire 03301
(603) 271-3658

FOOTNOTES

EXHIBIT NO. 3

*As stated at the public hearing on December 18, 1989, the following parties agree to this treatment of ECRM: The Commission Staff, Public Service Company of New Hampshire, Northeast Utilities, The Consumer Advocate, The Office of the Attorney General and the New Hampshire Electric Cooperative, Inc., Mr. Paul A. Savage, Esquire, counsel for a number of Small Power Producers authorized me to represent that they do not oppose these recommendations.

EXHIBIT NO. 14

[1]RSA 362-C.

[2]As stated at the public hearing on December 18, 1989, the following parties agree to this treatment of ECRM: The Commission Staff, Public Service Company of New Hampshire, Northeast Utilities, The Consumer Advocate, The Office of the Attorney General and the New Hampshire Electric Cooperative, Inc., Mr. Paul A. Savage, Esquire, counsel for a number of Small Power Producers authorized the Office of the Attorney to represent that they do not oppose these recommendations.

[3]Upon motion of the office of the Attorney General, the docket was expanded to include the establishment of a Temporary rate surcharge for the New Hampshire Electric Cooperative, Inc. ("NHEC"). During the hearing, all matters concerning NHEC were transferred to DR 89-245.

[4]The Escrow Agreement refers to the "First Effective Date" and the "Termination Date",

which are terms of art in the Rate Agreement signed by Northeast Utilities and the Attorney General and referenced in RSA 3620C. While the Rate Agreement has been provided to all parties and the Commission, a brief explanation of the use of these terms in the Escrow Agreement may be helpful to those who are not familiar with the document.

Section 3(e) contains the first reference to "First Effective Date" under the Agreement. The First Effective Date is the date on which PSNH emerges from bankruptcy as a reorganized entity which may occur before the merger with Northeast Utilities ("NU"). It is projected that the First Effective Date will be on or before July 1, 1990. (see: Agreement, Paragraph 1, page 2.) The "Acquisition Effective Date", which is referenced in Section 3(f), is the date on which of PSNH becomes subsidiary of NU. This could occur on the First Effective Date or at a later date. (See: Agreement, Paragraph 1, page 3.)

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The "Termination Date" referred to in Section 3(f) is the date on which it is determined that the merger of PSNH and NU will not occur. (See: Agreement, Paragraph 3, page 3.) If this occurs PSNH would continue as a stand-alone entity. Under Section 3(f) if the merger fails after PSNH emerges from bankruptcy, the escrowed funds would be released to PSNH. Under Section 3(h) if the Commission determines that the first step of the reorganization plan will not occur (i.e., PSNH being reorganized and emerging from bankruptcy) the escrow fund is to be dissolved and the funds with interest are to be dispersed as the Commission orders.

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NH.PUC*12/28/89*[51907]*74 NH PUC 554*Connecticut Valley Electric Company, Inc.

[Go to End of 51907]

74 NH PUC 554

Re Connecticut Valley Electric Company, Inc.

DR 89-215
Order No. 19,658

New Hampshire Public Utilities Commission

December 28, 1989

ORDER revising the purchase power cost adjustment rate of an electric utility.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power adjustment clause — Purpose — Electric utility.

[N.H.] The purpose of a purchase power cost proceeding is to set an adjustment rate that would allow the utility to recover from its customers forecast purchase power expenses, suitably adjusted for prior period over or undercollections. p. 555.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power adjustment clause — Reconciliation calculation — Methodology — Electric utility.

[N.H.] A proposed change in the method used to calculate purchase power cost adjustment reconciliations was found to be in the public interest in that it would more accurately recognize the purchase power revenues that are recovered through base rates; nevertheless, the commission found that the procedures for determining class specific capacity charges should be refined to take into account other factors such as seasonality in the non-capacity component of base rates. p. 555.

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APPEARANCES: Morris Silver, Esquire for Connecticut Valley Company, Inc; George R. McCluskey, Janet A. Besser, Thomas Frantz and Eugene Sullivan for the staff.

By the COMMISSION:

REPORT

On December 1, 1989 Connecticut Valley Electric Company, Inc. (company) filed a revision to its Purchase Power Cost Adjustment (PPCA) rate reflecting an expected decrease of $1,048,228 in sales revenue from January 1, 1990 through December 31, 1990. The change in the rate from $0.0000 to $(0.0062) per kWh is due primarily to the expectation that the projected increase in wholesale power costs for 1990 will be more than offset by a projected 1989 over collection of about $1 million. An underlying cause of this over collection is a revision to the forecast that placed Central Vermont's annual peak in January 1989. This peak is now forecast to occur in December 1989, resulting in Connecticut Valley receiving a lower allocation of Central Vermont's costs.

On December 13, 1989 the company submitted revisions to its December 1, 1989 filing. The purpose of these revisions is to:

1) propose a methodological change in the PPCA reconciliation and; 2) to revise the proposed 1990 PPCA rate downward from $(0.0062) to $(0.0065) per kWh. The company contends the methodological change would more accurately recognize the purchased power revenues that are now recovered through base rates.

On December 20, 1989 the company submitted further revisions to the filing to reflect:

1) a change in its short term capacity rate for small power producers for 1990 and; 2) the use of actual instead of projected cost and revenue data for November, 1989. These changes produce a net decrease in the proposed PPCA rate to $(0.0067) per kWh or a 6.8% reduction in annual revenue.

On December 20, 1989, the commission held a duly noticed hearing. The company presented two witnesses during said hearing who discussed the merits of the filing.

COMMISSION ANALYSIS:

[1] The purpose of a purchased power cost proceeding is to set an adjustment rate that would allow the utility to recover from its customers forecast purchase power expenses, suitably adjusted for prior period over (under) collections. Most, if not all, of these expenses are recovered through the purchased power component of base rates. Any shortfall (surplus) is accounted for by a positive (negative) PPCA rate.

Prior to the implementation of seasonal and time of use rates by Connecticut Valley it had been the practice in PPCA proceedings to express the purchased power component of base rates as a common unit charge, irrespective of rate class, and apply it to all kWhs sold. That unit charge is simply the average per kWh cost of purchased power in the test year.

In reality different rate classes place different demands on the power system and therefore should be assigned different power costs. If through rate redesign these different power cost responsibilities are reflected in base rates (i.e., incorporating seasonal and time of use differentials) then the actual purchased power revenues resulting from these new base rates will most likely differ from those obtained using a common charge. We say "most likely" even though in the instant filing Connecticut Valley has proposed for each rate class a set of base capacity charges that produce the same test year purchase power revenues as the common unit charge. For some rate classes the base capacity charges are expressed in terms of kWs of demand as well as kWhs sold. In a non-test year (e.g. 1990) the growth in the demand for kWs is unlikely to replicate the growth in demand for kWhs and therefore base capacity charge revenues will in all likelihood not equal the revenues obtained through a common unit charge.

[2] Since the objective of the PPCA reconciliation calculation is to safeguard the interests of both the utility and its customers, we accept the company's argument that this can best be achieved through the use of base charges that are more reflective of actual base capacity revenues. We therefore find the proposed methodological change to be in the public interest.

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Nevertheless, we find that the procedure for determining the class specific base capacity charges can be refined to take into account other factors such as seasonality in the non-capacity component of base rates. We will require the company to explore this issue and incorporate its findings in its next PPCA filing.

Based on the evidence provided, the commission finds the proposed PPCA rate of $(0.0067) per kWh to be fair and reasonable.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that Connecticut Valley Electric Company Inc.'s 1st Revised Pages 13, 14 and 15 and 2nd Revised Page 17 of its Tariff N.H.P.U.C. No.5 — Electricity reflecting a purchase power cost adjustment of $(0.0067) per kWh be, and hereby is, permitted to become effective January 1, 1990.

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

December, 1989.

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[Go to End of 51908]

74 NH PUC 556

Re Public Service Company of New Hampshire

DR 89-212
Order No. 19,659

New Hampshire Public Utilities Commission

December 29, 1989

ORDER maintaining, as a temporary rate subject to reconciliation, the energy cost recovery mechanism rate of an electric utility operating as a debtor-in-possession under the protection of a federal bankruptcy court.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost recovery mechanism — Temporary rate — Bankrupt electric utility.

[N.H.] Consistent with a prior order, the commission maintained, as a temporary rate subject to reconciliation, the energy cost recovery mechanism rate of an electric utility operating as a debtor-in-possession under the protection of a federal bankruptcy court. p. 557.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 53 — Energy cost recovery mechanism — Over- and undercollections — Electric utility.

[N.H.] Inasmuch as a prior order approved an agreement that the commercial operation of the Seabrook nuclear plant would not trigger an energy cost recovery mechanism hearing due to overrecovery of energy costs by an electric utility, the commission found that fairness required that the trigger mechanism should not apply due to underrecovery of energy costs by the utility. p. 557.

APPEARANCES: Eaton W. Tarbell, Jr., Esquire and Gerald M. Eaton, Esquire on behalf of Public Service Company of New Hampshire; Joseph Rogers of the Consumer Advocate's Office on behalf of the residential ratepayers; Paul Savage on behalf of the Biomass Producers; and Eugene F. Sullivan, III, Esquire on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

This docket was initiated on November 20, 1989, when Public Service Company of New Hampshire (PSNH) filed a revision to its ECRM rate for the period January through July, 1990. The parties engaged in data requests and settlement conferences during the course of the past month. On December 28, 1989 a duly-noticed hearing on the merits of the issue was held.

On December 18, 1989, the Governor

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signed RSA Chapter 362-C ordering the Public Utilities Commission to initiate a 5.5% temporary rate increase to the base rates of PSNH to be held in escrow during a six-month period in which the commission would examine an agreement entered into between the Attorney General, on behalf of the State of New Hampshire, and Northeast Utilities and any other competing agreement for the purchase of PSNH in order to resolve its bankruptcy.

On December 21, 1989 the parties to Docket DR 89-219 (the docket opened pursuant to RSA Chapter 362-C) entered into an agreement for the calculation of ECRM, the subject of the docket herein. On December 28, 1989 the commission issued report and order no. 19,655 (74 NH PUC 493) in Docket DR 89-219 wherein the commission ordered the establishment of a "temporary energy cost recovery mechanism and reconciliation of the period July 1, 1989 through June 30, 1990 on or after July 1, 1990 be implemented... " The report indicated that the commission would approve the establishment of the existing ECRM rate of "3.664¢/kwh as a temporary ECRM component to be in effect until June 30, 1990 with a grand reconciliation made for the entire July 1, 1989 through June 30, 1990 period on or after July 1, 1990... " in accordance with the parties' agreement mentioned above. See report and order no. 19,655 Docket DR 89-219, page 12.

Accordingly, at the hearing held on December 28, 1989 the parties recommended that the commission adopt the present ECRM rate in effect, i.e., 3.664¢/kwh, as a temporary ECRM rate consistent with the parties' recommendation in Docket DR 89-219. The parties further alerted the commission that an underrecovery by PSNH of its energy costs has already exceeded the discretionary $4 million trigger mechanism and was approaching the automatic $10 million trigger mechanism stipulated to in previous dockets. However, the parties also indicated that if the Seabrook Nuclear Power Plant were to go on line, said trigger mechanisms would not be approached.

The parties agreed that a certain incident which occurred at Schiller Station resulting in the outage of Unit 5 at said station; that the coal pile inventory requirements at Schiller station, and the short-term avoided cost energy rate for QF's would be dealt with at a later date. The parties could not agree, however, on the need for a new docket for short term avoided energy rates for QFs and the issue will be decided on or after January 12, 1990, the date on which briefs are due.

II. *Commission Analysis*

[1, 2] In light of our decision issued on December 28, 1989 in Docket DR 89-219 the commission will maintain the ECRM rate of 3.664¢/kWh effective on July 1, 1989 as a temporary ECRM rate to be reconciled in accordance with our order no. 19,655 in Docket DR

89-219.

The commission further notes that as the agreement between the parties in Docket DR 89-219 states that the commercial operation of the Seabrook Nuclear Power Plant will not result in the triggering of an ECRM hearing due to overrecovery of energy cost by PSNH, that fairness requires that the trigger mechanism will also not apply due to the underrecovery of energy costs by PSNH.

Our order will issue accordingly.

ORDER

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

ORDERED, that the ECRM rate of 3.664¢/kwh effective on July 1, 1989 will remain effective as a temporary ECRM rate to be reconciled by June 30, 1990 in accordance with our order no. 19,655 in Docket DR 89-219; and it is

FURTHER ORDERED, that a hearing on the prudency of the incident which occurred at Schiller Station resulting in the outage of Unit 5 be held on March 14, 1990 at 10:00 a.m. at the commission offices; and it is

FURTHER ORDERED, that a hearing on the requirements of a coal pile at Schiller Station will be held on March 14, 1990 at 10:00 a.m. at the commission offices; and it is

FURTHER ORDERED, that a hearing on the methodology for determining the short term avoided cost energy rate for QFs, specifically,

whether or not an average of an increment and a decrement to load or merely a decrement to load, should be used, will be held on March 14, 1990 at 10:00 a.m. at the commission offices; and it is

FURTHER ORDERED, that any matters that are not reached on March 14, 1990 will be heard on March 16, 1990 at 10:00 a.m.; and it is

FURTHER ORDERED, that the company shall file tariff pages for the months of January through June 1990 including revised pages 13 and 14 (Exhibits No. 7 & 8 in Docket DR 89-219) in compliance with this order; and it is

FURTHER ORDERED, that the company shall supply individual notice of the proposed change in short term avoided cost energy rate methodology for QFs to each of the QFs currently supplying PSNH with power by serving a copy of this order on said QFs by first class mail no later than January 10, 1990; and it is

FURTHER ORDERED, that the company shall provide notice of the proposed change in methodology for the calculation of short term avoided cost energy rates to the public by publishing a copy of this order once in a newspaper having general circulation in this state by January 12, 1990; and it is

FURTHER ORDERED, that any party seeking to intervene in said proceedings shall do so by filing a motion to intervene pursuant to RSA 541-A:17 three days prior to the hearing date.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1989.

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Endnotes

1 (Popup)

[1]RSA 362:4 as amended by 1988 N.H. Laws 134:1, eff. April 20, 1988. Although the majority of the commission opines that the legislative intent behind existing law justifies our opinion in this case, the commission nonetheless recently recommended that the legislature clarify RSA 362:4 by explicitly including the provision of sewer service by municipalities as qualifying for the same exemption afforded municipal water utilities.

2 (Popup)

[1]*Re Connecticut Valley Electric Company,* 73 NH PUC 117 at 130 (1988).

3 (Popup)

[1]RSA 362:4 as amended by 1988 N.H. Laws 134:1, eff. April 20, 1988. Although the majority of the commission opines that the legislative intent behind existing law justifies our opinion in this case, the commission nonetheless recently recommended that the legislature clarify RSA 362:4 by explicitly including the provision of sewer service by municipalities as qualifying for the same exemption afforded municipal water utilities.

4 (Popup)

[1]See *e.g., Re New England Alternate Fuels, Inc.-Swanzey,* 71 NH PUC 423 (1986) (*NEAF-Swanzey*); *Re Pinetree Power-North,* 71 NH PUC 638 (1986) (*Pinetree-North*); *Re TDEnergy, Inc.,* 72 NH PUC 85 (1987) (*TDE*); *Re HDI-Hinsdale, Inc. — Upper Robertson Dam,* 72 NH PUC 169 (1987), *aff'd,* 72 NH PUC 230 (1987) (*HDI-Hinsdale*); *Re D.J. Pitman International Corp.,* 72 NH PUC 166 (1987), *aff'd,* 72 NH PUC 232 (1987) (*Pitman*); *Re Vicon Recovery Systems, Inc.,* 72 NH PUC 298 (1987), *aff'd,* 72 NH PUC 366 (1987) (*Vicon*); and *Re Northeast Hydrodevelopment Corp.,* 73 NH PUC 292 (1988) (*Northeast Hydro.*)

5 (Popup)

[1]

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

MonthCalls	See letter of NTS dated
January	238 November 14, 1989.
February	224
March	274
April	316
May	311
June	220
July	0
August	0

6 (Popup)

[1]Concord Electric has only received such waivers since 1986.

7 (Popup)

[1] RSA 362-C.

8 (Popup)

[2]As stated at the public hearing on December 27, 1989, the following parties agree to these stipulations: The Commission Staff, The Business and Industry Association, The Consumer Advocate, The Office of the Attorney General and the New Hampshire Electric Cooperative, Inc.

9 (Popup)

[*]Commissioner Linda G. Bisson has recused herself at the request of the petitioner.

10 (Popup)

[*]As stated at the public hearing on December 18, 1989, the following parties agree to this treatment of ECRM: The Commission Staff, Public Service Company of New Hampshire, Northeast Utilities, The Consumer Advocate, The Office of the Attorney General and the New Hampshire Electric Cooperative, Inc., Mr. Paul A. Savage, Esquire, counsel for a number of Small Power Producers authorized me to represent that they do not oppose these recommendations.

11 (Popup)

[1]RSA 362-C.

12 (Popup)

[2]As stated at the public hearing on December 18, 1989, the following parties agree to this treatment of ECRM: The Commission Staff, Public Service Company of New Hampshire, Northeast Utilities, The Consumer Advocate, The Office of the Attorney General and the New Hampshire Electric Cooperative, Inc., Mr. Paul A. Savage, Esquire, counsel for a number of Small Power Producers authorized the Office of the Attorney to represent that they do not oppose these recommendations.

13 (Popup)

[3]Upon motion of the office of the Attorney General, the docket was expanded to include the establishment of a Temporary rate surcharge for the New Hampshire Electric Cooperative, Inc. ("NHEC"). During the hearing, all matters concerning NHEC were transferred to DR 89-245.

14 (Popup)

[4]The Escrow Agreement refers to the "First Effective Date" and the "Termination Date", which are terms of art in the Rate Agreement signed by Northeast Utilities and the Attorney General and referenced in RSA 3620C. While the Rate Agreement has been provided to all parties and the Commission, a brief explanation of the use of these terms in the Escrow Agreement may be helpful to those who are not familiar with the document.

Section 3(e) contains the first reference to "First Effective Date" under the Agreement. The First Effective Date is the date on which PSNH emerges from bankruptcy as a reorganized entity which may occur before the merger with Northeast Utilities ("NU"). It is projected that the First Effective Date will be on or before July 1, 1990. (see: Agreement, Paragraph 1, page 2.) The

"Acquisition Effective Date", which is referenced in Section 3(f), is the date on which of PSNH becomes subsidiary of NU. This could occur on the First Effective Date or at a later date. (See: Agreement, Paragraph 1, page 3.)

The "Termination Date" referred to in Section 3(f) is the date on which it is determined that the merger of PSNH and NU will not occur. (See: Agreement, Paragraph 3, page 3.) If this occurs PSNH would continue as a stand-alone entity. Under Section 3(f) if the merger fails after PSNH emerges from bankruptcy, the escrowed funds would be released to PSNH. Under Section 3(h) if the Commission determines that the first step of the reorganization plan will not occur (i.e., PSNH being reorganized and emerging from bankruptcy) the escrow fund is to be dissolved and the funds with interest are to be dispersed as the Commission orders.

