NH.PUC*01/02/91*[27046]*76 NH PUC 1*Connecticut Valley Electric Company

[Go to End of 27046]

Re Connecticut Valley Electric Company

DR 90-193, DR 90-197
Order No. 20,017

76 NH PUC 1

New Hampshire Public Utilities Commission

January 2, 1991

ORDER revising the fuel adjustment clause (FAC), purchased power cost adjustment (PPCA), and short-term avoided capacity and energy rates of a retail electric utility. Commission finds the sales forecasts used by the utility in its FAC and PPCA filing to be credible, but requests that the utility provide weather normalized data and more detailed analysis in its next filing.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 7

[N.H.] Fuel adjustment clause — Rate revision — Retail electric utility. p. 1.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchased power cost adjustment — Rate revision — Retail electric utility. p. 1.

3. COGENERATION, § 25

[N.H.] Rates — Avoided costs — Short-term energy and capacity. p. 2.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 52

[N.H.] Forecasts - Sales — Fuel adjustment clause — Purchased power cost adjustment — Weather normalization — Class analysis — Retail electric utility. p. 2.

APPEARANCES: Kenneth Picton, Esquire for Connecticut Valley Electric Company; Thomas C. Frantz and Eugene F. Sullivan for the PUC Staff.

BY THE COMMISSION:

REPORT

On November 30, 1990, Connecticut Valley Electric Company ("CVEC" or " Company") filed testimony, supporting documents and revisions to their currently effective tariff pages. The Company filed 4th Revised Page 17, 3rd Revised Page 18, 3rd Revised Page 50, and 3rd Revised Page 51 that reflect changes to their Purchased Power Cost Adjustment (PPCA), Fuel

Adjustment Charge (FAC), and Short-Term Energy Purchase Rate, respectively. An Order of Notice was issued on November 7, 1990, setting a hearing date for December 13, 1990. The Company's proposal for a new FAC rate, PPCA rate, and a Short-Term Energy Purchase Rate for the upcoming 12-month period was heard on December 13, 1990 at the offices of the Public Utilities Commission.

In support of the Company's proposals, Connecticut Valley presented the following witnesses: William J. Deehan, to address the Company's load forecast; Robert J. Amelang, to explain the 1991 short-term Small Power Producer purchase rate ("SPP Rate") and how it was calculated; Charles A. Watts, to explain the calculation of the RS-2 energy charges for each month in 1991, as well as comparing actual 1990 purchase power costs to the forecasted costs used in this proceeding; and C.J. Frankiewicz, who testified to the calculation of the FAC and PPCA rates for 1991.

Proposed FAC and PPCA Rates

[1, 2] The Company proposed an FAC rate that would decrease rates by $(344,665) or (2.5)% on an annual basis. The FAC decrease corresponds to a new Fuel Adjustment Rate of $(0.0041) per kWh to be effective on bills rendered on or after January 1, 1991. The FAC rate is determined by adding the forecasted 1991 RS-2 energy costs of $1,950,215 from Central

Vermont Public Service (CVPS) and SPP energy costs of $3,312,104, adjusting for interest and the franchise tax, for an estimated total cost to recover in 1991 of $5,312,771. The 1990 under collection of $89,206 is added to that amount for a net estimated cost amount of $5,401,977. The net estimated cost recovery is divided by the estimated kWh sales for 1991 to yield a unit energy charge of $0.0345. The base energy charge of $0.0386 is subtracted from $0.0345 to give the $(0.0041) per kWh FAC rate for 1991.

The Company proposed a PPCA revenue increase of $2,381,323 or 17% for the upcoming 12-month period based on annual revenues of $14 million. The proposed PPCA increase corresponds to a new Purchased Power Cost Adjustment on bills rendered on or after January 1, 1991 of $0.0085 per kWh. The Company estimated total costs of $7,092,707. They were then added to the 1990 undercollection of $219,697 for a net estimated recovery amount of $7,312,404 from which $5,981,315 of base capacity revenues were subtracted to yield the amount needed to be recovered through the 1991 PPCA. That amount, $1,331,089, divided by the 1991 forecasted sales of 156,666,000 kWh results in the PPCA rate of $0.0085 per kWh. The total rate effect is summarized below:

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

	Present Rate	*Proposed Rate*
FAC	$(0.0019)	$(0.0041)
PPCA	$(0.0067)	$0.0085
FAC & PPCA	$(0.0086)	$0.0044

Short-term QF Rates

[3] The Company's proposed short-term avoided capacity rate for qualifying facilities for 1991 is $22.20 per kW-year or $1.85 per kW-month. CVEC based the capacity rate on a contract with United Illuminating effective in 1991. The Company indicated that the low value for capacity reflected the current soft capacity market in New England.

The short-term energy rates for qualifying facilities for 1991 proposed by CVEC are:

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

For Billings Rendered:	*January-April*	*May-October*	*Nov.-December*
Peak Hours	3.80¢/kWh	3.61¢/kWh	3.91¢/kWh
Off-Peak Hours	2.33¢/kWh	2.22¢/kWh	2.86¢/kWh
Average All Hours*	3.03¢/kWh	2.88¢/kWh	3.36¢/kwh

*If interval data are not available.

The energy rates are 9% higher on a weighted average basis than the 1990 rates. They were calculated based on the use of an average of an increment and a decrement to load, consistent with prior Commission orders.

Based on the evidence provided, the Commission finds the proposed short-term avoided capacity and energy rates to be just and reasonable, and calculated in accord with the methodologies outlined in previous Commission orders.

Commission Analysis

[4] The Company's witness, Mr. Deehan, testified to the development of the sales forecast used in the Company's FAC and PPCA filing (CVEC Exhibit 1). The forecast by sector for 1991 is: a 1.8% increase in residential sales; a 1.5% increase in commercial sales; and a 0.3% sales increase for the industrial sector. Total sales are forecast to increase 1.21% over CVEC's 1990 energy sales. Although the Commission finds the new sales forecast credible, we still have concerns with the forecasting problems CVEC has experienced in the past two years. In the next filing we would like the Company to provide weather normalized data as part of the forecast and provide a more detailed analysis of its industrial class since it makes up a considerable part of CVEC's total sales. We also expect the Company to include with its filing peak load data for the past and forecast period.

Based on the evidence provided, the Commission finds that the proposed FAC rate of $(0.0041) per kWh and a PPCA rate of $0.0085 per kWh for the period January through December 1991 is just and reasonable and accordingly we allow those rates to become effective January 1, 1991.

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 fuel adjustment charge of $(0.0041)

per kWh for the twelve month period January through December 1991, be and hereby is, approved effective January 1, 1991; and it is

FURTHER ORDERED, that Connecticut Valley's purchased power cost adjustment of $0.0085 per kWh for the twelve month period January through December, 1991, be and hereby is, approved effective January 1, 1991; and it is

FURTHER ORDERED, that the short-term avoided capacity and energy rates for the twelve month period January through December 1991, be and hereby are, approved effective January 1, 1991; and it is

FURTHER ORDERED, that Connecticut Valley file compliance tariff pages NHPUC No.5 4th Revised Page 17, 3rd Revised Page 18, 3rd Revised Page 50 and 3rd Revised Page 51 reflecting the approved rates and the date and number of this order.

By order of the Public Utilities Commission of New Hampshire this second day of January, 1991.

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NH.PUC*01/04/91*[27047]*76 NH PUC 3*AT&T Communications of New Hampshire

[Go to End of 27047]

Re AT&T Communications of New Hampshire

DE 90-002
Order No. 20,018

76 NH PUC 3

New Hampshire Public Utilities Commission

January 4, 1991

ORDER denying reconsideration of a prior order that had found that the commission has statutory authority to grant franchises to more than one utility to serve the same service territory, provided that it finds that that multiple franchises would be in the public good. Commission limits scope of proceeding to consideration of whether it is in the public good to permit intrastate interexchange toll competition. For prior order see, *Re AT&T Communications of New Hampshire*, 75 NH PUC 670 (N.H.P.U.C.1990).

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1. MONOPOLY AND COMPETITION, § 11

[N.H.] Jurisdiction and powers — State commissions — Franchising authority — Nonexclusive franchises. p. 4.

2. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — State commission powers — Franchising authority — Nonexclusive franchises — Statutory considerations. p. 4.

3. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Franchising authority — Nonexclusive franchises. p. 4.

4. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Interexchange toll services — Franchising authority — Nonexclusive franchises. p. 4.

APPEARANCES: As noted.

BY THE COMMISSION:

REPORT

I. *INTRODUCTION*

On October 15, 1990, the Public Utilities Commission issued Order No. 19,956 (Order 19,956) finding *inter alia* that it has the statutory authority to grant franchises to more than one utility in a service territory, providing that it finds that multiple franchises would be for the public good. On November 5, 1990, Granite State Telephone, Inc. (GST) and Merrimack County Telephone Company (MST) filed a motion for rehearing of the commission's order pursuant to RSA 541:3. GST and MST contend that the commission does not have the authority to grant competing franchises within local exchange company service territories. For the reasons set forth below the commission disagrees with the companies' interpretation of its statutory authority and we hereby deny the request for rehearing.

II. *COMMISSION ANALYSIS*

[1-4] The crux of the companies' motion is that the commission's authority to grant competing franchises among telephone companies is limited to allowing inter-exchange toll competition. MST and GST contend that the plain language of RSA 374:22-e and 374:22-f preclude the commission from granting competing franchises within local exchange company service territories.

The issue of whether RSA 374:22-e and 374:22-f restrict the commission from granting multiple franchises within local exchange company service territories was addressed by the commission in order no. 19,956. As the commission explained, the statutes in question "address the procedures to be followed when the commission has made a finding that it is in the public good to have a single company provide particular services within a given franchise area." Order No. 19,956 at 15, n.2. In this proceeding the commission will be addressing the threshold issue of whether it is in the public good to have one or several carriers compete to provide services to the same customer. The enumerated factors the commission considers in defining the service territory contained in RSA 374:22-e and the desirability of avoiding duplication within exclusive service territories expressed in RSA 374:22-f are not relevant if the commission has already concluded that granting an exclusive franchise to a utility is not in the public good.

Our conclusion that the commission has the statutory authority to permit competition within local exchange company service territories is not intended to suggest that we believe the specific issue of local exchange competition is within the scope of this proceeding. The petitions of AT&T, Sprint and MCI are to supply competitive interexchange toll services. No company has requested authority to compete at the local exchange company level and, hence, the issue of whether it is in the public good for the commission to permit such competition is outside the scope of this proceeding.

Our order will issue accordingly.

ORDER

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

ORDERED, that the motion for rehearing of Granite State Telephone Company and Merrimack Telephone Company is denied; and it is

FURTHER ORDERED, that the scope of this proceeding shall be limited to consideration of whether it is in the public good to permit intrastate interexchange toll competition.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 19,956, 75 NH PUC 670, Oct. 15, 1990.

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NH.PUC*01/04/91*[27048]*76 NH PUC 5*Southern New Hampshire Water Company, Inc.

[Go to End of 27048]

Re Southern New Hampshire Water Company, Inc.

DR 90-050
Order No. 20,019

76 NH PUC 5

New Hampshire Public Utilities Commission

January 4, 1991

ORDER adopting a stipulation agreement authorizing a water utility to expand the boundaries of one of its franchises.

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1. SERVICE, § 210

[N.H.] Extensions — Water — Expansion of franchise boundaries — Stipulation. p. 5.

BY THE COMMISSION:

ORDER

WHEREAS, on March 20, 1990, Southern New Hampshire Water Company, Inc., (SNHW) filed a petition for expansion of its existing Beacon Hill Franchise within the Town of Derry; and

WHEREAS, at the July 11, 1990 prehearing conference, SNHW agreed to refile an amended petition according to a procedural schedule which was approved in Order No. 19,879 on July 17, 1990; and

WHEREAS, on July 16, 1990, SNHW refiled an amended petition re: expansion of its existing Beacon Hill franchise within the Town of Derry; and

WHEREAS, on November 14, 1990, SNHW submitted a stipulation between staff and SNHW for consideration by the commission; and

WHEREAS, we find that the proposed stipulation is just and reasonable and in the public good; it is hereby

[1] ORDERED, that the stipulation dated November 14, 1990 and attached hereto, and its description of the expanded boundaries of the Beacon Hill Franchise in Derry is approved.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1991.

STIPULATION AGREEMENT

I. AGREEMENT

This Stipulation Agreement ("Stipulation") entered into between Southern New Hampshire Water Company, Inc. ("Southern" or "Company"), and the Staff ("Staff") of the New Hampshire Public Utilities Commission ("Commission"), (hereinafter sometimes collectively referred to as "Parties"), for the purposes and subject to the terms and conditions hereinafter stated.

II. INTRODUCTION

On March 20, 1990, the Company filed with the Commission a Petition for Expansion of Existing Franchise within the Town of Derry and for Setting Rates Therein, which was subsequently amended on July 11, 1990 (hereinafter collectively referred to as the "Petition"). Appended to the Petition was an Agreement by and between the Company and the Town of Derry ("Town") dated April 27, 1989 for the purchase of water from the Town, the expansion of the Company's Beacon Hill franchise area, and main extension ("Derry Agreement") (attached hereto as Exhibit B). On May 1, 1990, the Commission ordered a pre-hearing conference for July 11, 1990. At the prehearing conference, the parties stipulated to a procedural schedule to govern this case, which was adopted by the Commission on July 17, 1990, by Order No. 19,879.

On July 11, 1990, the Company, pursuant to said procedural schedule, filed an Amended Petition revising the metes and bounds description of the franchise and moving the issue of rates for consideration in the Company's General Rate Case proceeding Docket DR 89-224. The Company also filed on July 11, 1990 the

testimony of Lawrence T. Gingrow, Jr. in support of the Petition, pursuant to the procedural schedule.

On July 20, 1990, the Staff promulgated data requests concerning the Petition and testimony, which were responded to by the Company on August 8, 1990. The Company also filed with the Commission a Water Main Extension and Service Agreement between the Company and a developer, Abdallah Construction Corporation ("Abdallah Agreement"), for service within the expanded area. On August 23, 1990, the Company filed a Petition for Temporary Rates and Temporary Franchise in order to serve the above development pending a final determination in this proceeding. On August 21, 1990 the Commission Staff filed the testimony of Robert B. Lessels, Water Engineer, that the Derry Agreement is a Special Contract requiring Commission approval. On August 28, 1990, the Parties met to discuss the possibility of stipulating to any and all issues relating to the Company's Petition, the Derry Agreement and Abdallah Agreement. The within Stipulation is the result of that meeting.

III. SUBJECT MATTER OF THIS AGREEMENT

This Stipulation relates to the Company's request for authority to expand its Beacon Hill franchise within the Town of Derry and, the rates to be charged customers therein, the Company's request for Temporary Rates and the Company's request for approval of the Derry Agreement and Abdallah Agreement. The Parties agree that the Company's Amended Petition, as modified by this Stipulation, should be granted by the Commission, and that the franchise expansion be granted by Order NISI.

IV. FRANCHISE AREA

The Parties agree that the existing and expanded franchise area is as depicted on the map attached hereto as Exhibit A. The area is described as follows:

> Beginning at a point on the centerline of Beacon Hill Road and the Derry-Windham Town line then heading in a westerly direction along the southernmost boundary line of Lot 0120-5 & 012-37 to a point. Then turning and heading in a northeasterly direction along the westernmost boundary line of Lot 012-37 to a point. Then turning and heading in a southeasterly direction along the southernmost boundary line of Lot 0112 to a point. Then turning and heading in a northerly direction along the westernmost boundary line of Lots 0116-10, 0116-14, and 0116-9, to a point. Then turning and heading in a northeasterly direction to the southernmost Lot corner of Lot 0114-2. Then turning and heading in a northerly direction along the westernmost boundary line of Lot 0114-2 to a point. Then turning and heading in a northerly direction to the southernmost Lot corner of Lot 021. Then turning and heading in a northeasterly direction along the northwestern boundary line of Lot 021 to the right of way intersection of Fordway Extension and Beacon Hill Road to a point. Then turning and heading in a northerly direction to the centerline intersection of Fordway Extension and Beacon Hill Road to a point. Then turning and heading in a northeasterly direction following the centerline of Fordway Extension Centerline and westernmost boundary line of Route 93 (Alan Shepard Highway) to a point. Then turning and heading in a southerly direction following the

westernmost boundary line of Route 93 (Alan Shepard Highway) to the town line. Then turning and heading in a westerly direction along the town line back to the point of beginning.

Said description is shown on Plan : Proposed Derry Franchise Expansion Beacon Hill C.W.S. Derry, N.H. Proposed Franchise Expansion Plan, dated January 1990 Scale : 1”=200´ Prepared by Southern New Hampshire Water Company, Inc., describing the existing and expanded area (See Exhibit A).

V. TARIFF RATES

The parties agree that in view of the Company's pending general rate case proceeding, Docket DR 89-224, the Company shall

Page 6

render water service to customers in the existing and proposed area in accordance with the terms of its existing tariff for General Metered Service for its Policy Satellite Division as such was determined by the Commission in Docket DR 87-135 as adjusted by the Commission's approval of temporary rates in Order No. 19,915, Docket DR 89-224, August 13, 1990. The rates shall be considered temporary rates pursuant to such order.

VI. AGREEMENT BETWEEN THE TOWN OF DERRY AND THE COMPANY

On April 27, 1989, the Town of Derry and the Company entered into an agreement concerning the extension of water main, the purchase of water and expansion of the Beacon Hill franchise among other things ("Derry Agreement"). The Derry Agreement was submitted to the Commission on August 1, 1989. On August 15, 1989, the Commission docketed this Agreement as DE 89-144. On January 8, 1990, the Company received a letter from Robert B. Lessels, Water Engineer, expressing his opinion that it was not a special contract, while questioning certain aspects concerning the main extensions and purchased water rate included therein. The Company's response to data requests, referred to in paragraph II of this Stipulation, addressed those and other issues. On August 21, 1990, Robert B. Lessels, Commission Water Engineer filed testimony that the Derry Agreement, in his opinion, is a Special Contract requiring Commission approval.

In view of the fact that the Parties, pursuant to paragraph V of the Stipulation, have deferred all rate issues to the Company's general rate case, Docket DR 89-224, and as the issues concerning the Derry Agreement relate to the Company's rate base and expenses which are being considered in that proceeding, the parties believe that it is both prudent and efficient to consider those issues in the context of that proceeding, and so recommend to the Commission.

VII. WATER MAIN EXTENSION AND SERVICE AGREEMENT — ABDALLAH CONSTRUCTION CORPORATION

On April 6, 1990, the Company entered into a Water Main Extension and Service Agreement with Abdallah Construction Corporation for service within the expanded franchise area ("Abdallah Agreement"). The Abdallah Agreement, at paragraph 3(c) indicated that the Company required authority to expand its franchise, which authority had been requested. It was the Company's opinion that the Abdallah Agreement itself was not a special contract requiring

Commission approval. However, on August 17, 1990, the Company was notified by the Commission that the Staff's initial review determined that it should be further investigated as a special contract and refiled as such in a separate proceeding.

On August 20, 1990, the Company responded objecting to the Commission Staff's determination of the Abdallah Agreement as a special contract, requesting that it be incorporated in this proceeding for consideration.

At the meeting on August 28, 1990, the parties agreed to request the Commission approve the Company's request for a franchise expansion and temporary rates in this proceeding so that service to customers can lawfully be provided as soon as possible. The Commission should then separately consider, in Docket DR 89-224, whether the Abdallah Agreement is a special contract requiring its approval.

VIII. OTHER REGULATORY APPROVALS

Approvals by the Department of Environmental Services, Water Resources Division and Water Supply and Pollution Control Division, received April 18, 1990 and April 10, 1990, respectively, are attached hereto, as Exhibits C and D, respectively.

IX. ABILITY OF APPLICANT TO SERVE

The Parties agree that the Company has the financial backing, the management and administrative expertise, the technical resources and is otherwise generally fit to own and operate the proposed water system and franchise.

X. POSITION OF THE TOWN OF DERRY

The Town of Derry does not object to the Company's expansion of the Beacon Hill franchise within the Town as proposed.

XI. GENERAL CONDITIONS

This Stipulation is subject to the following conditions:

A. In view of the importance to the Parties that they know whether the contents of this Stipulation will be accepted by the Commission, this Stipulation shall be presented to the Commission for acceptance and approval, and the Parties hereby request that any hearing on the merits regarding the Abdallah Agreement, not take place until after the Commission has reviewed and approved the Stipulation.

B. Except for items specifically provided for herein, the Commission's acceptance of this Stipulation does not constitute continuing approval of or precedent regarding any particular principle or issue in this proceeding, but such acceptance does constitute a determination that (as the Parties believe) the rates contemplated by this Stipulation will be just and reasonable under all the circumstances.

C. The making of this Stipulation establishes no principles or precedents affecting any party in any future proceedings except as expressly stated herein.

D. The Parties stipulate and agree that their respective obligations hereunder are

conditioned upon the Commission's acceptance and approval of all the terms of this Stipulation. In the event the Commission does not accept and approve this Stipulation in its entirety, any party shall have the right to rescind this Stipulation. If the Stipulation is withdrawn or rescinded, neither the Stipulation nor any of the negotiations which resulted in it shall constitute any part of the record in this proceeding or be used for any purpose whatsoever.

E. The discussions that have produced this Stipulation have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussion, and are not to be used against any party in any manner.

IN WITNESS WHEREOF, the Parties have caused this Stipulation to be duly executed in their respective names by themselves or their agents, each being fully authorized so to do behalf of his or her principle.

SOUTHERN NEW HAMPSHIRE
WATER COMPANY, INC.
By: Robert W. Phelps
President

Date: 11/13/90

STAFF OF PUBLIC UTILITIES
COMMISSION
By: James T. Rodier, Esq.
Staff Counsel for New Hampshire
Public Utilities Commission

Date: 11/14/90

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 19,915, 75 NH PUC 549, Aug. 13, 1990.

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NH.PUC*01/04/91*[50859]*75 NH PUC 9*Public Service Company of New Hampshire

[Go to End of 50859]

75 NH PUC 9

Re Public Service Company of New Hampshire

DR 89-212
Supplemental Order No. 19,665

New Hampshire Public Utilities Commission

January 4, 1991

ORDER, in an energy cost recovery mechanism proceeding, granting conditional approval to the proposed short-term avoided capacity rate and short-term avoided energy rates of a retail electric utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost recovery mechanism — Short-term avoided capacity rate — Short-term avoided energy rates — Retail electric utility.

[N.H.] In an energy cost recovery mechanism proceeding, the commission granted tentative approval to the proposed short-term avoided capacity rate and short-term avoided energy rates of a retail electric utility; approval was made subject to (1) the outcome of a hearing on the methodology used to determine the short-term avoided cost energy rates, and (2) reconciliation with the short-term avoided cost energy rates payable to qualifying facilities.

By the COMMISSION:

SUPPLEMENTAL ORDER

Upon consideration of the report accompanying Order No. 19,659 (74 NH PUC 556), which is made a part hereof; it is hereby

ORDERED, that the short term avoided capacity rate of $65.50/kW year and short term avoided energy rates of 3.922¢/kWh on peak, 2.541¢/kWh off-peak, and 3.166¢/kWh all hours, as filed by Public Service Company of

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New Hampshire on November 20, 1989 be, and hereby are, approved effective January 1, 1990, pending the outcome of the hearing on the methodology determining short-term avoided cost energy rates scheduled for March 14, 1990 and subject to reconciliation with the short-term avoided cost energy rates payable to qualifying facilities approved by the commission, retroactive to January 1, 1990.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1990.

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NH.PUC*01/07/91*[27049]*76 NH PUC 9*Telesphere Communications Inc.

[Go to End of 27049]

Re Telesphere Communications Inc.

DE 90-075
Order No. 20,021

76 NH PUC 9

New Hampshire Public Utilities Commission

January 7, 1991

ORDER, pursuant to stipulation, directing a telecommunications carrier to pay a fine of $1000 in acknowledgment of its unauthorized operation as a public utility. The carrier is further ordered to block its customers from completing intrastate, intraLATA calls through its network until such time as it obtains proper authority from the commission.

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1. PUBLIC UTILITIES, § 117

[N.H.] Telecommunications — Completion of intrastate, intraLATA calls — Unauthorized operation — Blocking. p. 9.

2. FINES AND PENALTIES, § 7

[N.H.] Grounds — Unauthorized operation — Telecommunications carrier — Completion of intrastate, intraLATA calls. p. 9.

3. SERVICE, § 469

[N.H.] Telecommunications — Toll service — Intrastate, intraLATA calls — Unauthorized provision — Blocking. p. 9.

APPEARANCES: Jack Pace, Esquire, on behalf of Telesphere Communications Inc.; Amy Ignatius, Esquire, on behalf of Granite State and Merrimack County Telephone Companies; Eugene F. Sullivan, III, Esquire, on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On April 16, 1990, staff received a copy of a telephone bill from Telesphere Communications Inc. (Telesphere) to the Sheraton North Country Inn itemizing charges for the completion of intrastate telephone calls. On May, 23, 1990, the commission issued Order No. 19,836, directing Telesphere to show cause why it should not be fined for operating as a public utility without authority and for charging rates without authority. See RSA 374:26, RSA Chapter 378. On July 2, 1990 the commission issued Order No. 19,869 rescheduling the hearing due to procedural problems leading to a lack of notice to Telesphere. On August 29, 1990, the commission held a duly notice hearing at which staff and Telesphere orally presented a stipulation agreement.

On August 9, 1990, Union Telephone Company (Union) filed a motion to intervene. Union did not attend the August 29, 1990 hearing. Both staff and Telesphere argued that pursuant to RSA Chapter 541-A Union's motion should be denied as they had failed to appear and said

failure to appear would unduly delay the proceedings. The hearings examiner recommended the commission deny Union's motion without prejudice should the proceedings continue beyond the August 29, 1990 hearing date.

II. *Findings of Fact*

[1-3] The staff produced a telephone bill sent by Telesphere to the North Country Sheraton Inn which indicated that intrastate telephone calls had been conveyed by Telesphere without Commission approval. Telesphere represented through its counsel that conveyance of intrastate traffic was inadvertent and the company only had approximately six customers in New Hampshire. Council further stated that all New Hampshire customers were blocked from using Telesphere to complete intrastate calls as of the date of the hearing.

In light of the Commission decision in

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docket DE 89-146, National Telephone Service (NTS), where the Commission found NTS to be a public utility for operations similar to Telesphere's, staff and Telesphere agreed that Telesphere would pay a fine of $1000.00, provide staff copies of all telephone bills to its New Hampshire customers for six months from the date of this order, and to ensure New Hampshire customers remain blocked from completing intrastate calls through Telesphere until such time as Telesphere obtains the proper authority for operating as a public utility in the State of New Hampshire.

1(1)

III. *Commission Analysis*

When Telesphere conveyed intrastate telecommunications in the State of New Hampshire, Telesphere was operating as a public utility without commission approval. See RSA 362:2, RSA 374:22, RSA 374:26. In addition, the commission has reviewed the stipulation agreement outlined above and attached hereto, and finds the agreement reasonable and in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, Telesphere pay a fine of $1000 as stipulated in acknowledgement of operating as a public utility in New Hampshire without authority pursuant to RSA 365:41; and it is

FURTHER ORDERED, Telesphere block their customers from completing intrastate calls through Telesphere's network until such time as Telesphere obtains proper authority from the Commission; and it is

FURTHER ORDERED, Telesphere submit copies of all telephone bills to its New Hampshire customers for six months from the date of this order.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1991.

INTRALATA TOLL SERVICE AGREEMENT

1.0 This Agreement is entered into this 22 day of October 1990, between Telesphere Communications Inc., ("Telesphere or company") and the ("staff") of the Public Utilities ("Commission") for the purposes and subject to the terms and conditions hereinafter stated.

2.0 *Introduction* On May 23, 1990, the Commission issued Order No. 19,836 to investigate whether Telesphere should be fined up to $25,000 or subject to criminal sanctions for operating as a public utility without authority and for charging rates therefore without authority. A hearing was originally scheduled for June 8, 1990. Due to a variety of factors including a dispute over proper notice a hearing was rescheduled by Order No. 19,869 issued on July 2, 1990, for August 29, 1990. Said hearing went forward and staff and Telesphere offered a stipulation to resolve the case orally to be followed by this written stipulation memorializing the oral agreement.

3.0 *Facts* The staff received a bill sent by Telesphere to Sheraton North Country Inn located in West Lebanon, New Hampshire which indicated that intrastate, intraLATA phone calls had been conveyed by Telesphere without Commission approval. The North Country Inn bill was the only evidence staff had indicating that any such actions were taking place in the State of New Hampshire by Telesphere. Telesphere represented through its counsel that this was an inadvertent conveyance of intraLATA telephone calls, that the company had only six customers in the State of New Hampshire, and that all of those customers were currently blocked. No such intraLATA calls would or could be completed by Telesphere in the future.

3.1 *Agreement* Staff and Telesphere agreed that the company would pay a $1,000 fine for the provision of intrastate, intraLATA communications without Commission approval. In addition, Telesphere will provide copies of its billings to New Hampshire customers for six months from the date an order is entered in this case, to insure that all intrastate, intraLATA calls for all customers in the State of New

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Hampshire are blocked. Finally, Telesphere will insure intrastate, intraLATA calls remain blocked until such time as proper Commission authority is obtained.

4.0 *General Conditions* This Agreement is subject to the following further conditions:

4.1 The making of this Agreement shall not be deemed in any respect to constitute an admission by any parties that any allegations in these proceedings other than those specifically agreed to herein is true and valid.

4.2 The making of this agreement establishes no principals or precedents in any other proceeding or investigation.

4.3 This agreement is expressly conditioned upon the Commission's acceptance of all its provisions without change or conditions and if the Commission does not provide such approval the agreement may be deemed to be withdrawn and shall not constitute any part of the record in this proceeding nor be used for any other purposes at the call of Telesphere or the staff.

4.4 This agreement constitutes an integrated writing and each of the provisions is in

consideration in support of every other provision and is an essential condition of every other provision.

4.5 The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement in discussions relating thereto shall remain confidential and privileged and without prejudice to the position of any participant presenting any such offer or participating in any such discussion and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS WHEREOF, the parties' fully authorized agents have exercised this agreement.

TELESPHERE COMMUNICATIONS, INC.
By Its Attorneys,
By Jack A. Pace, Esquire

STAFF OF PUBLIC UTILITIES COMMISSION
By Its Attorneys,
By: Eugene F. Sullivan, III, Esquire

FOOTNOTES

[1]See attached settlement for complete detail.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Telesphere Communications, Inc., DE 90-075, Order No. 19,836, 75 NH PUC 297, May 23, 1990. [N.H.] Re Telesphere Communications, Inc., DE 90-075, Order No. 19,869, 75 NH PUC 352, July 2, 1990.

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NH.PUC*01/07/91*[27050]*76 NH PUC 11*Public Service Company of New Hampshire

[Go to End of 27050]

Re Public Service Company of New Hampshire

DR 90-186
Order No. 20,022

76 NH PUC 11

New Hampshire Public Utilities Commission

January 7, 1991

ORDER establishing the energy cost recovery mechanism (ECRM) rate and the short-term avoided cost capacity and energy rates for a retail electric utility. Commission rejects proposed "levelized" ECRM rate concluding that ratepayers would prefer to pay temporary lower rates and experience rate fluctuations rather than pay rates that are higher than actual cost.

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1. COMMISSIONS, § 51

[N.H.] Investigation and action — Allegations of bias — Motion for recusal — Denial. p. 13.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Energy cost recovery mechanism — Fossil fuel — Coal inventory adjustment — Electric utility. p. 20.

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3. AUTOMATIC ADJUSTMENT CLAUSES, § 32

[N.H.] Procurement practices — Coal supplies — Contracting decisions — Reasonableness — Energy cost recovery mechanism — Electric utility. p. 21.

4. EXPENSES, § 122

[N.H.] Electric — Supply cost — Replacement power — Outage — Prudence — Shiller 3. p. 21.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Energy cost recovery mechanism — Replacement power — Outage — Electric utility — Prudence — Shiller 3. p. 21.

6. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Energy cost recovery mechanism — Purchased power — Off-system transactions — Capacity swap — Transaction analysis — Polaris model — Electric utility. p. 21.

7. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Energy cost recovery mechanism — Nuclear fuel — Re-booking of write-off — Valuation — Electric utility. p. 21.

8. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Energy cost recovery mechanism — Purchased power — Seabrook entitlement — Sellback agreement. p. 22.

9. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Energy cost recovery mechanism — Replacement power — Outage — Electric utility — Prudence — Seabrook nuclear plant. p. 22.

10. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Energy cost recovery mechanism — Indirect costs — Acid rain compliance — Plant conversion costs — Electric utility. p. 23.

11. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Energy cost recovery mechanism — Indirect costs — Ash Disposal — Electric utility. p. 23.

APPEARANCES: Gerald Eaton, Esquire, for Public Service Company of New Hampshire; Rath, Young, Oyer & Pignatelli by Eve Oyer, Esquire and Day, Berry & Howard by Robert Knickerbocker, Esquire, for Northeast Utilities Service Co.; Merrill and Broderick by Mark W. Dean, Esquire, for New Hampshire

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Electric Cooperative; Robert Cushing, Jr. for the Campaign for Ratepayers Rights; Ian Wilson for the Business & Industry Association; Brown, Olson and Wilson by Daniel W. Allegretti, Esquire, for Biomass Intervenors; Sheehan, Phinney, Bass and Green by Ann F. Ross, Esquire, for New Hampshire Yankee; Office of the Consumer Advocate by Michael Holmes, Esquire for Residential Ratepayers; Shelley Nelkins, *pro se*; Representatives Merrill, Arnesen and Spear, *pro se*; James Rodier, Esquire, and Susan Chamberlin, Esquire, for New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On November 1, 1990, the Public Utility Commission ("commission") issued an Order of Notice establishing Docket DR 90-186 for consideration of Public Service Company of New Hampshire's ("PSNH" or the "company") Energy Cost Recovery Mechanism ("ECRM"). The docket covers the filing for the 18 month reconciliation period beginning July 1, 1989 through December 31, 1990 and PSNH's proposed ECRM rate for the prospective six month period from January 1, 1991 to June 30, 1991. The Order of Notice also scheduled a November 26, 1990, prehearing conference to set a procedural schedule and to address matters of intervention.

A. *Motions to Intervene*:

At the prehearing conference, the Commission granted duly filed motions to intervene from the Biomass Intervenors; Reps. Merrill, Arnesen and Spear; New Hampshire Electric

Cooperative; and from the Business and Industry Association. Ms. Shelley Nelkins, *pro se*, moved to intervene and PSNH objected on the grounds that her interests can be represented by the Consumer Advocate and that Ms. Nelkins was attempting to bring in issues more appropriately addressed in another forum. The Commission granted Ms. Nelkins' motion with the following conditions: that she consolidate her issues with the Consumer Advocate wherever possible; and that she confine her participation to the scope set for the proceeding.

Mr. Robert Cushing moved to intervene on behalf of the Campaign for Ratepayers Rights. PSNH objected on grounds of efficiency and standing. The Commission granted Mr. Cushing's motion under the same terms as Ms. Nelkins' motion.

B. *Motion for Recusal*

[1] Ms. Nelkins moved to recuse Chairman Smukler on the grounds that his involvement in the Northeast Utilities takeover and his position on the Decommissioning Finance Committee precluded his ability to be objective in the ECRM proceeding. The Commission denied her motion. The Commission found in Docket DR 89-244 that the Northeast Utilities takeover of PSNH and the Rate Agreement were in the public good, and therefore Chairman Smukler is bound by that decision. The Commission further stated that the findings of the Decommissioning Financing Committee have no binding effect on matters within this Commission's jurisdiction and therefore Chairman Smukler's participation in either body has no effect on participation in the other.

C. *Schedule and Scope of the Proceeding*

On November 29, 1990, after consultation with all parties, PSNH filed a report on the schedule and scope of the proceedings which, *inter alia*, identified the issues to be addressed and set forth a proposed procedural schedule. The Commission approved this report at the December 3, 1990 commission meeting. Evidentiary hearings were held on December 17, 19, 20 and 21 at the commission office. The parties submitted written recommendations on the issues on December 27, 1990.

II. *Positions of the Parties*

A. *Merrimack Coal Inventory Adjustment*

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1. *PSNH*

In November 1989, PSNH conducted a routine survey of its Merrimack Station coal supply. The survey indicated that the company's book inventory was 19,422.74 tons greater than the measured coal supply. PSNH, as a result of the survey, made an adjustment to its books. The company believes that the adjustment is reasonable and consistent with past Commission decisions concerning coal inventory adjustments. It is the company's position that its actual fuel costs should be recoverable and those actual fuel costs include the 19,422 tons that were burned for ratepayer benefit. In support of its position, PSNH cited a letter from Damon Lawrence, President of New England Agencies, Inc., to William Steff of the PSNH Fuel Procurement Department (Exhibit 4 of Exhibit 48). Although PSNH states that a number of possible discrepancies are possible, it contends that the primary reason the survey indicated a 19,000 plus

tons discrepancy was moisture content change. The result was an understatement of actual coal burned. Furthermore, it is the company's position that no other explanation has been proffered that accounts for the difference.

2. *Staff*

The staff made no proposal concerning the Merrimack coal inventory adjustment.

3. *OCA*

The OCA emphasizes the history of similar discrepancies with PSNH's coal inventory. OCA is especially concerned that PSNH does not weigh the coal cars when they arrive at Bow, nor does PSNH actively participate in the weighing of the coal as it leaves the mine site. OCA raises the possible incentive for the coal company and train company to misrepresent actual weights shipped. Until PSNH takes corrective action to ensure that it is receiving what it is charged for, and therefore is acting prudently to protect ratepayers, OCA urges the Commission to disallow the coal pile adjustment of 19,422 tons.

B. *Sprague/Westmoreland Coal Contract*

1. *PSNH*

According to PSNH, the actions taken with respect to coal purchased for Schiller Station in 1989 must be viewed in the context of when the decisions were made. PSNH explained its decisions in a narrative provided with Response to Staff Data Request Set No. 1, Response 2. (Exhibit 26). Given the need for a new coal supply to replace the initial contract with ANR/Coastal Coal Sales, Inc., the Sprague/Westmoreland contract provided a base supply of coal against which all other purchases would be measured.

In order to establish a new coal supply at Schiller, PSNH exercised reasonable judgment given the price variability of the Units' two alternative fuels, coal and oil. Complicating the company's action was the UMW wildcat strike, affecting both price and availability of test coals and base supplies. PSNH would have preferred to have tested several coals during 1989 to be able to choose a base supply from many potential sources which PSNH knew would work in the Schiller Units; however, that was not possible during 1989. Coal suppliers, like PSNH's Merrimack supply sources, were trying to catch up with earlier commitments. They were not making test coals available at reasonable prices, if at all. Sprague was a supplier of coal which had been tested in the Units and could be made available before 1990. PSNH made the decision in order to be able to meet inventory requirements established by the commission and burn coal instead of oil at the Schiller Units.

The Sprague/Westmoreland contract established a base domestic supply for what could be up to 400,000 tons of annual burn. It enabled PSNH to negotiate transportation contracts for it and all other domestic coal supplies. The price was lower than other domestic sources. Given the need to establish a minimum inventory, the decision to contract for this coal was reasonable under all the circumstances of 1989.

2. *Staff and OCA*

In April, 1989, PSNH decided to begin

burning coal at Schiller Station in the late fall of 1989. PSNH did not initiate a test burn program, nor did it send out a formal solicitation for bids for coal supply until November, 1989. By December 1989, PSNH faced an "urgent" situation with respect to low coal supply, and therefore entered into the contract with Sprague. Were it not for the three unsolicited offers of test-burn coal from Sprague during 1989, PSNH might have run out of coal at Schiller.

The Sprague contract price was $2.50 per ton greater than the price for coal under the ARCO contract. The November solicitation also produced other bids that were lower in price than the Sprague coal.

Prior to the proceeding, PSNH agreed that its burden was to "satisfy the commission of the reasonableness" of the Sprague contract as provided for under RSA 366:5. (Exhibit 40). Staff believes that PSNH's testimony illustrated that it failed to make a reasonable effort to obtain a coal supply for late Fall, 1989.

Staff recommended that PSNH be disallowed recovery of the $2.50 per ton differential between the price paid to Sprague and the prevailing market price as measured by the ARCO contract. The total recommended disallowance would be $250,000 ($2.50 per ton multiplied by 100,000 tons). This disallowance does not take into account the increased costs paid by ratepayers as a result of Schiller being unable to burn lower priced coal from May through November 1989 due to wet coal and other problems.

C. *Schiller 3 Outage*

1. *PSNH*

In the Fall of 1988, Schiller Unit 3 (the Unit), the oldest and least efficient plant, underwent a lengthy scheduled outage in order to improve the Unit's reliability. The work was performed by a subsidiary of General Electric Company, the E.F. Hinds Company. Sometime during the outage, a small foreign object believed, by the company, to be a set screw, but not one of the set screws used in the reassembly of the turbine, found its way into the turbine. The company claims that proper procedures were followed during disassembly and reassembly of the Unit by the contractor. Visual inspection of the turbine area was not possible due to the many rotating and stationary blades.

Following normal start-up procedures, including the slow-turning of the turbine by hand, nothing unusual was detected. After the Unit was back in service, its output was lower than the company had anticipated. Due to the reduced output, the company tried to determine the cause. PSNH contacted General Electric, manufacturer of the turbine. General Electric, in a letter to PSNH dated March 22, 1989, concluded that the problem, decreased output due to steam flow blockage, resulted from one of the following two possibilities:

1. Boiler water chemistry.
2. Foreign object damage.

PSNH witness Mr. William Smagula, Steam Production Manager, testified that boiling water chemistry was ruled out, but that a third possibility existed. He stated that movement in some of the stationary components could have caused the reduction in steam flow. Mr. Smagula testified

that had he had any reason to question the safe operation of the Unit it would have been shut down immediately. A letter from General Electric dated May 22, 1989 supported Mr. Smagula's opinion that the Unit could be operated safely and suggested that it should be opened and inspected at the company's earliest convenience. It is PSNH's position that the "earliest convenience" occurred when the Unit shut itself down in December, 1989 due to a sudden loss in vacuum from a patch blown off in the condenser housing. At that time, PSNH extended the five day outage for repairing the condenser and to start inspection and repair of the damaged turbine. The total outage lasted 76 days.

Mr. Smagula stated that it is his belief that had the Unit been shut down earlier, such as in March, the outage would have lasted beyond 76 days due to the heavy work load by turbine blade manufacturers at that time of year. Additionally, the company believes its decision to wait until the December, 1989 outage enabled it

to conduct preventative maintenance scheduled for early 1990 that could not have been avoided if the Unit had been taken down in March, 1989.

PSNH contends that it exercised reasonable care to prevent the outage and that it diligently investigated the cause of the reduced output. Because there is no evidence of greater harm from running the Unit rather than opening it for an inspection that would have been longer in duration than what occurred in December, PSNH believes it is rightfully entitled to the replacement power costs it incurred.

2. *Staff*

The staff, though not fully satisfied with the actions and testimony presented by the company, does not seek a disallowance. The staff does recommend that the company review their procedures and the procedures of contractors at its fossil and hydro units in order to prevent the occurrence of a similar event. Such a review should include a comparison with NU procedures, and a report addressing those comparisons and the results and recommendations of procedures to the Commission within 60 days.

3. *OCA*

The Office of Consumer Advocate recommended that the replacement energy cost of the outage be disallowed.

D. *Capacity Swap and Capability Responsibility Purchases*

1. *PSNH*

PSNH did not address this issue in its written comments.

2. *Staff*

The Capacity Swap with Northeast Utilities was entered into for the period from July 1, 1990 through December 31, 1990. The swap is essentially a simultaneous purchase and sale between Northeast Utilities and PSNH. In effect, PSNH traded 110 MW of Merrimack Station for 140 MW of Northfield Mountain Pumped Storage.

Capability Responsibility purchases were entered into between PSNH and New York and Pennsylvania utilities during the period between November, 1989 and April 30, 1990. During this same period, NU made extensive sales of capacity, including peaking capacity to New England utilities.

During the hearings, PSNH conceded that virtually no analysis was available that would provide a basis for examining and evaluating whether the Capacity Swap with NU and Capability Responsibility purchases from outside New England were reasonable and in the best interest of ratepayers.

Indeed, the testimony of the company was that an assessment of the marketplace to identify possible alternatives had not been conducted for the Capacity Swap, and the possibility of peaking capacity purchases or other purchases from NU had not been fully explored.

The staff recommends that PSNH be required to upgrade and document the process by which it determines which off-system transactions it enters into, particularly those with NU. Future ECRM/FPPAC filings should provide all necessary information and market data for the company to establish that its transactions were the most reasonable and beneficial from a ratepayer's perspective.

3. *OCA*

OCA substantially concurred with staff's recommendations.

E. *Seabrook Re-booking of Nuclear Fuel Costs*

1. *PSNH*

The company has proposed to include, as an ECRM expense, its original book cost for Seabrook nuclear fuel from commercial operation until the First Effective Date. The basis for the company's proposal is fairness and equity. Because of the delay in the First Effective Date as a result of legal proceedings initiated by others, the company continues to provide very

substantial savings to ratepayers under ECRM from displacement of fossil fuel by nuclear energy, while, at the same time, there is presently no collection of any Seabrook capital costs or operation and maintenance expenses, including fuel, reflected in rates.

The effect of the company's proposal is to reduce by approximately one-half the Seabrook-related fossil fuel savings that would otherwise flow through to ratepayers. Those fuel savings are currently averaging about $6 million per month, and Seabrook fuel expense is approximately $3 million per month. Moreover, as Mr. Noyes testified on December 19, 1990 PSNH incurs in excess of $10 million per month of additional Seabrook capital costs and O&M expense that still will not be recovered even if nuclear fuel costs are included in ECRM.

Company witnesses testified during the hearings that traditional ECRM accounting would include Seabrook's nuclear fuel as an offset to savings from displaced fossil fuel. Accordingly, reflection of nuclear fuel expense in ECRM not only is equitable because it recovers a portion of the costs of Seabrook that are being incurred in order to save ratepayers roughly twice as much fossil fuel expense, but also would be "business as usual" under traditional ratemaking. In fact, if

PSNH had not written down the value of nuclear fuel on its books, there would be no contested issue relative to ECRM recovery of that fuel.

2. *Staff and OCA*

According to staff and OCA, PSNH wrote off its cost of nuclear fuel to zero in order to align its 1989 financial statements with the expected value of $2.3 billion under the Rate Plan. In September, 1990, and subsequent to Seabrook in-service, PSNH decided that the nuclear fuel write off was inequitable to PSNH and an "undue burden" due to the delay in achieving the First Effective Date. PSNH testified that its decision to rebook nuclear fuel cost in September, 1990 (retroactive to July 1, 1990) was based upon fairness considerations rather than accounting principles. PSNH also asserted that it is entitled to seek rate relief from the commission prior to the First Effective Date.

Staff and OCA do not believe that NU is lawfully entitled to rebook nuclear fuel cost. The risk of delay in the First Effective Date was known and foreseeable according to PSNH's 10Q's filed with the SEC.

Exhibit 41 indicates that PSNH's write-off of the $260 million Seabrook "impairment", which includes the nuclear fuel cost write-off, was not in any way contingent upon the occurrence of the First Effective Date at any particular time. PSNH's testimony confirmed that the Rate Agreement between the State and NU provides that PSNH will recover $1.5 billion for Seabrook including nuclear fuel after the First Effective Date. To allow PSNH to rebook the cost of nuclear fuel as proposed, would effectively result in a recovery of at least $24 million more than the agreed-upon $1.5 billion.

Staff and OCA also take the position that PSNH is presently collecting for Seabrook through the 5.5% increase which went into effect on January 1, 1990. Although the increased revenues are being escrowed, they will eventually accrue to the credit of reorganized PSNH. Not only is PSNH writing off nuclear fuel (which is valued at zero in the rate plan) they are also depreciating Seabrook at a rate of $3.1 million per month. As of October 31, 1990, PSNH has accumulated a reserve for depreciation of $12.5 million. The net effect of these adjustments is a benefit to PSNH once the First Effective Date occurs. Costs which were previously written off will be recovered because PSNH and NU admit that the value of Seabrook and the acquisition adjustment will be valued at $1.5 billion on the First Effective Date regardless of what has transpired during the period before the first effective date.

F. *New Hampshire Electric Cooperative's 25 MW Entitlement*

1. *PSNH*

According to PSNH, the company's original filing treated energy from NHEC's Seabrook entitlement as a "purchase" by PSNH under ECRM. This meant that, for accounting purposes, NHEC was credited for its share of

Seabrook at the energy charge under the current FERC-approved PSNH wholesale rate, NHEC was assumed to purchase all of its requirements from PSNH, and NHEC's Seabrook entitlement was assumed to be available to PSNH to supply all of its customers, including

NHEC.

Prior to the hearings, NU decided to modify the ECRM accounting for NHEC's Seabrook entitlement to reflect that this Commission had not yet approved the Sellback Agreement and had specifically prohibited its enforcement until it made such a determination in Docket No. DR 90-078. Mr. Noyes testified that there could be no "purchase" of energy from NHEC for ECRM purposes because there was no agreement legally in effect between NHEC and PSNH under which such a purchase could be made. Rather, ECRM accounting should reflect the exclusive use, by NHEC, of energy from its own Seabrook entitlement, directly offsetting the amount of energy otherwise purchased from PSNH at wholesale. This treatment is consistent with the commission's order in DR 90-078 and avoids payment by PSNH's other ratepayers for any of NHEC's Seabrook entitlement.

As a result of this correction in ECRM's accounting for NHEC's entitlement, Mr. Hall testified that PSNH customers were benefitted by approximately $400 thousand of increased "overrecovery" under ECRM.

2. *Staff*

PSNH's initial filing in this proceeding on November 30, 1990, treated NHEC's 25 MW share of Seabrook as a purchase by PSNH, i.e., as if it was being sold by NHEC to PSNH. Subsequently, PSNH modified its filing to remove the 25 MW from PSNH's power supply. The explanation provided by PSNH was that the NHEC sellback is not in effect and PSNH is not purchasing the 25 MW.

However, should the commission deem the sellback to be in effect and consequently that PSNH is purchasing NHEC's 25 MW, staff recommends that the energy cost of the 25 MW purchase should be included in ECRM at NHEC's actual fuel cost. Moreover, staff notes that there are several dockets pending before the commission and the FERC concerning the sellback agreement. Staff recommends that the commission specifically reserve the issue for further reconsideration once those proceedings are completed.

G. *November Seabrook Outage*

Staff was the only party addressing the November Seabrook outage in its written argument.

Staff believes that the only outage experienced at Seabrook that was of a substantial nature was the two-week outage which commenced on November 9, 1990.

The primary cause of the November 9 outage was an air line leak caused by the mounting of a booster relay pin on the end of a length of pipe in a location susceptible to vibrations. PSNH conceded that this was a less than optimal location. During the hearing, it also became apparent that not only was the location a problem but the cantilevered design was also a problem because the installation of a booster relay on the end of a "moment arm" amplifies vibration.

The secondary cause of the November 9 outage was the cracked piston. Media reports, in evidence at the hearing, quoting New Hampshire Yankee attribute the cracking of the piston to thermal stress. Beyond this, New Hampshire Yankee is also reported as stating that the thermal stress occurred during warmup; different reports quoting New Hampshire Yankee indicate that the thermal stress occurred during cooldown. At the hearing, New Hampshire Yankee denied that the cause was linked to thermal stress of any kind.

Staff is concerned about the design and location of the booster relay, but does not believe these shortcomings were so foreseeable that the commission should disallow the recovery of any replacement power cost.

With regard to the cracked piston, staff's review and recommendation's must await the findings of the metallurgical analysis and other studies currently being done by New Hampshire Yankee.

Staff notes that PSNH's ECRM filing in this proceeding did not contain any information

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on Seabrook operation, maintenance, or outages. This information is needed by the commission to provide a basis for evaluation of Seabrook management and performance. All future PSNH ECRM/FPPAC filings should contain this information.

H. *Acid Rain Compliance*

Staff was the only party addressing Acid Rain Compliance in its written argument.

According to staff, PSNH testified that the cost of complying with New Hampshire's new Acid Rain law would be approximately $9 million in 1991 for Newington Station. Newington Station is a 422 MW oil-fired steam plant that in the past burned 2.2% sulfur oil. The resulting cost increase is due to the higher cost of low sulfur oil. Newington will burn residual fuel oil with an average sulphur content of 1.35 percent starting January 1, 1991. The difference between the two residual fuels, according to the company, is approximately $5.00 per barrel or 76 cents per million Btu.

PSNH testified that converting Newington to burn natural gas in addition to oil would cost about $7.5 million. The company indicated during the hearing that it has not done a benefit-cost study of converting Newington to gas although some preliminary form of analysis has been done and is continuing.

Staff takes the position that a gas conversion could displace about 5 million mmBtu's per year. At current market prices for natural gas and low sulphur oil, staff estimates savings in excess of $1.00 per mmBtu are possible. Thus, staff believes yearly estimated savings could exceed $5 million dollars. Staff recommends that PSNH undertake and submit a detailed benefit-cost analysis to the commission within 60 days.

I. *Ash Disposal*

Staff was the only party addressing the cost of ash disposal in its written argument.

A concern was raised by Staff during the hearings that the high cost of ash disposal at Schiller Station from coal burning affects the dispatch order of the plant and therefore increases costs to ratepayers. Under ECRM, the direct costs of ash disposal are not recoverable. However, when FPPAC becomes effective, the company will be permitted ash disposal cost recovery. The company is currently paying approximately $70 per ton for ash disposal.

The staff recommends that the company file a report on the ash disposal problem at Schiller Station before the First Effective Date. No other parties commented on the issue of ash disposal.

J. *Qualifying Facilities, Short-term Capacity and Energy Rates*

PSNH proposes the following rates to be paid for purchases from QFs under short-term rate provisions from January 1, 1991 through June 30, 1991:

Energy Rates (not including adjustments for the Loss Factor and Indirect Factor):

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

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On-Peak Hours ......      3.767 1 per kWh
Off-Peak Hours ......     1.994 per kWh
All Hours ......          2.784 per kWh
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The energy rates are calculated using an average of an increment and a decrement to load in accordance with previous Commission Orders.

PSNH estimates the market value of capacity for the six month period January through June 1991 is $2.00 per kW-year. For the eight months ending in August 1990, the average value of surplus capacity paid to surplus participants was $2.06/kW-year.

PSNH believes it is unlikely the value of surplus capacity through NEPOOL Capability Responsibility Adjustment (CRA) charge distributions will be higher than the current levels and may, due to the sluggish economy and 2,000+ MW surplus in NEPOOL, approach zero in the next six months. This value is based upon the Commission continuing to use the present methodology of basing capacity value on the most recent actual market data. The PSNH short-term energy and capacity rates were not disputed by any of the parties.

K. *Traditional ECRM Rate or Levelized Rate*

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1. *PSNH*

In its filing, PSNH proposes that the currently effective ECRM rate of 3.664 cents per kWh remain in effect from January 1, 1991, until the First Effective Date. The 3.664 cents per kWh rate had been in effect since July 1, 1989. The company further proposes that due to the uncertain timing of the First Effective Date, no FPPAC rate be established on January 1, 1991. Under PSNH's proposal, the overrecovery at the end of December 1990 will increase until the First Effective Date is reached.

PSNH's rationale for keeping the ECRM rate unchanged is the unnecessary and confusing effect a decrease in rates now will have on ratepayers when they have anticipated annual 5.5 percent rate increases due to the Rate Plan. According to the company, if PSNH is ordered to decrease rates on January 1, 1991, by 8 percent under a traditional treatment of ECRM, if the First Effective Date occurs on March 1, 1991, rates at that time will increase approximately 16 percent.

The company states that its proposal would spread the refund more evenly throughout the year and reduce the number of rate changes. The company estimates a second rate increase of approximately 4 percent would go into effect on July 1, 1991 if a traditional ECRM format is followed. Under its proposal, the only rate increase would be on the First Effective Date. The increase will be approximately 6.4 percent if the First Effective Date is March 1, 1991. The "annualized" rate increase will be 5.3 percent. If the First Effective Date is April 1, 1991, the rate

increase will be 5.8 percent for an "annualized" increase of 4.4%.

2. *OCA and BIA*

The Office of Consumer Advocate and the Business and Industry Association filed Position Papers supporting the company's proposal for a levelized rate approach.

3. *Staff*

The staff, while agreeing that rate continuity is desirable, recommends that the objective of having rates reflect costs as they are actually incurred, especially in an ECRM proceeding designed to allow prompt rate changes due to changes in costs, overrides the concern of rate continuity in this case. Staff also is concerned with the large overrecovery that has accumulated through the end of 1990, and which would continue to increase under the company's proposal.

Seasonal customers, such as ski areas, are cited as customers who would contribute to the overrecovery under a levelized approach without any recourse later to recovery. Finally, staff does not believe that customers will not understand nor will PSNH not be able to explain that annualized base rate increases will be the same regardless of their timing.

Staff's position was supported on this issue by Representatives Arnesen, Spear and Merrill.

III. *Commission Analysis*

A. *Merrimack Coal Inventory Adjustment*

[2] PSNH made an adjustment to its books to reflect the results of a November, 1989 survey of its Merrimack coal supply. The survey results showed that book inventory reflected 19,422.74 tons of coal which were not found in the coal supply. We find that the adjustment should be approved because it represents actual costs paid by PSNH for fuel which was burned at Merrimack to serve customers for which customers were not charged. It is a reasonable adjustment made in the same manner as adjustments accepted by the Commission in the past.

We do expect NU, as it begins to exercise its management functions, to act in accordance with its representation in DR 89-244 about its ability to purchase fuel at lower prices. We will ask NU to address this issue should it arise again as to what steps it has taken to ascertain the adequacy of the procedures of monitoring the actual weight of coal between the time it is taken at the mine to the time it is taken to the bunker.

B. *Sprague-Westmoreland Coal Contract*

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[3] The second issue is the cost of coal purchased under a contract with Westmoreland negotiated by C. H. Sprague acting as sales agent. After reviewing the record, we do not find sufficient evidence to base a finding of imprudence under the facts as they were known, or should have been known, to the parties at the time. The facts included a MW coal strike which, according to PSNH, precluded the availability of test coals other than the Sprague coal. Therefore, under the circumstances, we do not find imprudence. The Westmoreland coal cost will be included in ECRM.

C. *Schiller Unit 3 Outage Costs*

[4, 5] The third issue is the replacement power costs associated with the extension of the December, 1989 outage at Schiller. We agree with the staff's recommendations that there is not sufficient evidence in the record to find imprudence. We will allow those replacement power costs to be included in the ECRM.

We will adopt staff's recommendation that PSNH review procedures utilized by PSNH crews and contractors at its fossil and hydro stations to prevent outages caused by foreign object damage. Said review will include a comparison with the practices at NU as a proxy for other companies. PSNH shall file a report with the commission within 60 days which addresses the above and makes recommendations for changes.

D. *Capacity Swap/Capability Responsibility Purchases*

[6] PSNH entered into a capacity swap with Northeast Utilities for the period from July 1, 1990, through December 31, 1990. The swap is essentially a simultaneous purchase and sale between the two companies. PSNH traded 110 MWs of Merrimack Station for 140 MWs of Northfield Mountain Pumped Storage.

PSNH entered into Capability Responsibility purchases with New York and Pennsylvania utilities during the period between November, 1989 and April 30, 1990.

We agree with the staff that there is nothing in the record to show that the capacity swap was anything other than beneficial to PSNH ratepayers. However, in as much as transactions between PSNH and NU are going to be occurring on a regular basis in the future and, because PSNH recently has replaced PSNH's its Prosim production simulation model with a Polaris model, we expect PSNH and NU to take affirmative steps to work with our staff and the Consumer Advocate (and any other parties who wish to participate in this process) to develop expertise with the Polaris model and to document the analysis behind the capacity swaps or related transactions. We expect these consultations to be completed between now and the next EORM/FPPAC proceeding.

E. *Nuclear Fuel Costs*

[7] The staff and the Consumer Advocate argued that nuclear fuel should be valued at zero for ECRM calculation purposes. The staff and the Consumer Advocate base their argument on the fact that PSNH wrote down nuclear fuel to zero on its books to reflect the treatment anticipated under the rate plan accepted by this Commission in *Re NU/PSNH*, DR 89-244, Report and Order No. 19,889 dated July 20, 1990). The staff and the Consumer Advocate contend that PSNH should be bound by its original accounting treatment.

PSNH opposes the nuclear fuel adjustment proposed by the staff and the Consumer Advocate. PSNH concedes that it wrote down nuclear fuel in anticipation of an early first effective date under the rate plan, but it also points out that nuclear fuel was reclassified on the company's books in September, 1990 when it became apparent that the first effective date was delayed. PSNH contends that fairness and equity entitle it to recover nuclear fuel costs because such costs were incurred to benefit ratepayers and because ratepayers are not supporting PSNH's capital investment in Seabrook under the rate plan.

We accept PSNH's argument that fairness and equity require a reflection of nuclear fuel costs in ECRM. PSNH is correct when it argues:

"Accounting determinations made by the

Company obviously are not determinative of ratemaking, since, if they were, the Company could control the ratemaking process in derogation of this Commission's authority by the manner in which it kept its books."

PSNH Brief at 11. In looking at the underlying transaction, we note that ratepayers have been receiving the value of Seabrook output which has displaced the need to incur higher replacement power costs. In return for this benefit, ratepayers have not, to date, been required to support PSNH's capital investment, nor do rates reflect operation and maintenance and other associated Seabrook expenses. It is therefore fair to include in ECRM the cost of nuclear fuel consumed in lieu of more expensive fuel costs that would have been incurred had the plant not been operating, regardless of how the cost may have been reflected on the company's books at various times.

Having decided to allow recovery of nuclear fuel costs, it remains to determine how PSNH's nuclear fuel is to be valued for ECRM purposes. Had we undertaken a prudent investigation of Seabrook, we would have determined, on the record, the level of PSNH's prudent investment in nuclear fuel. Such an investigation has never occurred; instead we undertook an investigation of whether the end result achieved in the rate plan is just and reasonable in lieu of a prudent investigation of discreet components of the Seabrook asset. Consequently, we do not have a record where PSNH has met its burden of proving that its investment in nuclear fuel was prudent. We also know that it is not rational to value nuclear fuel at zero; PSNH incurred a nuclear fuel cost which is clearly providing benefits to ratepayers. Thus, we confront the issue of how to value nuclear fuel in the absence of a valuation record.

We resolve this issue by going back to the rate plan. In *Re NU/PSNH*, *supra*, the Commission found reasonable the negotiated rate plan wherein PSNH was, in essence, required to write down its $2.9 billion investment in Seabrook to $1.5 billion. *See, e.g.*, Report at 53-54. The rate plan did not break down the write off among various Seabrook components[1(2)] ; rather it applied uniformly to PSNH's total investment in the plant, including nuclear fuel. In the absence of the rate plan, we have no basis to make a finding on the value of any Seabrook associated investment (including nuclear fuel) without first undertaking a prudent investigation. It is therefore rational to apply the negotiated rate plan, as accepted by the Commission, to the determination of the value of nuclear fuel.

As noted, under the rate plan, PSNH essentially wrote down its Seabrook investment from $2.9 billion[2(3)] to $1.5 billion; a write down of approximately 48%. The same ratio will be applied to PSNH's $72,087,036 nuclear fuel investment. Accordingly, for ECRM purposes, PSNH will be permitted to recover its nuclear fuel costs, with nuclear fuel valued at 52% of PSNH's total nuclear fuel investment.

It must be emphasized that our determination of this issue is solely for the purpose of establishing the instant ECRM. Nothing herein should be construed as amending the rate plan, which will be implemented as approved by the Commission in *Re NU/PSNH*, *supra*, upon the occurrence of the first effective date.

F. *Treatment of NHEC 25 MW Ownership Share of Seabrook*

[8] PSNH's initial filing in this proceeding on November 30, 1990 treated NHEC's 25 MW share of Seabrook as a purchase by PSNH, i.e., as if it was being sold by NHEC to PSNH. Subsequently, PSNH modified its filing to remove the 25 MW from PSNH's power supply. PSNH explained its actions by stating that the NHEC sellback is not in effect and PSNH is not purchasing the 25 MW.

The commission notes that there are several dockets pending before the commission and the FERC concerning the sellback agreement. The commission specifically reserves this issue for further consideration once those proceedings are completed.

G. *Seabrook Outage During November, 1990*

[9] The only substantial outage

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experienced at Seabrook was the two-week outage started on November 9, 1990.

The primary cause of the November 9 outage was an air line leak caused by the mounting of a booster relay on the end of a length of pipe in a location susceptible to vibrations. PSNH conceded that this was not an optimal location. During the hearings, it also became apparent that the cantilevered design was also a problem because the installation of a booster relay on the end of a "moment arm" amplifies vibration.

The secondary cause of the November 9 outage was a cracked piston. At the hearing, New Hampshire Yankee denied that the cause was linked to thermal stress of any kind.

We agree with staff's recommendation that problems caused by the design and location of the booster relay were not foreseeable under all of the circumstances. Therefore, the commission should not disallow the recovery of any replacement power cost.

With regard to the cracked piston, our final review must await the findings of the metallurgical analysis and other studies currently being done by New Hampshire Yankee.

PSNH's ECRM filing in this proceeding did not contain any information on Seabrook operation, maintenance, or outages. We agree with staff that this information is needed by the commission to provide a basis for evaluation of Seabrook management and performance. All future PSNH ECRM/FPPAC filings should contain this information.

H. *Acid Rain Compliance*

[10] PSNH testified that the increased cost of low sulfur oil needed at Newington Station to comply with the State acid rain law would be about $9 million during 1990. The cost of the conversion is now expected to be about $7.5 million. Although PSNH indicated to the commission in December, 1989 that it was pleased with the progress being made on the gas conversion, PSNH now asserts that there is no cost benefit analysis for the conversion available.

PSNH also testified that non-recovery of the cost of conversion through ECRM is a draw-back to the conversion.

Staff believes that a gas conversion could displace about 5,000,000 mmBTU's per year of oil.

If this is correct, under current market conditions for gas and oil, savings in excess of $1 per mmBTU are reasonably attainable. Thus, annual savings could exceed $5 million dollars.

We agree with staff's recommendation that PSNH be required to submit a detailed cost-benefit analysis to the commission within 60 days which would provide a basis for an eventual evaluation by the commission of whether the conversion should be undertaken.

I. *Ash Disposal*

[11] PSNH testified that ash disposal costs for Schiller Station are approximately $70 per ton while, in contrast, at Merrimack Station ash disposal generates a net profit for PSNH. The reason for the inordinately high cost of ash disposal at Schiller is that oil ash is mixed with coal ash and the resulting mix is non-marketable.

Under ECRM, ash disposal costs indirectly effect energy costs by their inclusion in dispatch rates. At times, high ash disposal costs resulted in the burning of oil at Schiller rather than cheaper coal. Under FPPAC, the high ash disposal costs will be recovered directly from ratepayers as well as affecting dispatch rates.

We agree with staff's recommendation that the commission require PSNH to report on its ash disposal problem at Schiller prior to the First Effective Date, particularly focusing on whether oil ash can be deposited in a different bin from the coal ash.

J. *QF Rates*

[12, 13] PSNH proposes the following rates to be paid for purchases from QFs under short-term rate provisions from January, 1991 through June 30, 1991:

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

Energy Rates (not including adjustments for the
Loss Factor and Indirect Factor):
On-Peak Hours ......  3.767 cents per Kwh
Off-Peak Hours ...... 1.994 cents per Kwh
All Hours ......      2.784 cents per Kwh
Capacity Rate (not including adjustments for the
Loss Factor and Peak Reduction Factor): $2.00 per
Kilowatt-year.
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The energy rates are calculated using an average of an increment and a decrement to load in accordance with previous commission orders. The low capacity rate reflects the current situation of surplus capacity in the New England market.

K. *ECRM Rate Proposal*

[14] PSNH projected that under traditional ECRM rate making there would be a rate reduction of 8.5% on January 1, 1991, followed by an increase of 15.4% if the First Effective Date is March 1, 1991, and a subsequent increase of 4.6% on July 1, 1991. As a result of our adjustment to PSNH's recoverable nuclear fuel costs, the ECRM rate for the six month period beginning January 1, 1991, is 2.413 cents/KWH. This rate represents a 13.1% reduction in current rates. Upon the First Effective Date, rates will increase 21.4% above this decreased level

or 3.3% above current rates. Additionally, following the reorganization of PSNH after the First Effective Date, ECRM rates and costs will be reconciled and the reconciliation will be applied to the fuel and purchased power adjustment clause (FPPAC) that replaces ECRM under the rate plan. On an annualized basis, the projected increase in 1991 rates is 4.2%.

To avoid these rate fluctuations, PSNH proposed a "levelized" approach under which ECRM is not changed on January 1, 1991, and there is an increase in rates on the First Effective Date.

3(4) By prolonging PSNH's current overrecovery of ECRM costs, the levelized approach has the effect of reducing the percentage increase necessitated on the First Effective Date. PSNH, the OCA and the BIA asserted that the levelized approach is preferable because it promotes rate continuity and is consistent with the regular increases customers expect as a consequence of the Rate Plan. For the reasons set forth below we disagree with the recommended rate levelization.

ECRM is designed to stabilize energy costs for each successive six month period. Traditionally, ECRM rates reflect anticipated energy costs for the ensuing six months as adjusted by any over or under recovery of actual costs from the previous ECRM period. The commission adopted ECRM to avoid the customer confusion and high regulatory expenses associated with monthly fuel adjustment charges while, at the same time, allowing regular reconciliation of projected and actual costs. *See, Re PSNH,* 67 N.H.P.U.C. 211 (1982), and *Re: Energy Cost Recovery Mechanism,* 67 N.H.P.U.C. 875, 876, 877 (1982). The levelized approach, recommended by PSNH, represents a departure from traditional ECRM ratemaking by not immediately refunding the existing overcollection and extending to twelve months the relevant period for calculating projected costs. The issue before the commission is whether this departure from traditional ECRM ratemaking is warranted.

Recently, in *Re NHEC,* DR 90-169, Report and Order No. 19,987 (November 19, 1990), the commission utilized a "totality of the circumstances" test to ascertain whether the Cooperative was entitled to depart from the traditional tracking mechanism for calculation of fuel costs. The commission ruled that the NHEC could not justify maintaining its current fuel adjustment clause because of anticipated increases in PSNH's wholesale fuel rates. In so holding, the commission considered, *inter alia,* the Cooperative's threats of bankruptcy and conduct indicative of a potential bankruptcy filing. Under these circumstances, the commission concluded that the desire to protect unsecured ratepayers from fuel overcharges that

were at risk of not being returned outweighed any benefits to be achieved from rate stability.

Upon consideration of the totality of circumstances present in this proceeding, we likewise conclude that a departure from traditional ratemaking is not warranted. With our adjustment to recoverable nuclear fuel costs, PSNH is beginning this ECRM period with an overcollection of approximately 14 million dollars, 9 million dollars of which results from our nuclear fuel cost disallowance. The remaining 5 million dollars was collected in November and December, 1990. The overcollection is caused by the fact that ratepayers are receiving the benefits of Seabrook power without paying its associated capacity costs. If we were to adopt PSNH's approach and keep in effect the current ECRM rate of 3.664 cents/KWh, the overcollection would continue.

The net result is that ratepayers will be compelled to loan money to PSNH in an effort to avoid wide rate fluctuations. According to PSNH, this result is justified by the near certainty of the First Effective Date and accompanying rate increase under the Rate Agreement occurring this spring.

NU and PSNH's predicted First Effective Date depends upon earlier successful resolutions of the pending proceedings at the New Hampshire Supreme Court and Federal Bankruptcy Court. Although we also are optimistic that the companies will succeed in those proceedings, we believe that it is somewhat speculative to assume that the resolutions will take place and the First Effective Date occur in the next three to four months. In any event, we do not find it appropriate to withhold ratepayers refunds on such a presumption.

We recognize that our conclusions are contrary to the BIA and OCA arguments; that their constituents prefer the rate stability contemplated by the levelized approach. Notwithstanding the assertions of these parties, we believe that on balance, ratepayers will prefer to pay temporary lower rates and experience rate fluctuations rather then pay rates that are higher than actual costs. Particularly in the case of seasonal ratepayers, such as the ski resorts, the traditional approach avoids the obvious inequity of compelling them to contribute to an overcollection without a practical opportunity to benefit from the delayed refund continuity contemplated by PSNH's levelized approach.

We also are unconvinced by the assertions that PSNH ratepayers will be confused by the anticipated rate fluctuations. We are confident that ratepayers will understand both the cause of the rate fluctuations and comprehend that on an annualized basis, the traditional versus levelized approach represent timing differences in rate increases, not the amount of increase. We accordingly agree with our staff that the traditional approach is appropriate and find that an ECRM rate of 2.413 cents/KWh commencing upon January 1, 1991, 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 ECRM component in effect from January 1, 1991 until June 30, 1991 or the First Effective Date be set at the level of 2.41¢/Kwh; and it is

FURTHER ORDERED, that the short term avoided cost capacity rate of $2.00/KW-year and short term avoided cost energy rates of 3.767¢/Kwh on peak, 1.994¢/Kwh off peak, and 2.784¢/Kwh all hours, are approved effective January 1, 1991 through June 30, 1991; and it is

FURTHER ORDERED, that PSNH shall file tariff pages for the months of January through June 1991 in compliance with this order and applicable commission rules.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1991.

SEPARATE OPINION OF
CHAIRMAN SMUKLER

[15] While I concur with the Commission majority on most issues in this proceeding, I am issuing this separate opinion to dissent from the majority's ruling that the Energy Cost Recovery

Mechanism (ECRM) should be reflected in rates in a "traditional" manner. I would have accepted the request of Public Service Company of New Hampshire (PSNH or Company)

to "levelize" rates.

The issue has been defined and discussed in the majority Report and I will not repeat that discussion here. It is sufficient to state that I agree with the State's position that the issue is one of policy. In this context, it is important to review the underlying rationale of ECRM.

When adopted, the ECRM represented a departure from conventional fuel adjustment charge (FAC) mechanisms. The Commission recognized that RSA 378:3-a appeared to contemplate a monthly mechanism, but held that its plenary ratemaking authority under RSA 378:7 allowed it to establish an alternative FAC methodology. *Re PSNH*, 67 N.H.P.U.C. 211, 213-214 (1982). Rate stability was a primary rationale for the departure from a monthly FAC to the bi-annual ECRM. The Commission stated:

> The ECRM is superior as compared to previous attempts to recover energy costs in New Hampshire. The old monthly fuel adjustment clause had significant disadvantages to PSNH and its customers. First, because of a wide variety of factors, including generating plant outages, coal and oil price fluctuations, heat rates, availability of units, line losses and sales both in and out of New Hampshire, the old monthly fuel adjustment was subject to major changes both up and down from month to month. These changes caused tremendous confusion and misunderstanding among all customers. Industrial, commercial, institutional and governmental customers were burdened by this procedure since these variations disrupted planning, either for budgetary purposes or for businesses whose product is energy intensive.
>
> ...
>
> The Commission ultimately adopted the ECRM procedure. This procedure ... stabilized the rate for a six-month period ... .

Re ECRM, 67 N.H.P.U.C. 875, 876-877 (1982).[1(5)] *See, also, Re PSNH*, 71 N.H.P.U.C. 269, 271-272 (1986) (affirming that rate stability is a primary ECRM rationale, but declining to prejudge a base rate filing that had yet to be adjudicated).

The majority's adherence to the "traditional" methodology is inconsistent with ECRM's underlying rate stability rationale. This is because the record supports a finding that there will be substantial rate fluctuation under the "traditional" methodology, while rates will remain relatively stable under PSNH's proposed "levelized" methodology.

The uncontradicted testimony of Mr. Hall (Exh. 21 at 5) is that under a "traditional" approach rates will decrease by 8% on January 1, 1991, increase by 15.1% on April 1, 1991, and increase a further 4.4% on July 1, 1991 (assuming an April 1, 1991 first effective date under the rate plan accepted in *Re PSNH*, DR 89-244). While changes to the ECRM calculation or the occurrence of the first effective date may affect those percentage figures, there is no dispute that the rate fluctuation analysis remains the same in all material respects.[2(6)] In contrast, the "levelized" approach would result in no rate change on January 1, 1991, a projected 4.4%

increase on April 1, 1991 and no change in rates on July 1, 1991 (assuming an April 1, 1991 first effective date) (Exh. 21 at 4).[3(7)]

The above example may be an optimistic forecast of rate fluctuations under a "traditional" approach. Unlike the usual ECRM forecast where we may have confidence in equal probability that actual costs will be above or below the projections, the record here supports a finding that the pressure will be toward costs that are higher than forecasted. For example, fossil fuel price uncertainty due to events in the Persian Gulf

[4(8)] and the resolution of the issues in the Seabrook buy-back agreement between PSNH and the New Hampshire Electric Cooperative, Inc. (NHEC) both have a higher probability of raising ECRM costs than of lowering them. These cost increases could be significant and thereby exacerbate an already excessive rate fluctuation.

The majority apparently assigns a higher level of risk to the occurrence of the first effective date within the six-month ECRM period. While it is true that the first effective date has been subject to delays, the pressure (in terms of

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unrecovered costs and expeditious favorable regulatory rulings) is, if anything, pushing the first effective date earlier. In my view, the consequences of excessive rate fluctuation from a timely occurrence of the first effective date substantially outweigh the risks associated with the "levelized" approach. Moreover, I do not believe that the record supports the majority's finding that the "traditional" approach sends more accurate price signals to customers. All the information available to us indicates that the cost of electricity will increase along a rationally projected path. The "levelized" approach more accurately reflects the real risk adjusted cost of electricity. Ratepayers and society are not benefitted by price signals that are too low.

The groups representing PSNH customers recognize the problems caused by the excessive rate fluctuation that will occur under the "traditional" approach. The Consumer Advocate (representing residential ratepayers) and the Business and Industry Association of New Hampshire (representing commercial and industrial customers) argued in support of the PSNH proposed "levelized" approach. In a policy matter such as this, the unanimous preferences of customers and utility are due a high degree of deference. RSA 363:17-a. On this record, I do not believe that the rejection of arguments made in a rare show of unanimity is warranted.

Finally, it is important to distinguish my position here from that taken on a similar issue presented by the NHEC. In *Re NHEC*, DR 90-169, Report and Order No. 19,987 (November 19, 1990) the Commission rejected a NHEC rate stability request to maintain rates at the December 31, 1989 level. The Commission recognized that special circumstances may justify a departure from traditional cost tracking methods, but found as a matter of fact that the totality of the circumstances confronting the NHEC did not warrant such a departure. In particular, the Commission found that the potential of a bankruptcy placed at risk any overrecovery from ratepayers. Report at 7-8. The Commission stated:

> Whatever advantage may be supplied by rate stability is far outweighed by the

desirability of protecting unsecured ratepayers from fuel clause overcharges that are at risk of not being returned.

Id. at 8. Here, the circumstances differ significantly. PSNH is emerging from bankruptcy with a plan of reorganization which has been confirmed by the Bankruptcy Court and a rate plan that has been approved by this Commission. There is little if any risk that refunds of overrecoveries will be lost or delayed. Thus, in my view, the consequences of excessive rate fluctuation outweigh the minimal risk to ratepayers.

For the foregoing reasons, I respectfully dissent from the majority holding on the rate stability issue.

Larry M. Smukler
Chairman

January 7, 1991

FOOTNOTES

Report

[1]For example, the rate plan did not provide that the write off percentage for the turbine would be different from that of the containment structure, which, in turn, would be different from that of the AFUDC, etc.

[2]We have used the $2.9 billion investment number because that was the figure proffered by Northeast Utilities and accepted by the Commission in *Re NU/PSNH*, *supra*.

[3]PSNH projected that under the levelized approach rates would increase by 6.4% if the First Effective Date is March 1, 1991. This calculation was made without the benefit of the commission's disallowance of approximately 50% of the company's recoverable nuclear fuel costs. If included in the calculation, we expect that our nuclear fuel adjustment would further reduce the rate increase contemplated on the First Effective Date.

Separate Opinion of
Chairman Smukler

[1]The majority opinion recognizes the rate stability rationale of ECRM as set forth in the above cited Orders, but observes that the intent was to have

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stability for only a six-month period. This begs the question. I agree that ECRM is designed to provide stability for a six-month rather than a twelve-month period. However, the issue in this case is whether rates will be stable for the period January 1, 1991 to June 30, 1991, not whether rates will be the same as those that existed on December 31, 1990. As discussed below, the record is compelling that rates will excessively fluctuate in the six-month ECRM period under a "traditional" methodology, while there will be relative stability over that same period under the "levelized" approach.

[2]For example, a March 1, 1991 first effective date results in a 8.5% decrease on January 1,

1991, a 15.4% increase on March 1, 1991, and a 4.6% increase on July 1, 1991. (Exh. 21 at 5). Similarly, the Commission's ruling on nuclear fuel valuation, which lowers the PSNH proposed ECRM rate, has the effect of exacerbating the fluctuation.

[3]The projected scenario under a March 1, 1991 first effective date is the same, except that rates increase 5.3% on March 1, 1991, instead of 4.4% on April 1, 1991. *Id.*

[4]The record reflects that fossil fuel cost projections were based on the assumption that there would be no change in the Persian Gulf situation during the six-month ECRM period; an assumption that is probably not realistic.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-169, Order No. 19,987, 75 NH PUC 726, Nov. 19, 1990. [N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990.

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NH.PUC*01/07/91*[27051]*76 NH PUC 28*Concord Electric Company

[Go to End of 27051]

Re Concord Electric Company

Additional petitioner: Exeter & Hampton Electric Company

DR 90-188
Order No. 20,023

76 NH PUC 28

New Hampshire Public Utilities Commission

January 7, 1991

ORDER placing the firm interruptible load programs of two retail electric utilities on inactive status and approving modifications to the special interruptible load programs of the utilities.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Firm interruptible load program — Special interruptible load program — Standard contracts — Program amendments. p. 29.

BY THE COMMISSION

ORDER

On November 2, 1990, Concord Electric Company (Concord) and Exeter and Hampton

Electric Company (Exeter) filed a petition for approval to amend their interruptible load programs, the Firm Interruptible Load Program ("FIP") and the Special Interruptible Load Program ("SIP"), and related standard contracts; and

WHEREAS, Concord and Exeter are proposing to continue to offer SIP, as modified, and place FIP, a program designed to comply with New England Power Pool (NEPOOL) Type 2 dispatchable loads, into an inactive status that will enable current and potential future FIP participants to receive benefits under the standard SIP payment provisions; and

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WHEREAS, SIP is designed to comply with and complement the NEPOOL Criteria, Rules, and Standard No. 16 (CRS 16) Type 5 dispatchable loads, loads that are voluntarily interrupted without regard to frequency but with the capability to be interrupted at least four hours a day; and

WHEREAS, SIP participants will be compensated with a Daily Demand Credit of $2.00 per kW based upon the actual daily average load relief contributed, averaged over the entire interruption period; and

WHEREAS, due to the changes in the New England power market, the proposal to incorporate a Reservation Provision to FIP that places the customer into SIP, as well as agreeing to put the customer back on the firm program when it is reactivated and to pay a nominal yearly kW payment until FIP is reactivated is consistent with past Commission decisions and in the public good; it is hereby

[1] ORDERED NISI, that the Firm Interruptible Program be placed on inactive status and that the Special Interruptible Program, as modified, be and hereby is approved; and it is

FURTHER ORDERED, that Concord and Exeter report to the Commission any changes in the short-term power market that would alter the conditions of the contracts approved today and that Concord and Exeter file no later than November 1, 1991, their interruptible programs for the following year; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this notice to be published once in a newspaper having general circulation in that part of the State in which operations are proposed to be conducted, such publication to be no later than January 18, 1991, said publication to be documented by affidavit filed with this office on or before January 25, 1990; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1991.

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NH.PUC*01/07/91*[27052]*76 NH PUC 29*New England Telephone

[Go to End of 27052]

Re New England Telephone

DE 90-180
Order No. 20,024

76 NH PUC 29

New Hampshire Public Utilities Commission

January 7, 1991

ORDER authorizing a telephone local exchange carrier to offer Ringmate Ring Identification Service, which enables a customer to have up to three separate telephone numbers associated with one exchange access line. Commission finds that marketing projection data demonstrates that the service would provide an adequate contribution.

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1. SERVICE, § 455

[N.H.] Telecommunications — Numbers — Ringmate Ring Identification Service — Cost justification — Local exchange carrier. p. 29.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on October 19, 1990, New England Telephone (The Company) filed a petition seeking approval of Ringmate Ring Identification Service for effect on November 18, 1990; and

WHEREAS, this service enables a customer to have up to three separate telephone numbers associated with one exchange access

line; and

WHEREAS, by Order No. 19,978, dated November 7, 1990, the Commission suspended the filing due to inadequate cost and marketing support data; and

WHEREAS, following a staff investigation, the Company filed revised cost and marketing projection data demonstrating that the service will provide an adequate contribution; it is therefore

ORDERED, that NHPUC No. 15 Tariff Pages:

Part A - Section 5, Second Revision of Page 37
Section 6, Original Table of Contents,
Page 2
First Revision of Page 4
Original Pages 12 and 13,

be and hereby are approved.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1991.

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NH.PUC*01/07/91*[27053]*76 NH PUC 30*Public Service Company of New Hampshire

[Go to End of 27053]

Re Public Service Company of New Hampshire

Additional applicant: DRED's Mt. Sunapee Ski Area

DR 90-216
Order No. 20,025

76 NH PUC 30

New Hampshire Public Utilities Commission

January 7, 1991

ORDER approving a revised special contract rate for interruptible electric service. The revised contract permits the use of regression analysis to determine interrupted demands for temperature-sensitive loads.

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1. RATES, § 211

[N.H.] Special contract rates — Revisions — Grounds for approval — Statutory standard. p. 30.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate — Revision — Regression analysis — Temperature-sensitive load. p. 30.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 30.

BY THE COMMISSION:

ORDER

On November 30, 1990, Public Service of New Hampshire (PSNH) filed 10 copies of Special Contract No. NHPUC-60-12 with an effective date of December 1, 1990; and

WHEREAS, Special Contract No. NHPUC-60-12 supersedes Special Contract No. NHPUC-60-10; and

[1-3] WHEREAS, the revised Special Contract No. NHPUC-60-12 provides for the same service under Rate WI, in accordance with the "Recommendations For Resolutions of This proceeding", that provides for, among other things, a form contract that permits the use of regression analysis to determine Interrupted Demands for temperature-sensitive loads approved by the Commission in Order No. 19,608 in Docket No. DR 89-171, but changes the Designated Load amount specified under the original Contract in Article 3; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds that the terms of the proposed Special Contract No. NHPUC-60-12 between PSNH and the Department of Resources and Economic Development (DRED) for service rendered at DRED's Mt. Sunapee Ski Area are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that DRED's Mt. Sunapee ski area has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that PSNH be, and hereby is, authorized to implement the above-described Special Contract No. NHPUC-60-12 effective December 1, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 18, 1991, said publication to be documented by affidavit filed with this office on or before February 7, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of PUC 1601.02(c) which requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract will be retroactively effective as of December 1, 1990 unless otherwise provided by Commission Order; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 89-171, Order No. 19,608, 74 NH PUC 443, Nov. 7, 1989.

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NH.PUC*01/07/91*[27054]*76 NH PUC 31*Public Service Company of New Hampshire

[Go to End of 27054]

Re Public Service Company of New Hampshire

Additional applicant: Shaw's Supermarket, Inc.

DR 90-217
Order No. 20,026

76 NH PUC 31

New Hampshire Public Utilities Commission

January 7, 1991

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard. p. 32.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate. p. 32.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 32.

BY THE COMMISSION:

ORDER

WHEREAS, on January 29, 1990 and March 6, 1990, the Commission issued Order Nos. 19,684 and 19,739 approving Special Contract Nos. NHPUC-63 and NHPUC-66, respectively, permitting Public Service Company of New Hampshire (PSNH) to render service to Shaw's Supermarket, Inc. (Shaw's) under PSNH's Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1989; and

[1-3] WHEREAS, proposed Special Contract No. NHPUC-68 provides for the same service under Rate WI thereby superseding Contract Nos. NHPUC-63 and NHPUC-66 except that the proposed contract consolidates previous contracts and permits service under Rate WI to three additional Shaw's supermarkets; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, proposed Special Contract No. NHPUC-68 with Shaw's, which was filed with the Commission on November 29, 1990, is the same as the prior contracts except for the above-mentioned changes; and

WHEREAS, the Commission finds that the terms of the proposed Special Contract No. NHPUC-68 between PSNH and Shaw's are reasonably consistent with the terms of Rate WI, and PSNH demonstrated that Shaw's has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that PSNH be, and hereby is, authorized to implement the above-described Special Contract No. NHPUC-68 effective December 1, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 18, 1991, said publication to be documented by affidavit filed with this office on or before February 7, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of PUC 1601.02 (c) which requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract will be retroactively effective as of December 1, 1990 unless otherwise provided by Commission Order; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 90-003, Order No. 19,684, 75 NH PUC 51, Jan. 29, 1990. [N.H.] Re Public Service Co. of New Hampshire, DR 90-014, Order No. 19,739, 75 NH PUC 140, Mar. 6, 1990.

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NH.PUC*01/11/91*[50862]*75 NH PUC 13*New Hampshire Electric Cooperative, Inc.

[Go to End of 50862]

75 NH PUC 13

Re New Hampshire Electric Cooperative, Inc.

DR 89-231, DR 89-232,
DR 89-233, DR 89-234, DR 89-235
Order No. 19,669

New Hampshire Public Utilities Commission

January 11, 1991

ORDER approving special contract rates for interruptible electric service.

RATES, § 322 — Electric rate design — Demand and load — Interruptible service — Special contracts.

[N.H.] An electric cooperative was authorized to provide electric service to certain commercial ski areas under special contracts intended to provide for the continuation of the voluntary interruptible load program approved by the commission in prior years and for a new "special incentive" interruptible load program; it was found that special circumstances existed that rendered departure from general rate schedules just and reasonable, including the fact the special contracts were part of an effort to reduce immediate and future generating capacity requirements and costs.

By the COMMISSION:

ORDER

On December 6, 1989, the New Hampshire Electric Cooperative, Inc. ("NHEC") filed special contracts between NHEC and five of its customers which are commercial ski areas. These special contracts are intended to provide for the continuation of the voluntary

interruptible load program approved by the commission in prior years for these customers and also a new "special incentive" interruptible program for the months of December, 1989 through February, 1990.

WHEREAS, the special incentive interruptible program conforms to an arrangement for interruptible loads between the NHEC and its wholesale supplier, Public Service Company of New Hampshire ("PSNH"), and is specifically targeted to the interruptible load available through the voluntary participation of the NHEC's ski area customers; and

WHEREAS, as part of its filing the NHEC provided a copy of PSNH's December 1989 filing with the Federal Energy Regulatory Commission pertaining to the agreement between PSNH and the NHEC; and

WHEREAS, each proposed special contract includes: a basic agreement for the continuation of the pre-existing arrangements, an addendum designated as "Option A" indicating the election of the ski areas to participate in the special incentive program for the months of December, 1989 through February, 1990 and, a stipulation of the loads included in Designated Interruptible Load under the terms of the program; and

WHEREAS, the program for the months of December, 1989 through February, 1990 covered by these special contracts represents an extension of PSNH's Rate WI program previously approved by the commission in Order No. 19,608 (74 NH PUC 443); and the goal of NHEC's efforts is to reduce immediate and future generating capacity requirements and costs; and

WHEREAS, the ski area participants have indicated a continued willingness to provide interruptible load within the limits of their unique operating requirements; and

WHEREAS, the staff of NHEC, in advance of the filing, has provided copies of draft materials to the commission staff for its review, has consulted with staff, and has considered and incorporated staff suggestions and comments in the formulation of its materials; and

WHEREAS, the Coop has requested expedited consideration and approval of the proposed special contracts by the commission due to the onset of its peak load season; and

WHEREAS, upon a review of the proposed contracts, the commission finds that, in accordance with RSA 378:18, special circumstances exist which render departure from the general rate schedules just and consistent with the public interest; it is hereby

ORDERED, that special contracts nos. 82,83,84,85 and 86 as filed on December 6, 1989, be and hereby are approved for effect retroactive as of the date of execution;

By order of the Public Utilities Commission of New Hampshire this eleventh day of January, 1990.

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Re EnergyNorth Natural Gas, Inc.

DE 88-136
Order No. 20,027

76 NH PUC 33

New Hampshire Public Utilities Commission

January 14, 1991

ORDER reviewing the propriety of the contractual arrangements between a gas distributor and an affiliated, unregulated propane supplier. Commission rules that the ratepayers of the distributor did not unduly suffer as a result of the contractual arrangements. Nevertheless, it encourages the companies to increase the level of management and administrative separation.

It also rules that gas distributors may include vapor gas transported under the interruptible schedules of interstate pipelines as peak-shaving fuel storage for purposes of satisfying commission-imposed storage requirements.

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1. GAS, § 7

[N.H.] Operation — Gas distribution companies — Peak-shaving utilities — On-site storage — Vapor gas — Interruptible pipeline deliveries. p. 42.

2. SERVICE, § 339.1

[N.H.] Security of supply — On-site storage — Gas distribution companies — Peak-shaving utilities — Vapor gas — Interruptible pipeline deliveries. p. 42.

3. WAIVER AND ESTOPPEL

[N.H.] Doctrine of estoppel — Use against state agencies — Reliance on commission staff advice. p. 42.

4. INTERCORPORATE RELATIONS, § 18

[N.H.] Utility contracts with affiliates — Propane supplier — Propriety. p. 42.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 32

[N.H.] Procurement — Propane transfers — Transactions with affiliates — Gas distributor. p. 42.

APPEARANCES: Jacqueline Fitzpatrick, Esquire and Thomas C. Platt III, Esquire or Orr and Reno for EnergyNorth Natural Gas, Inc.; James T. Rodier, Esquire for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

On September 9, 1988, EnergyNorth, Inc. (ENI) filed with this commission a proposed agreement for materials and services among Concord Natural Gas Corporation, Manchester Gas Company, Gas Service, Inc. (now known collectively as EnergyNorth Natural Gas, Inc., EnergyNorth Propane, Inc. and EnergyNorth, Inc.). Staff and ENI representatives met on several occasions to discuss the proposed agreement.

On June 7, 1989, the commission determined that further investigation of the agreement was necessary, and ordered a prehearing conference to be held on June 27, 1989, at the commission's Concord offices. The conference was duly held and, on July 12, 1989, a procedural schedule was set by order no. 19,467.

On July 17, 1989, the commission was informed by staff that three additional separate agreements relating to the affiliate companies had been filed on February 5, 1988 and that those agreements would have bearing on the investigation of the materials and services agreement filed on September 9, 1988. By its

order no. 19,482 the commission broadened the scope of the investigation to include the agreements filed on February 5, 1988, and set a new procedural schedule.

On January 9, 1990, the commission issued an order of notice setting a hearing for February 15, 1990. Following motions by staff and the Office of Consumer Advocate on February 7 and 8, 1990 respectively, the commission issued its order no. 19,718 scheduling a prehearing conference on February 15, 1990 in lieu of the hearing on the merits.

On April 13, 1990, the commission issued its order no. 19,807 setting a procedural schedule governing the remainder of the proceedings.

On May 24, 1990, EnergyNorth Natural Gas, Inc. filed a motion for protective order which, in pertinent part, requested authority to decline to produce a document identified as the company's responses to staff data requests 39, 40, 41, and 42, asserting that disclosure of that information would cause a cognizable harm to ENPI in its competitive environment. By its order no. 19,861, the commission directed the company to file the requested data and directed that it be viewed only by the commission, the commission staff and the OCA. It further directed that said data and the information contained therein should not be copied or reproduced, nor should the information be further disseminated. It set forth the procedure by which a party could seek disclosure.

During the pendency of this proceeding, the commission opened docket DR 89-181 on ENGI's cost of gas adjustment for the 1989-90 winter period. During the January 6, 1990 hearing it was determined by the commission that circumstances regarding the transfer of propane and related cost allocation between ENGI and ENPI were an area of legitimate inquiry by staff, but that they should be pursued in the instant docket rather than in the CGA docket. In its order no. 19,786 issued April 11, 1990, the commission found:

1. that the commission has jurisdiction over ENPI as an affiliate;

2. that it is appropriate to examine whether benefits have been expropriated from utility ratepayers by ENGI;

3. that ENGI's exposure in this proceeding should be limited to the customary period of time applicable to the commission's oversight of cost of gas adjustments and subsequent reconciliation under the provisions of RSA 378 and ENGI's tariff; and

4. that the scope of staff's inquiry shall not be limited to the rate set by the commission in docket DR 89-181 and the costs incurred by ENGI during the 1989-90 winter period.

The commission found specifically that:

1. the issue at hand in this proceeding is whether the furnishing of propane by ENGI to its affiliate ENPI contributed to the increased gas cost incurred by ENGI in DR 89-181.

2. if so, whether ENPI has been subsidized by utility ratepayers; and

3. whether said increased costs are appropriate for recovery from ratepayers through the cost of gas adjustment in docket DR 89-181.

In response to the company's objections, the commission, in its order no. 19,815 on May 7, 1990, denied a motion that it did not have jurisdiction over the contract with ENPI, and clarified its earlier decision that the relevant legal standard under RSA Chapter 366 is whether the propane contract between ENGI and ENPI and the charges incurred by ENGI in connection therewith have been "just and reasonable" under all the circumstances. If ENGI does not establish the reasonableness of the contract, the commission may disallow charges incurred by ENGI thereunder. The commission found that it was appropriate to limit the time period during which ENGI's expenses would be subject to possible disallowance to the 1989-90 winter period. It reiterated that the inquiry would include the investigation of whether the furnishing of propane by ENGI to its affiliate ENPI contributed to the increased gas costs incurred by ENGI in DR 89-181 and if so, whether ENPI has been subsidized by utility ratepayers. It indicated that the commission would weigh the benefit redounding to ENGI

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under and as a result of the existence of the propane contract with ENPI against any detriment to ENGI's ratepayers resulting therefrom. It reminded ENGI that its burden was to establish the nature and extent of the benefits of the contract to ENGI's ratepayers.

II. *Scope*

As described in the "Procedural Background" this docket was opened upon the filing of a proposed agreement for materials and services between EnergyNorth, Inc. and Concord Natural Gas Corporation, Manchester Gas Company and Gas Service, Inc. (now known collectively as EnergyNorth Natural Gas, Inc., EnergyNorth Propane, Inc. and EnergyNorth, Inc.). Three separate agreements, which had originally been filed with the commission on February 5, 1988 were brought into this case upon staff's contention that they would have a bearing on the

materials and services agreement. Those agreements focused on (1) the lease, (2) the tax allocation, and (3) the cost sharing agreements.

The winter cost of gas adjustment hearing (DR 89-181) raised additional questions by staff as to the propriety of propane sales between EnergyNorth, Inc. and EnergyNorth Propane, Inc. Staff contended that the ENGI contract for propane supplied to ENPI may have violated our standing NHPUC order requiring a seven day storage of peak shaving fuels during the winter period. Staff also contended that the inclusion of a vapor gas contract may have also violated the intent of the order, since the interruptible transportation rate under which Tennessee Gas Pipeline Company supplied that vapor gas may not have provided adequate assurance that vapor gas could be delivered when it was needed. Further, since vapor gas was not an option available to LDCs when the commission's order was issued, staff challenged whether its present availability provides adequate benefits to customers to justify waiving the commission's order. Staff questioned whether the acquiescence of the commission's engineering staff, which the company obtained prior to including vapor gas in its seven day storage list, provides adequate authority for ENGI to include vapor gas in its storage.

Staff also questioned whether ENGI double counted its LNG liquid and LNG vapors from Bay State Gas Company in making its seven day calculation.

Staff raised other issues:

Did ENGI fail to maintain adequate on-hand storage during the winter season?

If there was an inadequacy, was the storage inadequacy due to ENGI's sales of product to ENPI?

Should ENGI have anticipated unusually cold weather and increased its storage and/or supplemental purchases earlier in the winter period?

Were there benefits to ENGI customers as a result of ENGI's purchases of LPG for ENPI?

Should ENGI be disallowed recovery of $341,203 for costs attributable to ENGI's unlawful furnishing of propane to ENPI?

Encompassing the docket was an overriding question of whether or not the commission has jurisdiction over ENPI as an affiliate.

III. *Consolidation and Reduction of Issues*

Staff and the company indicated on the record that they had met during the summer and fall of 1989 and reached agreement settling all issues in the docket. The agreement was prepared and filed with the revised contracts, consistent with the agreement, on December 14. Following the December cold period, staff informed the company that it would no longer execute the contract.

Staff advises, again on the record, that there are no outstanding issues regarding the tax sharing contract and the lease contract. The remaining two — the materials and services contract and the cost allocation contract — remain in contention because of the dispute over the ENPI propane purchases and the vapor gas issues. Further, staff argues in its Reply Brief (p. 2):

Staff's initial brief implicitly assumes arguendo that the propane contract between

ENGI and ENPI is reasonable. Therefore, it is not essential to a resolution by the commission in this proceeding for the commission to find either under RSA 378:7 that the propane contract is unreasonable, or under RSA 366 that ENGI has not proven that the contract is reasonable.

Staff indicates its concurrence with the following summary of staff's position as articulated by ENGI in their Post Hearing Brief (p. 12):

> The staff's basic position is that the company violated the commission's seven day storage requirement, in part because of sales of propane to ENPI, and that this rule violation resulted in detriment to the company's ratepayers. Essentially, the staff contends that propane supplies used by the company in the calculation of its inventory available to meet the storage requirement was low-cost supply earmarked for the ratepayers. The staff then argues that because the sale of propane to ENPI contributed to a shortfall to the company's available supplies relative to the seven-day rule, the company had to incur additional costs by purchasing additional supplemental fuels, and that these additional costs should have been passed through to ENPI or should be borne by ENGI's shareholders.

Staff then suggests:

> Thus, the issues in this case which at times may have seemed highly complex and intractable, now reduce to the following threshold proposition: does vapor service transported under Tennessee Gas Pipelines interruptible rate schedule properly qualify as service and "guaranteed pipeline transmission capacity"?

IV. *Commission Analysis of Consolidated Issues*

Testimony was brief and incomplete on the specific contracts regarding materials and services, tax allocation, costs sharing agreements, and leases.

ENI contends that an agreement on the four contracts was reached with staff and that an agreement was filed on December 14th with the commission. The commission recognizes the submission of that agreement. It is reminded, however, that that agreement was never signed by staff because, after the company's December experience with cold weather, staff determined that it could no longer agree to the contract and wanted to reopen the docket.

Staff counsel contends that there remain no unresolved issues regarding the tax sharing contract and the lease contract. Staff has re-focused on the remaining two contracts — materials and services, and cost allocation — and even then only to the extent that they effect the propriety of ENI's propane contract with ENPI, the adequacy of ENGI's peak-shaving winter storage supply, and the appropriateness of vapor service in meeting winter storage requirements.

The record in this docket is adequate to address the issues on which staff focuses. It is not adequate to address the propriety or adequacy of the remaining issues. We note, in fact, that three of the four contracts were never entered into the record, although they were submitted on August 4, 1989. We will confine our analysis and decision to those issues which were the focus

of staff's concerns, and most specifically to the issue posed by staff in its reply brief: does vapor service transported under Tennessee Gas Pipeline's interruptible rate schedule properly qualify as service and "guaranteed pipeline transmission capacity"?

Accordingly, this proceeding is deemed to be an investigation into the issues addressed herein on the materials and services contract pursuant to RSA 366:5. We do not address whether and when additional RSA 366:5 investigations should be conducted on other issues or other contracts.

Finally, to the extent that there were challenges to the commission's jurisdiction over ENPI as an affiliate, we cite by our order no. 19,786 issued on April 11, 1990, wherein we found that we have such jurisdiction. We find it unnecessary to expand further on that issue.

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V. *Position of Parties*

A. *ENGI*

The company argues that the series of contracts between ENGI and ENPI provided significant benefits to utility customers in terms of reduced propane costs and increased available quantities of propane. The company's primary witness, Christopher P. Fleming, Vice President of Gas Supplies/Corporate Development (exh. 1, pp. 8-10), testified that procuring additional volumes of product for the propane company increases the company's "buying power" because the result of purchasing year round quantities of product is that the per unit cost of peaking supply decreases. Additionally, having the opportunity to supply ENPI at the end of the heating season helps to reduce inventory levels of LPG which were purchased and stored to meet NHPUC winter peak-shaving storage requirements. Inventory finance charges are reduced and storage space becomes available earlier to allow purchasing of summer low cost propane. Ratepayers' costs for gas are reduced because fixed costs associated with procurement and storage are spread over a larger overall quantity of product.

Propane dealers provide preferential treatment to customers who contribute to the wholesalers' efficiency by purchasing product year round instead of only in the high demand winter period. As a result of their contractual relationship with ENPI, ENGI has been able to procure additional product year round because of the increases in the aggregate amount of product purchased.

Mr. Fleming testified that in December, 1989, the country experienced extreme cold weather and the Northeast was the hardest hit region. December was the coldest on record in Concord, New Hampshire and the weather station at Blue Hills, Massachusetts recorded the coldest on record in 119 years of recordkeeping. It was approximately 32% colder than normal according to the tally of Concord degree days.

A combination of factors occurred simultaneously which resulted in gas supply shortages. First, the production from the North Sea, intended for the U.S. East coast, was rerouted to Europe. At the same time, transit times for ocean going vessels were extended because of the severe weather. Next, there was a general shortage of supply available from producers. On December 14, the Texas Eastern Transmission Pipeline, a principle source of supply to New

England, began allocating (restricting) supply. On December 28, the allocation was further reduced by 40% because of depletion of propane from salt cavern storage. Canadian imports were curtailed because Maritime personnel in Canada were experiencing a work stoppage. On December 29, the Texaco storage facility in Pennsylvania and the Sun Oil Refinery in Philadelphia announced they were completely out of propane. The Sea-3 terminal in Newington was prevented from replenishing its supply on December 21st when a propane supply ship, the "Hesperus", with a capacity of 12 million gallons, encountered a severe Atlantic storm, suffered damage, and was unable to arrive and finish unloading until January 8, 1990.

Mr. Fleming testified (exh. 1, pp. 9-13) that the company received written notice from Tennessee Gas Pipeline, its natural gas supplier, on December 26, 1989, to prepare for supply curtailments resulting from "freeze offs" conditions of production wells in Texas and Louisiana with probable pipeline losses of between 10-15% of daily supplies. For EnergyNorth, this represented a loss of 3,500 to 5,250 MCF/day or the equivalent of 38,000 to 57,500 gallons of propane per day.

In late December, the National Weather Service predicted a four week weather pattern of below normal temperatures.

At the end of December the severe cold weather had significantly reduced both the company's liquid on-site storage and its remaining winter liquid contract volumes for liquid supplies. The winter volumes of its Bay State Gas liquid natural gas contract was fully depleted as was its inventory at the Lowell Gas Company propane storage facility. More than half of the company's contract for firm priced propane volumes was consumed. The company's fixed storage dropped to 1.2 million gallons from the original 2.2 million gallons on

hand as of November 1, 1989.

During this late December period the company was requested by a task force established by Governor Judd Gregg to make available 100,000 gallons of propane to other retail suppliers in the State who were without supply. The program was intended to protect residential customers in New Hampshire from going without heat. The company responded positively to the request.

EnergyNorth, Inc. anticipated liquid requirements of 738,500 MMBTUs under normal weather conditions for the 1989-90 season. This number equates to 8 million gallons of LNG and propane (exh. 1, p. 13). The company had anticipated a need for 1,631,778 gallons of propane equivalent to establish the 7 day storage requirement established by the NHPUC. By letter of November 3, 1989 (exh. 6), the company advised the commission that its aggregate supply was 2,589,340 gallons, not including 500,000 gallons of storage located at Lowell, Massachusetts. The company advised at that time that construction of the NOREX Pipeline had an estimated in-service date of December 1, 1988, that additional storage capacity was uneconomical.

At the end of December the company had remaining supply commitments of 1,200,000 gallons of propane with Distrigas of Massachusetts, 1,400,000 gallons of propane with Sea-3 and 1,205,000 of propane in company storage. The company reached an agreement with Gas Supply, Inc. for an additional 1,650,000 of propane from a foreign flagged vessel, the "Hesperus", as it was the only available propane supply in the region.

1(9) The company also entered into a firm vapor contract with Distrigas of Massachusetts for 200,000 MMBTUs (8,000 MMBTU per day) of vaporized LNG to be delivered by pipeline by Tennessee Gas. This provided an equivalent of 2,333,722 gallons of propane. The company also executed a contract with Distrigas for 50,000 MMBTUs of liquid LNG (equivalent to 583,430 gallons of propane) to be delivered by truck transport to the company storage tanks.

Mr. Fleming testified (exh. 1, pp. 15-17) that whereby take-or-pay contracts called for demand payments and monthly commodity payments in mid-January, Distrigas relieved the company of its obligation for its 50,000 MMBTU liquid contract.

ENGI entered the winter period with a contract to sell 2 million gallons of propane to ENPI over the period November, 1989 through March, 1990. By December 31, approximately 700,000 gallons were sold. Mr. Fleming contends (exh. 1, p. 17) that ENGI's commitment to sell propane had no impact on the decision to purchase LNG as an optional supply fuel.

As was noted earlier, Mr. Fleming testified that it had calculated a requirement of 1,631,778 gallons of liquid storage to be on-site to meet the NHPUC rules and regulations, PUC 506.03, Form PUC 509.21 and Form PUC 509.22, to meet a 7 day on-site storage capability of peak shaving supplies. This was comprised of 140,250 gallons of LNG and 1,491,528 gallons of LPG. To meet those requirements, the company owned or leased the following:

3-LNG tanks at 55,000 gallons × 85% =
140,250 gallons
49 LPG tanks (30 - 60,000 gallon × 85% =
1,543,090 gallons)
26 rail cars (30,000 gallons × 100% =
700,080 gallons
5 transports at 9,000 gallons × 70% = 157,
500 gallons
TOTAL: 2,620,840 gallons

Additionally, as earlier noted, the company also owned and stored approximately 500,000 gallons of propane at facilities owned by Colonial Gas in Lowell, Massachusetts.

On December 1, 1989, the company had nearly 2,206,000 gallons of propane in inventory on-site. In addition, the transports and Lowell inventory were available.

During the record cold period no curtailments were made to ENGI customers. Gas demand was met in full. The only time the company did not have a seven day storage requirement was during a three day period between December 29 and 31 when storage fell below 6.3 days. A contributing factor to the reduction during that time was the fact that 26,868 gallons were contributed to the Governor's "set aside program".

Beginning January 1, 1990, an additional contract for 8,000 MMBTU per day of LNG vapor

was in effect.

ENGI contracted with ENPI for a withdrawal of 2,000,000 gallons of propane over the winter period in accordance with the following schedule:

November - 150,000
December - 500,000
January - 600,000
February - 550,000
March - 200,000

Actual withdrawals for the period were:

November - 202,146
December - 522,226
January - 608,708
February - 404,171
March - 264,767

ENPI propane was priced at the average propane inventory cost.

Mr. Fleming contends that the furnishing of propane to ENPI did not increase costs to ratepayers through the CGA. The increased cost of spot market propane during December and January was attributable to weather and transportation contingencies beyond ENGI's control (exh. 1, p. 25). Although there was a difference between the cost of gallons received by ENPI and the cost of equivalent gallons of LNG vapor supplied by Distrigas, the differences should not be considered an increased cost incurred by ENGI as a result of being a party to a contract.

In summary, Mr. Fleming testified (exh. 2, p. 3) that ENGI experienced a 95.17% increase over forecast in total liquid send-out during the December period. The increase in sales to the propane company over forecast accounted for only seven tenths of one percent (0.7%) of this increase. Mr. Fleming concluded that the prolonged cold weather in December, 1989 produced a substantial increase in demand for liquid volume by ENGI's ratepayers. It was this unexpected and material increase in usage by the ratepayers that caused the company to procure additional supply contracts at the end of December, 1989.

In addition to calling its own company management as witnesses, the company called Richard G. Marini, this commission's Gas Safety Engineer, on the issue of vapor delivery dependability. Mr. Marini testified (tr. II, 16), from an engineering standpoint the vapor gas transported by natural gas pipeline from Bay State Gas Company provided a more reliable delivery than did propane delivered by pipeline to Selkirk, New York and by tanker truck to New Hampshire. Mr. Marini further testified that, upon reviewing the company's projected winter storage plan for 1988-89, he found 392,021 mcf of vapor gas to be appropriately included as a reliable supply for winter storage purposes. He had, in fact, conveyed his support for such inclusion in response to the company's query to him prior to submission of the report.

In response to questions under cross-examination relative to the commission's seven day

storage rule, Mr. Marini testified that he had participated as a member of the commission staff in formulating the presently configured rule. He testified that generally the rule exists because of major transportation problems over roads in which winter problems and snow storms increased the risk of receiving propane product to gas plants at critical periods. Delivery of product by pipeline is more reliable than delivery over the road during winter conditions. Additionally, the availability of pipeline capacity for delivery of peak-shaving fuels is greatest during periods of high loads because during that time the customer demand is taxing the system and lowering gas pressures. Lower pressure provides an opportunity to inject gas, such as vapor gas, into the system.

B. *Staff*

Staff's principal witness was George A. McCluskey, Utility Analyst, with this commission. Mr. McCluskey reviewed the commission's seven day storage policy in order to determine whether its requirements were met during the 1988-89 winter period. He described ENGI's agreement with propane and examined the effect that the agreement had on the company's ability to comply with the storage policy. He discussed the steps the company took to overcome gas supply dislocations and

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meet the demand increases which resulted from the abnormally cold temperatures of November and December, 1989, giving particular attention to the cost of firm LNG vapor supply from Distrigas and recommended that the commission disallow $341,203 of Distrigas' costs on the grounds that the arrangement with propane resulted in the incurrence by utility customers of unreasonable gas costs.

He also rebutted ENPI's claim that substantial incidental benefits have flowed to utility customers as a result of its association with ENPI.

Mr. McCluskey defined the commission's winter storage policy as one which is intended to institute a minimum supply security standard for gas utility customers. It requires gas utilities to have, as of December 1st of each year, sufficient gas stored (the inventory) in on-site facilities such that supplies to customers can be maintained over a period of time equivalent to the company's seven consecutive coldest days on record. Since the cost of the gas inventory as well as the storage facilities and associated costs and expenses are recoverable through rates, it is staff's position that utility customers may expect a higher priority over the use of this inventory than other potential users.

Mr. McCluskey testified (exh. 5) that the company failed to calculate accurately its seven day storage requirement. ENGI computed a seven day cold spell demand equal to 555,068 MMBTU from which was subtracted seven days of firm pipeline gas totalling 398,293 MMBTU. This left a residual demand of 156,775 MMBTU to be met by stored gas. Mr. McCluskey contended that the quantity of dependable pipeline gas to be delivered over any seven day period could not have exceeded 331,569 MMBTU because liquefied natural gas vapor from Bay State Gas should not have been claimed as dependable pipeline gas. Accordingly, ENGI's seven day demand should have been 223,449 MMBTU.

The contract with Bay State for LNG calls for an eight year supply of LNG in the amount of

75,000 MMBTU firm and 25,000 MMBTU optional each year. Volumes are to be supplied over the period November through March of each year and are not calculated to be available at the rate of 10,000 MMBTU per day as offered by the company. The agreement does not require that the firm volumes be delivered in vapor form. Staff contends that ENGI has elected to receive firm LNG in liquid form and to store it in on-site facilities and that because the company claims credit for the liquid product it cannot also credit the firm pipeline portion. Most importantly, Mr. McCluskey suggests, is that any LNG delivered by Bay State to the Company in the form of vapor must be transported through the pipeline facilities of Tennessee under a Tennessee interruptible rate schedule. Interruptible rate schedules cannot qualify as "guaranteed pipeline transmission capacity" under the provisions of the commission's winter storage rules.

Since Bay State LNG should not be classified as firm pipeline capacity then the maximum daily dependable pipeline supply to ENGI during the winter was 47,367 MMBTU per day or, when multiplied times 7 days, 331,569 MMBTU.

Staff also questions the company's calculation of on-site storage capacity (exh. 5, p. 10). The commission's rules allow a company to claim credit for 85% of the nominal capacity of a fixed storage facility, and for 70% of the delivered capability of owned or leased trailers over a five day period. Staff contends that the same 85% limit should be imposed on trailer capability so that the company should have claimed credit for only 60% (85% × 70% = 60%) of the nominal trailer storage capacity. As a result, trailer capability should have been reduced to 107,000 gallons and the company's total capability should have been reduced to 2.57 million gallons.

Mr. McCluskey then testifies (exh. 5, p. 11) that the company did not take advantage of its total storage capability to maintain maximum inventories at December 1, 1989. Storage capability of the fixed and rail-car propane tanks is 2.32 million gallons but inventory on hand was only 2.21 million gallons. Similarly, ENGI claimed credit for 140,250 gallons of LNG capacity but the inventory on hand at December 1 was only 113,400 gallons. In addition, the 107,000 gallons of trailer capacity was actually empty during the critical period. Accordingly,

Mr. McCluskey concludes that the company entered the critical period with an on-site inventory of 2.32 million gallons or 221,263 MMBTU — less than the residual seven day demand computed by staff of 223,449 MMBTUs.

Staff contends that ENGI's commitment to ENPI affected its ability to comply with the seven day policy. ENPI continued to receive supplies at a time when propane inventories were below requirements. For example, during the period December 1 through January 6, when average daily inventory was only 80% of storage capability, propane withdrew from utility stock almost 700,000 gallons. The cumulative effect of these withdrawals was a major cause of the low propane inventory in late December and early January which triggered the purchase of additional gas supplies (exh. 5, p. 14). Since at least some of those additional supplies were purchased at prices higher than the original storage gas, the utility's customers were subjected to higher costs than would have resulted if the original stored gas had been reserved for their own use.

Further, staff contends the fact that ENGI purchased additional supply from Distrigas as security in the event Tennessee Gas Pipeline was forced to curtail natural gas volumes,

challenges the reliance of Tennessee to provide capacity for the delivery of Bay State's vapor gas.

Staff concludes that over the five month period November 1989 through March 1990, ENPI withdrew just over 2 million gallons at a total cost of $1,061,906. If utility customers had the use of that propane instead of having to rely on Distrigas vapor, a savings of $341,203 would have been realized.

Having recommended a disallowance of $341,203, staff then testified that ENGI's association with propane does not produce incidental benefits to utility customers. In fact, staff contends, it does not follow that the existence of economies of scale resulting from utility/non-utility shared assets will mean that utility customers actually receive a benefit (exh. 5, p. 19). Staff testified that the outcome is always in doubt when the utility and non-utility firms are controlled by the same management.

Mr. McCluskey observed that replacing expensive product withdrawn during the winter months with low cost product purchased in the summer months will not materially avoid inventory financing charges. Likewise, leaving storage tanks empty in the summer months in order to save on financing charges is not consistent with making least cost purchases. Additionally, summer storage is of little value if the company fails to utilize the resource through the procurement of low cost product. In fact, summer deliveries often fell short or barely exceeded the withdrawals by ENPI and hence could only have provided minimal benefit to utility customers. Finally, staff contends that despite Mr. Fleming's representations, the existence of low cost spot market propane at Mont Belview, Texas, does not necessarily mean the company purchased the product and had it delivered at prices show in company exhibits.

Staff also contends that even if it is recognized that a differential price exists between the average spot price and the average inventory price, that that difference is less than the alleged 14.9% to which the company testified. The company's calculations did not account for unloading labor and overhead expenses, inventory trust fees, through-put charges, and rail car lease expenses. It also did not take into consideration the difference in freight charges between the various ENGI facilities in New Hampshire. Accordingly, staff concludes that commodity cost benefits were not realized, and certainly not to the extent implied in company witness testimony.

Staff also challenges the adequacy of through-put charges paid by ENPI to ENGI. Through-put charges are intended to compensate the utility for the non-commodity costs associated with the storage, use and transfer of propane, and for parking on utility property. Staff compares ENGI's through-put charges to those paid by ENGI itself to Colonial Gas Company for the same type of service. If the Colonial charges had been imposed, revenues for the seven year period would have been greater by about $362,000.

Finally, staff challenges the company's contention that utility customers benefit from the greater supply security that comes from

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being associated with retail propane customers with year-round demands. In fact, ENPI requirements in the winter typically run two to three times their summer levels. Consequently, the additional winter volumes delivered to the utility are more than absorbed by ENPI itself.

Staff concludes that from a supply security standpoint, the association with propane could have done more harm than good.

VI. *Commission Analysis*

A. *Vapor Gas as a Contribution to Seven Day Storage*

[1-5] A brief review of the history of the commission's seven day storage rule is essential in order to address the question of whether or not it was appropriate to include vapor gas service in meeting the 1989-90 peak storage requirements.

During the week of January 7, 1968, an extreme cold period caused severe natural gas shortages in New Hampshire. Then, as now, regulated gas companies depended on the use of propane to supplement natural gas supplies required for customer service. On-site storage levels were at the discretion of individual company management, and there was heavy reliance on rail and truck transport to avoid on-site storage investments.

During that period, weather conditions caused significant disruption to transportation capabilities as well as to natural gas deliverabilities. Heavy snow prevented over the road deliveries, and ice packed rail yards prevented the switching of rail storage cars. As a result, companies reacted in various ways to utilize the limited resources available to them in order to meet customers demands. There were customer curtailments although the curtailments varied throughout company franchises. There was a recognized lack of sharing of limited supplies. There was "some lack of communications, both ways, between Tennessee and some of the distribution companies" as noted in this commission's report and order no. 9048 on March 19, 1968. *Re Gas Utilities*, 52 NHPUC 48, 61 (1968).

As a result of the commission investigation which resulted in order no. 9048, the commission, by supplemental order no. 9343, on August 1, 1968, ordered each peak-shaving utility to maintain on-site fuel storage facilities equivalent to five days of the estimated maximum peak-shaving demand. Railroad tank cars on-site on company rail sitings were considered on-site storage. *Re Gas Utilities*, 52 NHPUC 257 (1968). Where a gas company owned its own tank trucks, 80% of that delivery capability from a dependable bulk fuel supply point over a five day period was also considered as on-site storage.

In 1982, the commission recognized that state-of-the-art peak-shaving operations had changed significantly since 1968 as had methods and opportunities for fuel storage. Accordingly, the commission changed its "rules and regulations prescribing standards for gas utilities" and required:

> Between December 1 and February 14 of each year, each gas utility shall maintain an on-site storage capability in connection with the operation of its gas distribution system which will provide peak-shaving supplies for an estimated maximum design cold period of seven consecutive days. Railway tank cars on gas company rail sites and guaranteed pipeline transmission capacity for firm gas supply will be considered as on-site storage. Where a gas company owns or leases tank trucks, 70% of this delivery capability from a dependable bulk fuel supply point over a five day period may be counted as on-site storage. Between February 15 and February 28 the above minimum on-site storage capacity may be reduced to 75% of the total requirement of each company. Between March 1 and March 31 the minimum on-site storage capacity may be reduced to 50% of

the original total requirement.

Re Peak-shaving Fuel Storage, 67 NHPUC 541, 544 (1982).

Companies were required to file annual status reports before October 1 of each year, and were required to provide weekly telephonic reports from December 1 through April 1.

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On October 27, 1982, the commission, in its order no. 15,956, modified the last sentence of the storage rule as follows: "Where a gas company owns or leases tank trucks or has a fuel supply purchase contract or dedicated service contract, either of which includes guaranteed daily delivery capability, 70% of this delivery capability, from a dependable bulk fuel supply point over a five day period may be counted as on-site storage." *Re Peak-shaving Fuel Storage*, 67 NHPUC 745, 746 (1982).

It is important to remember that the above rule originated from a recognized inability to transport peak-shaving liquids to their destination. It is equally important to recognize that additional storage facilities, such as Sea-3 in Newington, New Hampshire, were erected closer to the company distribution facilities. As the commission noted in its report accompanying order no. 15,768 on July 23, 1982:

> Several of the companies have obtained additional firm gas supplies that is available during the winter period and delivered through the pipeline. The commission believes that not only is this method a reliable delivery capacity but also economical and in the best interest of the ratepayer.
>
> *Re Peak-shaving Fuel Storage*, 67 NHPUC 541,544 (1982)

Vapor gas was not an available alternative either in 1968 when the commission first addressed the storage issue, or in 1982 when it modified its fuel storage requirements. Staff focuses squarely on that issue when it suggests in its reply brief (p. 1) that the threshold proposition is:

> Does vapor service transported under Tennessee Gas Pipeline's interruptible rate schedule properly qualify as service and "guaranteed pipeline transmission capacity"?

Peak-shaving gas qualifies under the commission's storage rules if it is from "... guaranteed pipeline transmission capacity for firm gas supply." There was much testimony and cross-examination regarding the words "guaranteed" in regard to transmission capacity and the word "firm" in regard to gas supply. Our analysis of that testimony leads us to conclude that there is adequate assurance that Tennessee Pipeline's capacity will be available during the time that vapor gas is most likely to be needed. Although the vapor gas will be transported under an interruptible rate, which by definition is a lower priority service than is a firm schedule, testimony revealed that at the time that vapor gas is most needed, it is most likely that the pipeline will be most heavily taxed by customer usage and will most likely not be operating at full capacity. Accordingly, vapor gas is then most likely to have access and to, in fact, help restore the pipeline to normal operating conditions.

As to the issue of whether vapor gas qualifies as "firm gas supply" testimony reveals that on

every day except one, EnergyNorth received the vapor gas quantities from Bay State Gas that it requested. On that single day where vapor gas was denied, the denial was not based upon a physical inability to provide service, but rather on a Bay State decision to reassess its own overall energy situation before releasing additional storage volumes. It is interesting to note that the decision to make that release was based in part on the fact that EnergyNorth had itself contributed a portion of its own propane storage to the State of New Hampshire "set-aside program" on behalf of Bay State, and prevented Bay State from having to make available additional propane volumes of its own for that program.

We must find that the likelihood of the Tennessee Pipeline being available during periods of extreme cold and uncertain weather conditions is greater than the likelihood that over-the-road or rail transportation assets will be available. We reiterate our finding of order no. 15,768 issued on July 23, 1982:

> The commission believes that not only is this method a reliable delivery capacity but also economical and in the best interest of the ratepayer.
>
> *Re Peak-Shaving Fuel Storage*, 67 NHPUC 541,545 (1982)

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Having found that vapor gas generally qualifies for peak-shaving fuel storage, there are two additional issues that we must address: (1) Whether a company may use this commission order as a basis to include vapor gas storage in its peak-shaving fuel storage requirements in the future; and (2) whether EnergyNorth, Inc. took appropriate steps to assure itself that vapor gas was an appropriate qualifying fuel in view of the currently written commission rule.

We find the answer to the first question to be in the affirmative. There is an adequate record in this proceeding to find that, generally, vapor gas transported under interruptible rate schedules is a reasonable addition to fuel storage requirements. Although there remains some risk that pipeline capacity may occasionally be denied, that risk is no greater and is probably less than the risk that weather conditions will similarly deny transportation access to those railway tank cars and tank trucks which are currently authorized under the commission's rules to qualify for storage. We will accept vapor gas in future fuel storage reports.

The answer to the second question must be in the negative. Although the company took steps to inform the commission staff of its intent to include vapor gas in the filing and although the company received concurrence from the staff that such vapor gas was appropriate, there was adequate uncertainty in the definition of vapor gas as it related to the specific wording of the commission's rules and regulations to cause the company to take more specific formal action in requesting clarification of the commission as to the appropriateness of its inclusion. The company should have made that formal request.

We find no reason to take formal action against the company for its failure to do so. Its query of staff was understandable. Its subsequent inclusion based on staff's reaction was understandable.

The issue causes a resurfacing of an infrequent issue whereby a regulated company reaches out to staff for advice, acts on that advice, and then subsequently learns that staff's advice may

not appropriately reflect commission policy. When confronted with such queries, staff faces its own uncertainties. Based on the overwhelming number of daily queries which reach the commission's offices, staff attempts — as it should attempt — to provide prompt responses, based on its knowledge of commission rules and policies, so that companies may move affirmatively in an approved direction. Utilities must be cautioned, however, that reliance on staff, while useful, does not shield them from the consequences of inconsistent orders that may later be issued by the commission. In *Re Small Power Producers and Cogenerators*, DR 88-107, Report and Order No. 19,728 (February 28, 1990), the commission addressed an argument that it should be estopped from issuing orders having economic consequences when a party had in good faith relied on staff advice. The commission stated:

> In regard to the issue of estoppel the New Hampshire Supreme Court has held that estoppel cannot be applied against a state agency unless the statement or act upon which a party relies was within the state employees authority to act. See *City of Concord v. Tompkins*, 124 N.H. 463, 468.
>
> While staff brings a unique knowledge to issues before the commission and its opinions carry significant weight, its advice and opinions do not bind the commission; the commission speaks only through its Reports and Orders.

Report at 17. As the instant case revealed, new opportunities in a changing environment require new analyses of commission positions. Findings relative to these new analyses may be made only by the commission.

Having found that vapor gas is an appropriate fuel to meet ENI's storage requirements, we return to the issue of whether the company violated the commission's storage requirement by not meeting its minimum five day requirement. We find that it did not violate our storage requirement. The company calculated a requirement of 1,631,778 gallons of liquid to be on-site at December 1, 1989. The company owned or leased a total of 2,620,840 gallons of tank storage capacity to meet that requirement. Although there was evidence to show that some tanks were less than full we are satisfied that capacity levels were a result of design rather than error. It

is clearly unreasonable to expect that working tanks — i.e., those tanks which are being used daily in the course of providing product for service — will be exactly full at any particular time. We further recognize that because of the size of the transport tankers (10,000-30,000 gallons), it is necessary to draw down storage tanks to significant levels in order to be able to unload the full volumes of the transport. ENI has clearly demonstrated that it has met the commission's rule that it: "... shall maintain an on-site storage capability ... which will provide peak shaving supplies for an estimated maximum design cold period of seven consecutive days."

The company failed to submit its Annual Status Report to the commission before October 1, 1989, as required by the commission's rule, PUC 509.21. Rather, the company submitted a report on November 3, 1989 (exh. 6). Whether notification pursuant to the rules would have provided an earlier alert to the parties as to the potential propriety of such issues as vapor gas, and whether a resolution of those issues prior to the winter season might have averted such a comprehensive investigation as has been undertaken in this docket, remains unclear. It is clear, however, that the

reporting deadline of October 1 is an appropriate one. While the issue of the failure to meet the November 1 date does not rise to a level which justifies imposing sanctions or financial penalties upon the company, it does provide cause to alert the company that the commission expects prompt response to its requirements.

Finally, with regard to the propriety of the relationship between ENGI and ENPI, we cannot find that there was impropriety. Although there clearly were management decisions which resulted in propane being sold to ENPI during the time that propane could have been reserved for ENGI peak-shaving, the evidence does not lead us to find that the sale to ENPI was improper. ENI contracted to sell two million gallons of propane to ENPI over the winter period. ENPI actually withdrew 2,002,018 gallons, according to company testimony. We cannot conclude any wrongdoing in these transactions and we will not fault the companies for honoring their contract.

However, so long as there continues to be a relationship between ENGI and ENPI, the company must be prepared to address the type of issues that have been the focus of this docket. Although we found no wrongdoing, the interrelationship between employees of the two companies and, in fact, the intertwining of management responsibilities, however well defined and administratively separated, will inevitably continue to raise the legitimate issue as to whether or not there is favoritism.

Mr. Giordano testified (tr. 3, p. 76),

> "I will move towards more separateness. The utility business is our core business. It is what we are all about. It's 90% of the business and, to the extent that there is, you know, criticism or misunderstanding of how we run our non-utility versus our utility business, I have to protect the utility business."

We do not find sufficient evidence in the record to cause us to direct such a separation, but we find much in the record to encourage an increase in the level of separateness. We encourage the company to pursue a course of action which will do so.

Our order will issue accordingly.

ORDER

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

ORDERED, that vapor gas transported by pipeline under interruptible rate schedules of Tennessee Gas Pipeline meets the requirements of this commission's rule, Puc 509.21 and may reasonably be included in the calculation of peak-shaving gas storage; and it is

FURTHER ORDERED, that we find based on substantial evidence that the ratepayers of EnergyNorth Natural Gas Corporation did not unduly suffer as a result of the contractual arrangements between ENGI and ENPI.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of January, 1991.

FOOTNOTES

[1]Subject of 1990 winter CGA reconciliation.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Nat. Gas, Inc., DE 88-136, DR 89-181, Order No. 19,718, 75 NH PUC 111, Feb. 15, 1990. [N.H.] Re EnergyNorth Nat. Gas, Inc., DE 88-136, DR 89-181, Order No. 19,786, 75 NH PUC 221, Apr. 11, 1990. [N.H.] Re EnergyNorth Nat. Gas, Inc., DE 88-136, DR 89-181, Order No. 19,807, 75 NH PUC 253, Apr. 30, 1990. [N.H.] Re EnergyNorth Nat. Gas, Inc., DE 88-136, DR 89-181, Order No. 19,815, 75 NH PUC 266, May 7, 1990. [N.H.] Re EnergyNorth Nat. Gas, Inc., DE 88-136, DR 89-181, Order No. 19,861, 75 NH PUC 329, June 26, 1990. [N.H.] Re Small Power Producers and Cogenerators, DR 88-107, Order No. 19,728, 75 NH PUC 124, Feb. 28, 1990.

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NH.PUC*01/15/91*[27056]*76 NH PUC 46*Hillcrest Drive Water Company

[Go to End of 27056]

Re Hillcrest Drive Water Company

DE 90-228
Order No. 20,030

76 NH PUC 46

New Hampshire Public Utilities Commission

January 15, 1991

ORDER exempting a water utility from public utility regulation.

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1. PUBLIC UTILITIES, § 121

[N.H.] Water — Service to less than 10 customers — Exemption from regulation. p. 46.

BY THE COMMISSION:

ORDER

[1] On December 20, 1990, the commission received a petition from Hillcrest Drive Water Company seeking exemption from the provisions of RSA 362:4 for service provided to 9 customers in the City of Laconia, N.H.; and

WHEREAS, RSA 362:4 provides, *inter alia*, that if a water system shall supply fewer than ten consumers, the commission may exempt such water system from any and all provisions of public utility statutes; and

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

WHEREAS, the public should be offered an opportunity to file comments and/or request an opportunity to be heard on this petition; it is hereby

ORDERED, *NISI* that exemption from public utility statutes be, and hereby is, granted to Hillcrest Drive Water Company for water service provided to nine customers in the city of Laconia; and it is

FURTHER ORDERED, that all persons interested in responding to this petition must submit their comments, or a written request for a hearing, to the commission no later than twenty days from the required publication date of this order; and it is

FURTHER ORDERED, that Hillcrest Drive Water Company effect public notice by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the state in which operations are conducted, such publication to be no later than January 24, 1991 and documented by an affidavit to be filed with this office on or before February 14, 1991. 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 January 24, 1991; and it is

FURTHER ORDERED, that Hillcrest Drive shall notify this commission if and when it expands the water system to service ten or

more customers as defined in RSA 362:4; and it is

FURTHER ORDERED, that Hillcrest Drive shall maintain adequate records to fulfill the accounting obligations of a public utility.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1991.

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NH.PUC*01/15/91*[27057]*76 NH PUC 47*Atlantic Connections Ltd.

[Go to End of 27057]

Re Atlantic Connections Ltd.

DE 90-042
Order No. 20,031

76 NH PUC 47

New Hampshire Public Utilities Commission

January 15, 1991

ORDER holding a telecommunications company in violation of state statute for unauthorized

provision of intrastate resale service, directing the company to cease and desist from all intrastate telecommunications operations, imposing a fine of $5000, and precluding the company from applying for certification to provide resale service until all penalties have been discharged.

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1. PUBLIC UTILITIES, § 117

[N.H.] Telecommunications — Intrastate resale service — Unauthorized provision. p. 47.

2. FINES AND PENALTIES, § 7

[N.H.] Grounds — Unauthorized provision of service — Telecommunications — Intrastate resale service. p. 47.

3. CERTIFICATES, § 2

[N.H.] Unauthorized operations — Telecommunications — Intrastate resale service. p. 47.

BY THE COMMISSION

ORDER

[1-3] WHEREAS, on March 23, 1990 the New Hampshire Public Utilities Commission issued Order No. 19,766, ordering that Docket DE 90-042 be established for the purpose of investigating whether Atlantic Connections Ltd. (Atlantic) is a public telephone utility operating in the State of New Hampshire without franchise approval pursuant to RSA 374.22 and charging rates without authority pursuant to RSA 378:1 et seq.; and

WHEREAS, following hearings on December 4, 6, and 7, 1990 and January 7, 8, 9 and 11, 1991 the Commission has determined that Atlantic is a public utility under 362:2, operating without the authority of the NHPUC; and

WHEREAS, a full report and order will be issued containing a complete analysis of the record; and

WHEREAS, it is necessary formally to provide a prompt remedy which, of necessity, must be before a full report and order can be issued; it is hereby

ORDERED, that Atlantic cease and desist all resale operations in the New Hampshire intrastate marketplace as of the date of this order; and it is

FURTHER ORDERED, that Atlantic pay a fine of five thousand dollars ($5,000), pursuant to RSA 365;41; and it is

FURTHER ORDERED, that Atlantic provide written notification to its customers that it will cease and desist supplying intrastate resale to its customers as of the date of the Order and will supply the commission with a fully attested copy of this written notification; and it is

FURTHER ORDERED, that Atlantic may not apply to the NHPUC for a certificate of service to provide intrastate resale until all penalties have been discharged.

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

1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Atlantic Connections, Ltd., DE 90-042, Order No. 19,766, 75 NH PUC 186, Mar. 23, 1990.

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NH.PUC*01/16/91*[27058]*76 NH PUC 48*New Hampshire Electric Cooperative, Inc.

[Go to End of 27058]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: High View Church Farms

DR 90-229
Order No. 20,032

76 NH PUC 48

New Hampshire Public Utilities Commission

January 16, 1991

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard. p. 48.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate — Temperature sensitive winter interruptible program — Standby generation program. p. 48.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 48.

BY THE COMMISSION:

ORDER

[1-3] On December 24, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC), filed a Special Contract between the NHEC and High View Church Farms; and

WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed by the NHEC to reduce wholesale billing costs, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 93 provides for 250kW of interruptible load that High View Church Farms has designated for interruption under NHEC's voluntary interruptible load program in accordance with Order No. 20,004, dated December 11, 1990 that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 93 with High View Church Farms are consistent with the public interest; it is hereby

ORDERED NISI, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 93 effective December 11, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 28, 1991, said publication to be documented by affidavit filed with this office on or before February 18, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective

date, so that the Special Contract No. 93 will be retroactively effective as of December 11, 1990, unless otherwise provided by Commission order; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-205, Order No. 20,004, 75 NH PUC 753, Dec. 11, 1990.

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NH.PUC*01/16/91*[27059]*76 NH PUC 49*New Hampshire Electric Cooperative, Inc.

[Go to End of 27059]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Hart's Turkey Farm Restaurant

DR 90-230
Order No. 20,033

76 NH PUC 49

New Hampshire Public Utilities Commission

January 16, 1991

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard. p. 49.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate — Temperature sensitive winter interruptible program — Standby generation program. p. 49.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 49.

BY THE COMMISSION:

ORDER

[1-3] On December 24, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC), filed a Special Contract between the NHEC and Hart's Turkey Farm Restaurant; and

WHEREAS, this Special Contract is intended to provide for a continuation of the voluntary interruptible load program approved in prior years for Hart's Turkey Farm Restaurant and also for a new interruptible program designed by the NHEC to reduce wholesale billing costs, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 92 supersedes Special Contract No. 87 and provides service under NHEC's voluntary interruptible load program in accordance with Order No. 20,004, dated December 11, 1990 that approved a temperature sensitive winter interruptible

program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 92 with Hart's Turkey Farm are consistent with the public interest; it is hereby

ORDERED NISI, that NHEC be, and

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hereby is, authorized to implement the above-described Special Contract No. 92 effective December 11, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 28, 1991, said publication to be documented by affidavit filed with this office on or before February 18, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract No. 92 will be retroactively effective as of December 11, 1990, unless otherwise provided by Commission order; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-205, Order No. 20,004, 75 NH PUC 753, Dec. 11, 1990.

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NH.PUC*01/16/91*[27060]*76 NH PUC 50*New Hampshire Electric Cooperative, Inc.

[Go to End of 27060]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Mt. Attitash Lift Corp.

DR 90-231
Order No. 20,034

76 NH PUC 50

New Hampshire Public Utilities Commission

January 16, 1991

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard. p. 50.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate — Temperature sensitive winter interruptible program — Standby generation program. p. 50.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 50.

BY THE COMMISSION:

ORDER

[1-3] On December 24, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC), filed a Special Contract between the NHEC and Mt. Attitash Lift Corp., a commercial ski area; and

WHEREAS, this Special Contract is intended to provide for a continuation of the voluntary interruptible load program approved

in prior years for Mt. Attitash Lift Corp. and also for a new interruptible program designed by the NHEC to reduce wholesale billing costs, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 87 supersedes Special Contract No. 82 and provides service under NHEC's voluntary interruptible load program in accordance with Order No. 20,004, dated December 11, 1990 that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special

circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 87 with Mt. Attitash Lift Corp. are consistent with the public interest; it is hereby

ORDERED NISI, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 87 effective December 11, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N. H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 28, 1991, said publication to be documented by affidavit filed with this office on or before February 18, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract No. 87 will be retroactively effective as of December 11, 1990, unless otherwise provided by Commission order; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-205, Order No. 20,004, 75 NH PUC 753, Dec. 11, 1990.

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NH.PUC*01/16/91*[27061]*76 NH PUC 51*New Hampshire Electric Cooperative, Inc.

[Go to End of 27061]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Black Mountain Development Corp.

DR 90-232
Order No. 20,035

76 NH PUC 51

New Hampshire Public Utilities Commission

January 16, 1991

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard. p. 52.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate — Temperature sensitive winter

Page 51

interruptible program — Standby generation program. p. 52.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 52.

BY THE COMMISSION:

ORDER

[1-3] On December 24, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC), filed a Special Contract between the NHEC and Black Mountain Development Corp., a commercial ski area; and

WHEREAS, this Special Contract is intended to provide for a continuation of the voluntary interruptible load program approved in prior years for Black Mountain Development Corp. and also for a new interruptible program designed by the NHEC to reduce wholesale billing costs, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 88 supersedes Special Contract No. 83 and provides service under NHEC's voluntary interruptible load program in accordance with Order No. 20,004, dated December 11, 1990 that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 88 with Black Mountain Development Corp. are consistent with the public interest; it is hereby

ORDERED NISI, that NHEC be, and hereby is, authorized to implement the above-described

Special Contract No. 88 effective December 11, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 28, 1991, said publication to be documented by affidavit filed with this office on or before February 18, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract No. 88 will be retroactively effective as of December 11, 1990, unless otherwise provided by Commission order; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-205, Order No. 20,004, 75 NH PUC 753, Dec. 11, 1990.

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NH.PUC*01/16/91*[27062]*76 NH PUC 53*New Hampshire Electric Cooperative, Inc.

[Go to End of 27062]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Mount Cranmore, Inc.

DR 90-233
Order No. 20,036

76 NH PUC 53

New Hampshire Public Utilities Commission

January 16, 1991

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard. p. 53.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate — Temperature sensitive winter interruptible program — Standby generation program. p. 53.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 53.

BY THE COMMISSION:

ORDER

[1-3] On December 24, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC), filed a Special Contract between the NHEC and Mount Cranmore Inc., a commercial ski area; and

WHEREAS, this Special Contract is intended to provide for a continuation of the voluntary interruptible load program approved in prior years for Mount Cranmore Inc. and also for a new interruptible program designed by the NHEC to reduce wholesale billing costs, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 89 supersedes Special Contract No. 84 and provides service under NHEC's voluntary interruptible load program in accordance with Order No. 20,004, dated December 11, 1990, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 89 with Mount Cranmore Inc. are consistent with the public interest; it is hereby

ORDERED NISI, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 89 effective December 11, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 28, 1991, said publication to be documented by affidavit filed with this office on or before February 18, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract No. 89 will be retroactively effective as of December 11, 1990, unless

otherwise provided by Commission order; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-205, Order No. 20,004, 75 NH PUC 753, Dec. 11, 1990.

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NH.PUC*01/16/91*[27063]*76 NH PUC 54*New Hampshire Electric Cooperative, Inc.

[Go to End of 27063]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Loon Mountain Recreation Corp.

DR 90-234
Order No. 20,037

76 NH PUC 54

New Hampshire Public Utilities Commission

January 16, 1991

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard. p. 54.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate — Temperature sensitive winter
interruptible program — Standby generation program. p. 54.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 54.

BY THE COMMISSION:

ORDER

[1-3] On December 24, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC), filed a Special Contract between the NHEC and Loon Mountain Recreation Corp., a commercial ski area; and

WHEREAS, this Special Contract is intended to provide for a continuation of the voluntary interruptible load program approved in prior years for Loon Mountain Recreation Corp. and also for a new interruptible program designed by the NHEC to reduce wholesale billing costs, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 90 supersedes Special Contract No. 85 and provides service under NHEC's voluntary interruptible load program in accordance with Order No. 20,004, dated December 11, 1990 that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 90 with Loon Mountain Recreation Corp. are consistent with the public interest; it is hereby

ORDERED NISI, that NHEC be, and hereby is, authorized to implement the above-

Page 54

described Special Contract No. 90 effective December 11, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 28, 1991, said publication to be documented by affidavit filed with this office on or before February 18, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract No. 90 will be retroactively effective as of December 11, 1990, unless otherwise provided by Commission order; 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 15 days after the date of publication of this

Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-205, Order No. 20,004, 75 NH PUC 753, Dec. 11, 1990.

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NH.PUC*01/16/91*[27064]*76 NH PUC 55*New Hampshire Electric Cooperative, Inc.

[Go to End of 27064]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Waterville Valley Inc.

DR 90-235
Order No. 20,038

76 NH PUC 55

New Hampshire Public Utilities Commission

January 16, 1991

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard. p. 55.

2. RATES, § 322

[N.H.] Electric rate design — Demand and load — Interruptible service — Special contract rate — Temperature sensitive winter interruptible program — Standby generation program. p. 55.

3. RATES, § 250

[N.H.] Retroactive rates — Special contracts — Interruptible electric service. p. 55.

BY THE COMMISSION:

ORDER

[1-3] On December 24, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC), filed a Special Contract between the NHEC and Waterville Valley Inc., a commercial ski area; and

WHEREAS, this Special Contract is intended to provide for a continuation of the voluntary interruptible load program approved

in prior years for Waterville Valley Inc. and also for a new interruptible program designed by the NHEC to reduce wholesale billing costs, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 91 supersedes Special Contract No. 86 and provides service under NHEC's voluntary interruptible load program in accordance with Order No. 20,004, dated December 11, 1990 that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 91 with Waterville Valley Inc. are consistent with the public interest; it is hereby

ORDERED NISI, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 91 effective December 11, 1990, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 28, 1991, said publication to be documented by affidavit filed with this office on or before February 18, 1991; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract No. 91 will be retroactively effective as of December 11, 1990, unless otherwise provided by Commission order; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-205, Order No. 20,004, 75 NH PUC 753, Dec. 11, 1990.

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NH.PUC*01/21/91*[27065]*76 NH PUC 56*Long Distance North of New Hampshire, Inc.

[Go to End of 27065]

Re Long Distance North of New Hampshire, Inc.

DE 87-249
Order No. 20,039

76 NH PUC 56

New Hampshire Public Utilities Commission

January 21, 1991

ORDER granting a telecommunications company interim authority to operate as a reseller of intrastate long distance telephone service, pending the completion of a generic investigation of competition in the intrastate telecommunications market.

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1. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing toll service — Intrastate long distance — Reseller — Interim authorization. p. 57.

2. CERTIFICATES, § 123

[N.H.] Telecommunications — Intrastate

Page 56

long distance — Reseller — Interim authorization. p. 57.

BY THE COMMISSION:

ORDER

On December 4, 1987, Long Distance North of New Hampshire, Inc. (LDN) filed a petition for authority to do business as public telecommunications utility in the state of New Hampshire pursuant to RSA 374:22 and RSA 374:26; and

WHEREAS, LDN proposes to do business as a reseller of intrastate long distance telephone

service; and

WHEREAS, the commission finds that interim authority for intrastate competition in the telecommunications industry is in the public good because it will allow the commission to analyze the effects of competition on the local exchange companies' revenue and the resultant effect on rates; and

WHEREAS, the commission has determined pursuant to the above finding that it would be in the public good to allow LDN to offer intrastate long distance service on an interim basis until the completion of consideration of the generic issue of whether there should be competition in the intrastate telecommunications market in Docket DE 90-002, the so called competition docket; and it is hereby

[1, 2] ORDERED, that LDN be, and hereby is, granted interim authority to offer intrastate long distance telephone service in the state of New Hampshire subject to the following conditions:

1. that said services, as stated above, shall be offered only on an interim basis until completion of the so-called competition docket in Docket No. DE 90-002 at which time the authority granted herein may be revoked or continued on a different basis;

2. that LDN shall notify each of its customers requesting this service that the service is approved on an interim basis and said service may be required to be withdrawn at the completion of the so called competition docket or continued on the same or different basis;

3. that LDN shall notify the commission of its rates by filing a schedule of such rates pursuant to RSA 378:1 within one day after offering service and shall subsequently file any change in rates to be charged the public within one day after offering service at a rate other than the rate on file with the commission;

4. that LDN shall be subject to all statutes and administrative rules relative to quality and terms and conditions of service, disconnections, deposits and billing and specifically N.H. Admin. Rules, Puc Chapter 400;

5. that LDN shall be subject to all reporting requirements contained in RSA 374:15-19;

6. that LDN shall compensate the appropriate Local Exchange Company for originating and terminating access pursuant to NET Tariff N.H.P.U.C. 78, Page 5, Section 4, Switched Access Service Rate or its relevant equivalent contained in the tariffs' of the Independent Local Exchange Companies until a new access charge is approved by the commission;

7. all new service offerings are to be accompanied by rates and effective dates;

8. LDN shall report all intraLATA minutes of use to the affected Local Exchange Company. Additionally, LDN shall report to the commission all intraLATA minutes of use, the Local Exchange Company the minutes of use were reported to and revenues paid to the Local Exchange Companies, all data to be reported by service category on a monthly basis;

9. LDN shall report revenues associated with each service on a monthly basis;

10. LDN shall report the number of customers on a monthly basis;

11. LDN shall report percentage interstate usage on a quarterly basis to both the affected

Local Exchange Company and the commission. Furthermore, each Local Exchange Company shall file quarterly data reporting each access service subscriber's currently declared percentage interstate usage; and

12. that LDN meet with the staff of the commission to discuss the means for the accurate monitoring of the effects of competition; and it is

FURTHER ORDERED, that with the

Page 57

exception of requiring NET to extend its access tariff to apply to the services LDN offers, nothing contained in this order shall be construed to allow LDN to operate outside of the conditions set out in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that this order is subject to modification concerning the above listed conditions as a result of the commission's monitoring.

By order of the New Hampshire Public Utilities Commission this twenty-first day of January, 1991.

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NH.PUC*01/21/91*[27066]*76 NH PUC 58*AT&T Communications of New Hampshire

[Go to End of 27066]

Re AT&T Communications of New Hampshire

DE 90-002
Order No. 20,040

76 NH PUC 58

New Hampshire Public Utilities Commission

January 21, 1991

ORDER granting an interexchange telecommunications carrier interim authority to offer custom network "add on" services on an intrastate basis, pending the completion of a generic investigation of competition in the intrastate telecommunications market.

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1. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Interexchange carrier — Custom network "add on" services — Intrastate service — Interim authorization. p. 58.

2. CERTIFICATES, § 123

[N.H.] Telecommunications — Interexchange carrier — Custom network "add on" services — Intrastate service — Interim authorization. p. 58.

BY THE COMMISSION:

ORDER

On January 4, 1990, the New Hampshire Public Utilities Commission (commission) received a petition by AT&T Communications of New Hampshire (AT&T) for authority to provide any telecommunication service as a public utility in the state of New Hampshire pursuant to, *inter alia,* RSA 374:22 and RSA 374:26; and

WHEREAS, the commission bifurcated the case to consider the generic issue of intrastate competition in the telecommunications industry and to separately consider the four services specifically requested by AT&T; and

WHEREAS, in its petition AT&T specifically requested authority to offer custom network "add on" services in the form of AT&T Mega Com Watts, AT&T Mega Com 800, AT&T ReadyLine and AT&T MultiQuest; and

WHEREAS, the commission finds that interim authority for intrastate competition in the telecommunications industry is in the public good because it will allow the commission to analyze the effects of competition on the local exchange companies' revenues and the resultant effect on rates; and

[1, 2] WHEREAS, the commission has determined pursuant to the above finding that it would be in the public good to allow AT&T to offer AT&T Mega Com Watts, AT&T Mega Com 800 and AT&T ReadyLine services on an intrastate basis on an interim basis until the completion of consideration of the generic issue of whether there should be competition in the intrastate telecommunications market in Docket DE 90-002, the so called competition docket; and

WHEREAS, the commission has determined that it would not be in the public good to authorize the AT&T MultiQuest until it completes blocking rules for intrastate pay-per-call services; it is hereby

ORDERED, that AT&T be, and hereby is, granted interim authority to offer AT&T Mega Com Watts, AT&T Mega Com 800 and AT&T ReadyLine subject to the following conditions:

1. that said services, as stated above, shall be offered only on an interim basis until

completion of the so-called competition docket in Docket No. DE 90-002 at which time the authority granted herein may be revoked or continued on a different basis;

2. that AT&T shall notify each of its customers requesting any of these three services that the services are approved on an interim basis and said services may be required to be withdrawn at the completion of the so called competition docket or continued on the same or different basis;

3. that AT&T shall notify the commission of its rates by filing a schedule of such rates pursuant to RSA 378:1 within one day after offering service and shall subsequently file any

change in rates to be charged the public within one day after offering service at a rate other than the rate on file with the commission;

4. that AT&T shall be subject to all statutes and administrative rules relative to quality of service, disconnections, deposits and billing and specifically N.H. Admin. Rules, Puc Chapter 400;

5. that AT&T shall be subject to all reporting requirements contained in RSA 374:15-19;

6. that AT&T shall compensate the appropriate Local Exchange Company for originating and terminating access pursuant to NET Tariff N.H.P.U.C. 78, Page 5, Section 4, Switched Access Service Rate or its relevant equivalent contained in the tariffs' of the Independent Local Exchange Companies until a new access charge is approved by the commission;

7. all new service offerings are to be accompanied by rates and effective dates;

8. AT&T shall report all intraLATA minutes of use to the affected Local Exchange Company. Additionally, AT&T shall report to the commission all intraLATA minutes of use, the Local Exchange Company the minutes of use were reported to and revenues paid to the Local Exchange Companies, all data to be reported by service category on a monthly basis;

9. AT&T shall report revenues associated with each service on a monthly basis;

10. AT&T shall report the number of customers on a monthly basis;

11. AT&T shall report percentage interstate usage on a quarterly basis to both the affected Local Exchange Company and the commission. Furthermore, each Local Exchange Company shall file quarterly data reporting each access service subscriber's currently declared percentage interstate usage; and

12. that AT&T meet with the staff of the commission to discuss the means for the accurate monitoring of the effects of competition; and it is

FURTHER ORDERED, that with the exception of requiring NET to extend its access tariff to apply to the services AT&T offers, nothing contained in this order shall be construed to allow AT&T to operate outside of the conditions set out in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that this order is subject to modification concerning the above listed conditions as a result of the commission's monitoring.

By order of the New Hampshire Public Utilities Commission this twenty-first day of January, 1991.

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NH.PUC*01/21/91*[27067]*76 NH PUC 59*MCI Telecommunications Corporation

[Go to End of 27067]

Re MCI Telecommunications Corporation

DE 90-108

Order No. 20,041

76 NH PUC 59

New Hampshire Public Utilities Commission

January 21, 1991

ORDER granting an interexchange telecommunications carrier interim authority to offer custom network "add on" services on an intrastate basis, pending the completion of a generic investigation of competition in the intrastate telecommunications market. Commission denies authorization for the proposed offer of 900 service, finding that authorization would not be in the public good until it completes blocking rules for intrastate pay-per-call services.

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1. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Interexchange carrier — Custom network "add on" services — Intrastate service — Interim authorization. p. 60.

2. CERTIFICATES, § 123

[N.H.] Telecommunications — Interexchange carrier — Custom network "add on" services — Intrastate service — Interim authorization. p. 60.

3. CERTIFICATES, § 123

[N.H.] Telecommunications — Interexchange carrier — Pay-per-call services — 900 service — Intrastate offering — Authorization denied. p. 60.

4. SERVICE, § 449

[N.H.] Telecommunications — Intrastate pay-per-call services — 900 service — Interexchange carrier. p. 60.

BY THE COMMISSION:

ORDER

On July 20, 1990, the New Hampshire Public Utilities Commission (commission) received a petition from MCI Telecommunications Corporation (MCI) for authority to provide custom network add-on services in the form of MCI Vnet, MCI 800, MCI Prism I and MCI 900; and

[1-4] WHEREAS, the commission finds that interim authority for intrastate competition in the telecommunications industry is in the public good because it will allow the commission to analyze the effects of competition on the local exchange companies' revenues and the resultant effect on rates; and

WHEREAS, the commission has determined pursuant to the above finding that it would be in the public good to allow MCI to offer MCI Vnet, MCI 800 and MCI Prism I on an interim basis

until the completion of consideration of the generic issue of whether there should be competition in the intrastate telecommunication market in Docket DE 90-002, the so called competition docket; and

WHEREAS, the commission has determined that it would not be in the public good to authorize MCI 900 until it completes blocking rules for intrastate pay-per-call services; it is hereby

ORDERED, that MCI be, and hereby is, granted interim authority to offer MCI Vnet, MCI 800 and MCI Prism I subject to the following conditions:

1. that said services, as stated above, shall be offered only on an interim basis until completion of the so-called competition docket in Docket No. DE 90-002 at which time the authority granted herein may be revoked or continued on a different basis;

2. that MCI shall notify each of its customers requesting any of these three services that the services are approved on an interim basis and said services may be required to be withdrawn at the completion of the so called competition docket or continued on the same or different basis;

3. that MCI shall notify the commission of its rates by filing a schedule of such rates pursuant to RSA 378:1 within one day after offering service and shall subsequently file any change in rates to be charged the public within one day after offering service at a rate other than the rate on file with the commission;

4. that MCI shall be subject to all statutes and administrative rules relative to quality and terms and conditions of service, disconnections, deposits and billing and specifically N.H. Admin. Rules, Puc Chapter 400;

5. that MCI shall be subject to all reporting requirements contained in RSA 374:15-19;

6. that MCI shall compensate the appropriate Local Exchange Company for originating and terminating access pursuant to NET Tariff N.H.P.U.C. 78, Page 5, Section 4, Switched Access Service Rate or its relevant equivalent contained in the tariffs' of the Independent Local Exchange Companies until a new access

charge is approved by the commission;

7. all new service offerings are to be accompanied by rates and effective dates;

8. MCI shall report all intraLATA minutes of use to the affected Local Exchange Company. Additionally, MCI shall report to the commission all intraLATA minutes of use, the Local Exchange Company the minutes of use were reported to and revenues paid to the Local Exchange Companies, all data to be reported by service category on a monthly basis;

9. MCI shall report revenues associated with each service on a monthly basis;

10. MCI shall report the number of customers on a monthly basis;

11. MCI shall report percentage interstate usage on a quarterly basis to both the affected Local Exchange Company and the commission. Furthermore, each Local Exchange Company shall file quarterly data reporting each access service subscriber's currently declared percentage

interstate usage; and

12. that MCI meet with the staff of the commission to discuss the means for the accurate monitoring of the effects of competition; and it is

FURTHER ORDERED, that with the exception of requiring NET to extend its access tariff to apply to the services MCI offers nothing contained in this order shall be construed to allow MCI to operate outside of the conditions set out in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that this order is subject to modification concerning the above listed conditions as a result of the commission's monitoring.

By order of the New Hampshire Public Utilities Commission this twenty-first day of January, 1991.

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NH.PUC*01/21/91*[27068]*76 NH PUC 61*U.S. Sprint Communications Company of New Hampshire

[Go to End of 27068]

Re U.S. Sprint Communications Company of New Hampshire

DE 90-127
Order No. 20,042

76 NH PUC 61

New Hampshire Public Utilities Commission

January 21, 1991

ORDER granting a telecommunications carrier interim authority to offer custom net intrastate service on an intrastate basis, pending the completion of a generic investigation of competition in the intrastate telecommunications market.

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1. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Custom net intrastate service — Interim authorization. p. 61.

2. CERTIFICATES, § 123

[N.H.] Telecommunications — Interexchange carrier — Custom net intrastate service — Interim authorization. p. 61.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, on July 26, 1990, U.S. Sprint Communications Company of New

Hampshire (Sprint) petitioned the New Hampshire Public Utilities Commission (commission) for authority to offer Ultra Watts, Ultra 800, FONLINE and VPN sm; and

WHEREAS, each of these services is a custom net intrastate service; and

WHEREAS, the commission finds that interim authority for intrastate competition in the telecommunications industry is in the public good because it will allow the commission to analyze the effects of competition on the local

Page 61

exchange companies' revenues and the resultant effect on rates; and

WHEREAS, the commission has determined pursuant to the above finding that it would be in the public good to allow Sprint to offer Ultra Watts, Ultra 800, FONLINE and VPN sm services on an intrastate basis on an interim basis until the completion of consideration of the generic issue of whether there should be competition in the intrastate telecommunications market in Docket DE 90-002, the so called competition docket; it is hereby

ORDERED, that Sprint be, and hereby is, granted interim authority to offer Ultra Watts, Ultra 800, FONLINE and VPN sm subject to the following conditions:

1. that said services, as stated above, shall be offered only on an interim basis until completion of the so-called competition docket in Docket No. DE 90-002 at which time the authority granted herein may be revoked or continued on a different basis;

2. that Sprint shall notify each of its customers requesting any of these three services that the services are approved on an interim basis and said services may be required to be withdrawn at the completion of the so called competition docket or continued on the same or different basis;

3. that Sprint shall notify the commission of its rates by filing a schedule of such rates pursuant to RSA 378:1 within one day after offering service and shall subsequently file any change in rates to be charged the public within one day after offering service at a rate other than the rate on file with the commission;

4. that Sprint shall be subject to all statutes and administrative rules relative to quality and terms and conditions of service, disconnections, deposits and billing and specifically N.H. Admin. Rules, Puc Chapter;

5. that Sprint shall be subject to all reporting requirements contained in RSA 374:15-19;

6. that Sprint shall compensate the appropriate Local Exchange Company for originating and terminating access pursuant to NET Tariff N.H.P.U.C. 78, Page 5, Section 4, Switched Access Service Rate or its relevant equivalent contained in the tariffs' of the Independent Local Exchange Companies until a new access charge is approved by the commission;

7. Sprint shall report all intraLATA minutes of use to the affected Local Exchange Company. Additionally, Sprint shall report to the commission all intraLATA minutes of use, the Local Exchange Company the minutes of use were reported to and revenues paid to the Local Exchange Companies, all data to be reported by service category on a monthly basis;

8. Sprint shall report minutes of use by service category on a monthly basis;

9. Sprint shall report revenues associated with each service on a monthly basis;

10. Sprint shall report the number of customers on a monthly basis;

11. Sprint shall report percentage interstate usage on a quarterly basis to both the affected Local Exchange Company and the commission. Furthermore, each Local Exchange Company shall file quarterly data reporting each access service subscriber's currently declared percentage interstate usage; and

12. that Sprint meet with the staff of the commission to discuss the means for the accurate monitoring of the effects of competition; and it is

FURTHER ORDERED, that with the exception of requiring NET to extend its access tariff to apply to the services Sprint offers, nothing contained in this order shall be construed to allow Sprint to operate outside of the conditions set out in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that this order is subject to modification concerning the above listed conditions as a result of the commission's monitoring.

By order of the New Hampshire Public Utilities Commission this twenty-first day of January, 1991.

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NH.PUC*01/22/91*[27069]*76 NH PUC 63*Pennichuck Water Works, Inc.

[Go to End of 27069]

Re Pennichuck Water Works, Inc.

Additional petitioner: Bedford Water Corporation

DE 90-116
Order No. 20,043

76 NH PUC 63

New Hampshire Public Utilities Commission

January 22, 1991

ORDER authorizing Bedford Water Corporation (Bedford Water) to discontinue service, in light of the transfer, its franchise rights and assets to Pennichuck Water Works, Inc. (Pennichuck). Commission authorizes Pennichuck to provide service in its newly acquired territory under the rates charged by its predecessor in the territory, Bedford Water.

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1. CERTIFICATES, § 143

[N.H.] Franchise transfer — Water utilities — Fitness of transferee. p. 63.

2. SERVICE, § 277

[N.H.] Discontinuance and substitution — Water — Transfer of franchise. p. 63.

3. CONSOLIDATION, MERGER, AND SALE, § 1

[N.H.] Water utilities — Transfer of franchise. p. 63.

4. RATES, § 124

[N.H.] Reasonableness — Factors considered — Rates of predecessor — Water utility — Franchise transfer. p. 63.

APPEARANCES: John Pendleton, Esq. and Tenley P. Callaghan, Esq. on behalf of Pennichuck Water Works, Inc.; Daniel J. Kalinski on behalf of Bedford Water Corporation; James T. Rodier, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. *Procedural History*

On December 26, 1974, the commission issued a report and order granting Bedford Water Corporation (Bedford Water) a franchise to serve limited areas of the Town of Bedford and set rates to be charged in those areas. See *Re Bedford Water Corporation*, 58-60 N.H.P.U.C. 328 (1974).

On July 23, 1990, Bedford Water, filed a petition to transfer its franchise rights and assets to Pennichuck Water Works, Inc. (Pennichuck), a public water utility engaged in business in the City of Nashua and limited areas of the towns of Merrimack, Milford, Hollis, Derry and Plaistow, New Hampshire, and to discontinue business pursuant to RSA 374:30.

On July 10, 1990, Pennichuck filed a petition to engage in business in that limited area of the town of Bedford currently being served by Bedford Water pursuant to RSA 374:22 and RSA 374:26 and to set rates at the rates currently being charged by Bedford Water pursuant to RSA Chapter 378. *Id*. Both petitions were based on a purchase and sales agreement entered into between Bedford Water and Pennichuck whereby Pennichuck would acquire Bedford Water.

On October 3, 1990, the commission held a duly noticed hearing on the merits.

II. *Commission Analysis*

[1-4] Pursuant to RSA 374:30 the commission finds that it is in the public interest to allow Bedford Water to discontinue business as a public utility in light of the sale of Bedford Water's assets and franchise rights to Pennichuck.

Pursuant to RSA 374:22 and RSA 374:26 the commission finds that Pennichuck has the technical, managerial and financial expertise to operate this public water utility. See *Re*

Pennichuck Water Works, Inc., 73 N.H.P.U.C. 278, 281 (1988). The acquisition price is $35,000 which is approximately the currently listed book value of the company as found in the annual reports on file with the commission. See Exhibit #2. Pennichuck has requested that the

same rates set by the commission in 1974 and charged by Bedford Water to its customers since that date continue to be the rates under the new ownership. The commission finds the current rates to be just and reasonable and Pennichuck may continue to charge said rates. See *Re Bedford Water Corporation*, 58-60 N.H.P.U.C. 328, 329-330 (1974).

Our order will issue accordingly.

ORDER

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

ORDERED, that Bedford Water Corporation may discontinue service and Pennichuck Water Works, Inc. may engage in business in that franchise area of the Town of Bedford granted to Bedford Water Corporation and described in Docket D-E 6627, Report and Order No. 11,678 (See *Re Bedford Water Corporation*, 58-60 N.H.P.U.C. 328, 330 (1974); and it is

FURTHER ORDERED, that Pennichuck Water Works may continue to charge rates in accordance with the above referenced Report and Order.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1991.

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NH.PUC*01/23/91*[27070]*76 NH PUC 64*Contel of New Hampshire, Inc.

[Go to End of 27070]

Re Contel of New Hampshire, Inc.

DF 90-237
Order No. 20,046

76 NH PUC 64

New Hampshire Public Utilities Commission

January 23, 1991

ORDER authorizing a telephone public utility to issue and sell one or more promissory notes in the aggregate principal amount of $1.5 million at an interest rate of 9.75%. The borrowed funds would be used to reduce short-term indebtedness and for telephone plant construction.

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1. SECURITY ISSUES, § 44

[N.H.] Authorization — Promissory notes — Short-term debt retirement — Plant construction — Telephone public utility. p. 64.

2. SECURITY ISSUES, § 94

[N.H.] Kinds and proportions — Promissory notes — Interest rate — Telephone public utility. p. 64.

BY THE COMMISSION:

ORDER

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

[1, 2] WHEREAS, Contel, on December 26, 1990 filed an application for approval of the issuance and sale of its 9.75% Promissory Note(s) due February 28, 2010 in principal

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amount of $1,500,000; and

WHEREAS, Contel, proposes to issue and sell to Minnesota Mutual Life Insurance Co. (MIMLIC) at private sale for cash equal to the principal amount thereof, one or more promissory note(s) of Contel's in the aggregate principal amount of $1,500,000, which shall bear interest at the rate of 9.75% per annum, payable on August 31 and February 28 in each year, beginning August 31, 1991; and

WHEREAS, Contel's outstanding indebtedness for borrowed money evidenced by promissory notes and payable more than 12 months after the date thereof are as follows: GTE Automatic Electric Incorporated, unpaid principal amount as of September 30, 1990, $467,500; Unionmutual Stock Life Insurance Co. of America and to Union Mutual Life Insurance Company, unpaid principal amount as of September 30, 1990, $440,000; Unionmutual Stock Life Insurance Co. of America and to State Life Insurance Company, unpaid principal amount as of September 30, 1990, $560,000; Nationwide Life Insurance Company, unpaid principal amount as of September 30, 1990, $2,166,666, and further outstanding indebtedness as of December 21, 1990 evidenced by promissory notes on demand or not more than 12 months after the date thereof is $100,000; and

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

WHEREAS, Contel's purpose in issuing this $1.5 million note is to apply the proceeds of the issuance and sale to reduce the short-term indebtedness at the time of the issuance and sale of said note for borrowed money used for telephone plant construction, with any remaining proceeds to be used to fund new construction to meet the Applicant's service obligations; and

WHEREAS, Contel submitted testimony, financial data and copies of other various documents justifying the terms and amounts of the proposed financing as well as resolutions authorizing financing; and

WHEREAS, Contel requested a prompt hearing or expedited investigation pursuant to RSA 369:4 in light of it's need to comply with the time constraints of the Note Purchaser's commitments; and

WHEREAS, it appears that it is consistent with the public good to approve Contel's

application; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for hearing on the matter before this commission no later than February 18, 1991; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper of general circulation in the area in question no later than February 1, 1991, and documented in an affidavit to be made on a copy of this order and filed with this office on or before February 22, 1991; and it is

FURTHER ORDERED, NISI, that Contel of New Hampshire, Inc. is hereby authorized, pursuant to RSA 369:1 to issue and sell to Minnesota Mutual Life Insurance Co. (MIMLIC), the 9.75% Promissory Note(s), due February 28, 2010, the proceeds of which will be used to reduce the short-term indebtedness for borrowed money used for telephone plant construction, with any remaining proceeds to be used to fund new construction to meet the Applicant's service obligations; and it is

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

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

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

FURTHER ORDERED, that this Order shall be effective 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-third day of January, 1991.

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NH.PUC*01/24/91*[50869]*75 NH PUC 46*New England Telephone and Telegraph Company

[Go to End of 50869]

75 NH PUC 46

Re New England Telephone and Telegraph Company

DE 89-134
Order No. 19,679

New Hampshire Public Utilities Commission

January 24, 1991

ORDER authorizing a telephone local exchange carrier to place and maintain telephone submarine cable under and across public waters.

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1. CERTIFICATES, § 123 — Telephone — Crossing public waters — Submarine cable — Local exchange carrier.

[N.H.] A telephone local exchange carrier was authorized to place and maintain telephone submarine cable under and across public waters, provided that all construction meet the established minimum safety standards; it was found that such crossing was necessary for the LEC to meet reasonable service requirements. p. 46.

2. CERTIFICATES, § 42 — Crossing public property — License requirement — Telephone local exchange carrier.

[N.H.] The commission directed its staff to investigate the practices and policies of a telephone local exchange carrier relative to compliance with state statute RSA 371:17, which requires that utility crossings over public property must be licensed by the commission. p. 46.

By the COMMISSION:

ORDER

[1] WHEREAS, on July 27, 1989 the New England Telephone and Telegraph Company (NET), filed with this commission a petition seeking a license pursuant to RSA 371:17 to place and maintain telephone submarine plant under the Merrimack River between Merrimack and Litchfield, New Hampshire; and

WHEREAS, this plant will consist of a 48 fiber submarine cable as detailed on submitted Drawing No. 52-3, dated 11/12/88; and

WHEREAS, the crossing from existing man hole #1A5 on private property of Woodcomp Bldg. Systems Inc. on the west bank of the river in Merrimack, New Hampshire to existing manhole #1A6 on private property of Naticook Landing at Litchfield Association on the east bank of the river in Litchfield, New Hampshire, is designed to provide additional capacity for NET's Merrimack exchange; and

WHEREAS, copies of the easements for the placing of utility plant have been filed with this commission; 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; it is hereby

ORDERED, that NET be, and hereby is, granted license pursuant to RSA 371:17 *et seq.* to place, and maintain telephone submarine plant under the Merrimack River as depicted on Drawing No. 52-3 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

[2] FURTHERED ORDERED, that, in light of the fact that NET proceeded with construction of the submarine cable before this license was granted, the staff of the public utilities commission is directed to investigate the practices and policies of NET relative to compliance with RSA 371:17 and to report to the commission on the need for opening a docket to correct any deficiencies.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of January, 1990.

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NH.PUC*01/28/91*[27071]*76 NH PUC 66*Littleton Water and Light Department

[Go to End of 27071]

Re Littleton Water and Light Department

DR 90-122
Order No. 20,047

76 NH PUC 66

New Hampshire Public Utilities Commission

January 28, 1991

ORDER setting temporary rates for service provided by a municipal electric utility to its out-of-town customers.

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1. RATES, § 429

[N.H.] Municipal utility — Electric service — Out-of-town customers — Temporary rates. p. 66.

2. RATES, § 630

[N.H.] Temporary rates — Electric service — Municipal utility — Out-of-town customers. p. 66.

APPEARANCES: Littleton Water and Light Department by Lee Smith, Steven D. Griffin and James Thyng and Staff of the New Hampshire Public Utilities Commission by Audrey Zibelman, Esquire.

BY THE COMMISSION:

REPORT

On October 4, 1990 Littleton Water and Light Department, (LWLD) petitioned for a 36% rate increase to apply to all of its customers outside of the Town of Littleton. On the same date, Littleton requested temporary rates to take effect in the event the Commission suspended the permanent rate filling. On October 29, 1990, the Commission suspended the LWLD tariff and scheduled a pre-hearing conference for December 5, 1990, to address the temporary rate request and establish a procedural schedule for the remainder of this proceeding. At the pre-hearing conference, LWLD and the staff presented to the commission a proposed procedural schedule, which was approved by the Commission and confirmed by letter dated December 6, 1990, from Wynn E. Arnold, Executive Director and Secretary of the commission to the parties.

LWLD also requested that the permanent rate requested be approved as temporary rates. Staff argued that there was insufficient information on which to base temporary rates. The commission directed staff to work with the company in order to obtain the required information to establish temporary rates.

After the hearing, LWLD and the staff conferred on the information that was necessary to support the temporary rate request. On December 13, 1990, LWLD filed the required information and proposed that temporary rates for their out of town customers be as follows:

Customer Charge $5.00/month or billing cycle
Energy and Demand Charge $.05896 per KWH.

These revised rates reflect a 19.6% increase over those presently in effect. These Charges were based on a test year of calendar year 1988 adjusted to reflect purchased power costs as provided for in the New England Power W-11(a) rate filing at FERC. The filing was revised to show a return on rate base of 7.5% rather than the 8.0% used in the original filing.

COMMISSION ANALYSIS

[1, 2] We have reviewed the filing of December 13, 1990, and find it acceptable for the purpose of setting Temporary Rates. We also note that the test year is calendar year

1988, and we will expect that for the purpose of permanent rate request, LWLD will update its filing to a test year which is closer in time to the period in which the rates will be in effect.

Our order will issue accordingly.

ORDER

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

ORDERED, that Littleton Water and Light Department Seventh Revision Page 7a to its Tariff N.H.P.U.C. NO 1-Electric be, and hereby is, approved as Temporary Rates effective for all service rendered as of the date of this report and order; and it is

FURTHER ORDERED, that LWLD refile said page bearing the appropriate annotation

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of January, 1991.

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NH.PUC*01/28/91*[27072]*76 NH PUC 67*Public Service Company of New Hampshire

[Go to End of 27072]

Re Public Service Company of New Hampshire

DF 90-207
Order No. 20,048

76 NH PUC 67

New Hampshire Public Utilities Commission

January 28, 1991

ORDER granting supplemental reorganization financing authority to an electric utility. The financing proceeds would be used to retire securities and pay debts owed to creditors so that the utility may emerge from bankruptcy pursuant to the confirmed plan of reorganization.

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1. BANKRUPTCY

[N.H.] Reorganization plan — Financing authority — Electric utility. p. 69.

2. SECURITY ISSUES, § 111

[N.H.] Financing methods — Flexibility — Bankruptcy reorganization — Electric utility. p. 69.

3. SECURITY ISSUES, § 44

[N.H.] Authorization — Reorganization financing — Public utility — Electric utility. p. 69.

APPEARANCES: Gerald M. Eaton, Esquire, Robert Knickerbocker, Esquire and William F. J. Ardinger, Esquire for Public Service Company of New Hampshire; Harold Judd, Esquire for the Attorney General of the State of New Hampshire; Michael Holmes, Esquire for the Consumer Advocate; Audrey Zibelman, Esquire for the Commission staff.

BY THE COMMISSION:

REPORT

On November 20, 1990, Public Service Company of New Hampshire ("PSNH" or "Company") filed its Petition for Supplementary Financing Authority to permit the substitution of other debt financings for Pollution Control Revenue Bonds (PCRBs) at the Effective Date of the joint plan of reorganization for PSNH and the issuance of PCRBs after the Effective Date to

replace a portion of the debt issued at the Effective Date. The alternate debt financing plan would consist of additional first mortgage bond financing or additional term bank borrowings, or a combination of the two. The plan also contemplates the possibility of leaving outstanding some of the outstanding PCRBs which were to be refunded with tax exempt pollution control refunding revenue bonds. The exact nature of the contingency financing would be determined on the basis of market conditions near the Effective Date.

In its petition, PSNH states that it is not requesting an increase in the 11.50 percent per annum limit set forth in paragraph 15(e) of the financing approvals in the initial embedded cost to PSNH of the securities issuances and

Page 67

borrowings authorized in docket DR 89-244. The company is not requesting an increase in the total amount of indebtedness that it was authorized to incur under the reorganization plant. PSNH further states that the requested approvals would not affect the permitted capitalization ratios of PSNH after giving effect to the financings and would merely authorize issuance of alternate forms of securities. The proceeds of the alternate debt financings will be used to retire securities and pay debts owed to R2 creditors to allow PSNH to emerge from bankruptcy pursuant to the confirmed plan of reorganization.

PSNH seeks the following findings and authorizations:

(A) Notwithstanding the $400 million limitation expressed in paragraph 15(i) of the Financing Approvals, the issuance and sale of up to $825 million of first mortgage bonds by PSNH at the Effective Date, otherwise substantially as described and subject to the conditions specified in such paragraph 15(i) and subject to the further conditions expressed in paragraph (C) below, is consistent with the public good and is hereby authorized.

(B) Notwithstanding the $487 million limitation expressed in paragraph 15(m) of the Financing Approvals, the borrowing by PSNH of up to $969.5 million from a group of banks under a term loan facility at the Effective Date, with a maturity of up to seven years and otherwise substantially as described and subject to the conditions specified in such paragraph 15(m) and subject to the further conditions expressed in paragraph (C) below, is consistent with the public good and is hereby authorized.

(C) The sum of (i) the aggregate principal amount of first mortgage bonds and pollution control bonds which may be issued at the Effective Date pursuant to paragraphs 15(i) through 15(l) of the Financing Approvals and paragraph (A) above (exclusive of the principal amount of first mortgage bonds required to provide security for the Letter of Credit and Reimbursement Agreement that may be issued in support of the taxable pollution control revenue bonds), and (ii) the amount of the borrowing under the term loan facility which may be made at the Effective Date pursuant to paragraph 15(m) of the Financing Approvals and paragraph (B) above, shall not exceed $1,312 million.

(D) Notwithstanding the requirement in paragraphs 15(j), 15(k) and 15(l) of the Financing Approvals that the PCRBs be issued on behalf of PSNH at the Effective Date, consummation after the Effective Date of some or all of the PCRB financing, including

the issuance by PSNH of first mortgage bonds to a trustee for the benefit of the holders of such revenue bonds, substantially as described and subject to the conditions specified in the applicable ones of such paragraphs 15(j), 15(k) and 15(l), is consistent with the public good and is hereby authorized, on condition that the proceeds of such financing, together with any other available funds, are used to retire substantially concurrently an equal principal amount of first mortgage bonds issued, or term bank borrowings incurred, on the Effective Date.

The company witness, Eugene G. Vertefeuille, testified that the purpose of the filing was to give PSNH additional financing flexibility within the long term debt portion of the reorganization financing. The application was initially prompted by concern over whether Industrial Development Authority (IDA) financing would be available. PSNH had previously applied for and had approved $497,290,000 of new PCRBs. On October 15, 1990, the New Hampshire Superior Court issued an order in *Cushing v. Gregg*, Docket No. 90-E-448, finding certain defects in the procedure used by the IDA to reach its recommendation. PSNH reapplied for authority to issue new PCRBs and after the IDA proceeded in accordance with the Superior Court order and notification that the Superior Court so found. However, the Campaign for Ratepayers' Rights, which initiated the Superior Court action, has asked for reconsideration and the possibility of an appeal or a stay still exists. Therefore, PSNH is concerned that the use of IDA financing at the time of reorganization could be prevented and has asked for

approval of the requested financing authority in the unlikely event that it would be unable to use PCRB financing at the time that PSNH is reorganized.

The initial request of PSNH was that it be allowed the flexibility of issuing up to $825 million of first mortgage bonds instead of a combination of $825 million for first mortgage bonds and pollution control revenue bonds as approved in DR 89-244, Report and Order No. 19,889 at 185, paragraph 15(f). Under the originally approved plan, the issuance and sale of up to $400 million of first mortgage bonds was found to be consistent with the public good and, subject to the $825 million limitation, PSNH was authorized to issue up to $352.5 million of tax-exempt PCRBs and $300 million of taxable PCRBs.

In supplemental direct testimony, company witness Vertefeuille requested that the commission revise the approval further by authorizing PSNH to issue an additional $6 million of tax exempt PCRBs and an additional $29 million of taxable PCRBs. The additional authorization of $35 million results from a higher allocation by the IDA as a result of a new application in response to the Superior Court modification of its initial decision after hearings held by the IDA. The supplemental filing requests that the company be allowed to issue additional PCRBs and to decrease the amount of borrowing under the term credit facility with banks. The originally approved plan authorized $487 of term notes which, when included with the first mortgage bonds and PCRBs, would amount to $1,312 million of debt financing. In place of the original request for authorization to issue up to $825 million for first mortgage bonds and pollution control revenue bonds, the company requests the commission to impose a new alternate limit on the overall debt financing limit requested in the petition that would be substituted for the previously applicable $825 million limit on first mortgage bonds and PCRB financing. The

aggregate amount of debt financing would remain the same.

It was further testified that the largest portion of the additional PCRB financing would consist of taxable PCRB's. The taxable PCRB financing would be structured with variable rates that will be reset periodically to give the company the flexibility to convert the financing over time to tax exempt issues. Mr. Vertefeuille claims that the taxable PCRB financing is like the term loan facility because PSNH will be incurring variable interest rates rather than the fixed rates which first mortgage bonds would bear. It is anticipated that the initial interest rate on the term bank facility will be lower than the rate for the proposed first mortgage bond issues. The bulk of the additional PCRB financing (the taxable portion) is comparable to the proposed term bank facility borrowings; therefore, the balance between fixed and variable rates financings remains in balance. This approach has the additional benefit of maintaining the amount of borrowing capacity that will be required from commercial banks for the overall financing. Taxable PCRB's will be supported by bank letters of credit. Therefore, the increase in that component of the financing would require additional capacity from banks unless it is balanced by a reduction in the amount of borrowing under the term facility. Finally, the witness stated that commercial bank lending capacity is a possible problem at the present time due to the state of the economy.

The company witness testified that both the originally filed contingency plan and the current plan would result in financing costs below the levels that were presented to the commission in May 1990 in Docket No. DR 89-244. Under the contingency plan the expected embedded cost of debt and preferred stock is projected to be 10.18%, as compared to a rate of 10.43% proposed in exhibit 10 in Docket No. DR 89-244, including issuance expenses. The commission had set a ceiling of 11.50 percent per annum for the embedded cost of debt and preferred stock. The witness cited the fact that there had been positive developments in interest rates since May 1990 when the commission approved the plan. Under the current plan, which assumes that the company is able to do IDA financing, the combined cost of debt and preferred stock would be 9.66%.

Commission Analysis

[1-3] The company's original petition had

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two alternatives. One was to ask for a revision of the first mortgage bond option from a maximum of $400 million to a maximum of $825 million in order to have the flexibility to raise sufficient capital in the event that IDA financing was not available. The second request was to allow further flexibility by providing that the term loan facility be increased from $487 million to $969.5 million in order to replace the IDA financings with a second flexibility option. In testimony filed after the original petition, the company withdrew its request to raise the term loan facility authorization. The company decided to limit itself to the first mortgage bond alternative. Therefore, we will address the first mortgage bond option only.

The contingency plan that has been proposed allows the company to issue $1,312 million of debt with an upper limit of $825 million of first mortgage bonds and $487 million of term loans in order to implement the debt portion of the financing of the Rate Agreement for the

reorganization of Public Service of New Hampshire. This change from the financing approved in the plan in Docket 89-244 results from the uncertainty of being able to issue pollution control revenue bonds through the New Hampshire Industrial Development Authority (IDA). The PCRB authorizations have been approved by the IDA and the Governor and Council and it has been determined that the procedures followed satisfied the applicable requirements of law by the New Hampshire Superior Court, Merrimack County. The Court has been asked to reconsider his opinion. Therefore, PSNH needs the flexibility to issue debt through sources other than the IDA. In the event that the IDA bonds are not used, the company has projected an expected embedded cost of 10.06 percent for debt to be issued as compared to a rate of 10.25 percent which was estimated in the rate plan. The overall cost of debt and preferred stock would remain well below the 11.50 percent per annum level which was approved in Docket No. DR 89-244. If PSNH is able to issue PCRB bonds, as it currently plans, the overall cost of debt would be lowered to 9.48% and the cost of debt and preferred stock would be at a rate of 9.66%. The overall cost of debt and preferred stock is therefore much more favorable with a mix that includes industrial development bonds. The reduced debt cost would enable PSNH greater opportunity to meet the earnings levels which were projected in the rate plan, and is beneficial to ratepayers because the revenue requirement would be less over the time than the debt revenues outstanding. PSNH would also have the means to lower rates during the pendency of the rate plan if it earns above the Return on Equity (ROE) ceiling which was approved in the plan.

The following is an analysis of the rates used to develop the total cost of debt and preferred stock for Docket DR 89-244, the contingency plan and the current plan.

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

	DR89-244		*Cont. Plan*		*Cur. Plan*	
	Amt.	*Rate*	*Amt.*	*Rate*	*Amt.*	*Rate*
First Mortgage Bonds	$342.5	10.75%	$825.0	9.75%	$342.5	9.75%
Tax Exempt	$282.5	8.50%			$288.5	8.50%
Taxable IDB	$200.0	9.75%			$229.0	9.10%
Term Notes	$487.0	9.75%	$487.0	9.00%	$452.0	9.00%
Cont. Notes	$205.0	15.85%	$205.0	15.35%	$205.0	15.35%
Pref. Stock	$125.0	11.40%	$125.0	10.65%	$125.0	10.65%
Total		11.12%		10.84%		10.38%

We find the proposed revisions in the financing to be consistent with the public good and we will therefore grant the petition. Although the requested flexibility has been approved, PSNH is encouraged to utilize the financings that have been proposed in the current plan to the extent possible. Final approval of the terms and conditions of the financing by the Commission is required. Therefore, we will be reviewing the actual financing in accordance

with the provisions of Report and Order No. 19,889 in Docket No. DR 89-244.

PSNH's request to set a new alternative limit on overall debt financing (first mortgage bonds, PCRB's and term credit facilities borrowings) of $1.312 billion is approved. The new limit will be substituted for the previously approved $825 million limit on first mortgage and PCRB

financing. This authorization will provide the flexibility to issue the new authorized level of pollution control revenue bonds (tax-exempt and taxable) in the event that all legal impediments have been removed. The limit on first mortgage bonds will be increased from $400 million to $825 million in order to provide the flexibility to issue additional first mortgage bonds if PCRB's are not available.

Our order will issue accordingly.

ORDER

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

ORDERED, that the supplemental reorganization financing authority requested by Public Service Company of New Hampshire pursuant to RSA Chapter 369 and RSA 362-C:3 and Report and Order No. 19,889 in DR 89-244 is approved as follows:

(A) Notwithstanding the $400 million limitation expressed in paragraph 15(i) of the Financing Approvals, the issuance and sale of up to $825 million of first mortgage bonds by PSNH at the Effective Date, otherwise substantially as described and subject to the conditions specified in such paragraph 15(i) and subject to the further conditions expressed in paragraph (B) below, is consistent with the public good and is hereby authorized.

(B) The sum of (i) the aggregate principal amount of first mortgage bonds and pollution control bonds which may be issued at the Effective Date pursuant to paragraphs 15(i) through 15(l) of the Financing Approvals and paragraph (A) above (exclusive of the principal amounts of first mortgage bonds required to provide security for the Letter of Credit and Reimbursement Agreement that may be issued in support of the taxable pollution control revenue bonds), and (ii) the amount of the borrowing under the term loan facility which may be made at the Effective Date pursuant to paragraph 15(m) of the Financing Approvals, shall not exceed $1,312 million.

(C) Notwithstanding the requirement in paragraphs 15(j), 15(k) and 15(l) of the Financing Approvals that the PCRBs be issued on behalf the PSNH at the Effective Date of some or all of the PCRB financing, including the issuance by PSNH of first mortgage bonds to a trustee for the benefit of the holders of such revenue bonds, substantially as described and subject to the conditions specified in the applicable ones of such paragraphs 15(j), and 15(k) and 15(l), is consistent with the public good and is hereby authorized, on condition that the proceeds of such financing, together with any other available funds, are used to retire substantially concurrently an equal principal amount of first mortgage bonds issued, or term bank borrowing incurred, on the Effective Date; and it is

FURTHER ORDERED, that the securities to be issued and borrowings to be made will be consistent with the public good.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of January, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990.

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NH.PUC*01/28/91*[27073]*76 NH PUC 72*New Hampshire Electric Cooperative, Inc.

[Go to End of 27073]

Re New Hampshire Electric Cooperative, Inc.

DR 90-227
Order No. 20,049

76 NH PUC 72

New Hampshire Public Utilities Commission

January 28, 1991

ORDER granting a petition by an electric cooperative for emergency rate relief, contingent upon the cooperative achieving a comprehensive debt restructuring settlement with United States Rural Electrification Administration. Commission finds that the emergency relief has a reasonable probability of enabling the cooperative to avoid bankruptcy and resolve its underlying debt crisis in a manner favorable to its ratepayers.

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1. RATES, § 631

[N.H.] Emergency rates — Grounds for relief — Three-part test — Statutory considerations — Severity of crisis — Effectiveness of relief — Public good. p. 74.

2. RATES, § 631

[N.H.] Emergency rates — Electric cooperative — Creditor demands — United States Rural Electrification Administration — Imposition of personal liability on board members and directors — Threatened bankruptcy. p. 74.

3. RATES, § 631

[N.H.] Emergency rates — Factors considered — Foreseeability — Management conduct — Public good. p. 74.

4. RATES, § 630

[N.H.] Emergency rates — Conditions — Debt restructuring — Effective date. p. 74.

APPEARANCES: Merrill & Broderick by Mark Dean, Esq. for New Hampshire Electric Cooperative, Inc; Gerald Eaton, Esq. for Public Service Company of New Hampshire, Rath, Young, Pignatelli & Oyer by William Ardinger, Esq. and Day, Berry & Howard by Robert

Knickerbocker, Esq. for Northeast Utilities Service Co.; Robert Cushing, Jr. for the Campaign for Ratepayers' Rights; McLane, Graf, Raulerson and Middleton by Richard Samuels, Esq. for New Hampshire Business and Industry Association; Harold Judd, Esq. and Diane German, Esq. Attorney General's Office, for the State of New Hampshire; Office of the Consumer Advocate by Michael Holmes, Esq., Joseph Rogers, Esq. and Kenneth Traum; Audrey Zibelman, Esq. for New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On December 21, 1990, the New Hampshire Electric Cooperative, Inc., (NHEC or the Cooperative) petitioned the Commission for emergency rate relief pursuant to RSA 378:9. The NHEC requested a rate increase of approximately 27% of all retail rates[1(10)] . The Cooperative alleged that the emergency is the demand of the United States Rural Electrification Administration (REA) that the Cooperative file for the requested increase by December 21, 1990 and receive affirmative relief from the commission by January 21, 1991, as a condition to the REA's continuing waiver of its right to impose personal liability on its board members and directors for the company's outstanding debt to the federal government.

On December 31, 1990, the Commission issued an Order of Notice scheduling a prehearing conference for January 9, 1991 *inter alia* to address matters of intervention and take evidence on the existence of the Cooperative's emergency. At the prehearing conference the commission granted the timely motions to intervene of the State of New Hampshire (State), the

Business and Industry Association of New Hampshire (BIA), Public Service Company of New Hampshire (PSNH), and Northeast Utilities (NU). The commission also granted the timely motion to intervene filed by the Campaign for Ratepayer's Rights (CRR) over the objection of the BIA. The commission acknowledged the BIA's concern that the CRR's representative, Robert Cushing, is not a licensed attorney, but determined that it did not have sufficient information before it to conclude *sua sponte* that Mr. Cushing is commonly practicing law before the commission. *See*, RSA 311:7. The commission further noted that by statute and rule it has the specific right to reconsider its decisions on intervention if necessary during the pendency of the proceeding.

Testimony in support of the Cooperative's filing was supplied by its manager, Mr. Jon Bellgowan. The commission also provided the parties an opportunity to file written comments on the Cooperative's request by January 17, 1991.

II. POSITIONS OF THE PARTIES

A. *The NHEC*

The NHEC contends that RSA 378:9 vests the commission with broad discretionary authority to respond to utilities' requests for emergency relief. Citing *Petition of PSNH*, 130 N.H. 265, 283 (1988) and *Petition of PSNH*, 97 N.H. 549 (1951), the Cooperative argues that an

emergency is defined by the current situation confronting the utility rather than the precipitating event. Thus, an emergency may exist under the statute even if the precipitating event is not "unforeseen, or sudden, or unexpected." *Id.,* 97 N.H. at 550-1.

According to the NHEC, the relevant undisputed facts established at the hearing satisfy the supreme court standard of an emergency. The Cooperative first points to the fact it has been in default of its federal financing obligations since December 1987. Since that time, at the Cooperative's behest the federal government has issued monthly waivers of its right under 31 U.S.C. Sec. 3713 (b) to assert its claims against the management and directors of the Cooperative.

2(11) Mr. Bellgowan testified that the NHEC's outstanding accumulated interest debt since default is approximately $44-45 million. He explained that the major portion of the owed interest relates to an outstanding Seabrook debt of approximately $187 million. However, a portion of the interest debt is for financing related to the cooperative's distribution system. Mr. Bellgowan claimed that because of their potential personal liability exposure the Board of Directors ordered him to file for protection under Chapter 11 of the United States Bankruptcy Code if the federal government fails to extend its Sec. 3713 waiver.

Mr. Bellgowan further testified that in his opinion a letter dated November 30, 1990, from the REA to the Cooperative indicates that the REA will not extend the Sec. 3713 waiver beyond January 21, 1991, unless the following three conditions are met:

1. Before December 21, 1990, the NHEC filed with the commission a request for an 8% rate increase above rate levels that existed on October 31, 1990;

2. The NHEC receives commission approval for the requested rate increase by January 21, 1991;

3. The NHEC and the REA are in agreement on the essential elements of a debt restructuring before January 21, 1991.

On the basis of this correspondence the NHEC contends that it is in a crisis precipitated by the REA's threat that the Sec. 3713 waiver will be revoked and the cooperative will be compelled to seek Chapter 11 protection on or about January 21, unless the rate increase demanded by the REA is granted by the commission before that date.

B. *The State*

The State maintains that the Cooperative failed to establish that it qualifies for emergency relief under RSA 378:9. The State argues that pursuant to *Petition of PSNH, supra,* the commission must engage in a three part inquiry in determining whether emergency relief is

warranted. The first issue is whether there is an emergency as a matter of fact. The second issue is whether the emergency is of sufficient severity to warrant relief. If the commission concludes that there is a sufficiently severe situation to warrant emergency relief, the State contends that there must be a final determination that the requested relief will remedy the

emergency.

According to the State, the Cooperative's concern relative to the potential liability of its directors and board members under 31 U.S.C. Sec. 3713 is an insufficient basis for emergency rate relief. The State contends that Mr. Bellgowan's testimony that the requested rate increase is unrelated to the financial needs of the company and, further, will not necessarily be used to meet debt service requirements to the REA requires a commission finding that the requested relief will not remedy the emergency.

The State also expressed concern that a refundable temporary rate to protect ratepayers' funds in the event the Cooperative seeks bankruptcy protection may be ineffective. The State contended that bankruptcy law is sufficiently unclear on this issue to warrant, at a minimum, that the Cooperative acquire a third party surety bond. *See*, RSA 378:30.

C. *The OCA*

The OCA argued that the Cooperative did not establish a *prima facie* case of an emergency. The OCA asserted that the NHEC's concerns that the REA may take legal action against the its management coupled with the uncertainty that the REA will accept the requested relief as a satisfactory resolution of the cooperative's financial difficulties are insufficient grounds upon which the commission may fashion emergency relief. The OCA further urged the commission to extend the letter of credit established in *Re NHEC*, 73 N.H.P.U.C. 352 (1988), for sums in excess of $900 to all customer deposits.

D. *The CRR*

The CRR argued that the Cooperative can be viewed as experiencing an emergency within the meaning of RSA 378:9. However, according to the CRR, the NHEC's crisis was precipitated by PSNH's refusal to honor the Seabrook sellback agreement with the Cooperative. Accordingly, the CRR recommended that the commission issue an order requiring PSNH to honor the sellback agreement by making payment on the amounts the NHEC claims is currently owed to it from PSNH. The CRR further recommended that the commission direct the NHEC to use PSNH's payments to commence reducing its REA debt. Finally, the CRR recommended that the commission use the opportunity of this proceeding to request the New Hampshire Supreme Court to remand for further consideration its decision approving the rate plan for PSNH's reorganization. *See*, *Re NU/PSNH*, DR 89-244, Report and Order No. 19,889 (July 20, 1990).

E. *The BIA*

The BIA argued that under RSA 378:9 the commission has the authority temporarily to alter rates if it finds an emergency exists. The BIA maintained that the statute grants the discretion to fix emergency rates without regard to conventional ratemaking principles. The BIA contended that under the circumstances of this case emergency relief is warranted as a measure to avert a voluntary bankruptcy by the NHEC. Bankruptcy by the NHEC is of great concern to BIA members because of its implications of rate uncertainty, quality and reliability of service and the competitive position of customers' businesses. Accordingly, the BIA recommended that the commission grant the requested relief subject to the requirements that revenues generated from the increase be escrowed, that the REA extends its Sec. 3713 waiver for at least sixty days, and that the escrowed sums be returned to ratepayers if the NHEC is unable to reach settlement of its debt restructuring, sellback agreement and power supply issues or either voluntarily seeks or is

placed in bankruptcy while the emergency rates are in effect.

II. COMMISSION ANALYSIS

[1-4] The three part test identified by the

State is the appropriate analytical framework. The initial issue before the commission is whether an emergency exists within the meaning of RSA 378:9. The statute reads as follows:

> Emergency. Whenever the commission shall be of the opinion that an emergency exists, it *may* authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto.

(Emphasis supplied). In *Petition of PSNH*, 97 N.H. 549 (1951), the Court observed that the term emergency is intended to be interpreted in accordance with the common understanding that it is synonymous with "crisis". *Id*. at 550. The court further explained that because the components of an emergency cannot be precisely determined, the obvious legislative intent was to vest in the commission as a fact finding body wide discretion to determine whether emergency relief is warranted. Thus, the task before the commission is to "... inquire whether reasonable persons may find the affairs of this company are at such a crisis that immediate and substantial disaster threatens unless prompt relief is given." *Id.* at 550-51; *see also, Petition of Public Service Co. of New Hampshire*, 130 N.H. 265 (1988); *New England Tel. & Tel. Co. v State*, 95 N.H. 58 (1949).

We conclude that the record supports a finding that the threatened action of the REA precipitated an emergency for the Cooperative. The principal evidence of an emergency is the testimony of Mr. Bellgowan that he believes correspondence the Cooperative received from the REA in November and December 1990 demonstrates that the REA will not extend the so-called Sec. 3713 waiver beyond January 21, 1991, unless the commission grants the requested relief. According to Mr. Bellgowan, the Cooperative's Board of Directors already have determined that the personal exposure of management and board members to liability for the NHEC's debt to the federal government is unacceptable. Mr. Bellgowan testified that if the REA undertakes the threatened conduct, the cooperative will immediately seek protection under Chapter 11 of the United States Bankruptcy Code.

The next inquiry is whether the emergency is sufficiently severe to warrant relief. On the basis of the record, we find that the emergency presents sufficient risks to customers to warrant relief. Mr. Bellgowan testified that the voluntary bankruptcy of the Cooperative at this time would be particularly unfortunate as it appears that a comprehensive settlement is imminent and will occur no later then February 6, 1991. Our experience with the bankruptcy of PSNH gives us hope that a bankruptcy by the Cooperative may ultimately be resolved in a manner that is consistent with the public good. *See, Re NU/PSNH*, DR 89-244, Report and Order No. 19,889 (July 20, 1990). At the same time, we agree with the sentiments of the BIA that for the Cooperative's ratepayers the uncertainty over such matters as the level of future rates and service quality coupled with potential litigation as to the ratemaking authority of the federal government,[3(12)] are matters of grave concern. Balancing these concerns with the Cooperative's testimony that a comprehensive settlement is imminent leads us to conclude that the REA's threat

of refusal to extend the Sec. 3713 waiver before an imminent settlement can be reached is a severe crisis for the company.[4](13)

The third inquiry is a determination of whether it is appropriate to afford emergency relief under the circumstances. This involves an examination of whether a remedy will address the emergency and, if so, whether such relief is otherwise consistent with the public good. Thus, our conclusion that the NHEC's current situation can be characterized as a severe emergency does not mean that it is necessarily entitled to the requested relief. The use of the word "may" in RSA 378:9 means that the fashioning of a remedy, if any, to address an emergency is within the discretion of the commission. *Town of Nottingham v. Harvey*, 120 N.H. 889, 895 (1980) ("[t]he general rule of statutory construction, subject to exception, is that the word `may' makes enforcement of a statute permissive and that the word `shall' requires mandatory enforcement"). In determining whether a particular crisis warrants

emergency relief, the commission will carefully examine all of the circumstances and consider *inter alia* the cause of the crisis and whether it is possible to tailor relief in a manner that is both effective and consistent with the public good.

We disagree, therefore, with the Cooperative's assertion that the *Petition of PSNH, supra* holding makes consideration of the cause of an emergency irrelevant to a determination of whether emergency relief is warranted. In that case, the issue the Court was addressing was the meaning of the term "emergency" and, in particular, whether a company is entitled to emergency relief if the crisis was foreseeable. The court responded in the negative and observed "[W]e believe the *urgency of the petitioner's needs* and not the time nor manner of their arrival is decisive". *Id.*, 97 N.H. at 551 (emphasis in the original).

The issue of foreseeability is clearly distinct from the question of whether the commission may examine the cause of the emergency for the purpose of exercising its discretion to grant appropriate relief. For example, in those circumstances where it appears that the emergency was precipitated by the malfeasance or otherwise opprobrious conduct of the utility's management, it is clearly within the discretionary authority of the commission to deny emergency relief. In such a situation the commission is in essence determining that the problem lies with the utility's management and an emergency rate increase will not resolve that problem.

The facts in this record do not support a finding that the Cooperative management was responsible for putting itself "in harm's way" with respect to the REA demand. The testimony at the hearing was that the threats of the REA are the sole cause of the Cooperative's request.[5](14) Thus, the only remaining issue is whether the commission can fashion relief that is both effective and consistent with the public good.

As we explained above, our finding that emergency relief is warranted is largely predicated on the Cooperative's assertion that a comprehensive settlement is imminent. In the absence of this claim by Mr. Bellgowan, the commission would have been compelled to deny the requested relief because the record would not support a finding that the requested relief has a reasonable probability of resolving the underlying crisis, *i.e.*, that the Cooperative's financial situation can be favorably restructured absent bankruptcy. Thus, the relief which we are granting is

specifically framed to remedy the existing emergency and at the same time protect the interests of ratepayers.[6(15)] The precise relief and accompanying conditions are as follows:

1. The level of requested relief will be as demanded by the REA[7(16)] ; however, the effective date of the rate increase will be February 6, 1991, for service rendered on or after that date;

2. The rate increase will appear as a surcharge on all customers' bills.

3. The surcharge will be accompanied by an explanation attributing it to the REA's demands. The precise words of the explanation will be determined in consultation with the commission's staff.

4. The rate increase is subject to the parties' reaching a comprehensive settlement before the effective date of the rate increase.

5. The commission's General Counsel is appointed to participate as an observer at all settlement negotiations and may inquire of all parties regarding their positions.

6. The parties will report to the Commission on or before February 6, 1991 on whether a settlement has been achieved. If no such settlement is achieved this order is void and the emergency rate increase cannot become effective.

7. The rate increase is temporary and is subject to recoupment and refund. In addition, upon oral or written notification by the REA that it intends to refuse to extend the waiver of personal liability of the Cooperative's management under 31 U.S.C. Sec. 3713(b), this Order is revoked and any collected increase must be refunded;

8. The Cooperative must post a surety bond pursuant to RSA 378:30 or propose an alternative mechanism to secure ratepayers' rights to a refund before the effective date of the increase.

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The above conditions will ensure that the relief afforded is narrowly constrained to address the emergency. As stated above, the imminence of a comprehensive settlement is a determinative factor in our finding that relief will be effective in resolving the emergency. Thus, we have provided that the emergency rate increase cannot be effective unless such a settlement is actually achieved. This confines the remedy to our intent to provide a bridge over the chasm of bankruptcy between the current impasse and a comprehensive settlement. The remaining conditions are likewise tailored to the rationale. The temporary rate and bonding conditions will protect ratepayers if the relief fails to achieve the objective of a fair comprehensive settlement. The conditions relative to what is depicted on customer bills will allow us to calculate accurately refunds, if any, that may be due to customers and informs customers about the amount and cause of the emergency increase. Finally, the condition relative to the observer status of the commission's General Counsel will provide us with independent process information (as distinguished from information about the substantive content of the discussions) from an objective non-participant.

8(17) We also intend to be responsive to the PSNH request (which had previously been made by other parties in the companion case of *Re NHEC*, DR 90-078) that a settlement judge be appointed. While we are not compelling such a role, the presence of an independent observer will provide the parties with a mediator resource should they deem the utilization of such assistance appropriate.

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 petition for emergency rate relief pursuant to RSA 378:9 is granted subject to the terms and conditions set forth in the attached report.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of January, 1991.

FOOTNOTES

[1]In *Re NHEC*, DR 90-169, Report and Order No. 19,987 (November 19, 1990), the commission reduced the Cooperative's fuel adjustment rate by approximately 15% to reflect the company's actual projected wholesale fuel costs. The commission refused the company's request to retain the previous year's fuel rate because it found the company's statements relative to possibility of bankruptcy represented a risk that any overcollection in fuel costs may not be refunded. The commission determined that the risk to ratepayers of not being able to recover overcollected fuel costs far outweighed any benefit that they may receive from rate continuity. Report at 8.

The cooperative's current petition requests that we increase the level of rates to their pre-November levels plus an additional 8%. In order to raise current rates to this level, base rates must be increased by approximately 27%.

[2]31 U.S.C. Sec. 3713 provides as follows:

> (a)(1) A claim of the United States Government shall be paid first when — (A) a person indebted to the Government is insolvent and — (i) the debtor without enough property to pay all debts makes a voluntary assignment of property; (ii) property of the debtor, if absent, is attached; or (iii) an act of bankruptcy is committed; or (B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor. (2) This subsection does not apply to a case under title II.
>
> (b) A representative of a person or an estate (except a trustee acting under title II) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

[3]*See*, *e.g.*, 55 Fed. Reg. 38,649 (September 19, 1990) (final rule of the REA pertaining to federal preemption in ratemaking in connection with REA borrowers in bankruptcy) (to be codified at 7 CFR secs. 1717.350 *et seq*.); *but see*, *e.g.*, *Wabash Valley Power Association, Inc.*

v. REA, 903 F.2d 445 (7th Cir. 1990).

[4]We realize that our finding that the REA intends to carry out its threat to take action that will lead the Cooperative to bankruptcy is made without benefit of an appearance by the REA. In view of the REA's obvious interest in the Cooperative's filing, it is unfortunate that the agency chose to absent itself from our hearing. We hope that in the future the REA will act as a full participant in a process in which it

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has such a substantial interest.

[5]Attached to the Attorney General's Comments on the behalf of the State was an October 11, 1990, letter from Mr. Bellgowan to Mr. Gary Byrne at the U.S. Department of Agriculture. The Cooperative objected to our consideration of the letter because *inter alia* it was not a part of the record. We sustain the Cooperative's objection only to the extent that it seeks to have us disregard material which is *de hors* the record in the instant order. We do this partially because the January 21, 1991 emergency "deadline" would not allow us sufficient time to permit all parties to address the letter and the proper inferences to be drawn therefrom. We note, however, that on its face the letter raises serious concerns over the possible complicity of the NHEC in the REA's actions. We expect that these concerns will be addressed in future phases of these or related proceedings.

[6]During the hearing Mr. Bellgowan testified that revenues collected as a result of the rate increase are not specifically earmarked to pay off the NHEC's existing federal debt. Mr, Bellgowan explained that the Cooperative will resume payment on the defaulted loans once its cash reserves reach $10 million. By granting emergency relief, we are not intending to direct the Cooperative to recommence payment on its loans. This is a decision that belongs in the first instance with the NHEC Board and management. We note, however, our surprise that the Cooperative defaulted on both its Seabrook and non-Seabrook related loans. At a minimum, we expect that the NHEC will articulate its reasoning in declining to make payment on the financing it received for the distribution system because that financing is wholly unrelated to the Seabrook issue.

[7]By granting the rate increase at the level demanded by the REA, we mean only to address the emergency. Our decision can be construed neither as a determination that there is sufficient evidence to find underlying cost support for the level of rates approved herein, nor that the level of the emergency increase is consistent with appropriate enabling authority. Indeed, we note our substantial concern that a permanent rate increase that incorporates the emergency level exceeds the authority granted to us in RSA 362-C. We expect the parties to address this concern in the context of their settlement discussions and, if necessary, in subsequent commission proceedings.

[8]We emphasize that our General Counsel's role is that of an observer. As an agency of the State, our substantive representation, if any, must be by the Office of the Attorney General. RSA 21-M:11, II.(a), which enjoys the full confidence of the commission.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-169, Order No. 19,987, 75 NH PUC 726, Nov. 19, 1990. [N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990.

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NH.PUC*02/04/91*[27074]*76 NH PUC 78*Coos County Nursing Homes-Farm-Correction

[Go to End of 27074]

Re Coos County Nursing Homes-Farm-Correction

DE 90-222
Order No. 20,051

76 NH PUC 78

New Hampshire Public Utilities Commission

February 4, 1991

ORDER granting a license for the construction, use, maintenance, repair and reconstruction of water main crossings on state-owned railroad property.

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1. CERTIFICATES, § 125

[N.H.] Water — Main construction — License to cross state-owned land — Factors considered. p. 78.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on December 7, 1990, Coos County Nursing Homes-Farm-Corrections filed with this commission a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct a 6-inch water main and a 2-inch water main at separate locations across state-owned railroad property in the

Town of Stewartstown; and

WHEREAS, the 6-inch water main is required to provide an adequate water supply for the Coos County facilities in West Stewartstown; and

WHEREAS, the 2-inch water main will provide a backup supply for a dairy cattle operation, and also a future supply for an anticipated correctional facility; and

WHEREAS, the above crossings are shown on plans filed with the Commission; and

WHEREAS, a single crossing is not feasible due to the significant increase in cost resulting from the obstacles of ledge, swamp and/or existing facilities that would be encountered by construction along the opposite side of the railroad property; and

WHEREAS, the 6-inch crossing and 2-inch crossing are at approximate Valuation Stations 2800 + 05 and 2789 + 84, respectively, Maps V21/28 and V21/27, of the North Stratford, New Hampshire to Beecher Falls, Vermont Railroad; and

WHEREAS, the commission finds the above construction is necessary to meet the reasonable requirements of the petitioner without substantially affecting the public rights in said state property; and

WHEREAS, no private property is affected by this petition; and

WHEREAS, the petitioner avers that the Bureau of Railroads (DOT) is in agreement with this petition; 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 28, 1991; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an attested copy of this order to be published once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Stewartstown area, said publications to be no later than February 14, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Stewartstown town clerk, by first class U.S. mail, postage prepaid, and postmarked on or before February 14, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the commission on or before March 6, 1991; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq.* to Coos County Nursing Homes-Farm-Corrections, P.O. Box 10, West Stewartstown, New Hampshire 03597 for the construction, use, maintenance, repair and reconstruction of the aforementioned water main crossings of public railroad property in West Stewartstown, New Hampshire identified at approximate Valuation Stations 2800 + 05 and 2789+84, Maps V21/28 and V21/27; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (DOT), the Department of Environmental Services and others as mandated by the Town of Stewartstown; 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 fourth day of February, 1991.

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NH.PUC*02/06/91*[27075]*76 NH PUC 80*New Hampshire Electric Cooperative, Inc.

[Go to End of 27075]

Re New Hampshire Electric Cooperative, Inc.

DR 90-227
Order No. 20,052

76 NH PUC 80

New Hampshire Public Utilities Commission

February 6, 1991

ORDER modifying a prior order that granted emergency rate relief to an electric cooperative, subject to the condition that the cooperative achieve a comprehensive debt restructuring settlement with the United States Rural Electrification Administration. The modification provides for an extension of the effective date of the emergency rates to allow the cooperative sufficient time to develop a comprehensive settlement.

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1. RATES, § 630

[N.H.] Emergency rates — Conditions — Debt restructuring — Effective date — Extension. p. 80.

BY THE COMMISSION:

ORDER

WHEREAS, the New Hampshire Electric Cooperative, Inc. (NHEC) filed on December 21, 1990 a petition for emergency rate relief pursuant to RSA 378:9; and

WHEREAS, the commission issued Report and Order No. 20,049 (January 28, 1991), *inter alia*, granting the requested relief effective February 6, 1991 subject to the condition that the parties reach "a comprehensive settlement before the effective date of the rate increase ... " (Report at 14); and

WHEREAS, on February 6, 1991 the State of New Hampshire filed a motion requesting an enlargement of time and a corresponding extension of the effective date of the emergency rate increase until February 8, 1991 to allow sufficient time to complete the process of developing a comprehensive settlement; and

WHEREAS, Public Service Company of New Hampshire, Northeast Utilities, the NHEC, and the United States Rural Electrification Administration concur in the State's request; it is hereby

[1] ORDERED, that Order No. 20,049 be, and hereby is, modified to provide that the effective date of the emergency rates will be February 8, 1991 for service rendered on or after that date subject to the condition precedent that the parties report to the commission on or before 12 noon of February 8, 1991 that a comprehensive settlement has been achieved; and it is.

FURTHER ORDERED, that Order No. 20,049 shall remain in full force and effect in all other respects.

By order of the Public Utilities Commission of New Hampshire this sixth day of February, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-227, Order No. 20,049, 76 NH PUC 72, Jan. 28, 1991.

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NH.PUC*02/08/91*[27076]*76 NH PUC 81*New Hampshire Electric Cooperative, Inc.

[Go to End of 27076]

Re New Hampshire Electric Cooperative, Inc.

DR 90-227
Order No. 20,053

76 NH PUC 81

New Hampshire Public Utilities Commission

February 8, 1991

ORDER modifying a prior orders that granted emergency rate relief to an electric cooperative, subject to the condition that the cooperative achieve a comprehensive debt restructuring settlement with the United States Rural Electrification Administration. The modification provides for an extension of the effective date of the emergency rates to allow the cooperative sufficient time to develop a comprehensive settlement.

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1. RATES, § 630

[N.H.] Emergency rates — Conditions — Debt restructuring — Effective date — Extension. p. 81.

BY THE COMMISSION:

ORDER

WHEREAS, the New Hampshire Electric Cooperative, Inc. (NHEC) filed on December 21, 1990, a petition for emergency rate relief pursuant to RSA 378:9; and

WHEREAS, the commission issued Report and Order No. 20,049 (January 28, 1991) granting, *inter alia*, the requested relief effective February 6, 1991, subject to the condition that the parties reach "a comprehensive settlement before the effective date of the rate increase ..." (Report at 14); and

WHEREAS, on February 6, 1991, the commission issued Order No. 20,052, granting a request by the State of New Hampshire for an enlargement of time and a corresponding extension of the effective date of the emergency rate increase until February 8, 1991; and

WHEREAS, on February 8, 1991, the parties submitted a joint request for a further continuance until the close of business on February 11, 1991 to allow the parties additional time to achieve a comprehensive settlement; and

WHEREAS, the Rural Electrification Administration has agreed to extend its waiver of liability pursuant to 31 U.S.C. 3713 until the close of business on February 11, 1991; and

WHEREAS, the parties will not seek further extensions; it is hereby

[1] ORDERED, that Order Nos. 20,049 and 20,052 be and hereby are modified to provide that the effective date of the emergency rates will be February 11, 1991 for service rendered on or after that date subject to the condition precedent that the parties report to the commission in writing on or before 4:30 p.m., Eastern Standard Time, February 11, 1991, that a comprehensive settlement has been achieved; and it is

FURTHER ORDERED, that Order Nos. 20,049 and 20,052 shall remain in full force and effect in all other respects.

By order of the New Hampshire Public Utilities Commission this eighth day of February, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-227, Order No. 20,049, 76 NH PUC 72, Jan. 28, 1991. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-227, Order No. 20,052, 76 NH PUC 80, Feb. 6, 1991.

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NH.PUC*02/11/91*[27077]*76 NH PUC 82*New Hampshire Electric Cooperative, Inc.

[Go to End of 27077]

Re New Hampshire Electric Cooperative, Inc.

DR 90-078, DR 90-227
Order No. 20,054

76 NH PUC 82

New Hampshire Public Utilities Commission

February 11, 1991

ORDER modifying, by extending the effective date of emergency rates, prior orders that granted emergency rate relief to an electric cooperative, subject to the condition that the cooperative achieve a comprehensive debt restructuring settlement with the United States Rural Electrification Administration. Commission grants the extension on an interim basis, deferring a final ruling on the request for an extension pending arguments on the merits of the extension and an update from the parties on the status of the negotiations.

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1. RATES, § 630

[N.H.] Emergency rates — Conditions — Debt restructuring — Effective date — Extension. p. 82.

BY THE COMMISSION:

ORDER

The New Hampshire Electric Cooperative, Inc. (NHEC) and the State of New Hampshire (State), having filed a joint motion to extend the emergency rate relief (joint motion) deadline in docket DR 90-227 from February 11, 1991 until and including February 28, 1991; and

WHEREAS, the commission granted by Order. No. 20,049, a petition by the NHEC filed on December 21, 1990, for emergency rate relief subject to the condition that the parties reach a comprehensive settlement before February 6, 1991; and

WHEREAS, on February 6, 1991, the commission issued Order No. 20,052, granting a request by the State for an enlargement of time and a corresponding extension of the effective date of the emergency rate increase until February 8, 1991; and

WHEREAS, on February 8, 1991, the commission issued Order No. 20,053, granting a joint request of the parties, filed on February 8, 1991, for a further continuance until the close of business on February 11, 1991 to allow the parties additional time to achieve a comprehensive settlement; and

WHEREAS, the parties, in its joint request for further continuance on February 8, 1991, represented that they will not seek further extensions in this matter; and

WHEREAS, the parties having had approximately one year to resolve their differences in this matter and there being no persuasive evidence to date that a comprehensive settlement can be achieved, the commission, at its public meeting of February 11, 1991, decided that the parties to docket DR 90-227 and the parties to related docket DR 90-078 appear before the commission to argue the merits of the joint motion of February 11, 1991 for a further continuance and to inform the commission of the status of each of the two separate dockets; it is hereby

[1] ORDERED, that Order Nos. 20,049, 20,052 and 20,053 be and hereby are modified to

provide that the effective date of the emergency rates will be February 14, 1991 for service rendered on or after that date subject to the condition precedent that the parties report to the commission in writing on or before 4:30 p.m., Eastern Standard Time, February 14, 1991 that a comprehensive settlement has been achieved or unless otherwise ordered by the commission; and it is

FURTHER ORDERED, that the parties to docket Nos. DR 90-227 and DR 90-078, including the Rural Electrification Administration (REA), appear before the commission at two o'clock in the afternoon on the thirteenth day of February, 1991, to address the merits of pending motions to intervene, the merits of the

Page 82

pending joint request of the parties for a further continuance until February 28, 1991, and to inform the commission of the status and negotiations among the parties in both dockets; and it is

FURTHER ORDERED, that the commission will defer further ruling on the joint motion until hearing from the parties at the hearing scheduled for February 13, 1991; and it is

FURTHER ORDERED, that the interim extension of the effective date for emergency rate relief until February 14, 1991, is conditioned on the REA agreeing to extend its waiver of liability pursuant to 31 U.S.C. 3713 until the close of business on February 14, 1991; and it is

FURTHER ORDERED, that Order Nos. 20,049, 20,052 and 20,053 shall remain in full force and effect in all other respects.

By order of the New Hampshire Public Utilities Commission this eleventh day of February, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-277, Order No. 20,049, 76 NH PUC 72, Jan. 28, 1991. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-277, Order No. 20,052, 76 NH PUC 80, Feb. 6, 1991. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-277, Order No. 20,053, 76 NH PUC 81, Feb. 8, 1991.

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NH.PUC*02/12/91*[27078]*76 NH PUC 83*Atlantic Connections Ltd.

[Go to End of 27078]

Re Atlantic Connections Ltd.

DE 90-042
Order No. 20,056

76 NH PUC 83

New Hampshire Public Utilities Commission

February 12, 1991

ORDER denying, to the extent necessary to perfect the movant's right to request a stay from the state supreme court, a motion for rehearing of a prior order that held a telecommunications company in violation of state statute for unauthorized provision of intrastate resale service.

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1. PROCEDURE, § 33

[N.H.] Rehearing — Denial — Perfection of right to request judicial stay. p. 83.

2. PROCEDURE, § 42

[N.H.] Rehearing — Denial — Perfection of right to request judicial stay. p. 83.

3. APPEAL AND REVIEW, § 5

[N.H.] Commission orders — Right to stay — Prior steps — Denial of rehearing. p. 83.

BY THE COMMISSION:

ORDER

WHEREAS, Atlantic Connections, Ltd. (ACL) filed on February 1, 1991 a Motion for Rehearing of Order No. 20,031 (January 15, 1991) pursuant to RSA 541:3; and

[1-3] WHEREAS, the Commission issued Order No. 20,031, *inter alia*, to provide ACL with timely notice of its finding that ACL is a public utility as defined in RSA 362:2 and, as such, cannot operate without first seeking and

obtaining the authority of the commission; and

WHEREAS, the commission has indicated that it will rule expeditiously on a request for authority to operate and to waive regulatory requirements should ACL file such requests; and

WHEREAS, the commission intends to supplement Order No. 20,031 with a full report setting forth its analysis, findings and conclusions; and

WHEREAS, ACL has filed a request with the New Hampshire Supreme Court seeking a stay of Order No. 20,031; it is hereby

ORDERED, that ACL's Motion for Rehearing is denied to the extent a commission ruling is necessary to perfect ACL's right to request a stay of Order No. 20,031; and it is

FURTHER ORDERED, that the commission will defer ruling on the remaining issues raised in ACL's Motion for Rehearing until it has issued its substantive report and ACL has had an opportunity to supplement its Motion for Rehearing based on the contents of that report.

By order of the Public Utilities Commission of the State of New Hampshire this twelfth day of February, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Atlantic Connections Ltd., DE 90-042, Order No. 20,031, 76 NH PUC 47, Jan. 15, 1991.

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NH.PUC*02/19/91*[27079]*76 NH PUC 84*New England Telephone and Telegraph Company

[Go to End of 27079]

Re New England Telephone and Telegraph Company

DE 90-174
Order No. 20,059

76 NH PUC 84

New Hampshire Public Utilities Commission

February 19, 1991

ORDER authorizing a telephone local exchange carrier to reclassify certain exchanges.

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1. SERVICE, § 445

[N.H.] Telecommunications — Exchange areas and boundaries — Reclassification — Telephone local exchange carrier. p. 84.

BY THE COMMISSION:

ORDER

WHEREAS, on October 9, 1990, New England Telephone and Telegraph Company (the Company) filed a petition to reclassify the Alstead, Bethlehem, Canterbury, Deerfield, Dover, Epping, Goffstown, Greenfield, Groveton, Hampstead, Hinsdale, Jaffrey, Kingston, Madison, Manchester, Marlow, Monroe Locality, Newmarket, North Walpole Locality, Northwood, Portsmouth, Sanbornville, Spofford, Suncook, Tilton and West Stewartstown exchanges; and

[1] WHEREAS, the filing provides for the reclassification of portions of exchanges and localities serving some municipalities; and

WHEREAS, the filing was suspended on November 7, 1990 by order no. 19,977, while the Commission reviewed NET's rate design proposals in docket DR 89-010; and

WHEREAS, the Commission is not inclined to disturb the existing rate group classification methodology at this time, but will

defer consideration of the number of rate classes and their cost reflectiveness until a future date; it is hereby

ORDERED, that the following tariff pages of NET's NHPUC No. 75 be and hereby are approved.

Part A Section 5

Sixteenth Revision of Page 8
Tenth Revision of Page 22
Tenth Revision of Page 23
Eighth Revision of Page 24
Eighth Revision of Page 25
Ninth Revision of Page 26
Seventh Revision of Page 27

By order of the Public Utilities Commission of New Hampshire this nineteenth day of February, 1991.

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NH.PUC*02/19/91*[27080]*76 NH PUC 85*Connecticut Valley Electric Company

[Go to End of 27080]

Re Connecticut Valley Electric Company

DR 90-197
Order No. 20,060

76 NH PUC 85

New Hampshire Public Utilities Commission

February 19, 1991

ORDER establishing an interim purchased power cost adjustment (PPCA) rate for an electric utility. The PPCA mechanism provides for an interim rate if a utility's total cost of purchased power is expected to vary by 5% or more from the revenues approved in the PPCA.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchased power — Cost adjustment rate — Interim rate — Variance from approved revenues — Electric utility. p. 85.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 52

[N.H.] Purchased power cost adjustment — Variance from forecast — Interim rate. p. 85.

BY THE COMMISSION:

ORDER

On January 30, 1991, Connecticut Valley Electric Company ("the Company" or "ConnValley") filed ten copies of 5th Revised Page 17, Superseding 4th Revised Page 17 of N.H.P.U.C. No. 5, along with supporting testimony and exhibits; and

[1, 2] WHEREAS, the Company's filing provides for an Interim PPCA of $0.0014 per kWh to be applicable for the period March through December 1991; and

WHEREAS, the proposed PPCA rate of $0.0014 is based upon an expected 1991 overcollection of 13.25 percent; and

WHEREAS, the PPCA mechanism provides for an Interim PPCA if the Company's total cost of purchased power is expected to vary by 5 percent or more above or below the revenues approved in the PPCA; and

WHEREAS, the currently effective PPCA of $0.0085 per kWh was based on estimated 1991 purchased power costs and kWh sales and an estimated undercollection of $219,697 from the 1990 PPCA; and

WHEREAS, the Company now expects that the 1990 PPCA variance will be an overcollection of $623,076, which is primarily due from ConnValley's coincident peak load with Central Vermont in December being 4 MW lower than forecast resulting in a lower capacity allocation factor for ConnValley than what was forecast; and

WHEREAS, the lower production capacity allocation factor for the Company would result in an overcollection for the 1991 PPCA of $928,653 or 13.25 percent; and

WHEREAS, the Commission analysis finds the Company's proposal for reducing the

PPCA from $0.0085 per kWh to an Interim PPCA of $0.0014 per kWh to be billed during the March through December 1991 period to be just and reasonable; it is hereby

ORDERED *NISI*, that ConnValley be, and hereby is, authorized to reduce the PPCA to $0.0014 per kWh effective March 1, 1991 unless otherwise ordered; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted by February 23, 1991, such publication to be documented by affidavit filed with this office on or before March 1, 1991; 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 5 days after the date of publication of this Order; and it is

FURTHER ORDERED, that the Company file compliance tariff pages.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of February, 1991.

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NH.PUC*02/19/91*[27081]*76 NH PUC 86*Locke Lake Water Company

[Go to End of 27081]

Re Locke Lake Water Company

DR 89-205
Order No. 20,061

76 NH PUC 86

New Hampshire Public Utilities Commission

February 19, 1991

ORDER granting a motion for a continuance in an investigation of alleged overearnings by a water utility, pending a review of the utility's 1990 annual report. Commission finds that it would be prudent to analyze the utility's current rate of return before pursuing the overearnings investigation.

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1. RATES, § 640

[N.H.] Procedure — Overearnings investigation — Continuance — Water utility. p. 86.

BY THE COMMISSION:

ORDER

On or about March 31, 1988, Locke Lake Water Company, Inc., (Locke Lake) submitted its 1987 annual report to the commission; and

WHEREAS, staff analysis of said annual report indicated Locke Lake was earning a rate of return of 21.33%; and

WHEREAS, in its most recent rate case (See Docket DR 85-207 Order No. 18,300) Locke Lake was authorized to earn a rate of return of 11.25%; and

WHEREAS, on December 11, 1989 the commission issued order No. 19,610 scheduling a show cause hearing on why a docket should not be opened to investigate whether rates and charges currently demanded by Locke Lake were unjust and unreasonable pursuant to the provisions of RSA 378:1 *et seq*.; and

WHEREAS, the commission held a hearing on said issue on January 16, 1990; and

WHEREAS, on March 16, 1990 the commission issued Report and Order No. 19,760

opening an investigation into the rates and charges of Locke Lake; and

WHEREAS, Order No. 19,760 made all charges for services rendered as of the date of said order temporary rates pursuant to RSA 378:27; and

WHEREAS, Locke Lake was further ordered to consummate a proposed sale within four (4) months or submit testimony on the issue of rates four (4) months from the date of this order if no sale took place; and

[1] WHEREAS, said order was modified by Order No. 19,864 giving Locke Lake until January 17, 1991 or four (4) weeks from the sale of the company whichever first occurred to file testimony on the issue of rates; and

WHEREAS, Locke Lake has had some

Page 86

capital expenditures during the course of the past year; and

WHEREAS, the commission has received a motion to continue from Locke Lake until a review of its 1990 annual report; and

WHEREAS, said motion was concurred in by staff; and

WHEREAS, the commission considers it prudent to analyze the current rate of return before pursuing the matter further; it is hereby

ORDERED, that Locke Lake shall file its 1990 annual report on or before March 31, 1991 in conformance with the commission rules; and it is

FURTHER ORDERED, that the Finance Department shall inform the commission and Locke Lake of the rate of return earned by the company after thorough analysis of their 1990 annual report and an audit, if one is necessary, by May 10, 1991; and it is

FURTHER ORDERED, that Locke Lake will submit testimony on the issue or rates by April 10, 1991, if the commission has not issued an order closing this docket after reviewing the above referenced information.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of February, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Locke Lake Water Co., Inc., DR 85-287, Order No. 18,300, 71 NH PUC 362, June 13, 1986. [N.H.] Re Locke Lake Water Co., Inc., DR 89-205, Order No. 19,610, 74 NH PUC 447, Nov. 9, 1989. [N.H.] Re Locke Lake Water Co., Inc., DR 89-205, Order No. 19,760, 75 NH PUC 181, Mar. 16, 1990. [N.H.] Re Locke Lake Water Co., Inc., DR 89-205, Order No. 19,864, 75 NH PUC 338, June 27, 1990.

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Re Pennichuck Water Works, Inc.

DE 89-137
Order No. 20,062

76 NH PUC 87

New Hampshire Public Utilities Commission

February 20, 1991

ORDER, in a condemnation proceeding, finding that the proposed construction by a water utility of a storage tank is necessary to meet the reasonable requirements of service to the public, but directing the water utility to find an alternative construction site. Commission holds that the public good, not merely physical necessity, must be considered in condemnation proceedings. Construction of the water storage tank on the proposed site would, the commission finds, unacceptably impair the aesthetic value of the neighborhood and decrease property values.

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1. EMINENT DOMAIN, § 4

[N.H.] Condemnation proceedings — Factors considered — Physical necessity — Public good — Water utility — Storage tank construction. p. 88.

APPEARANCES: Gallagher, Callahan and Gartrell by Mary Ellen Kiley, Esquire on behalf of Pennichuck Water Works, Inc.; Sheehan, Phinney, Bass & Green by Mark W. McDonald, Esq. for the Flatley Company; Walter Merrill pro se; Peter Schuler pro se; John Tedder pro se; and Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On August 2, 1989, Pennichuck Water Works, Inc., (Pennichuck) filed a petition for condemnation pursuant to RSA 371:1 *et seq*. of a certain parcel of land located in the City of Nashua, New Hampshire on the westerly side of the F.E. Everett Turnpike shown as Lot A-46 on a plan entitled "Easement Plan Shakespeare Road, Nashua, N.H." dated December 6, 1988 prepared by Cuko and Cormier, Inc. owned in fee simple by one Thomas Flatley and in which a number of other parties have easements.[1(18)]

Pennichuck proposes to condemn the land owned by Mr. Flatley and the easements of the respondents listed in Footnote 1 in order to construct a water storage tank having a capacity of

4.5 million gallons for the purpose of increasing storage capacity in that area of Nashua known as the "Southwest High Pressure Zone". (SWHPZ)

On August 8, 1989, the commission issued an order of notice requiring the company to notify each of the parties with an interest in the property by general publication and by individual notice of its petition for the condemnation of their property rights.[2(19)] The commission further established a pre-hearing conference pursuant to RSA 541-A for October 4, 1989.

On October 30, 1989, the commission issued Report & Order No. 19,589 establishing a procedural schedule. The procedural schedule bifurcated the issue of necessity and the issue of valuation, (pursuant to RSA Chapter 371 the commission may allow the condemnation of property by a public utility if it finds necessity and set the value of the subject property). On November 6, 1989, Pennichuck filed an amended petition with no "substantive" changes to its original petition. On November 28, 1989, the commission held an informational hearing on the proposed condemnation at the Bicentennial school in Nashua and on January 11, 1990, the commission viewed the site of the proposed property to be condemned.

On March 27, 1990, March 28, 1990, and April 6, 1990, the commission held duly noticed hearings on the issue of necessity.

This order will address the necessity for the requested condemnation in accordance with the evidence of record. It should be noted that the Consumer Advocate was advised in writing of the hearing and orally by the commission's counsel of the hearing and the issues to be decided in this case and chose not to attend. See transcript Day I, p. 4-5.

II. *Position of the Parties*

Pennichuck took the position that the condemnation was necessary for the construction of a water storage tank to serve the SWHPZ. It further contended that as a matter of law the commission could only rule on the issue of necessity and could not consider the harm to the local residents as any harm would be compensated for with monetary damages.

Messrs. Merrill, Schuler and Tedder took the position that the condemnation was not necessary as there was no need for a water storage tank to service the SWHPZ and, further, that the construction of water storage tank on the proposed site would irreparably damage their neighborhood.

The Flatley Company opposed the condemnation.

Staff took no position, but acted to create a complete record for the commission.

III. *Commission Analysis*

A. Necessity of Tank

[1] RSA 371:1 provides that:

> [W]henever it is necessary, in order to meet the reasonable requirements of service to the public that any public utility should acquire land ... for the necessary construction ... of any plant ... and it cannot agree with the owners of such land or rights as to the necessity ... such public utility may petition the public utilities commission for permission to take such lands or rights as may be needed for said purposes.

RSA 371:4 further provides that the commission shall "hear and determine the necessity for the right prayed for ...".

Pennichuck proposed to condemn the contested land to construct a 4.5 million gallon water tank. The tank as proposed would be 135

feet in diameter and approximately 42 feet in height including fill. Tr. Day 1, p. 17, Exhibit 2. The proposed tank would serve four purposes: hourly fluctuations, that amount of storage necessary to meet daily demand and peak fluctuations at a constant pumping level; fire protection, the water needed to provide flows and pressures to fight fires; emergency storage required in the event of power outages, etc.; and dead storage which is required to keep the tank at a certain level to meet the other three requirements of a tank. Day 1, p. 17-18, Exhibit 14. The tank is proposed to serve the SWHPZ, located in the southwestern region of the City of Nashua; Exhibit 13. The SWHPZ is currently experiencing a deficit in excess of 1.2 million gallons which excludes dead storage, i.e., that storage which would be ineffective in serving the needs of the SWHPZ and merely provides support for the "effective storage". Tr. Day 1, p. 46. The tank has been somewhat oversized to meet the future needs of the SWHPZ. Tr. Day 1, p. 47.

Pennichuck testified that a tank is necessary to avoid potential disasters from fire, to meet the everyday peak demands of the customers of the SWHPZ and to meet the requirements of any kind of energy outage or the like. Based on the above, the commission finds that Pennichuck has satisfactorily demonstrated that construction of an alternate tank on Shakespeare Hill is necessary to meet the reasonable requirements of RSA 371:4.[3(20)]

B. Location of Tank

Pennichuck contends that, as a matter of law, the commission's authority pursuant to RSA Chapter 371 is limited to the issue of necessity and once it has addressed that issue it cannot address the issue of public good to protect the interests of local residents or the citizens of the State in general. We disagree.

In both *White Mountain Power Co. v Maine Central Railroad*, 106 N.H. 443 (1965) and *Public Service Co. v. Shannon*, 105 N.H. 67 (1963) the New Hampshire Supreme Court stated that RSA 371:1 "grants to public utilities the power to condemn in broad and very general language'". *White Mountain*, 106 N.H. at 444; *Shannon*, 105 N.H. at 69. Both cases go on to state that RSA 371:1 is to be given a "reasonable construction". *White Mountain*, 106 N.H. at 445; *Shannon*, 105 N.H. at 69.

The commission holds that a reasonable construction of RSA 371:1 and RSA 371:4, require consideration of the public good and public interest when addressing the issue of necessity. Merely to allow necessity to control the decisions of this commission in condemnation proceedings may result in inequities to the public in general which this commission cannot countenance in light of its general responsibility to balance the interests of utilities and the public given it throughout its legislative mandates. RSA 363:17.

Our interpretation of authority under RSA 371:1 is consistent with the analysis of the Supreme Court in *Appeal of Milford Water Works*, 126 N.H. 127 (1985). In *Milford* the Court

analyzed RSA 31:62, now amended and codified at RSA 674:30, which provided for public utility exemptions from local zoning ordinance and read as follows:

> *Exemption*. Structures used or to be used by a public utility may be exempted from the operation of any regulation made under this subdivision [planning and zoning] if, upon petition of such utility, the public utilities commission shall after a public hearing decide that the present or proposed situation of the structure in question is *reasonably necessary* for the convenience or welfare of the public. [Emphasis added]

The Court's interpretation of the above cited statute addressed the argument by the Milford Water Works that the commission did not have the right to attach conditions to protect the public to a request for an exemption from a local zoning ordinance once the commission had found the exemption to be "reasonably necessary", essentially the same argument made herein by Pennichuck in its interpretation of RSA Chapter 371. The Court rejected that argument stating that the commission may "attach reasonable conditions in consideration of the interests of local residents ...". *Milford*, 126 N.H. at 132.

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In accordance with basic tenets of statutory construction, the commission concludes that RSA 571:1 must be interpreted *in pari materia* RSA 31:62. See e.g., *Wakefield v. Phillips*, 37 N.H. 295 (1858). We accordingly hold that the interests of local residents and the general public will be taken into consideration in commission decisions involving RSA Chapter 371. When appropriate we will attach reasonable conditions to all decisions approving condemnation of private or utility property once the threshold burden of necessity has been met by the petitioning utility. Cf. *Milford*, 126 at 132.

The commission finds that construction of the water storage tank on the proposed site would unacceptably impair the aesthetic value of the neighborhood. The neighborhood surrounding the proposed site consists of single family residences with very little cover. The proposed tank would be surrounded mainly by deciduous trees. Thus, there would only be cover during three seasons of the year and limited cover during the summer months. Additionally, because the intended size of the tank is 135 feet in diameter and approximately 42 feet in height, it would be visible from approximately twenty-five (25) homes thereby decreasing the value of their property and irreparably harming the neighborhood in general. See Exhibit 2. Further, construction of the tank would involve the removal of trees and the introduction of a road for maintenance and consequently increasing the negative aesthetic impacts to the neighborhood. See Generally Tr. Day III, pgs. 377-477.

The commission finds that there are alternative sites available for the construction of the tank that would greatly reduce or completely remove any of these aesthetic concerns. The increased cost of acquiring property or alternative sites, if any, will be addressed in the valuation phase of proceedings involving that alternative site.

In conclusion, the commission finds that a water storage tank to service the SWHPZ is reasonably necessary. However, the commission does not believe that the proposed site which is the subject of this petition is in the public good. Substantial evidence in the record showed that construction of the tank on the proposed site would damage local residents of Shakespeare Hill

to an extent that exceeds the cost of utilizing an alternative site. Therefore, the commission denies Pennichuck's petition for condemnation. Pennichuck may refile a petition for an alternative site to locate the tank.

Our order will issue accordingly.

ORDER

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

ORDERED, that there is a necessity for another water storage tank to service the "Southwestern High Pressure Zone" of the City of Nashua; and it is

FURTHER ORDERED, that the site proposed to be condemned by Pennichuck Water Works, Inc. for the construction of a water storage tank on Shakespeare Hill will cause damage to the local residents to an extent that exceeds the cost of utilizing an alternative site and, therefore, is not in the public good; and it is

FURTHER ORDERED, that requiring Pennichuck Water Works, Inc. to find an alternative site for the necessary storage tank is a reasonable condition precedent to condemnation; and it is

FURTHER ORDERED, that if Pennichuck Water Works, Inc. files another petition for condemnation of land to construct a water storage tank to service the "Southwestern High Pressure Zone" it need not address the issue of physical necessity, but must demonstrate that the site of the proposed tank is in the public good as discussed in this Report and Order.

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1991.

FOOTNOTES

[1]Pursuant to the easement Patricia A. and Theodore J. Setlang, Jr., Frances A. and John R. Conner, Ella S. and N. Thomas Brown, Margaret E. and John C. McCarthy, Elizabeth A. and John F. Cepaitis, Diane K. and Antonio J. Rizzo, Louis Mattioli, Mary Jo and Johnny F. Tedder, Kathleen and Peter Schuler, Pamela and Walter Merrill, Sarah S. and George J.

Katis, Patricia F. and Fred L. Hummell, Alice H. and Warren E. Webber, Helen R. and David N. Rasmassen, and JoAnn and Dale H. Munk were granted an equitable servitude on the subject land creating a so called "buffer zone" or "green belt" where no construction could take place. See *Petition of Pennichuck Water Works, Inc.*, Exhibit B.

[2]Thomas Flatley and the "additional respondents" (See Footnote 1).

[3]There is currently a smaller tank located adjacent to the property sought to be condemned herein on Shakespeare Hill. Exhibit 24. Any other tank constructed to serve the SWHPZ must be constructed at the same elevation as the existing tank. Tr. Day III, p. 442-443.

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Re Atlantic Connections, Ltd.

DE 90-042
Order No. 20,063

76 NH PUC 91

New Hampshire Public Utilities Commission

February 22, 1991

ORDER denying a motion to stay a prior order that required a telecommunications company to cease and desist from all intrastate telecommunications operations and imposed a fine of $5,000 for operation without a franchise. Commission rules that any continuing failure by the telecommunications company to comply with the terms of the prior order may subject the company and its principals to additional civil and/or criminal penalties.

Proposed "relaxed" regulation of the resale of intrastate toll service is rejected as inconsistent with the public good.

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1. PUBLIC UTILITIES, § 14

[N.H.] Tests of public utility character — Statutory interpretation — Telecommunications — Intrastate toll service — Resale of service. p. 93.

2. PUBLIC UTILITIES, § 117

[N.H.] Telecommunications — Resale of service — Intrastate toll service — Regulatory status. p. 93.

3. TELEPHONES, § 5

[N.H.] Jurisdiction — State commissions — Resale of service — Intrastate toll service. p. 93.

4. SERVICE, § 68

[N.H.] Jurisdiction and powers — State commissions — Resale of service — Telecommunications — Intrastate toll service. p. 93.

5. SERVICE, § 171

[N.H.] Resale of service — Telecommunications — Intrastate toll service — Service attributes. p. 93.

6. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Intrastate toll service — Resale of service — Discussion. p. 93.

7. PUBLIC UTILITIES, § 117

[N.H.] Telecommunications — Resale of service — Intrastate toll service — Relaxed regulation — Discussion. p. 93.

8. SERVICE, § 468

[N.H.] Telecommunications — Intrastate toll service — Resellers — Regulatory status — Commission jurisdiction. p. 93.

APPEARANCES: Shaines & McEachern by Paul McEachern, Esq. and Susannah Colt, Esq. on behalf of Atlantic Connections, Ltd.; Devine, Millimet and Branch by Amy Ignatius, Esq. on behalf of Granite State Telephone and Merrimack County Telephone; John Reilly, Esq. on behalf of New England Telephone

Company; John Rohrbach and Kenneth Traum on behalf of the Office of Consumer Advocate and Audrey A. Zibelman, Esq. and Eugene F. Sullivan, III, Esq. for New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On March 23, 1990, the commission issued Order No. 19,766, opening Docket DE 90-042 for the purpose of investigating whether Atlantic Connections, Ltd., (Atlantic or Company) or any of its officers should be fined or should be subjected to criminal prosecution or other appropriate sanctions pursuant to, *inter alia*, RSA 365:42, RSA 365:41 or RSA 374:41 *et seq*, for operating as a public telecommunications utility without authority, (RSA 362:2, RSA 374:22 and RSA 374:26) and for charging rates therefore without authority (RSA Chapter 378). The commission further ordered that Atlantic appear before the commission at a hearing to be held on May 9, 1990, to show cause why it should not be found in violation of the above statutes. The commission's order was prompted by information that Atlantic was engaged in the resale of long distance telephone service within New Hampshire.

On April 30, 1990, the commission received a motion for a prehearing conference and continuance from Atlantic. On May 4, 1990, staff informed the commission that Atlantic and staff had agreed to a continuance of the hearing on the merits and set a date for a prehearing conference.

At a hearing held on May 9, 1990, the commission accepted Atlantic's April 30 motion and used the May 9 hearing as a prehearing conference. At the conference staff and Atlantic presented a stipulated procedural schedule excluding a hearing date. On June 5, 1990, the commission issued Report and Order No. 19,846 setting a procedural schedule. The procedural schedule included staff and Atlantic's agreed upon dates for data requests from both parties, responses to data requests from both parties, testimony from both parties and a hearing date of July 19, 1990, set by the commission.

On May 11, 1990, Granite State Telephone, Inc. (Granite State) and Merrimack County Telephone Company (Merrimack County) filed motions to intervene. On May 31, 1990, Union Telephone Company (Union) also filed a motion to intervene. All three motions were subsequently granted; however, Union did not participate in the hearings on the merits.

On June 25, 1990, the commission informed New England Telephone Company (NET) that the commission had made it a mandatory party because the preliminary hearings indicated "possible violations of NET tariffs and possible adverse impact for NET ratepayers, necessitating full NET participation in the proceedings".

During the course of the proceedings both staff and Atlantic moved for continuances resulting in the rescheduling of the hearing dates. Duly noticed hearings on the merits were held in this matter on December 4, 1990, December 7, 1990, January 7, 1991, January 8, 1991 and January 11, 1991.

On January 15, 1991, the commission issued Order No. 20,031 finding Atlantic to be a public utility pursuant to RSA 362:2 ordering it to cease and desist from all intrastate telecommunications operations and fining it $5,000. On January 22, 1991, Atlantic moved to stay the cease and desist order and on February 1, 1991, Atlantic filed a motion for rehearing of the order. The motion for rehearing was denied in part by the commission on February 12, 1991. The motion for a stay is addressed in this order.

II. *Positions of the Parties*

Atlantic argues that because it owns only a telecommunications switch it is not a public utility within the meaning of RSA 362:2. The company further contends that in *Appeal of Omni Communications*, 122 N.H. 860, 451 A.2d 1289 (1982), the supreme court restricted the commission's regulatory authority to natural monopolies. According to Atlantic, the commission has no regulatory authority over resellers

since they are not natural monopolies. Atlantic further maintains that in *Re Motorola Cellular Services, Inc.*, 71 N.H.P.U.C. 240 (1986), the commission adopted this restriction in its regulatory authority.

Staff contends that Atlantic falls squarely within the statutory definition of a public utility set forth in RSA 362:2. Staff Telecommunications Engineer, Kathryn M. Bailey, testified that by owning a switch and leasing lines from NET, Atlantic is in fact conveying telephone messages for the public, and, therefore, is a public utility within the meaning of the statute. Utility Rate Analyst Economist Leszek Stachow further testified that the intrastate toll telecommunications market was not a competitive market. He explained that the provision of intrastate telecommunications competition could result in significant revenue losses to the local exchange companies and without adequate safeguards could require increases in local exchange rates. Mr. Stachow also testified that simply allowing competitive entry into the toll market did not guarantee the establishment of competition, and could result in a single service provider retaining a dominant market share. Mr. Stachow stated that it was the purpose of the commission's generic competition docket, DE 90-002, to analyze these issues and provide for the possible emergence of competition in the intrastate toll market in the State of New

Hampshire.[1(21)]

The Office of Consumer Advocate supported staff's position that Atlantic is a public utility pursuant to RSA 362:2. It argued further that there are numerous issues involving intrastate toll competition which should be addressed in the generic competition docket. The Office of Consumer Advocate was primarily concerned about higher rates to residential ratepayers due to "cream skimming" by resellers threatening the achievement of universal service.

NET supported staff's position that Atlantic is a public utility pursuant to RSA 362:2. NET also urged resolution of the numerous issues involved in intrastate toll competition in the generic competition docket. NET stated that while it believed competition in the intrastate toll market is inevitable, any competition must be "economically based competition" and a generic investigation of competition is necessary to achieve that goal.

Merrimack County Telephone and Granite State Telephone also supported staff's position that Atlantic is a public utility. The two companies urged the commission to address the numerous issues involved in intrastate toll competition in a structured, organized and thorough manner in the generic competition docket.

III. *Commission Analysis*

[1-8] The issue in this case is whether Atlantic is a public utility subject to the regulatory authority of the commission. Atlantic admits that in 1987 it commenced business as a reseller of intrastate long distance telephone service without, *inter alia*, first obtaining a franchise from the commission as required under RSA 374:22. The company contends that it is not subject to commission regulation because it is not a public utility as defined in RSA 362:2. The statute reads in pertinent part as follows:

> Public Utility. The term "public utility" shall include every corporation, company, association ... its lessees owning, operating or managing ... any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages ... for the public ... .

Atlantic initially contends that it does not fall within the statutory description of a public utility because it does not convey telephone messages. Citing *Appeal of Omni Communications, Inc.*, 122 N.H. 860, 451 A.2d 1289 (1982) and *Allied N.H. Gas Co. v. Tri-State Gas Co.*, 107 N.H. 306, 221 A.2d 251 (1966), the company alternatively argues that the New Hampshire Supreme Court has restricted the scope of the statutory definition of public utility to apply only to natural monopolies. Because it is not disputed that resellers are not natural monopolies, the company asserts that the commission has no regulatory authority over them. For the reasons set forth below, the commission disagrees with both of these assertions and finds

that it has jurisdiction over intrastate long distance resale.

The issue of whether Atlantic is a public utility initially is a matter of statutory interpretation. When interpreting statutes, the commission first considers the language of the statute. In the

absence of any ambiguity, the rules of statutory construction require us to apply the statute in accordance with the plain meaning of its terms. *Private Truck Council of America, Inc*., 128 N.H. 466, 517 A.2d 1150 (1986); *Concord Steam Corp. v. City of Concord*, 128 N.H. 724, 519 A.2d 266 (1986). The definition of a public utility is clear. Pursuant to RSA 362:2, any company that owns, uses or operates equipment for the conveyance of telephone messages for the public is a public utility. In the past the commission has applied this statutory definition *inter alia* to companies that own or operate coin operated telephones, *Re Coin Operated Telephone Policies*, 70 N.H.P.U.C. 89 (1985); long distance resellers of alternative operator services (AOS), *Re National Telephone Services*, 74 N.H.P.U.C. 456 (1989), as well as more traditional long distance telephone companies such as AT&T. *Re AT&T Communications of New Hampshire, Inc*., 72 N.H.P.U.C. 361 (1987). *Cf*., *Re Plymouth State College*, DE 89-206, Order No. 19,695 (January 29, 1990) (the fact that Plymouth State College resells telephone service on its campus does not make it a public utility because it does not sell to the public); and *Re Motorolla Cellular Service, Inc.*, 71 N.H.P.U.C. 240 (1986), (wherein the commission concluded that resale of cellular service should not be regulated at that time because the service was new and there was no evidence that it was not competitive).[2](22) These cases demonstrate a consistent approach by the commission to assert its regulatory authority over companies that own or operate telephone equipment for the purpose of selling to the public services which fall within the traditional and common understanding of telephone services. Application of this approach to long distance resale leads us to conclude that long distance resellers are public utilities.

It is undisputed that Atlantic resells toll service in a manner that is typical of long distance resellers in states where resale is authorized. Such companies normally own sophisticated telecommunication switches and lease interexchange facilities from either the local Bell Operating Company (BOC) or other franchised long distance carriers which own their own facilities, such as AT&T. As Atlantic's witness former Vermont PUC Commissioner Louise McCarren testified, resellers profit from their activities by engaging in tariff arbitrage. These companies purchase a service from the underlying carrier such as Wide Area Telephone Service (WATS) or a dedicated interexchange circuit.[3](23) They then "resell" the use of the lines to their own customers. Resellers' profits are derived from their ability to take advantage of volume discounts and other opportunities available to high volume telephone users and charge rates to small business or residential customers that are lower than otherwise available to them. Ms. McCarren's characterization of resellers as opportunists is apt. A reseller's existence is dependent upon its ability to ferret out of the regulated utility's tariff service offerings which when resold allow the reseller to compete profitably with the regulated telephone company.

Atlantic's conduct of its business is exemplary of this type of opportunism. Atlantic owns a sophisticated telecommunications switch that is located in NET's Portsmouth local exchange area. Atlantic also leases interexchange facilities from NET for intrastate calls and AT&T, Sprint and MCI for interstate calls. Calls enter the Atlantic switch via the Portsmouth local exchange network. The switch identifies the destination of the call and selects which of the leased NET lines offers the least cost route to terminate the call. Atlantic profits from this activity by effectively using NET's tariffed services in an unintended manner. For example, Atlantic carries a majority of its intrastate calls over the dedicated foreign exchange (FX) lines it leases from NET. Atlantic pays NET a flat monthly rate for the use of these lines.[4](24) Atlantic then uses the lines to supply toll service to its customers at a rate that is lower than NET's standard toll rates

and high enough to allow Atlantic to profit.

Despite this evidence, Atlantic argues that it is not conveying telephone messages because

it does not own the interexchange facilities that transport the calls. According to Atlantic, there are actually two calls completed when a customer uses it as a long distance carrier. It characterizes the first call as the connection of the customer to Atlantic's switch and the second as the connection of the switch to the ultimate called party.[5](25) On the basis of these characterizations, Atlantic argues that resellers are analogous to telephone answering services and further contends that like such services, resellers should be considered customers of NET. Atlantic further contends that treatment of resellers as customers accords with the Federal Communications Commission (FCC) definition of an "end user". We disagree as a matter of fact and law with both of these assertions.

Atlantic's attempt to compare itself to a telephone answering service cannot be accepted. When a telephone answering service intercepts a call for a customer, the call terminates after the answering service accepts the message. The customer then receives the message from the answering service. There is no direct communication between the customer and the calling party, but rather two separate telephone calls.

In contrast to a telephone answering service, Atlantic's switch does in fact convey the call between its customer and the called party. As described above, the Atlantic switch identifies the location of the called party and transports the call over the least cost route to its ultimate destination. As staff witness Kathryn Bailey testified, when an Atlantic customer uses Atlantic to complete a call, the Atlantic switch performs the actual physical connection that establishes the two-way communication path between the Atlantic customer and the called party. Contrary to Atlantic's assertion, there is only one telephone call and, in accordance with the statutory definition, Atlantic's network of its switch and leased lines conveys the telephone message for the benefit of its customers.[6](26)

We further disagree with Atlantic's claim that the FCC defines resellers as "end users". The definition of end user relied upon by Atlantic is found in the FCC rules on access charges.[7](27) The regulation defines end users as follows:

> "End User" means any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a *person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller*.

47 CFR Ch.1 Subsection 69.2(m) (1989), (emphasis added).

The end user definition contained in the current FCC regulations is the result of a 1986 rulemaking in which the FCC *inter alia* amended the access charge payment obligations of resellers. *Re WATS-Related and Other Amendments of Part 69 of the Commission's Rules, Notice of Proposed Rulemaking,* 51 Fed. Reg. 633 (1986) (hereinafter Notice); *In Re WATS-Related and*

Other Amendments of Part 69 of the Commission's Rules, Report and Order, FCC 86-115 (released March 21, 1986), (hereinafter Report and Order). One of the issues addressed by the FCC in the rulemaking was whether to apply the new access requirements to resellers such as hotels and business complexes which resell services from their business premises. The FCC elected to continue the exemption of such resellers from access charge obligations. The FCC rules distinguish resellers such as Atlantic who use the local exchange network to route customer calls to and from the reseller's switch from hotel type resellers whose calls originate on their business premises. *Notice* paras. 10-13; *Report and Order*, paras. 25, 29. This distinction is reflected in the current definition of an end user as *inter alia* a reseller whose resale transmissions originate on the reseller's premises, i.e. a hotel.[8(28)]

We also find no merit in Atlantic's argument that *Re Omni Communications, Inc.*, 122 N.H. 860, 451 A.2d 1289 (1982) and *Allied N.H. Gas Company v. Tri-State Gas and Supply*

Co., 107 N.H. 306, 721 A.2d 251 (1966), preclude the commission from asserting jurisdiction over long distance resale. In *Allied N.H. Gas Company v. Tri-State Gas and Supply Co., supra*, the Court affirmed the commission's determination that it did not have the authority to regulate the sale of liquified petroleum gas to individual structures through use of a single storage tank. The commission had found that even though RSA 362:2 authorizes it to regulate *inter alia* companies that furnish heat to the public, the legislature had intended only to include within the commission's regulatory authority "pipeline companies and gas companies using a system of underground mains for the distribution of gas to an entire community or area." *Id*. at 308. On appeal, the Court affirmed the commission's conclusion that it did not have the authority to regulate "the sale and distribution of liquefied petroleum gas in the manner disclosed by the evidence in this case." *Id*.

The distinction between *Allied* and the instant case is evident. In *Allied*, the company was selling a product that was different in kind than the product sold by regulated gas utilities. The product was distributed via a single storage tank located on property contiguous to a single apartment building that was being heated. *Allied, supra*. at 307. In contrast, Atlantic is reselling a service that has always fallen under the rubric of a regulated telephone service. Moreover, Atlantic conveys messages for its customers through its use of NET's facilities. The analogy in gas supply would be a company that uses the regulated gas utilities mains to resell gas to its own customers. While this specific issue never has been addressed by the commission, we have little doubt that in such a situation we would assert regulatory authority over a "gas reseller". In any event, "gas resale" was not involved in *Allied*, and the Court's holding therein is inapposite.

Equally without merit is Atlantic's assertion that *Re Omni Communications, Inc*, supra, precludes the commission from asserting jurisdiction over resellers. In *Omni* the supreme court reversed the commission's denial of Omni Communications' petition to tie its radio-paging system into telephone lines in New Hampshire. As previously discussed in footnote 6, radio-paging systems use telephone lines to establish one way communications between an individual and the terminal equipment of the paging company. An individual using a paging service is given a receiver or "beeper". A person who wishes to reach the subscriber dials the telephone number that is assigned to the paging company's terminal equipment. The telephone

call is completed once the caller delivers the message to the terminal equipment. The terminal equipment then transmits the message to the subscriber's receiver. The commission denied Omni's petition because it had previously granted another company, Comex, Inc., an exclusive franchise to provide radio-paging service in New Hampshire. The Supreme Court found that the commission did not have regulatory authority over radio pagers and reversed. Atlantic interprets *Omni* to restrict the commission's regulatory authority to companies that are natural monopolies. Under this interpretation, the commission could not continue to regulate toll service if we were to find that providers of this service are not natural monopolies. A fair reading of *Omni* belies such a restrictive interpretation of our regulatory authority.

In *Omni* the court observed that the commission's regulatory authority is consonant with the principles of favoring competition in trades and condemning monopolistic conduct embodied in part II, Article 83 of the New Hampshire Constitution. The legislative intent in authorizing commission regulation of electric, gas and telephone utilities was predicated on a recognition that such entities were natural monopolies and the public interest requires regulatory oversight of sanctioned monopolies. *Id*. at 862. However, the court further reasoned that the commission's regulatory authority does not extend to "all companies and businesses somehow related to railroads, telephone, telegraph, light, heat and power companies ..." *Id*. at 863 (citations omitted). Since the evidence was that the new and burgeoning industry of radio paging was competitive, the court concluded that regulating the one-way communication used by such companies was not in the public good.

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Contrary to the Atlantic argument, we do not interpret *Omni* to preclude the commission from regulating competition among long distance resellers. Taken to its extreme, Atlantic's limiting interpretation of our authority would require the commission to deregulate NET's provision of long distance service if it found that technological or other factors caused the service no longer to be a natural monopoly because competition can exist. To the extent that the commission finds, instead, that regulating a service and allowing a company to compete with NET provides an effective means of fostering competition, Atlantic's interpretation of *Omni* precludes such action. This interpretation would leave the scope of our regulatory authority in a state of flux — determined more by technological development than by the reasoned policy-making objectives of the legislature. We do not believe that the supreme court intended such a result. We interpret *Omni* to require the commission to undertake a factual investigation to ascertain whether, in the first instance, a particular service is a service that the legislature intended to regulate and second, whether the "relaxation" of regulation of that service is in the public good. When applied to long distance resellers, we conclude that the court's holding in *Omni* authorizes the commission to assert jurisdiction over Atlantic. *See also*, *Re AT&T*, DE 90-002, Report and Order No. 19,956 (October 15, 1990).

Telephone toll service is a service that until recently was considered to possess all the characteristics of a natural monopoly. Indeed, until Judge Green ordered the divestiture of AT&T in 1983, there was effectively only one provider of toll service in the nation. *United States v AT&T*, 552 F. Supp. 131, *Aff'd sub nom*; *Maryland v United States*, 460 US 1001 (1983). Hence, there can be no doubt that when the legislature first enacted our statutes in 1911, it

intended the commission to exercise full regulatory scrutiny over the provision of telephone toll service. Laws 1911, c.164, s. 13.

Accordingly, the issue now before the commission is whether it is in the public good to now "relax" the regulation of resale of toll service, both in terms of market entry and exit and in terms of price and service. Recently, in the generic competition docket, the commission addressed the public good standard set forth in our statutes. DE 90-002, Order No. 19,956, October 15, 1990. As we explained therein, when ascertaining the public good the commission examines the totality of the circumstances present. Specifically with reference to the issue of competition, the commission will look to the issue of whether it is in the public good to have one or several utilities operate within a given franchise area. Order No. 19,956 at 9-10 citing, *inter alia*, *N.E. Household Moving & Storage, Inc.*, 117 N.H. 1038 (1977); *Household Goods Carriers Ass'n. v. Ouellette*, 107 N.H. 199, 201 (1966).

Consideration of the totality of the circumstances involved in the resale of long distance service leads us to conclude that at this time commission determination to decline to exert its regulatory authority over long distance resale is not consistent with the public good. The testimony of both staff and Atlantic witnesses was that irrespective of any regulatory restraints, the market for long distance services is currently not competitive. Staff Witness Leszek Stachow testified that despite the presence of competition in the interstate toll market for some time, the market is still dominated by AT&T which retains the bulk of U.S. market share. Mr. Stachow further opined that deregulation of the intrastate toll market would not necessarily result in competition. Rather, in the event that the commission finds that competition can exist in a manner consistent with the public good, it must establish a mechanism for the orderly transition from one that is occupied by a single regulated firm to free and fair competition. Mr. Stachow's sentiments in this regard were shared by Atlantic's own economist, Mr. William McEachern.

Mr. Stachow further testified that at this time it is not at all clear that the introduction of toll competition will result in net benefits to ratepayers. He explained that because of the current regulatory structure of telecommunications in New Hampshire, authorizing intrastate competition can have a potential negative impact on consumers. Two long standing policy goals of this commission have been universal service and uniform rates. To achieve this

goal the commission has imposed obligations on NET in exchange for its exclusive franchise right, *inter alia*, to supply ubiquitous toll service and geographically averaged rates. This means that regardless of actual costs, ratepayers throughout the state pay the same rates for toll.

The evidence at the hearing was that new entrants to the toll market, like Atlantic, will in all likelihood target customers in NET's more lucrative urban toll markets. Thus, permitting competitive entry may result in the emergence of rate differentials based upon geographic locations. The effect of this geographic de-averaging will have an adverse impact on rural business customers who will be competitively disadvantaged by the lack of competition in their exchanges.

There was also evidence during the hearing that the introduction of toll competition may result in higher basic exchange rates. NET's current rates are designed to meet the company's

over-all revenue requirement. Thus, to the extent that introduction of competition results in a loss of toll revenues to NET, the company will seek recovery from the least competitive service, basic exchange. Here again, we can expect that NET's revenue erosion will have a disproportionate adverse impact on rural customers who will have the dual impact of higher basic exchange rates, but not have the opportunity to benefit by lower toll rates offered by NET's competitors.

In summary, substantial evidence in the record supports our finding that, for the present, a commission determination to decline to regulate long distance resale is not consistent with public good. Our findings that the current intrastate toll market is not competitive in combination with the potential, negative impacts of competition leads us to proceed cautiously in transitioning from a monopolistic to a competitive intrastate toll market. Our ultimate goal is to allow competition to flourish in areas where it can exist and, at the same time, continue to protect the interests of monopoly ratepayers. We agree with staff and the other parties that the generic competition docket is the appropriate proceeding to pursue this goal.

We therefore find that Atlantic's resale of long distance service within New Hampshire makes it a public utility within the meaning of RSA 362:2. We accordingly reaffirm our January 15, 1991 Order requiring Atlantic *inter alia* to cease and desist its intrastate operations and pay a fine of five thousand dollars ($5,000) for operating illegally up to January 15, 1991[9(29)] , pursuant to RSA 374:41. Certification by Atlantic that it has complied with the cease and desist order is a precondition of a commission order granting a franchise to Atlantic if and when the company elects to file a petition with the commission.

The final issue which we will address in this Order, is Atlantic's request for a stay of the cease and desist order. With respect to this issue, we conclude that Atlantic has not demonstrated sufficient justification for a stay. Atlantic claims that by requiring it to cease intrastate operations we are causing financial harm to its customers and are effectively causing the company to cease all operations. Based upon the evidence in the record, we find that neither of these claims justify granting a stay.

With respect to Atlantic's customers, the company's testimony during the hearing supports a finding that the only impact of our ruling on its customers is to oblige them to use NET as their toll carrier. During the hearing Atlantic witnesses repeatedly testified that they do not displace NET as a carrier. The witnesses testified that in the event Atlantic is unable to complete their calls, they can continue to use NET as a long distance carrier. To the extent that this information is erroneous and additional costs will be incurred by Atlantic customers, we deem it appropriate for Atlantic to bear the costs of such misinformation.[10(30)]

We further find that the evidence does not support a finding that Atlantic will be irreparably harmed by our decision. The evidence at the hearing was that intrastate calls represent only 35% of Atlantic's traffic. Our Order, therefore, does not require Atlantic to cease operations of a majority of its business. Moreover, to the extent that Atlantic is required totally to cease doing business, this result is a direct consequence of its own illegal conduct. An analogy may be drawn between Atlantic and an individual who is licensed to practice law in Maine, but who elects to be an unlicensed practitioner in

New Hampshire. In such a circumstance, we have no doubt that the individual would be prevented from continuing to practice regardless of his or her fitness as an attorney. Similarly, it is apparent that by enacting the franchising statute the legislature has concluded that companies that act as unfranchised public utilities are engaging in conduct that is harmful to the safety and welfare of ratepayers. Public utilities that violate the franchising requirement are necessarily subject to commission termination of their business once they are discovered. To do otherwise would render meaningless our statutory authority.

Our order will issue accordingly.

ORDER

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

ORDERED, that Atlantic Connections, Ltd. (Atlantic) is a public utility operating in the State of New Hampshire without franchise approval pursuant to RSA 374:22 and charging rates without authority pursuant to RSA 378:1; and it is

FURTHER ORDERED, that Atlantic's motion to stay the Public Utility Commission's order of January 15, 1991 (Order No. 20,031) requiring, *inter alia*, Atlantic to cease and desist all resale operations within the State of New Hampshire and pay a fine of Five Thousand Dollars ($5,000) pursuant to RSA 365:41 is hereby denied; and it is

FURTHER ORDERED, that the continuing failure of Atlantic to comply with Order No. 20,031 and with this order may subject Atlantic and its principals to additional civil and/or criminal penalties pursuant to RSA 365:41 and RSA 365:42.

By order of the New Hampshire Public Utilities Commission this twenty-second day of February, 1991.

FOOTNOTES

[1]On January 4, 1990, AT&T Communications of New Hampshire filed a petition to commence business as a public utility within New Hampshire. In an order issued on June 7, 1990, the commission determined that it would simultaneously investigate AT&T's petition and pursue on a generic basis the issue of whether and in what form intrastate long distance competition is in the public good. DE 90-002, Order No. 19,853. The commission now has granted on an interim basis AT&T's petition and similar requests of Long Distance North, Inc. (DE 87-249, Order No. 20,039), U.S. Sprint (DE 90-127, Order No. 20,042) and MCI (DE 90-108, Order No. 20,041) in order that it may monitor the potential effects of toll competition on rates and services. Final hearings and completion of the generic proceeding should occur by the end of this calendar year.

[2]Atlantic's assertion that our finding that resellers of long distance are public utilities is inconsistent with our decision in *Motorola* is meritless. In that proceeding the commission only deregulated resale of cellular telecommunication service. Resellers of cellular service do not compete with NET for long distance traffic. Rather, cellular owners use the service in addition to their normal phone lines. Thus, the commission deregulated the resale of cellular on the basis of

findings that it was a new and competitive service. In so ruling, the commission explicitly reserved the right to revisit the issue of whether regulation was appropriate if competition did not develop. *Id*. at 244. Resale of traditional toll service was not deregulated in *Motorola*. Moreover, in contrast to the resale of cellular service, substantial evidence supports the finding that the deregulation of traditional long distance toll service will not necessarily produce a competitive toll market.

[3]Dedicated circuits are either intraexchange or interexchange transmission facilities that are dedicated to the use of the carrier's customer. The testimony at the hearing was that high monthly subscription rates that NET and other carriers charge for dedicated circuits means that only high volume users find them more economical then the public switched network.

[4]The NET FX tariff explicitly prohibits resale of FX in competition with NET. (NHPUC Tariff #75, Part A85, p.30, Paragraph 5.2.2, A,3). During the hearing Atlantic asserted that it was unaware of this prohibition and further, that the restriction is an illegal restraint on competition. In response, NET claimed that as a matter of policy the company favors competition and does not enforce its tariffs against competitors because of antitrust concerns.

The record reflects and the commission finds that NET knew or should have known that Atlantic was violating its tariff. Under the circumstances NET's failure to enforce the tariff was at best negligent and at worst collusive. At the same time, the commission does not intend to engage in micro-management of

NET and will not direct the company enforce its tariffs. It is up to NET to decide whether it will take action to obtain compliance with its existing tariffs or seek to amend them. To the extent, however, that NET chooses not to enforce its tariffs, the company is on notice that in future rate cases any revenue loss attributable to its failure to seek compliance with its tariffs will not be compensated by ratepayers.

[5]Although the Atlantic customer must dial two telephone numbers — Atlantic's and that of the ultimate recipient of the call — it is undisputed that the result is a standard telephone conversation between the Atlantic customer and the recipient.

[6]We note that in contrast to long distance resellers companies that provide radio-paging do function as electronic answering services. Radio-paging is accomplished via two separate "calls". The first call is the call made by the individual seeking to contact the subscriber to the service to the radio-pager's switch. The individual delivers the message to the switch and the call terminates. The second "call" is the radio beep between the switch and the subscriber's pager. In contradistinction to long distance resellers, radio-pagers do not establish two way communications for their subscribers and do, in fact, use telephone lines in a manner that is tangential to the actual service they are providing ... radiopaging. See discussion, *infra*, *Omni Communications, Inc*., 122 N.H. 860, 451 A. 2d 1289 (1982), of the regulatory treatment of radio-paging devices.

[7]An access charge is a charge which a local exchange company assesses against an interexchange carrier for access to the local network.

[8]We similarly find no merit to Atlantic's suggestion that our assertion of jurisdiction over resellers is contrary to the approach taken in other states. Except when specifically exempted by statute, the vast majority of state commissions have interpreted their regulatory jurisdiction to extend to long distance resale. We recognize, however, that many jurisdictions subject resellers to a form of "relaxed" regulation. See, *NARUC Annual Report on Utility and Carrier Regulation*, p. 699-700 (1989).

[9]We do not address here the issue of whether additional fines may be appropriate for Atlantic's defiance of our cease and desist order subsequent to its January 15, 1991, effective date.

[10]We note that in its sales literature Atlantic makes similar claims to its customers that it does not displace NET. Thus, to the extent Atlantic's customers sustain injury from these representations they may have an opportunity to seek judicial relief.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 19,853, 75 NH PUC 316, June 7, 1990. [N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 19,956, 75 NH PUC 670, Oct. 15, 1990. [N.H.] Re Atlantic Connections, Ltd., DE 90-042, Order No. 19,766, 75 NH PUC 186, Mar. 23, 1990. [N.H.] Re Atlantic Connections, Ltd., DE 90-042, Order No. 20,031, 76 NH PUC 47, Jan. 15, 1991. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 20,039, 76 NH PUC 56, Jan. 21, 1991. [N.H.] Re MCI Telecommunications Corp., DE 90-108, Order No. 20,041, 76 NH PUC 61, Jan. 21, 1991. [N.H.] Re Plymouth State College, DE 89-206, Order No. 19,695, 75 NH PUC 65, Jan. 29, 1990. [N.H.] Re U.S. Sprint Communications Co. of New Hampshire, DE 90-127, Order No. 20,042, 76 NH PUC 59, Jan. 21, 1991.

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NH.PUC*02/22/91*[27084]*76 NH PUC 100*Birchview by the Saco, Inc.

[Go to End of 27084]

Re Birchview by the Saco, Inc.

DE 89-207
Order No. 20,064

76 NH PUC 100

New Hampshire Public Utilities Commission

February 22, 1991

ORDER adopting a water rate settlement that provides for a $4,450 increase in revenue requirement. The settlement further requires the utility to allocate 22% of its total revenue requirement to a hotel located within its service territory.

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1. RATES, § 630

[N.H.] Temporary rates — Grounds for rejection — Improper accounting — Commingling of accounts — Water utility. p. 101.

Page 100

2. RATES, § 595

[N.H.] Water — Rate increase — Settlement. p. 101.

3. RATES, § 605

[N.H.] Water rate design — Allocation of increase — Settlement. p. 101.

APPEARANCES: Brown, Olson and Wilson by Paul A. Savage, Esquire; Audrey Zibelman, Esquire for the Public Utilities Commission.

BY THE COMMISSION:

I. *Procedural History*

On February 5, 1990, Birchview By the Saco, Inc. (Birchview or Company), serving a limited area in the Town of Bartlett, N.H., filed proposed rate schedules and supporting documents which would result in an increase in annual revenues of $17,120.00. In conjunction with the request for permanent rates, Birchview requested a temporary rate increase in the amount of $10,003.00 on an annual basis.

On May 15, 1990, the commission conducted a prehearing conference to address procedural matters regarding the proposed permanent rate increase and held a hearing on the Petitioner's request for temporary rates.

By Order No. 19,855 the Company's request for temporary rates was denied without prejudice and the commission staff was ordered to conduct an audit of the Company's books. A further hearing on the merits of awarding the Company temporary rates was held on July 25, 1990.

Hearings on Birchview's permanent rate request were scheduled to convene on December 14, 1990. Prior to the hearing, staff and Birchview reached a settlement of the permanent rate request. In this order we will address the petitions for temporary and permanent rates.

II. *Position of the Parties*

Birchview sought an increase of $10,003 in revenues to be reflected in its rate schedule as temporary rates until the completion of these proceedings and the establishment of permanent rates. The Company claimed the increase was necessary because of plant additions made in 1985 and annual net operating losses since 1985.

Staff recommended that the request for temporary rates be denied. Staff testified that following the commission's denial of the company's temporary rate request in Order No. 19,855,

staff audited the company's books to ascertain a reasonable basis to establish temporary rates. The audit revealed that the Birchview's books were not kept in accordance with the commission's Uniform Classifications of Accounts for Water Utilities and, further, that the company commingled its utility and non-utility accounts. As a result, staff questioned the reasonableness of the proposed temporary rates.

With respect to the permanent rate request, staff and Birchview recommended that the commission approve the parties' settlement. (Attachment A.)

1(31) The settlement proposes an overall revenue requirement of $18,988. This represents an increase of $4,450.00 in Birchview's current revenue requirement. The settlement further proposes that the company allocate 22% of its revenue requirement to a hotel located within its service territory. Because Birchview previously had not charged the hotel for water, the net impact of the revenue increase and allocation to the hotel on residential customers is to increase their annual charges from $120.00 to $139.72.

III. *Commission Analysis*

[1-3] The commission accepts staff's recommendation to deny the company's temporary rate request. Pursuant to RSA 378:27, the commission has the discretionary authority to refuse to grant temporary rates if it has reasonable grounds to question the information contained in the financial reports that the utility files with the commission. In Order No. 19,855, the commission denied Birchview's request for

temporary rates because the company's failure to comply with commission requirements concerning the maintenance of accurate financial reports and installation of meters gave rise to reasonable grounds to question the proposed temporary rates. The commission denied the request without prejudice to enable the company to have a second hearing on temporary rates following a staff audit of its books.

Staff testified during the second temporary rate hearing that its audit did not satisfy its concerns relative to the accuracy of the company's reported costs and assets. Instead, the audit revealed that the company commingled its utility and non-utility accounts, thereby preventing a reasonable estimate of its recoverable utility costs. On the basis of these facts we agree with staff that there are reasonable grounds to question the basis of the proposed temporary rates and pursuant to RSA 378:27, we hereby deny the request.

The commission further finds that the terms and conditions set forth in the attached settlement are in the public good and accept the settlement as modified by the December 19, 1990, letter by Birchview's counsel. Specifically, the agreement is modified to state that the hotel's annual charge is $5,011.28 or 22% of the company's total revenue requirement. The second paragraph on page 2 of the agreement is also modified to delete the reference to the 1974 agreement between Birchview and the hotel. The paragraph will now read as follows:

> On December 11, 1990, Staff and the Company met in an attempt to settle the proceeding. Mr. T. M. Egbert, Jr. and Mr. Philip C. Lawson, two of the [sic] Birchview's

customers, were also present. During the meeting Birchview noted that the owner of the hotel has intimated that if billed, the hotel may refuse to pay for water service. While Birchview is willing to bill and pursue whatever remedies it may have against the hotel, the Company expressed concern over the effect of a 37% loss of revenues and a judicial determination that it is required ~~under~~ ~~the~~ ~~1974~~ ~~agreement~~ to supply free water to the hotel will have on its ability to meet its expenses.

With these modifications, we find that the revenue requirement and rate allocation contained in the settlement are just and reasonable and represent a fair allocation of costs between the hotel and residential ratepayers. We note that the settlement also provides an administrative expense to allow the company to engage outside consultants to prepare its books and an assurance by Birchview that it will begin metering the hotel's usage and purchase meters for the remaining ratepayers as soon as practicable. We expect the company to adhere to these terms and in the future avoid the difficulties it encountered in this proceeding.

Our order will issue accordingly.

ORDER

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

ORDERED, that Birchview By the Saco, Inc.'s petition for temporary rates is denied; and it is

FURTHER ORDERED, that the stipulation attached hereto as Appendix A be, and hereby is, adopted; and it is

FURTHER ORDERED, that Birchview By the Saco, Inc. shall file tariffs complying with the stipulation prior to charging rates.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1991.

ATTACHMENT A

Agreement on Permanent Rates

This agreement is entered into on this 14th day of December, 1990 between Birchview by the Saco, Inc. (Petitioner or Company) and the Staff of the Public Utilities Commission (Commission) for the purposes of and subject to the terms and conditions hereinafter stated.

Introduction

On February 5, 1990, Birchview by the

Saco, Inc., (Petitioner of Company), petitioned the commission for a proposed increase of $17,120.00 (118%) in its permanent rates. If adopted the proposed increase would augment the Company's revenue requirement from $14,528.00 to $31,648.00 and would raise annual customer charges from $120.00 to 298.57.

On October 24, 1990, Staff filed testimony recommending an annual revenue requirement of

$18,857. Staffs' recommendation increases the company's annual revenue level by $4,329.00 and reduces rates to residential customers to $113.14. Staff's proposed reduction in residential customer rates is caused by its recommendation that a hotel/restaurant located in the Company's service territory now be allocated 37% of the company's annual revenue requirement. Currently the Company is not charging the hotel/restaurant for water service because of a 1974 agreement between the owners of the hotel and the Company in which Birchview agreed to supply water to the hotel in exchange for property and water rights. Prior to this proceeding the Company did not notify the Commission of the 1974 agreement. (The Company's Petition contemplated allocating of 5.5% of its revenues requirement to the hotel).

On December 11, 1990, Staff and the Company met in an attempt to settle the proceeding. Mr. T. M. Egbert, Jr. and Mr. Philip C. Lawson, two of the Birchview's customers, were also present. During the meeting Birchview noted that the owner of the hotel has intimated that if billed the hotel may refuse to pay for water service. While Birchview is willing to bill and pursue whatever remedies it may have against the hotel, the Company expressed concern over the effect of a 37% loss of revenues and a judicial determination that it is required under the 1974 agreement to supply free water to the hotel will have on its ability to meet its expenses.

Staff continues to believe that its recommended allocation to the hotel is appropriate under the circumstances. Staff is cognizant, however, that with proper metering of usage it may be shown that the allocations should be changed. Staff and the Company agreed that the hotel should be metered as quickly as possible so that an accurate analysis of its use may be made.

Staff also agrees with the Company that a 37% loss in revenues may have a severe adverse effect on Birchview's financial condition. While disconnecting the hotel for non-payment of its bill will avoid some of the Company's costs, the Company will continue to incur non-usage sensitive costs that it may not be able to recover. Because of existing quality of service concerns, Staff concluded that it was in the public good to redesign the rate structure in the following manner:

1. The hotel/restaurant will be allocated 22% of the Company's revenue requirement.

2. General and administrative expenses will be increased from Staff's proposed $1,200 to $2,200 to allow the Company to engage outside consultants to prepare its books on a quarterly basis. However, the cost of power was reduced by 22% to reflect the amount allocated to the hotel.

3. The Company will be allowed an additional $600.00 a year in operating expenses for Department of Environmental Services fees.

As a result of these changes the Company's annual revenue requirement will be $18,988. Residential ratepayers will pay $14,811 annually and the hotel/restaurant will pay $4,177.23 annually. Staff and the Company agree that this allocation will permit the Company to earn sufficient sums from its residential ratepayers to meet its expenses even if the hotel is disconnected. Staff and the Company agree that the stipulated rates are in the public good and permit the Company to earn a reasonable return on its investment.

III. SETTLEMENT TERMS

1.0 *Rate Base* The Company's rate base will be $28,991.

2.0 *Rate of Return* The Company will earn a rate of return on equity of 11.9% and an overall rate of return of 11.84%.

3.0 *Revenue Requirement* The Company's annual revenue requirement will be $18,988. The hotel will be allocated 22% of the revenue requirement and the residential ratepayers' allocated share will be 78%.

4.0 *Billing*: The Company will bill all customers prospectively on a quarterly basis.

5.0 *Hook-up Fees*: The Company will file a compliance tariff removing all references to hook-up fees within thirty (30) days of the date of the Order approving the Stipulation.

6.0 *Hotel Bills:* The Company will file a compliance tariff establishing a rate for its commercial customer within thirty (30) days of the Order approving the Stipulation and will bill the hotel at its first bill issuance following compliance. The Company will report to Staff on its efforts to obtain compliance with its tariff.

7.0 *Meters*: The Company will attempt to obtain the financing necessary to install meters at all customers locations within 12 months of the date of the Order approving the Stipulation and at the end of the 12 month period will inform Staff of the success of its efforts. In any event, the Company shall install and read its meter at the hotel as soon as possible after approval of the Stipulation and no later than 60 days following approval.

8.0 *General Conditions:* In addition to the above the Stipulation is subject to the following conditions:

8.1 The agreement shall be promptly presented to the Commission for approval, and approval shall be issued without delay.

8.2 The making of this agreement shall not be deemed in any respect to constitute an omission by any party that any allegation in these proceedings other than those specifically agreed to herein is true and valid.

8.3 The making of this agreement establishes no principles or precedent in any other proceeding or investigation.

8.4 The Commission approval of this agreement does not establish any principles or precedents.

8.5 The Commission approval of this agreement shall not in any respect constitute determination as to the merits of any allegations made in this rate proceeding.

8.6 This agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not approve it, the agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purposes.

8.7 This agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

8.8 The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating, thereto shall remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participation in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS THEREOF, the parties fully authorized agents have reviewed this agreement.

Birchview by the Saco Water Company
By Its Attorneys
By: Paul A. Savage, Esquire

STAFF OF PUBLIC UTILITIES COMMISSION
By Its Attorneys
By: Audrey A. Zibelman, Esquire

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Page 110

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ATTACHMENT B

December 19, 1990

HAND DELIVERED

Audrey A. Zibelman, Esquire
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301

Re: *DR 89-207/Birchview By The Saco, Inc. ("Birchview")*

Dear Audrey:

Pursuant to our conversation, I am requesting that the Agreement on Permanent Rates (the "Agreement") be modified slightly. Specifically, Birchview requests that the Agreement expressly authorize Birchview to charge the hotel for its share of the electricity expense and that the Agreement clarify Birchview's

concerns regarding the possible rights the hotel may have to free water.

Regarding Birchview's power expense, the Agreement states that twenty-two (22%) percent of the cost of power is allocated to the hotel, while the remaining seventy-eight (78%) will be paid by the residential customers of Birchview. The proposed water rate for the residential customers takes into account their share of the electricity expense. However, the water rate for the hotel does not include their share of the power expense. Thus, the Agreement is somewhat inconsistent as it states that the hotel will pay its share of the power expense, when in fact the water rate for the hotel does not take into account such an expense. Therefore, the hotel is not required to pay for such an expense. Birchview believes that the water rates for the hotel should be altered to require that the hotel pay its share of the electricity. Furthermore, the inclusion of this expense in the hotel's water rate is consistent with Staff's position that the hotel should pay its fair share of the cost of service. It should also be noted that according to Staff testimony the hotel's water rate should be approximately seven thousand ($7,000.00) dollars.

Schedule 3A of the Agreement indicates that the hotel's share of the power expense per year

is nine hundred sixty one ($961.00) dollars. This amount should be added to the present water rate of the hotel, producing a new water rate for the hotel of five thousand eleven dollars and twenty-eight cents ($5,011.28).

Birchview also wishes to clarify its concern regarding the possibility that a judicial determination may require Birchview to continue to supply the hotel with free water. Presently, the Agreement states on page 2 that the concern is based on the 1974 Agreement. Birchview's concern is based not only on the 1974 Agreement, but on other water rights the hotel may possess if the 1974 Agreement was determined to be unenforceable. Birchview is therefore requesting that "under the 1974 Agreement" be deleted from the following statement in the Agreement:

> "While Birchview is willing to bill and pursue whatever remedies it may have against the hotel, the Company expressed concern over the effect of a thirty-seven (37%) percent loss of revenues and a judicial determination that it is required to supply free water to the hotel will have on its ability to meet its expenses."

If you have any questions or comments concerning the above, please do not hesitate to contact me.

Sincerely,
Paul A. Savage, Esq.

FOOTNOTES

[1]On December 19, 1991, Birchview requested two minor modifications to the settlement agreement. The first modification modifies the rate Birchview will charge to the hotel located in its service territory to reflect accurately that 22% of the company's power costs are being allocated to the hotel. The result of the allocation is to increase the hotel's annual rate from $4,177.23 to $5,011.28. The second modification is to delete a reference to a 1974 agreement between the hotel and the company from the settlement. Staff concurred in both of these requests. (Attachment B).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Birchview by the Saco, Inc., DR 89-207, Supplemental Order No. 19,855, 75 NH PUC 321, June 11, 1990.

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NH.PUC*02/25/91*[27085]*76 NH PUC 117*New England Telephone Company

[Go to End of 27085]

Re New England Telephone Company

DE 91-018
Order No. 20,065

76 NH PUC 117

New Hampshire Public Utilities Commission

February 25, 1991

ORDER approving a tariff filed by a telephone local exchange carrier. The tariff, filed in compliance with an order of the Federal Communications Commission, changes the definition of the demarcation point between telephone company and subscriber facilities and amends rules governing the connection of customer premises equipment and wire to the telephone network.

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1. SERVICE, § 435

[N.H.] Telecommunications — Equipment and facilities — Demarcation point — Company facilities — Subscriber facilities — Local exchange carrier. p. 117.

2. SERVICE, § 457

[N.H.] Telecommunications — Physical connection — Customer premises equipment — Network interconnection — Rules — Local exchange carrier. p. 117.

BY THE COMMISSION:

ORDER

WHEREAS, on January 29, 1991 New England Telephone (N.E.T.) submitted a filing seeking changes in the definition of the demarcation point between telephone company and subscriber facilities, and in rules governing the connection of customer premises equipment and wire to the telephone network; and

WHEREAS, by Order No 18,514 dated December 19, 1986, and subsequently revised on December 30, 1986, the New Hampshire Public Utilities Commission approved the detariffing of telephone inside wire installation and maintenance services as delineated by the FCC in its Second Report and Order, CC Docket No 79-105, FCC 86-63, 51 FR 8498, on February 24, 1986; and

[1, 2] WHEREAS, in Docket No. 88-57, the FCC undertook a review of the rules setting forth the terms and conditions under which customers may install and connect to the network simple inside telephone wiring; and

WHEREAS, this filing is being made in compliance with the Federal Communication Commission's (the `F.C.C.') Report and Order in Docket 88-57, issued on June 14, 1990; and

WHEREAS, following a staff investigation, the Commission finds that NET has filed this petition in accordance with the FCC's Report and Order in Docket 88-57; it is hereby

ORDERED that the following tariff pages:

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


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NHPUC-No 75
Part A Section 1 — Fifth Revision of Page 21
                   Fifth Revision of Page 22
                   Fifth Revision of Page 27
                   Sixth Revision of Page 28
                   Sixth Revision of Page 30
Section 2        — Fifth Revision of Page 9
Section 3        — Fifth Revision of Page 2
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be and hereby are approved.

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of February, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Detariffing Telephone Utilities' Inside Wire, DE 86-154, Order No. 18,514, 71 NH PUC 801, Dec. 19, 1986; revised Dec. 30, 1986.

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NH.PUC*03/04/91*[27086]*76 NH PUC 118*Public Service Company of New Hampshire

[Go to End of 27086]

Re Public Service Company of New Hampshire

Additional petitioner: New England Telephone Company

DE 91-014
Order No. 20,066

76 NH PUC 118

New Hampshire Public Utilities Commission

March 4, 1991

ORDER granting licenses to place and maintain submarine electric and telephone cables under public waters.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Submarine crossing — Public waters — Local exchange carrier. p. 118.

2. ELECTRICITY, § 6

[N.H.] Submarine cable — Authorization — License to cross public waters. p. 118.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, on January 31, 1991, Public Service Company of New Hampshire (PSNH) filed with this commission a petition seeking license pursuant to RSA 371:17 to construct, operate and maintain electric power submarine cable under the public waters of Newfound Lake in the Town of Bristol, New Hampshire; and

WHEREAS, on February 28, 1991, a joint letter was filed by New England Telephone Company (NET) and PSNH requesting that the petition be a joint petition to include construction, operation and maintenance of a telephone cable to be installed at the same time and along the same route as the power cable; and

WHEREAS, electric and telephone service have been requested for Mayhew Island on Newfound Lake; and

WHEREAS, the necessary right-of-way easements are being obtained; and

WHEREAS, Permit No. 91-123 has been issued by the Wetlands Board, Department of Environmental Services, for both submarine cable crossings; and

WHEREAS, the electric cable crossing will consist of approximately 1750 feet of single conductor 35 KV aluminum submarine electric cable to be operated at 7.2 KV; and

WHEREAS, the telephone cable crossing will consist of a single 25-pair cable installed parallel to the electric cable; and

WHEREAS, the commission finds such crossings necessary for PSNH and NET to meet their obligations to provide service within their respective franchise areas, 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 hereby

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 18, 1991; and it is

FURTHER ORDERED, that PSNH effect such notification by publication of an attested copy of the Order of Notice once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Bristol area, said publications to be no later than March 11, 1991. In addition, pursuant to RSA 541-A:22, PSNH shall serve a copy of this Order Of Notice to the Bristol town clerk, by first class U.S. mail, postage prepaid, and postmarked on or before March 11, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the commission on or before March 22, 1991; and it is

FURTHER ORDERED, *NISI* that PSNH

Page 118

and NET be, and hereby are, authorized pursuant to RSA 371:17 *et seq*, to construct, operate and maintain submarine electric and telephone cable beneath Newfound Lake as described in documents on file with this commission; and it is

FURTHER ORDERED, that necessary easements be obtained and 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 New Hampshire Public Utilities Commission this fourth day of March, 1991.

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NH.PUC*03/04/91*[27087]*76 NH PUC 119*Locke Lake Water Company

[Go to End of 27087]

Re Locke Lake Water Company

DR 89-205
Order No. 20,067

76 NH PUC 119

New Hampshire Public Utilities Commission

March 4, 1991

ORDER modifying a prior order that granted a motion for a continuance in an investigation of alleged overearnings by a water utility. The modification extends the date by which the utility must file testimony on the issue of rates should the commission decide to proceed with its investigation.

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1. RATES, § 648

[N.H.] Procedure — Overearnings investigation — Evidence — Filing deadline. p. 119.

BY THE COMMISSION:

ORDER

On February 19, 1991, the commission issued Order No. 20,061 requiring Locke Lake Water Company (Locke Lake) to file its annual report by March 31, 1991, the commission Finance Department to analyze the annual report filed by the company and conduct an audit, if one is necessary, by May 10, 1991 and that Locke Lake submit testimony on the issue of rates by April 10, 1991 if the commission has not closed this docket by May 10, 1991; and

WHEREAS, it was the commission's intent to require testimony from Locke Lake by July 10, 1991; it is hereby

[1] ORDERED, that Order No. 20,061 be modified in the following manner; Locke Lake shall file testimony on the issue of rates on or before July 10, 1991 if it has not received an order from the commission by June 10, 1991 closing this docket.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Locke Lake Water Co., DR 89-205, Order No. 20,061, 76 NH PUC 86, Feb. 19, 1991.

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NH.PUC*03/04/91*[27088]*76 NH PUC 120*New Hampshire Electric Cooperative, Inc.

[Go to End of 27088]

Re New Hampshire Electric Cooperative, Inc.

DR 90-078, DR 90-227
Order No. 20,068

76 NH PUC 120

New Hampshire Public Utilities Commission

March 4, 1991

ORDER denying a motion by an intervenor to segregate and seal from public access certain documents filed in a proceeding to review a capacity sellback agreement.

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1. EVIDENCE, § 33

[N.H.] Privileged communications — Who may assert privilege — Client in transaction. p. 120.

2. PROCEDURE, § 17

[N.H.] Production of evidence — Public access — Privilege — Confidentiality. p. 120.

BY THE COMMISSION:

ORDER

WHEREAS, New England Power Company (NEP), in its Motion to Segregate Certain Unrelated Documents from the Docket, requested an order to segregate and seal from general public access Attachment A to Northeast Utilities Service Company (NUSCO)/ Public Service Company of New Hampshire's (PSNH) Objection to Intervention by New England Power

Company, and Exhibit A to New England Power Company's Response to NUSCO/PSNH, as well as an order directing parties and recipients of said exhibits listed on the service list to maintain confidentiality with regard to the content of those documents; and

WHEREAS, PSNH is the client in the transactions which gave rise to the documents referred to as Attachment A and Exhibit A; and

[1, 2] WHEREAS, NEP sought to obtain concurrence in the Motion to Segregate from PSNH and NUSCO and was unable to do so; and

WHEREAS, pursuant to Rule 502 of the New Hampshire Rules of Evidence the privilege of confidentiality is possessed by the client; Rule 502(b), (c); it is hereby

ORDERED, that NEP's Motion to Segregate is denied; and it is

FURTHER ORDERED, that Exhibit A and Attachment A will remain public documents.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1991.

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NH.PUC*03/04/91*[27089]*76 NH PUC 120*Kearsarge Telephone Company

[Go to End of 27089]

Re Kearsarge Telephone Company

DR 91-022
Order No. 20,070

76 NH PUC 120

New Hampshire Public Utilities Commission

March 4, 1991

ORDER authorizing an independent telephone carrier to issue a one-time credit to ratepayers to disburse a refund received by the carrier pursuant to a settlement agreement stemming from a toll settlement dispute with a connecting carrier.

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1. REPARATION, § 39

[N.H.] Award of reparation — Method of payment — Passthrough of settlement proceeds — One-time credit — Independent telephone carrier. p. 121.

BY THE COMMISSION:

ORDER

On February 18, 1991, Kearsarge Telephone Company filed a petition requesting approval to issue a one time credit totalling $50,000 to customers of record as of April 15, 1991; and

WHEREAS, the refunded revenues represent the retroactive (year 1989) portion of a settlement agreement with New England Telephone (NET) stemming from a dispute over treatment by NET of Kearsarge's Intrastate Subscriber Plant Factor (SPF) in the toll settlement process; and

WHEREAS, the refunded revenues will be disbursed through a one time 79% reduction in each Kearsarge customers' April 15, 1991 local service rate; and

WHEREAS, the Commission finds the disbursement of the one time credit-consistent with the public interest; it is hereby

[1] ORDERED NISI, that Kearsarge be, and hereby is authorized to issue the one time credit to customers of record as of April 15, 1991; and it is

FURTHER ORDERED, that pursuant to NH Administrative Rules, PUC 203.01, the petitioner notify all parties desiring to be heard by causing an attested copy of this order to be published once in a paper 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 15, 1991, said publication to be documented by affidavit filed with this office on or before March 22, 1991; 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 15 days from the date of publication of this order; and it is

FURTHER ORDERED, that this Order Nisi will be effective 20 days from the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1991.

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NH.PUC*03/04/91*[27090]*76 NH PUC 121*Great Bay Water Company

[Go to End of 27090]

Re Great Bay Water Company

DF 90-110
Order No. 20,071

76 NH PUC 121

New Hampshire Public Utilities Commission

March 4, 1991

ORDER adopting a stipulation requiring a water public utility to pay fines for failure to file annual reports with the commission.

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1. REPORTS, § 2

[N.H.] Power to require — Effect of failure to file — Fines — Stipulation — Water utility. p. 122.

2. FINES AND PENALTIES, § 5

[N.H.] Grounds — Failure to file annual reports — Stipulation. p. 122.

BY THE COMMISSION:

ORDER

WHEREAS, on February 23, 1988, the commission granted Great Bay Water Company ("Great Bay" or "Company") authority to operate as a water utility in a limited area of the town of Newmarket, New Hampshire; and

WHEREAS, RSA 374:5 and PUC Rules 607:66 and 609.05 require public utilities to file annual reports with the commission; and

WHEREAS, Great Bay failed to file its F-16 Annual Reports for 1988 and 1989; and

WHEREAS, the commission staff wrote to the Company in December, 1988, April, 1989 and telephoned many times to compel the Company to file and these attempts were unsuccessful; and

WHEREAS, the commission established Docket DF 90-110 to determine if fines should be imposed and scheduled a show cause

Page 121

hearing for November 29, 1990; and

WHEREAS, Great Bay and commission staff met prior to the hearing and entered into a Stipulation (Attachment 1); and

[1, 2] WHEREAS, the commission finds that the Stipulation requiring the Company to pay fines for failing to file and to submit its annual reports is a reasonable resolution of this matter; it is hereby

ORDERED, that the attached Stipulation is hereby approved.

By order of the New Hampshire Public Utilities Commission this fourth day of March, 1991.

ATTACHMENT 1

STIPULATION

1.0 This Agreement is entered into this 29th day of November 1990, between Great Bay

Water Company ("Great Bay or Company") and the Staff ("staff") of the Public Utilities Commission ("Commission") for the purposes and subject to the terms and conditions stated herein.

2.0 *Introduction* On February 23, 1988, Great Bay was granted authority to operate as a water utility in a limited area of the Town of Newmarket. Pursuant to RSA 374:5, and N.H. Code of Administrative Rules Puc 607.06 and 609.05, every public utility shall file annual reports with the Commission. Great Bay Water Company and its President, Robert Hanna, has not filed the F-16 Annual Report for 1988 and 1989.

The Commission made many attempts to compel Great Bay to comply with the filing requirements. In December, 1988, the Commission sent blank reports with filing instructions to Great Bay Water Co. On April 28, 1989, the Commission again requested the reports and notified Mr. Hanna that he could be fined for failing to file. Attorney Sullivan contacted the Company approximately ten (10) times during the last few months of 1989. The Company stated it would file a return but did not. The Commission established Docket DF 90-110 to determine if fines should be imposed and scheduled a show cause hearing.

On November 29, 1990, Great Bay and Staff met before the hearing. Great Bay stipulated that it had received notice of the filing requirements and had failed to file. Staff and Great Bay entered into an agreement concerning fines, a filing schedule and future penalties should Great Bay fail to comply with the Stipulation.

3.0 *Fines*. Great Bay shall pay an unrecoverable, $250 fine to the Commission for failing to file its 1988 and 1989 annual reports. Great Bay shall also pay $100 to Court Reporter Robert Patenaude for his appearance. These fines are due on or before January 31, 1991.

4.0 *Scheduling*. Great Bay shall file its 1988 and 1989 reports on or before January 31, 1991. The 1990 report shall be filed on or before March 31, 1991.

5.0 *Future Penalties*. Should Great Bay fail to pay its fines or file its 1988 and 1989 reports by January 31, 1991, a $1,000 fine shall be imposed. Should Great Bay fail to file its 1990 annual report by March 31, 1991, an additional $1,000 fine shall be imposed.

6.0 *General Conditions*. This agreement is subject to the following further conditions:

6.1 The agreement shall be promptly presented to the Commission for approval, and approval shall be issued without delay.

6.2 The making of this agreement shall not be deemed in any respect to constitute an admission by any party that any allegation in these proceedings, other than those specifically agreed to herein, is true and valid.

6.3 The making of this agreement establishes no principles or precedents in any other proceeding or investigation.

6.4 The Commission approval of this agreement does not establish any principles or precedents.

6.5 Commission approval of this agreement shall not in any respect constitute a determination as to the merits of any allegations made in this rate proceeding.

6.6 This agreement is expressly conditioned upon the commission's acceptance of all its

provisions, without change or condition, and if the commission does not so approve it, the agreement may be deemed to be withdrawn and shall not constitute any part of the record in this

proceeding nor be used for any other purpose.

6.7 This agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

6.8 The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS WHEREOF, the parties' fully authorized agents have exercised this agreement.

GREAT BAY WATER COMPANY

STAFF OF PUBLIC UTILITIES COMMISSION
By Its Attorney,
Susan Chamberlin, Esquire

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NH.PUC*03/05/91*[27091]*76 NH PUC 123*Eastman Sewer Company

[Go to End of 27091]

Re Eastman Sewer Company

DR 90-170
Order No. 20,072

76 NH PUC 123

New Hampshire Public Utilities Commission

March 5, 1991

ORDER denying, without prejudice, a petition by a sewer utility for temporary rates. Commission grants motions to intervene and establishes a procedural schedule.

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1. PARTIES, § 19

[N.H.] Petitions for intervention — Consolidation of intervention — Community associations — Individual ratepayers. p. 123.

2. RATES, § 630

[N.H.] Temporary rates — Grounds for denial — Statutory considerations — Accuracy of financial reports. p. 125.

APPEARANCES: David Marshall, Esquire, representing Eastman Sewer Company, Inc.; David Springsteen and Donald Taylor representing The Eastman Community Association; Michael Holmes, Esquire and Kenneth Traum, representing Office of Consumer Advocate and Susan Chamberlin, Esquire, representing the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

This report addresses the issues of intervention, temporary rates and procedural schedule presented at the prehearing conference and temporary rate hearing held on January 8, 1991.

INTERVENTIONS

[1] There were three motions to intervene. The petition to intervene filed on December 21, 1990, by Myron L. Cummings, Eastman resident and member of the Grantham Board of Selectmen, was denied by the hearing examiner because Mr. Cummings did not appear at the hearing. Mr. Cummings' written comments filed with this motion to intervene were entered into the record, however, for consideration by the parties and the commission as a limited intervention in the form of a public statement. The Eastman Community Association filed a timely motion to intervene and Mr. Donald Taylor, an Eastman resident, appeared *pro se* and as vice chairman of the Eastman Sewer Committee. Mr. Taylor's motion to intervene was filed out of time at the hearing on January 8, 1991. There were no objections to the motions to intervene except that Eastman requested that the intervenors consolidate their intervention. Mr.

Springsteen on behalf of the Eastman Community Association, and Mr. Taylor agreed to consolidate their testimony, questioning and other participation in this docket to the extent consistent with their individual interests. With this condition, the motions to intervene filed by The Eastman Community Association and Mr. Taylor will be granted.

PROCEDURAL SCHEDULE

The parties stipulated to the following procedural schedule:

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

January 8, 1991    Prehearing conference — hearing on
                     temporary rates
Previously filed   Company prefiled testimony and
                     exhibits
February 21, 1991  Staff data requests to petitioner
March 22, 1991     Data responses from petitioner
April 30, 1991     Second set of data requests to
                     petitioners
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May 10, 1991	Data responses to staff and interveners
June 14, 1991	Staff and intervenor testimony due
July 1, 1991	Data requests to staff and intervenors
July 15, 1991	Staff data responses to July 1, 1991 requests
July 22, 1991	Settlement conference
August 20-22, 1991	Hearing on the Merits

The proposed procedural schedule is reasonable and is hereby adopted.

The Consumer Advocate made a further request that a public hearing be scheduled at the Eastman Community Association on a Saturday morning in June or July, 1991. The Consumer Advocate asserts that the proposed hearing would enable the customers of Eastman Sewer Company to voice their concerns to the commission. Many residents would purportedly find it difficult to attend a hearing scheduled during the work week or during evening hours. The commission encourages public participation in its proceedings and accordingly, we will schedule a public hearing to hear the comments of the utility's customers at a date, place and time that is mutually convenient to the commission and the parties.

TEMPORARY RATES

Eastman Sewer Company (Eastman) and staff stipulated that temporary rates should be instituted at current rate levels. Eastman asserted that its revenue deficiency during its latest fiscal year, ending March 31, 1990, was nearly $90,000, as set forth in Schedule A of Exhibit Two. The staff concurred with the company's request asserting that it was equitable for temporary rates to be installed at current levels to ensure that either the company, in the event of under recovery, or the ratepayers, in the event of over recovery should not be penalized by having to wait for appropriate relief to take effect at the end of what are projected to be lengthy proceedings. However, staff testified that there is only two month's worth of pertinent information on file with the commission on which to determine what a reasonable level would be for temporary rates. As a result of staff's evaluation of that two months of data, staff calculated that Eastman is earning a 2.53% rate of return. The staff witness testified that there were significant differences between Eastman's prefiled testimony and exhibits and the annual report on file from Eastman with the commission, causing staff to commence an audit of the company in preparation for the permanent rate proceeding. The audit is still in progress. The staff witness testified that the commission has not previously addressed whether the rates currently being charged by

Eastman are just and reasonable.

The Consumer Advocate and the parties representing the Eastman Community Association argued that the current temporary rates should not be established and that current rates should continue in effect as permanent rates unless and until they are ultimately changed by the commission at the conclusion of these proceedings.

COMMISSION ANALYSIS

[2] The establishment of temporary rates is governed by RSA 378:27, which reads in

pertinent part as follows:

> In any proceeding involving the rates of a public utility brought either upon motion of the commission or upon complaint, the commission may, after reasonable notice and hearing, if it be of the opinion that the public interest so requires, immediately fix, determine, and prescribe for the duration of said proceeding reasonable temporary rates; provided, however, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, *as shown by the reports of the utility filed with the commission, unless there appears to be reasonable ground for questioning the figures in such reports.* (emphasis supplied)

In this case, there are only two months of data on file with the commission. The staff witness indicated that there are significant differences between the information contained in the company's annual report on file with the commission and the company's rate filing. One example is that the value of plant listed in the annual report was $800,000 whereas in the rate filing, plant was valued at under $500,000. The staff also questioned the propriety of capitalization of a lease, the company's accounting methodologies, and its treatment of depreciation.

Although the standard of proof is lower regarding temporary rates than it is for permanent rates; *New England Telephone & Telegraph Co. v. State*, 95 N.H. 515 (1949); it is the commission's opinion that the record here is inadequate to establish temporary rates. The limited information currently on file with the commission is not sufficient to estimate reliably the company's rate of return and does not substantiate the data filed by Eastman in this proceeding.

Our denial of temporary rates is without prejudice to appropriate requests that may be filed after the completion of the staff audit.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that the motions to intervene filed by the Eastman Community Association and Donald Taylor are granted on the stipulated condition that they consolidate their intervention to the extent consistent with their individual interests; and it is

FURTHER ORDERED, that the parties confer with the executive director of the commission to establish a mutually convenient location, date and time for a public hearing at or near the Eastman Community Association; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties and set forth in the foregoing report is hereby accepted; and it is

FURTHER ORDERED, that the petition by the Eastman Sewer Company, Inc., for temporary rates to be established at current rate levels is hereby denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this fifth day of March, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.Sup.Ct.] New England Teleph. & Teleg. Co. v. State, 95 N.H. 515, 82 PUR NS 296, 68 A.2d 114, Aug. 16, 1949.

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[Go to End of 27092]

Re New England Hydro-Transmission Corporation

DF 91-008
Order No. 20,073

76 NH PUC 126

New Hampshire Public Utilities Commission

March 6, 1991

ORDER approving long term financing arrangements proposed by a utility in connection with its participation in the expansion of the transmission interconnection between the electric systems in New England and Hydro Quebec.

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1. ELECTRICITY, § 3

[N.H.] Transmission interconnection — Hydro Quebec Phase II — Financing. p. 126.

2. SECURITY ISSUES, § 44

[N.H.] Factors affecting authorization — Public good — Hydro Quebec Phase II — Permanent debt financing. p. 126.

3. SECURITY ISSUES, § 57

[N.H.] Purpose and subject — Electric transmission interconnection — Hydro Quebec Phase II — Permanent debt financing. p. 126.

4. SECURITY ISSUES, § 111

[N.H.] Financing methods and practices — Electric transmission interconnection — Hydro Quebec Phase II — Permanent debt financing. p. 126.

BY THE COMMISSION:

ORDER

[1-4] WHEREAS, New England Hydro-Transmission Corporation ("NH Hydro") is an electric utility subject to our jurisdiction having its principal business office in the City of Concord, duly organized and existing under the laws of the State of New Hampshire; and

WHEREAS, on January 24, 1991, NH Hydro filed a petition requesting authorization and approval from the commission of certain long term financing arrangements in connection with its participation in the expansion of the transmission interconnection between the electric systems in New England and Hydro Quebec ("Phase II"); and

WHEREAS, NH Hydro seeks approval to enter into long term permanent debt financing arrangements pursuant to which it may borrow up to $81,200,000 from New England Hydro Finance Company, Inc. ("NEHFC") under the terms of a master agreement. The funds borrowed from NEHFC will be evidenced by notes under the master agreement and will be used by NH Hydro to retire its outstanding construction loans used to finance its portion of Phase II and for other corporate purposes related to Phase II; and

WHEREAS, New England Hydro-Transmission Electric Company, Inc. ("Mass. Hydro"), a Massachusetts utility, will also be borrowing up to $133,800,000 in funds from NEHFC to retire its portion of Phase II construction debt and for other corporate purposes related to Phase II. The aggregate amount borrowed by Mass. Hydro and NH Hydro from NEHFC will not exceed $215,000,000. NEHFC will be borrowing the funds from a number of institutional investors ("Lenders"). In order to ease administrative difficulties of dealing with numerous lenders, NEHFC, Mass. Hydro, and NH Hydro propose to use a trustee or other agent to hold security interests, handle payments, and transact other related business with the Lenders; and

WHEREAS, NH Hydro proposes to guarantee its share of NEHFC's borrowings under the note agreement, including interest, premium, and other costs related to these borrowings. NH Hydro also proposes to grant security interests to the Lenders in all of its rights to receive payments from the utilities participating

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in Phase II under their respective support agreements, including the right to receive the cash deficiency commitments ("Cash Deficiency Commitments") previously described and authorized in DE 87-124 dated April 11, 1988. These Cash Deficiency Commitments constitute a several guarantee of the debt by participating utilities. Guarantees to meet the Cash Deficiency Commitments of certain below investment grade participants in the Phase II project will be provided to the Lenders by the equity sponsors of Mass. Hydro and NH Hydro. These equity sponsor guarantees were also previously described and authorized in DE 87-125 dated April 11, 1988. The equity sponsor guarantees constitute a further guarantee of such participants' obligations; and

WHEREAS, Phase II represents an expansion of New England's transmission interconnection with Hydro Quebec from 690 megawatts (MW) of transfer capability to 2000 MW. The total cost of Phase II in the United States is currently estimated to be approximately $481 million. Of this amount, NH Hydro and Mass. Hydro are expected to spend $371 million for construction of: (i) 133 miles of high voltage direct current transmission line from Monroe, New Hampshire to the Ayer/Groton town line in Massachusetts: (ii) a converter terminal facility in Massachusetts. NH Hydro's
share of the $371 million is expected to be $141 million and Mass. Hydro's share is estimated at $230 million; and

WHEREAS, on November 1, 1990, Phase II went into commercial operation with an initial transfer capability of 1200 MW. Further, NH Hydro has stated that transmission system tests will be completed in the first half of 1991, which will increase the total transfer capability of the interconnection from the 1200 MW to the 2000 MW level; and

WHEREAS, as of November 30, 1990, Mass. Hydro and NH Hydro had borrowed from NEHFC approximately $129.3 million and $84.7 million, respectively, for a total of $214 million. These amounts borrowed represent 63% of total consolidated capitalization, while common equity for both companies at that date totaled approximately $125 million or 37% of total consolidated capitalization. NH Hydro's and Mass. Hydro's construction expenditures, including allowance for funds used during construction, as of November 30, 1990 totaled $137 million and $198 million, respectively; and

WHEREAS, NH Hydro had no short term notes outstanding at November 30, 1990, and the capital structure of NH Hydro as of November 30, 1990 consisted of the levels of debt and equity listed in the following table:

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

Capitalization

Common stock and related premium, par value $5 per share (sold at $1000 per share),	
Authorized — Class A — 88,000 shares	
Authorized — Class B — 2,000 shares	
Outstanding — Class A — 21,493 shares	
Outstanding — Class B — 1,507 shares	$23,000,000
Other paid in capital	$18,948,781
Retained Earnings	$10,721,609
Total Common Equity	$52,670,390
Long Term debt — affiliated company	$84,658,734
Total capitalization	$137,329,124

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WHEREAS, in DE 87-124 by Order dated April 11, 1988, the commission, *inter alia*, granted the petition of NH Hydro and certain other New England electric utilities requesting regulatory approval of the terms of eight contracts and certain related guarantees, all in connection with Phase II. DE 87-125 sets forth in detail the unique features of the Phase II construction and the negotiation which led to the aforementioned arrangements. Specifically, in DE 87-124, the commission: (i) approved the commitments relative to cash deficiencies and payments under the Phase II New Hampshire Transmission Facilities Support Agreement, the Phase II Massachusetts Transmission Support Agreement, and the Restated Use Agreement; (ii) approve the issuance by NH Hydro of up to 99,999 additional shares of its common stock; (iii) approved the lease by NH Hydro of 112 miles of right of way and AC Transmission Facilities owned by New England Power company, including the Fifteen Mile Falls Support Agreement; and (iv) approved the lease by NH Hydro of 9 miles of right of way owned by Public Service

Company of New Hampshire. In another related commission proceeding, DF 88-115 by Order dated December 16, 1988, the commission, *inter alia*, granted the petition of NH Hydro requesting regulatory approval for NH Hydro to borrow up to $130 million from NEHFC to fund construction and related costs for the expansion of the Phase II transmission interconnection between NEPOOL and Hydro-Quebec. The commission also: (i) permitted NH Hydro to guarantee unconditionally up to $130 million of indebtedness of NEHFC; and (ii) approved the grant by NH Hydro of a security interest and mortgage in certain properties, support agreements, and other contracts as more fully set forth in the order; and

WHEREAS, in order to provide long term financing for NH Hydro and Mass. Hydro, NEHFC proposes to issue three series of senior notes in an aggregate principal amount of $215 million (the "Notes"). NEHFC proposes to issue and sell $116.9 million of 8.82% Series A Notes due 2001, $51.83 million of 9.26% Series B Notes due 2007, and $46.27 million of 9.41% Series C Notes due 2015. These Notes will be issued and sold to the Lenders pursuant to the terms of a note agreement ("Note Agreement"). In accordance with the terms of a proposed master agreement among NEHFC, Mass. Hydro, and NH Hydro ("Master Agreement"), NEHFC will lend the funds borrowed under the Note Agreement to Mass. Hydro and NH Hydro on the same terms and conditions as NEHFC borrowed these funds from the Lenders. The Master Agreement will provide that Mass. Hydro and NH Hydro will borrow up to $133.8 million and $81.2 million, respectively; and

WHEREAS, the Series A Notes will mature April 17, 2001, and will bear interest at the rate of 8.82% per annum, payable monthly in arrears. Principal on the Series A Notes will be retired monthly through mandatory pre-payments beginning October 17, 1991. The Series A Note will be redeemable at any time, in whole or in part, at the then outstanding principal amount plus a yield maintenance premium. It is expected that NH Hydro's share of the proceeds of the Series A Notes will be $4,470,000, and Mass. Hydro's share will be $72,430,000. The Series B Notes will mature April 17, 2007, and will bear interest at the rate of 9.26% per annum, payable monthly in arrears. Principal on the Series B Notes will be retired monthly through mandatory prepayments beginning May 17, 2001. The Series B Notes will be redeemable at any time, in whole or in part, at the then outstanding principal amount plus a yield maintenance premium. In addition, the Series B Notes are callable at par beginning June 17, 2004. It is expected that NH Hydro's share of the proceeds of the Series B Notes will be $19,690,000, and Mass. Hydro's share will be $32,140,000. The Series C Notes will mature October 17, 2015, and will bear interest at the rate of 9.41% per annum, payable monthly in arrears. Principal on the Series C Notes will be retired monthly through mandatory prepayments beginning May 17, 2007. The Series C Notes will be redeemable at any time at the then outstanding principal amount plus a yield maintenance premium. In addition, the Series C Notes are callable at par beginning January 17, 2012. It is expected that NH Hydro's share of the proceeds of the Series C Notes will be $17,040,000, and Mass. Hydro's share will be $29,230,000. All series of the

proposed Notes would also subject to mandatory redemption at par, in whole or in material part, in the event of a condemnation or casualty to all or part of NH Hydro's or Mass. Hydro's facilities; and

WHEREAS, in order to fund short term fluctuations in capital requirements or working capital needs, NH Hydro also is requesting authorization so that it may, from time to time, issue and renew notes, bonds, and other evidences of indebtedness payable in less than twelve months after the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such indebtedness that is to be retired with the proceeds of any new borrowings) not in excess of $25 million. NH Hydro proposes to invest its excess cash (which may include funds from this borrowing) in permitted investments as outlined in the term sheet, exhibit NEH-2. These investments would consist of United States government obligations, commercial paper, certificates of deposit, banker's acceptances, repurchase agreements, tax exempt money market securities, and the NEES Money Pool; and

WHEREAS, NH Hydro submitted testimony, financial data, and copies of other various documents justifying the terms and amounts of the proposed financing; and

WHEREAS, NH Hydro has offered to submit copies of the proposed Note Agreement, Master Agreement, Notes, and related loan documentation for review by the commission; and

WHEREAS, NH Hydro has requested a prompt hearing or expedited investigation pursuant to RSA 369:4 in light of its need to comply with the time constraints of the Lenders' commitments and the favorable rates and terms with the Lenders; and

WHEREAS, after investigation by the commission, pursuant to RSA 369:4, it appears that it is consistent with the public good to approve NH Hydro's petition; it is

ORDERED, that all persons interested in responding to this petition should be notified that they may submit their comments or file a written request for a hearing on the matter before this commission no later than March 26, 1991; and it is

FURTHER ORDERED, that NH Hydro effect said notification by publication of this order one time in each of the following newspapers: The Union Leader (Manchester), and The Valley News (West Lebanon), no later than March 14, 1991, and documented in an affidavit to be made on a copy of this order and filed with this office on or before March 29, 1991; and it is

FURTHER ORDERED, nisi, that NH Hydro be and hereby is authorized under RSA 369:1 to borrow up to $81,200,000 from New England Hydro Finance Company, Inc. ("NEHFC") from time to time, evidenced by notes or other evidences of indebtedness, and to enter into agreements reflecting such indebtedness; and it is

FURTHER ORDERED, nisi, that NH Hydro be and hereby is authorized to guarantee unconditionally, from time to time, its share of NEHFC's borrowings from the Lenders issued on NH Hydro's behalf, including interest, premium, and other costs related to these borrowings; and it is

FURTHER ORDERED, nisi, that NH Hydro be and hereby is authorized under RSA 369:2 to grant the NEHFC and the further assignment by NEHFC to the Lenders of a security interest in all of NH Hydro's rights to receive payments from the utilities participating in the Phase II project under its respective support agreements, including the right to receive the cash deficiency commitments previously described and authorized in DE 87-124 dated April 11, 1988; and it is

FURTHER ORDERED, nisi, that NH Hydro may utilize a trustee or other agent to hold

security interests, handle payments, and transact other related business as contemplated by this Order; and it is

FURTHER ORDERED, nisi, that NH Hydro may, from time to time, purchase notes, bonds, and other evidences of indebtedness payable in less than twelve months after the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such indebtedness that is to be retired with the proceeds of any new borrowings) not in excess of $25,000,000; and it is

FURTHER ORDERED, nisi, that NH Hydro shall provide copies to this commission

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of the final Note Agreement, Master Agreement, Notes, and related loan documents before consummation of the closing; and it is

FURTHER ORDERED, nisi, that NH Hydro is authorized to do all things, take all steps, and deliver and execute all documents necessary or desirable to implement and carry out the terms of this Order; and it is

FURTHER ORDERED, nisi, that the closing of the proposed financing authorized hereunder shall occur on or before December 31, 1991, and not thereafter, unless such period is extended by Order of this commission; and it is

FURTHER ORDERED, that on or about January first and July first in each year, NH Hydro shall file with this commission a detailed statement, duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of such financing, until the expenditure of the whole of said proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that this Order shall be effective commencing on March 29, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date hereof.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Hydro-Transmission Corp., DE 87-124, Order No. 19,058, 73 NH PUC 161, Apr. 11, 1988. [N.H.] Re New England Hydro-Transmission Corp., DF 88-115, Order No. 19,270, 73 NH PUC 520, Dec. 16, 1988.

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NH.PUC*03/06/91*[27093]*76 NH PUC 130*New England Telephone Company

[Go to End of 27093]

Re New England Telephone Company

DE 90-200
Order No. 20,074

76 NH PUC 130

New Hampshire Public Utilities Commission

March 6, 1991; revised March 15, 1991

ORDER approving telephone directory publishing agreements executed by New England Telephone and NYNEX Information Resources Company.

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1. INTERCORPORATE RELATIONS, § 14.2

[N.H.] Holding companies and affiliated interests — Intercorporate contracts, arrangements, and payments — Telephone directory publishing agreements. p. 130.

2. REVENUES, § 6

[N.H.] Directory advertising agreement — Contribution to telephone local exchange carrier — Payment formula. p. 130.

BY THE COMMISSION:

ORDER

[1, 2] On November 13, 1990, the New England Telephone (the Company or NET) filed the following agreements executed by NET and NYNEX Information Resources Company (NIRC) on November 2, 1990: (I) Directory License Agreement; (II) Subscriber Listing License Agreement; (III) Billing and Collection Agreement; (IV) Listing Database Service Agreement; and (V) Directory Advertising Agreement; and

WHEREAS, the agreements are submitted for effect on January 1, 1991 and shall remain

in force for five years; and

WHEREAS, these agreements will supercede the former Directory Publishing Agreement in effect since January 1984; and

WHEREAS, under the agreements, in 1991 NET will receive from NIRC all its earnings from telephone directories, excluding an amount equal to the composite allowed pretax rate of return on investment of NET, times NIRC's investor supplied capital for its operations in publishing telephone directories; and

WHEREAS, the 1991 payment to NET will then be defined as a percentage of NIRC's contribution for directory operations; the same percentage contribution being subsequently applied for each remaining year of the agreement; and

WHEREAS, pursuant to RSA 366:3 the Commission finds the above mentioned agreements to be just and reasonable; it is hereby

ORDERED, that the following agreements between NET and NYNEX Information Resources Company: (I) Directory License Agreement; (II) Subscriber Listing License Agreement; (III) Billing and Collection Agreement; (IV) Listing Database Service Agreement; and (V) Directory Advertising Agreement be and hereby are approved; and it is

FURTHER ORDERED, that the Commissions' approval is subject to further review following the New York Public Service Commission investigation in Dockets 90-C-0912 and 91-C-0102, of the NYNEX corporate structure.

By order of the New Hampshire Public Utilities Commission this sixth day of March, 1991.

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NH.PUC*03/06/91*[27094]*76 NH PUC 131*Union Telephone Company

[Go to End of 27094]

Re Union Telephone Company

DR 90-220
Order No. 20,075

76 NH PUC 131

New Hampshire Public Utilities Commission

March 6, 1991

ORDER approving a stipulation to establish temporary rates for an independent telephone company.

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1. PARTIES, § 18

[N.H.] Motions to intervene — Grounds for granting — Limitations — Temporary rate proceeding. p. 132.

2. RATES, § 630

[N.H.] Temporary rates — Established at current levels — Independent telephone company. p. 133.

3. RATES, § 655

[N.H.] Rates pending completion of investigation — Temporary rates — Established at current levels — Independent telephone company. p. 133.

APPEARANCES: Melinda H. Butler and Richard P. Thayer, representing Union Telephone

Company; Mark C. Rouvalis, Esquire, representing Wilton Telephone Company; John E. Reilly, Esquire, representing New England Telephone Company; and Eugene F. Sullivan, III, Esquire, representing the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

Page 131

This report and order addresses the issue of procedural schedule and temporary rates for Union Telephone Company based on the record of the hearing held on February 6, 1991.

The docket was opened on December 10, 1990, on motion of the New Hampshire Public Utilities Commission (commission) to investigate the rate of return earned by Union Telephone Company (Union).

The commission decision to open this docket resulted from a review by the commission staff (staff) of the returns earned by franchised New Hampshire independent telephone companies for the year ending December 31, 1989. Staff calculated that Union was earning in excess of its allowed rate of return for the period in question and so notified the commission by memorandum filed on September 20, 1990. On further review, staff recommended, via memorandum dated November 30, 1990, that the commission open a docket to investigate Union's level of earnings.

The commission, by Order of Notice dated December 14, 1990, granted staff's request and opened this docket to investigate whether the rates being charged by Union are just and reasonable. Said Order of Notice scheduled a prehearing conference to establish procedural schedule and to set temporary rates pursuant to RSA 378:27 for February 6, 1991. At the prehearing conference on February 6, 1991, the parties stipulated to a procedural schedule and to the establishment of temporary rates at current rate levels.

INTERVENTIONS

[1] There was a timely motion to intervene filed by Wilton Telephone Company (Wilton) and a late filed oral motion to intervene by New England Telephone Company (NET). NET requested intervention limited to the issue of toll settlements. Union did not object to either request for intervention but requested that each intervention be conditioned on the same basis that Union's intervention was conditioned in a similar docket, DR 90-221, involving an investigation into rates charged by Wilton. In that case, Union agreed not to oppose any settlement reached in negotiation between Wilton and staff and provided that if Union disagrees with any position agreed to by Wilton and staff, Union will not object in DR 90-221, without waiving any right to take a different position in DR 90-220, the case now before us. Neither Wilton nor NET objected to the proposed conditions. Accordingly, NET's and Wilton's motions to intervene are granted subject to the conditions and limitations requested by Union.

PROCEDURAL SCHEDULE

The parties stipulated to the following procedural schedule:

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

February 6, 1991	Prehearing conference
March 1, 1991	Staff begins management and financial audit
April 1, 1991	Company files 1990 annual report and audited financial report
May 20, 1991	Company testimony and exhibits
June 3, 1991	Staff and intervenors data requests to company (1st set)
June 24, 1991	Staff and intervenors data responses from company
July 8, 1991	Staff and intervenors data requests to company (2nd set)
July 29, 1991	Staff and intervenors data responses from company
August 12, 1991	Staff and intervenor testimony and exhibits
September 9, 1991	Data requests to staff and intervenor (1st set)
September 30, 1991	Data responses from staff and intervenors
October 14, 1991	Data requests to staff and intervenors (2nd set)
November 4, 1991	Data responses from staff and intervenors
November 12-14, 1991	Settlement Conference
November 19-21, 1991	Hearing date(s)

The parties further recommended that if they can achieve settlement before the date(s) scheduled for hearing, that the commission schedule an expedited hearing before a Hearings Examiner.

The procedural schedule proposed by the parties appears to be reasonable and is hereby adopted by the commission.

TEMPORARY RATES

Both Union and staff recommend that temporary rates be established at current rate levels. Staff witness ChristiAne Mason, testified that staff analysis of the reports filed by Union with the commission demonstrates that Union is currently earning a rate of return of 21.38% as opposed to its currently authorized 13.57% rate of return. Union's witness did not dispute the accuracy of the staff calculations although she disputes the methodology employed. Union chose not "to set forth its position to the Commission on the specific areas of disagreement with staff at this point in time." (Ex. 3 at 2)

COMMISSION ANALYSIS

[2, 3] Temporary rates are to be established pursuant to RSA 378:27, which requires, *inter alia*, that temporary 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, *as shown in the reports that the utility filed with the commission, unless there appears to be reasonable ground for a questionning of figures in such reports.*" (emphasis added)

The commission analysis cited in the Order of Notice and in the testimony of staff witness Mason demonstrates that the staff recommendation is based on staff's review of Union's reports

on file with this commission and that a rate reduction may be justified. The company agrees that temporary rates should be established at current levels in recognition that, should the commission ultimately decide that Union's rates should be higher than they currently are, the company's interest would be protected. Since the commission uses a historic test year, the permanent rate levels ultimately to be determined by this commission would, if now known, be equally justifiable if made effective today as they would be at the end of these proceedings. This, in addition to the prolonged procedural schedule, spanning nearly a year, lead us to the conclusion that it would be in the best interest of the utility and its customers to establish temporary rates at current rate levels.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is hereby incorporated, it is hereby

ORDERED, that the motions to intervene by Wilton Telephone Company and New England Telephone Company are hereby granted subject to the conditions set forth in the report accompanying this order; and it is

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FURTHER ORDERED, that the procedural schedule proposed by the parties as set forth in the foregoing report is hereby accepted; and it is

FURTHER ORDERED, that the stipulation of the parties to establish temporary rates for Union Telephone Company at its current rate levels is in the public interest and is hereby approved effective this date.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1991.

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NH.PUC*03/07/91*[27095]*76 NH PUC 134*Deer Run Water Company

[Go to End of 27095]

Re Deer Run Water Company

DR 89-165
Order No. 20,076

76 NH PUC 134

New Hampshire Public Utilities Commission

March 7, 1991

ORDER granting a temporary, one-year franchise to operate as a public water utility and adopting stipulated rates. The franchisee is directed to file sufficient information to enable the commission to determine whether or not it possesses the requisite financial, technical and

managerial capability to operate a water utility.

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1. CERTIFICATES, § 125

[N.H.] Water — Temporary franchise — Stipulation. p. 134.

2. RETURN, § 115

[N.H.] Water utility — Temporary franchise — Stipulation. p. 134.

3. RATES, § 595

[N.H.] Water — Temporary franchise — Stipulation. p. 134.

APPEARANCES: Alden Brown on behalf of Deer Run Water Company; Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. *Procedural History*

On May 23, 1990, Deer Run Water Company (Deer Run) filed a petition for authority to establish a water utility in a limited area in the Town of Campton. On June 1, 1990, the commission by order of notice ordered a prehearing conference to establish a procedural schedule and to address matters on intervention to be held on July 11, 1990. On June 18, 1990, Deer Run requested that the commission also consider temporary rates at the scheduled hearing. Because the hearing was not noticed for a franchise or temporary rates the commission did not address the issue and scheduled a subsequent hearing for issues. At the hearing on Deer Run's request for a franchise and temporary rates, staff made no recommendation due to the fact that the president and owner of Deer Run resided in Florida. Staff and the company subsequently met on several occasions in the form of technical conferences to derive a rate base, rate of return and operation and maintenance expenses for the company. As a result of these conferences, Deer Run and the staff reached a settlement on the company's rates and the issuance of a franchise attached hereto as Appendix A.

II. *Commission Analysis*

A. Stipulation between Staff and Deer Run

[1-3] Staff and Deer Run agreed that Deer Run would be allowed a temporary franchise for the period of one year following the date of this order. A one year franchise affords the commission an opportunity to review the financial, managerial and technical capabilities of Alden Brown, the owner of Deer Run. Because Mr. Brown resides in Florida, staff was concerned about his ability to operate the company. The stipulation also notes that Mr. Brown has retained a qualified organization to operate the

system in his absence. By delaying the decision on a permanent franchise for one year, the

settlement gives Mr. Brown an opportunity to demonstrate that his absence does not affect the quality of service provided for by the company.

Staff and Deer Run further agreed that the company shall be allowed an opportunity to earn an overall rate of return of 11.9% on a rate base of Four Thousand Two Hundred and Thirty-Eight Dollars ($4,238).

Deer Run is authorized to charge revenue rates designed to collect annual revenues in the amount of $6,561 and bills will be rendered on a quarterly basis. Deer Run further agreed to file compliance tariffs at the conclusion of these proceedings and to institute an appropriate accounting process and work order system. Finally, Deer Run agreed to contract with a certified water operator and contractor for the purposes of normal operations, consumer contact in the event of emergencies, and for capital additions or retirements to the system.

In addition to the stipulated settlement and supporting documents, the commission's record contains a letter from the Town of Campton, New Hampshire, indicating it has no objection to the grant of a franchise in this matter, letters from the Water Resources Division and the Water Supply and Pollution Control Divisions of the Department of Environmental Resources indicating that Mr. Brown complied with RSA 374: (II). The commission will make no specific findings as to Mr. Brown's qualifications at this time, but it will require him to demonstrate his capabilities in a filing to be made with this commission on or before one year from the date of this order.

Based upon the foregoing, the commission finds that the stipulation is in the public good as set forth in the stipulation, however, Mr. Brown's absence from New Hampshire raises concerns over his ability to operate a water utility. Furthermore, the commission finds the rates reached in the stipulation yield a reasonable return on the value of the property used and useful to the public.

Our order will issue accordingly.

ORDER

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

ORDERED, that Deer Run Water Company be temporarily granted the following area as a franchise to operate a public water utility:

That area of Campton known as the Deer Run Subdivision and those more specifically described as follows: Those lots bordering Parker Brush Farm Road, Tyler Way, Alden Drive and Summit View Road; and it is

FURTHER ORDERED, that Deer Run Water Company shall file with this commission on or before the anniversary date of this order sufficient information for the commission to determine the financial, managerial and technical capability of the company to run a water utility; and it is

FURTHER ORDERED, that the stipulation attached hereto as Appendix A be, and hereby is, adopted; and it is

FURTHER ORDERED, that Deer Run Water Company shall file compliance tariffs with said stipulation prior to charging rates.

By order of the New Hampshire Public Utilities Commission this seventh day of March,

1991.

Appendix A

Increase in Rates

AGREEMENT

1.0 This Agreement is entered into this 31st day of October, 1990, between Deer Run Water Company (the "Company"), and the Staff ("Staff") of the Public Utilities Commission ("Commission"), for the purposes and subject to the terms hereinafter stated.

2.0 *Introduction.* On May 23, 1990, the Company filed its Petition for authority to establish a water utility in a limited area in the town of Campton. On June 1, 1990, the Commission, by Order of Notice, ordered a prehearing conference to establish a procedural schedule and to address matters on intervention at a hearing on July 11, 1990. On June 18, 1990, the Company requested that the Commission also

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consider temporary rates at the scheduled hearing, as the hearing was not noticed for a franchise or temporary rates the Commission did not address the issue and scheduled a subsequent hearing on those issues. At the subsequent hearing on the issue of a franchise and temporary rates the Commission made no decision and Staff made no recommendation on those issues due to the fact that the president and owner of the Company resided in Florida. Staff and the Company met on several occasions in the form of technical conferences to derive a rate base, rate of return and operation and maintenance expenses. As a result of these conferences this stipulation has been reached. This stipulation further addresses the issue of the franchise request.

3.0 *Franchise.* It is agreed that the Company shall be allowed a temporary franchise for the period of one year following the date of a final order establishing rates. This will afford the Commission an opportunity to review the financial, managerial and technical capabilities to determine whether or not a permanent franchise shall be granted to the Company given the fact that Alden Brown, the owner of Deer Run Water Company resides in Florida. It should be noted that Mr. Brown has retained a qualified organization to operate the system in his absence. It is further agreed that the Company shall file for a permanent franchise, demonstrating that Mr. Brown's absence has not affected the quality of service provided by the Company.

4.0 *Rate Base.* It is agreed that the Company shall be allowed an opportunity to earn, at the conclusion of this proceeding, a return on a rate base of Four Thousand, Two Hundred Thirty-eight Dollars ($4,238.00).

5.0 *Rate of Return.* It is agreed that the Company shall be allowed an opportunity to earn an overall rate of return of eleven and nine-tenths percent (11.9%) on the stipulated rate base set forth in Paragraph 3.0.

6.0 *Revenue Requirement.* It is agreed that the Company shall be authorized to charge rates designed to collect annual revenues in the amount of Six Thousand, Five Hundred, Sixty-one Dollars ($6,561.00).

7.0 *Rate Structure.* It is agreed that the Company shall be allowed to alter its rates to allow

the Company the opportunity to recover the revenues set forth in Paragraph 5.0. The Company agrees to bill quarterly in arrears. The Company shall file a compliance tariff at the conclusion of these proceedings, such compliance tariff to be subject to Commission review to determine its compliance with the Commission Order and this Agreement.

8.0 *Compliance With Staff Findings.* The Company agrees to institute continuing property records and a work order system. The Company also agrees to have a contract with a certified water operator and contractor for purposes of normal operation and maintenance of the system, for consumer contact in the event of emergencies, and for capital additions or retirements of the system.

9.0 *General Conditions.* This Agreement is subject to the following further conditions:

9.1 The Agreement shall be promptly presented to the Commission for approval, and approval shall be issued without delay.

9.2 The making of this Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation in these proceedings, other than those specifically agreed to herein, is true and valid.

9.3 The making of this Agreement establishes no principles or precedents in any other proceeding or investigation.

9.4 The Commission approval of this Agreement does not establish any principles or precedents.

9.5 A Commission approval of this Agreement shall not in any respect constitute a determination as to the merits of any allegations made in this rate proceeding.

9.6 This Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not so approve it, any party to the Agreement may withdraw from it, and shall not constitute any part of the record in this proceeding nor be used for any other purposes.

9.7 This Agreement constitutes an integrated writing, and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

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9.8 The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS WHEREOF, the parties'
fully authorized agents have executed this agreement.

DEER RUN WATER COMPANY
By Its Owner,
By: Alden T. Brown, Owner

STAFF OF PUBLIC UTILITIES COMMISSION
By Its Attorneys,
By: Audrey Zibelman, General Counsel

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

DEER RUN
DE 89-165
REVENUE REQUIREMENT

	STIPULATION SCHED. 1
RATE BASE (SCHEDULE 2)	4,238
RATE OF RETURN	11.9%
REVENUE REQUIREMENT	504
OPERATING INCOME (LOSS) (SCHEDULE 3)	(5,917)
DEFICIENCY	6,421
TAX EFFECT (SCHEDULE 1A)	141
REVENUE DEFICIENCY	6,561

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

DEER RUN
DE 89-165
EFFECTIVE TAX FACTOR

	STIPULATION SCHED. 1A
TAXABLE INCOME	100.00%
LESS: BUSINESS PROFITS TAX	8.00%
FEDERAL TAXABLE INCOME	92.00%
F.I.T. RATE	15.00%
F.I.T.	13.80%
ADD: BUSINESS PROFITS TAX	8.00%
EFFECTIVE TAX RATE	21.80%
PERCENT OF INCOME AVAILABLE IF NO TAX	100.00%
EFFECTIVE TAX RATE	21.80%
PERCENT USED AS A DIVISOR IN DETERMINING THE REVENUE REQUIREMENT	78.20%

DEER RUN
DE 89-165
RATE BASE

	STIPULATION

	SCHED. 2
PLANT IN SERVICE	1,564
LESS: DEPRECIATION	78
NET PLANT IN SERVICE	1,486
ADD: WORKING CAPITAL	
TOTAL O&M EXPENSES	5,295
(QUARTERLY IN ARREARS — 90/2 + 30 = 75)	20.55%
CASH WORKING CAPITAL	1,088
UNAMORTIZED EXTRA-ORDINARY EXPENSE	1,664
RATE BASE	4,238

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

DEER RUN
DE 89-165
DEPRECIATION SCHEDULE

PLANT	ORIGINAL COST	LIFE	DEPR EXPENSE	ACCUM DEPR
				STIPULATION SCHED. 3
1988 Master Meter	453.38	40	11.33	22.67
1989 Pumps (air compressor)	1111.08	20	55.55	55.55
TOTAL PLANT	1564.46		66.89	78.22

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

DEER RUN
DE 89-165
INCOME STATEMENT

STIPULATION

SCHED. 4

	12 MNTHS ENDED 12/31/89	REF	PROFORMA ADJUST	REF	TEST YEAR PROFORMA	PROPOSED INCOME
Revenues				0	SCH	6,561
6,561						
Operating Expenses						
Customer Accounting	0	SCH 6	370		370	
370						
Maintenance Exp.	586	SCH 5/6			586	
586						

Production Exp.	2,153	SCH 5/6	416	2,569		
2,569						
Adm & General:						
Management Fees	480	SCH 5/6	960	1,440		
1,440						
Accounting Fees	0	SCH 6	150	150		
150						
PUC Assessment	0	SCH 6	40	40		
40						
Misc. General Exp	140	SCH 5		140		
140						
Total O & M Expenses	3,359		1,936	5,295		0
5,295						
Taxes:						
State					SCH 1	44
44						
F.I.T.					SCH 1	97
97						
Amortization Expense	555	SCH 6		555		
555						
Depreciation Expense	67	SCH 3		67		
67						
TOTAL EXPENSES	3,981		1,936	5,917		141
6,057						
NET OPERATING INCOME	(3,981)		(1,936)	(5,917)		6,421
504						

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

DEER RUN
DE 89-165
COMPANY EXPENSES

STIPULATION

SCHED. 5

Actual Operating Expenses:

8/28	Deachman & Hause (legal fees – Ron Olive)	839.73
6/11	Deachman & Hause (legal fees – Ron Olive)	1,043.08
11/14	Deachman & Hause (legal fees – Ron Olive)	51.00
7/3	Deachman & Hause (legal fees – Ron Olive)	113.05
10/18	Deachman & Hause (legal fees – Ron Olive)	726.10

NON-RECURRING
Legal 2,772.96

12/1	Gilford Well Co. Inc. (repairs)	136.25
6/13	L.E. Johnston Construction (repair leak)	450.00

MTNC EXP	586.25		
1/6	N.H. Electric Coop (electric charges)		133.81
2/5	N.H. Electric Coop (electric charges)		195.93
3/4	N.H. Electric Coop (electric charges)		276.47
4/8	N.H. Electric Coop (electric charges)		172.40
5/10	N.H. Electric Coop (electric charges)		156.12
6/2	N.H. Electric Coop (electric charges)		5.63
6/5	N.H. Electric Coop (electric charges)		146.34
7/23	N.H. Electric Coop (electric charges)		140.05
8/4	N.H. Electric Coop (electric charges)		165.08
9/27	N.H. Electric Coop (electric charges)		156.06
10/3	N.H. Electric Coop (electric charges)		130.28
11/6	N.H. Electric Coop (electric charges)		154.81
12/6	N.H. Electric Coop (electric charges)		189.70
Elec. Exp.	1,678.17		
4/3	State of N.H.		190.00
	State of N.H.		45.00
	W.S.P.C.C. (water testing)		150.00
	W.S.P.C.C. (water testing)		90.00
Test. Exp.	475.00		
PROD EXP	2153.17		
10/29	Gilford Well Co. Inc. (management fee)		120.00
11/14	Gilford Well Co. Inc. (management fee)		120.00
12/10	Gilford Well Co. Inc. (management fee)		120.00
9/20	Gilford Well Co. Inc. (management fee)		120.00
A&G MGMT FEE	480.00		
3/23	Alden Homes (misc)		40.00
3/4	Stephen Brown (Oper. License — two people)		100.00
A&G MISC.	140.00		

Actual Capital Expenses:

2/13	Gilford Well Co. Inc. (air compressor)		950.00
1/24	Gilford Well Co. Inc. (Labor)		103.00
4/8	Zwicker Electric (parts — air compressor)		58.08
Cap. Exp.	1,111.08		

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

DEER RUN
DE 89-165
PROFORMA ADJUSTMENTS

STIPULATION

SCHED. 6

Page 1 of 2

PROFORMA ADJUSTMENTS:

PROFORMA ADJUSTMENT – MANAGEMENT FEES

Gilford Well monthly fee	120.00	
one year	12.00	
Total fees	1,440.00	
less: 4 months actual included	480.00	
Proforma Adjustment – MANAGEMENT FEES		960.00

PROFORMA ADJUSTMENT – WATER TESTS

Water Supply & Pollution Control		
Well test once every 3 years	$475.00	
Company has three wells	3	
Total Cost of Tests	$1,425.00	
divided by 3 years	3	
Proforma adjustment – wells tests	$475.00	
Monthly water quality test per system	$8.00	
12 months	12	
Proforma adjustment – quality tests	$96.00	
Proforma adjustment – water tests	$571.00	
less: actual expenses	(475.00)	
Proforma Adjustment		96.00

PROFORMA ADJUSTMENT – ELECTRIC

Actual Electric Expenses	1678.17	
divided by 42 customers	39.96	
Proforma adjustment for		
8 additional customers		319.65
Proforma adjustment – PRODUCTION EXPENSES		415.65

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

DEER RUN
DE 89-165
PROFORMA ADJUSTMENTS

STIPULATION
SCHED. 6

Page 2 of 2

PROFORMA ADJUSTMENTS:

PROFORMA ADJUSTMENT – CUSTOMER ACCOUNTING	
Postage – $.25 Stamp per bill per quarter	50.00

Billing & Collecting –	
$10/HR * 8 Hours * 4 Quarters	320.00
Proforma Adjustment-CUSTOMER ACCOUNTING	370.00
PROFORMA ADJUSTMENT – PUC REGULATORY EXPENSE	
PUC Assessment (minimum bill)	40.00
PROFORMA ADJUSTMENT – ACCOUNTING SERVICES	
Accounting Services (Tax Returns)	
and Annual Report Preparation	150.00
PROFORMA ADJUSTMENT – EXTRA-ORDINARY EXPENSES	
Legal Fees for Ron Olive	2,772.96
to be amortized over five years	5
Amortization Expense	554.59
Unamortized Expense	1,663.78

DEER RUN
DE 89-165
RATE CALCULATION

	STIPULATION SCHED. 7
REVENUE REQUIREMENT	$6,561
CUSTOMER BASE	50
ANNUAL RATE PER CUSTOMER IN ARREARS	$131.23
QUARTERLY BILL PER CUSTOMER	$32.81

NH.PUC*03/11/91*[27096]*76 NH PUC 143*AT&T Communications of New Hampshire

[Go to End of 27096]

Re AT&T Communications of New Hampshire

DE 90-002
Order No. 20,077

Re MCI Telecommunications Corporation

DE 90-108
Order No. 20,077

Re U S Sprint Communications
Company of New Hampshire

DE 90-127
Order No. 20,077

Re Long Distance North of New Hampshire

DE 87-249
Order No. 20,077

76 NH PUC 143

New Hampshire Public Utilities Commission

March 11, 1991

ORDER clarifying prior orders that granted telephone interexchange carriers interim authority to offer a number of custom network "add on" services or to resell intrastate long distance traffic. The clarification concerns the obligation of the carriers to compensate the appropriate telephone local exchange carrier for originating and terminating access.

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1. TELEPHONES, § 14

[N.H.] Telecommunications — Compensation — Access charges — Use of the local network — Competing carriers. p. 143.

BY THE COMMISSION:

ORDER

On January 21, 1991, the New Hampshire Public Utilities Commission granted interim authority to AT&T Communications of New Hampshire, MCI Telecommunications Corporation, U.S. Sprint Communications Company of New Hampshire and Long Distance North of New Hampshire to offer a number of specific custom network add on services or to resell intrastate long distance traffic, as specified in consecutive Order Nos, 20,039, 20,040, 20,041 and 20,042; and

[1] Whereas, approval of these services was subject to several conditions, including *inter alia*, the obligation by the carriers to compensate the appropriate local exchange company for originating and terminating access pursuant to New England Telephone Company (NET) Tariff N.H.P.U.C. 78, Page 5, Section 4, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the independent exchange companies; and

Whereas, on January 25, 1991, NET filed a motion for clarification; or in the alternative, a stay of the commission's order; and

Whereas, in its motion NET requested that the commission stay the effective date of interim authorization until such time that NET files and the commission approves a compliance access tariff and NET's InfoAge New Hampshire 2000 filing (NET 89-010); and

Whereas, the commission's intent in issuing Order Nos 20,039, 20,040, 20,041 and 20,042 was to authorize the above mentioned companies to commence providing service on an interim basis immediately upon their compliance and conditions set forth in the above referenced orders; and

Whereas, lengthy minimum service periods offered by the interexchange carriers may foreclose NET's ability to compete in the future; and

Whereas, a delay in the implementation of the effective date of the interim authorizations is

contrary to the commission's intent of authorizing intrastate competition on an interim basis to allow the commission to analyze the effect of competition in the intrastate telecommunications market; it is hereby

Ordered, that NET's motion for a stay is hereby denied; and it is

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Further Ordered, that Condition 6 of Order No's 20,039, 20,040, 20,041 and 20,042 be clarified to state that the Switched Access Rates in Tariff No 78 apply to intrastate switched access as used, on either the originating or terminating end or both, when switched access is used in the provision of toll services, and special access charges apply when special access facilities are used; and it is

Further Ordered, that during the interim period all carriers be prohibited from offering minimum service periods greater than thirty days, and it is

Further Ordered, that AT&T, MCI, U.S. Sprint and LDN are authorized to provide services on an interim basis effective upon their compliance with terms and conditions set forth in the above mentioned orders as clarified herein.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 20,040, 76 NH PUC 58, Jan. 21, 1991. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 20,039, 76 NH PUC 56, Jan. 21, 1991. [N.H.] Re MCI Telecommunications Corp., DE 90-108, Order No. 20,041, 76 NH PUC 59, Jan. 21, 1991. [N.H.] Re U.S. Sprint Communications Co. of New Hampshire, DE 90-127, Order No. 20,042, 76 NH PUC 61, Jan. 21, 1991.

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NH.PUC*03/11/91*[27097]*76 NH PUC 144*Wilton Telephone Company

[Go to End of 27097]

Re Wilton Telephone Company

DR 90-221
Order No. 20,079

76 NH PUC 144

New Hampshire Public Utilities Commission

March 11, 1991

ORDER adopting a stipulation to establish temporary rates for an independent telephone

company.

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1. PARTIES, § 18

[N.H.] Motions to intervene — Temporary rate proceeding. p. 145.

2. RATES, § 630

[N.H.] Temporary rates — Established at current levels — Refund or recoupment — Independent telephone company. p. 146.

3. RATES, § 655

[N.H.] Rates pending completion of investigation — Temporary rates — Established at current levels — Refund or recoupment — Independent telephone company. p. 146.

APPEARANCES: Steven B. Camerino, Esquire, representing Wilton Telephone Company; John Reilly, Esquire, representing New England Telephone Company; Melinda H. Butler, representing Union Telephone Company and Audrey A. Zibelman, Esquire, representing staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

This docket was opened on motion of the commission, on recommendation of commission staff, to investigate whether the rates being

charged by Wilton are too high. The commission issued an Order of Notice on December 14, 1990, setting a prehearing conference for February 5, 1991 to address the determination of temporary rates and a procedural schedule for the permanent rate proceedings.

INTERVENTIONS

[1] There was a timely motion to intervene, pursuant to RSA 541-A:17, filed by Union Telephone Company (Union) on January 30, 1991. By letter dated January 30, 1991, Union communicated an agreement reached with the commission staff (staff), that Union will not oppose any settlement reached in negotiation between Wilton and staff, "without prejudice to Union in any other proceedings." In return, staff agreed not to oppose Union's intervention in this docket. Wilton did not object to Union's motion. Accordingly, the commission will grant Union's motion to intervene subject to the stipulated condition.

New England Telephone Company (NET) orally moved for intervention at the prehearing conference asserting that it is a joint provider of toll services which may be an issue in this docket. Wilton objected to NET's motion as being untimely and as creating a possible conflict for Wilton's counsel, who also represents NET in other matters. Wilton accordingly requested that consideration of NET's motion be deferred to allow interested parties an opportunity to

confer. Since NET's interest in the proceedings was limited to toll services and not to the subject matter of the prehearing conference; i.e., temporary rates, the Hearing Examiner denied NET's motion to intervene without prejudice and we concur. NET may renew its motion to intervene in writing for consideration by the commission at the next scheduled hearing in these proceedings.

PROCEDURAL SCHEDULE

The parties stipulated to the following procedural schedule:

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

February 5, 1991	Prehearing conference
March 1, 1991	Staff begins management and financial audit
April 1, 1991	Company files 1990 Annual Report and audited financial report
June 10, 1991	Company testimony and exhibits
July 23, 1991	Data requests to company (1st set)
August 6, 1991	Data responses from company
August 16, 1991	Data requests to company (2nd set)
September 3, 1991	Data responses from company
October 8, 1991	Staff and intervenors testimony and exhibits
October 22, 1991	Data requests to staff and intervenors (1st set)
November 8, 1991	Data responses from staff and intervenors
November 22, 1991	Company rebuttal testimony
December 2-3, 1991	Settlement conference
December 5 and 10, 1991	Hearing dates

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The parties further recommended that if they can achieve settlement before the date(s) scheduled for hearing, that the commission schedule an expedited hearing before a Hearings Examiner.

The procedural schedule proposed by the parties appears to be reasonable and is hereby adopted by the commission.

TEMPORARY RATES

This docket was opened by the commission based on staff's representations that examination of Wilton's records on file with this commission indicates that the company is earning in excess of its authorized rate of return. Since the commission uses a historic test year, the permanent rate levels ultimately to be determined by this commission, would if known, be equally justifiable if made effective today as they will be at the end of these proceedings. Staff and the company concurred that the establishment of temporary rates at current levels would protect the interests of both the ratepayers, in the event of overcollection by Wilton, and the company, in the event of undercollection.

Staff's analysis indicates that Wilton is earning a 14.85% return on a proforma test year at

December 1989, although its authorized rate of return is 14%. (Ex. 1, attach. C.) Wilton asserts that, although staff's calculations are correct as far as they go, they are not complete. Wilton did not offer any evidence to support this assertion but indicated that they will do so during the permanent rate proceedings.

COMMISSION ANALYSIS

[2, 3] Temporary rates are to be established pursuant to RSA 378:27, which requires, *inter alia*, requires that temporary 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, *as shown in the reports that the utility filed with the commission, unless there appears to be reasonable ground for a questionning of figures in such reports*." (emphasis added)

The evidence is uncontroverted that the company records on file with the commission indicate that the company is overearning. If subsequent examination during the permanent rate proceedings indicate that this is true, then the establishment of temporary rates at current levels would protect the ratepayer interests by allowing repayment of any excessive charges. On the other hand, if the record in the permanent rate proceeding represents that the rates being charged by Wilton are too low, then the utility's interest would be protected by allowing recoupment of undercollected amounts.

It would not be in the interest of rate continuity to establish temporary rates below current rates in this case because to do so could expose ratepayers to unnecessary rate fluctuations and ultimately a possible surcharge in the event that current rates are found to be appropriate or too low. We find, therefore, that the stipulated request of the parties that temporary rates be established at current rate levels is reasonable and in the public good.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is hereby incorporated, it is hereby

ORDERED, that the motion to intervene filed by Union Telephone Company is granted and the motion to intervene filed by New England Telephone Company is denied without prejudice as set forth in the foregoing report; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties as set forth in the foregoing report is hereby accepted; and it is

FURTHER ORDERED, that the stipulation of the parties to establish temporary rates for Wilton Telephone Company at its current rate levels is in the public interest and is hereby approved effective this date.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1991.

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NH.PUC*03/11/91*[27099]*76 NH PUC 150*New England Telephone and Telegraph Company

[Go to End of 27099]

Re New England Telephone and Telegraph Company

DR 89-010, DR 85-182
Order No. 20,082
76 NH PUC 150

New Hampshire Public Utilities Commission
March 11, 1991

ORDER approving changes in the rate design of a telephone local exchange carrier (LEC). Commission adopts an incremental cost study performed by the LEC as the basis for rate design.

The LEC is directed impute access charges to its intraLATA toll rates and to offer bottleneck services provided to Centrex customers on an unbundled basis at the same rates as charged to customers using private branch exchange systems.

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1. RATES, § 532

[N.H.] Telecommunications rate design — Goals — Ubiquitous network — Universal service — Local exchange carrier. p. 164.

2. RATES, § 143

[N.H.] Reasonableness — Cost of service — Costing methods — Embedded cost of service — Monopoly services — Incremental cost of service — Competitive services — Telephone local exchange carrier. p. 164.

3. RATES, § 532

[N.H.] Telecommunications rate design — Cost of service — Costing methods — Embedded cost of service — Monopoly services — Incremental cost of service — Competitive services — Telephone local exchange carrier. p. 164.

4. RATES, § 262

[N.H.] Cost elements — Embedded costs — Incremental costs — Telecommunications rate design — Local exchange carrier. p. 164.

5. APPORTIONMENT, § 38

[N.H.] Expenses and costs — Historical embedded costs — Incremental costs — Telecommunications rate design — Local exchange carrier. p. 164.

6. APPORTIONMENT, § 61

[N.H.] Telephone — Basic local exchange service — Toll service — Cross-subsidies — Jurisdictional separations. p. 164.

7. RATES, § 534

[N.H.] Telecommunications rate design — Special factors — Contribution to basic local exchange service — Subsidization by toll service — Local exchange carrier. p. 164.

8. APPORTIONMENT, § 38

[N.H.] Expenses and costs — Nontraffic sensitive cost — Allocators — Local exchange carrier. p. 164.

9. RATES, § 534

[N.H.] Telecommunications rate design — Special factors — Allocation of nontraffic sensitive costs — Local exchange carrier. p. 164.

10. RATES, § 534

[N.H.] Telecommunications rate design — Incremental cost pricing — Discrepancy with revenue requirement — Gap closure — Equi-proportional adjustment — Local exchange carrier. p. 164.

11. RATES, § 553

[N.H.] Telecommunications rate design — Basic exchange service — Incremental cost recovery — Contribution to overhead — Local exchange carrier. p. 167.

12. RATES, § 582

[N.H.] Telecommunications rate design — Toll service — Message toll rates — Movement toward incremental cost — Business and residential service. p. 167.

13. RATES, § 565

[N.H.] Telecommunications rate design — Public telephone service — Pay stations — Local exchange carrier. p. 168.

14. RATES, § 553

[N.H.] Telecommunications rate design — Directory assistance — Local exchange carrier. p. 168.

15. RATES, § 553

[N.H.] Telecommunications rate design — Service and equipment charges — Incremental cost recovery — Local exchange carrier. p. 168.

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16. RATES, § 553

[N.H.] Telecommunications rate design — Private line services — Incremental cost recovery — Local exchange carrier. p. 169.

17. RATES, § 561

[N.H.] Telecommunications rate design — Multiparty service — Discontinuance — Grandfathering — Local exchange carrier. p. 169.

18. RATES, § 553

[N.H.] Telecommunications rate design — TouchTone service — Incorporation into basic service — Local exchange carrier. p. 169.

19. SERVICE, § 443

[N.H.] Telecommunications — Lifeline service — Local exchange carrier. p. 170.

20. RATES. § 125

[N.H.] Discounts — Low-income users — Telephone local exchange carrier. p. 170.

21. RATES, § 566

[N.H.] Telecommunications rate design — Private branch exchange service — Centrex — Unbundling — Cost justification — Local exchange carrier. p. 170.

22. MONOPOLY AND COMPETITION, § 84

[N.H.] Telecommunications — Anticompetitive pricing — Bottleneck services — Centrex service — Unbundling — Local exchange carrier. p. 170.

23. RATES, § 588

[N.H.] Telecommunications rate design — Access charges — Imputation in toll rates — Local exchange carrier. p. 171.

24. TELEPHONES, § 14

[N.H.] Carrier access charges — Incremental cost basis — Imputation in toll rates — Local exchange carrier. p. 171.

25. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — IntraLATA toll service — Imputation of carrier access charges — Local exchange carrier. p. 171.

APPEARANCES: Victor DelVecchio, Esquire, and John E. Reilly, Esquire, for New England Telephone Company; Devine, Millimet, Stahl & Branch by Frederick J. Coolbroth, Esquire, for Granite State Telephone Company and Merrimack County Telephone Company; Ransmeier & Spellman by Dom D'Ambruoso, Esquire, for Kearsarge Telephone Company and Wilton Telephone Company; Shaheen, Cappiello, Stein & Gordon by Dorothy Bickford, Esquire, for Union Telephone Company; Joseph Harris Jr. for Contel Service Corporation; David W. Jordan, Esquire, for Long Distance North of NH, Inc.; Richard Fipphen, Esquire, for MCI Telecommunications; James P. Finglas and Harry M. Davidow, Esquire, for AT&T Communications of NH, Inc.; Helen Hall, Esquire, for U.S. Sprint Communication Company; Michael Holmes, Esquire, for the Office of the Consumer Advocate; Vena, Truelove & Lahey by Jack Lahey for the Business and Industry Association; NH Legal Assistance by Alan N. Linder for Volunteers Organized in Community Education; Blumenfeld & Cohen by Jeffrey Blumenfeld, Esquire and Gary Cohen, Esquire, for the NH Public Utilities Commission.

BY THE COMMISSION:

REPORT

This report and order addresses the issues of cost of service studies and rate design and closes docket no. DR 85-182. It adopts the incremental cost study as the basis for rate design and approves specific proposals for rate

design changes. It leaves open the issues of changes in the form of regulation for New England Telephone and Telegraph Company (NET or company).

I. PROCEDURAL HISTORY

On March 3, 1989, NET filed with the NH Public Utilities Commission (commission) proposed permanent rate schedules and supporting testimony to produce an increase in intrastate revenues of $21,187,000 (8.4%) after uncollectable and independent telephone company settlements. The company proposed initial pricing structure and rate changes for a series of services designed to produce its requested revenue requirement. Third, it requested a change in the form of regulation from traditional rate of return regulation to an incentive form of regulation known as price or price cap regulation.

The commission suspended the filing on March 23, 1989 by order no. 19,352. On April 5, 1989, the commission staff (staff) filed a motion to consolidate DR 89-182, the generic rate structure investigation, with DR 89-010, as well as a motion requesting, *inter alia*, that NET update its Embedded Cost of Service Study (COSS) and produce the usage data on which its studies were based. On March 29, 1989 NET filed additional financial detail and on April 14, 1989 its Incremental Cost Study (ICS).

On April 20, 1989, the commission issued an order of notice that designated May 18, 1989 to hear staff's motion and motions for intervention. It also indicated that in order to consider NET's InfoAge NH 2000 proposal, the commission must first determine whether it has the statutory authority to set rates based on an alternative form of rate regulation and must further decide whether the proposal was a rate schedule, which pursuant to RSA 378:6, I, the commission may not suspend for more than 12 months. It established a procedural schedule that concluded with a hearing on June 16, 1989 to address the issues of commission authority and the schedule that would govern the remainder of the proceedings. On May 2, 1989, the commission informed the parties that it would also entertain at the May 18th hearing the April 27, 1989 petition filed by AT&T Communications of New Hampshire, Inc. (AT&T) that it designate the issue of "whether intrastate telecommunications services should be provided in New Hampshire on a competitive basis".

Following the May 18, 1989 hearing, on June 12, 1989 the commission issued order no. 19,430, which approved interventions, consolidated the dockets DR 89-010 and DR 85-182 for purposes of investigation, discovery and hearings, and ordered that NET update both the COSS and the ICS to reflect the test year data and provide the underlying usage studies. It denied AT&T's petition, finding that competition was a factor that may be considered in evaluating the NET petition for a new form of regulation. However, NET had not advocated competition as an essential component of the proposed form of regulation and the commission would not create the

objective of deciding in the instant docket the issue of whether competition should be allowed. By order no. 19,429 the commission established the procedures under which NET would provide the required confidential information.

On June 27, 1989, the commission by order no. 19,442 established a limited procedural schedule that addressed the dates for conferences on cost study methodology and the subsequent filing of the cost studies (August 15, 1989) and for testimony and hearing on temporary rates. In denying a motion for clarification and/or reconsideration filed by NET, the commission on July 31, 1989 specified that it had intended that NET update all cost studies, including those not sponsored by NET but approved by order no. 18,977 in DR 85-182. Those studies included the National Regulatory Research Institute Peak Responsibility Methodology requested by staff, and the restatement of the COSS intrastate results in accordance with a cost matrix more closely corresponding to NET's tariff requested by Volunteers Organized in Community Education (VOICE).

By order no. 19,479, the commission on July 19, 1989 found that it had the authority to implement alternative rate regulation provided that the rates that resulted were just, reasonable and otherwise lawful. It deferred ruling on whether the proposal was a rate schedule that

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could not be suspended for more than 12 months, stating that the issue was not ripe for determination since the existing schedule permitted the case to be decided within the one year suspension period.

During the summer and early fall of 1989, the parties engaged in discovery, and the commission issued various orders on confidentiality. From August 21 to November 20, 1989, the commission also held 13 public informational hearings around the state. On August 15, 1989, the company filed proposed temporary rate schedules and supporting testimony; staff filed testimony on the temporary rate request on September 12, 1989. The parties filed a stipulation on temporary rates on September 18, 1989 and on September 28, 1989 the commission issued order no. 19,544 approving the stipulation and authorizing the company to place into effect temporary rates which would increase intrastate revenues in the amount of $10,771,000. The order deferred issues regarding NET's labor dispute until later in the proceedings.

By order no. 19,521 dated September 5, 1989 the commission established a schedule for the remainder of the proceeding. NET requested reconsideration of the procedural schedule, proposing that it be amended to allow NET to file rebuttal testimony regarding the issues raised by the expert witnesses retained by staff and the intervenors, and a reply brief. The commission acknowledged that pre-filed rebuttal testimony can result in a clearer record, but found that the existing schedule could not accommodate the entry of additional evidence by NET and that the parties had already experienced difficulties in adhering to the procedural schedule that had been adopted. Noting that the delays in the provision of cost studies, usage data and responses to discovery requests applied to the issues of rate re-design and price caps rather than revenue requirements, the commission bifurcated the docket and provided a four month extension to address issues of rate design and the form of regulation. The commission found that such bifurcation did not offend the protection provided in RSA 378:6 against suspension of rate

schedules for more than 12 months as long as the decision on the revenue requirement was reached within the 12 months. The procedural schedule was subsequently modified by order no. 19,672 on January 19, 1990 to allow for additional discovery by staff and intervenors.

Staff filed direct testimony on the revenue requirements issues in December 1989 and the parties, meeting in January 1990, were able to negotiate a settlement of those issues. The stipulation was signed on January 31, 1990 by NET, staff, the Office of the Consumer Advocate (OCA) and VOICE. Subsequently all other parties agreed not to oppose the stipulation. Three parties, Kearsarge Telephone Company (Kearsarge), Merrimack County Telephone Company (Merrimack) and Granite State Telephone Company (Granite), reserved their rights to argue the issue of independent company toll settlements in Phase II of the proceeding. The parties presented the stipulation to the commission on February 5, 1990, and on March 8, 1990 by order no. 19,747 the commission approved the agreement and authorized the company to file tariffs to produce a permanent rate increase of $11,574,000.

On February 6, 1990 the commission heard testimony by NET on the financial and quality of service impacts of the NET strike, and supplemented the procedural schedule established by order no. 19,672 to permit further investigation of the effects of the strike.

Testimony on rate design and forms of regulation was filed by Union Telephone Company (Union), Granite and Merrimack, AT&T, MCI Telecommunications (MCI), and VOICE in March 1990, and by staff in April 1990. Following discovery on intervenor and staff testimony and extensive discussions with staff on costing methodology, NET filed rebuttal testimony on rate design and price regulation on May 18, 1990. On June 13, 1990 NET filed a modified version of the ICS that incorporated the changes to which NET and staff had agreed. NET and AT&T filed additional supplemental testimony in July.

Beginning on June 14, 1990 the commission held 18 days of hearings, closing the record on July 17, 1990. The parties engaged in settlement discussion in August and September, but were unable to reach agreement. Briefs were filed on November 1, 1990.

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II. POSITIONS OF THE PARTIES

As this order addresses only the issues of cost studies and rate design, the following will summarize the positions of the parties only on those issues.

A. NET

NET argues that value of service pricing and across-the-board increases are inappropriate standards for designing NET's rates. Value of service pricing does not reflect the current costs associated with providing service and it has resulted in rates that are misaligned with the cost of providing those services. While ratemaking to promote goals of universal service could be tolerated in the regulated monopoly environment of the past, the impacts of technology on the costs of providing service and the elimination of the historical barriers to market entry and therefore the development of intrastate toll competition, require the adoption of a cost of service standard for ratemaking.

NET states that the company's pricing objectives are to provide reliable service at fair,

reasonable price levels, with each product and service covering its appropriate economic cost. To this end, it filed two cost studies, the historical, fully allocated embedded COSS and the forward-looking, long term ICS, and argues that long run incremental costs, adjusted to produce revenues equal to the company's revenue requirement, are the economically relevant costs for establishing NET's rates. The incremental costs serve as the lower limit below which no rate should be set and form the basis for setting relative rates. NET describes the ICS methodology agreed to by the company and staff as characterized by a 15 year study period, by the assumption of a 3.0% access line growth rate as a reasonable compromise, by the modelling of investment costs such that after the assumed initial fill of 70% one-seventh of the growth jobs on the network occur in each year in the interval between 1992 and 1999, and by attributing to incremental demand only that portion of the cost of conversion of digital switches which expanded capacity. To satisfy staff's concern that current usage data might fail to address future changes in usage trends, the company will update the ICS in April 1993 using 1992 usage data. At that time it will also consider the impact of usage on concentrator costs and the resulting impact, if any, on loop costs. The company further avers that all of staff's concerns over documentary support and data validation in the study have been fully addressed.

The company contends that the non-traffic sensitive (NTS) costs, representing equipment whose quantities and costs do not vary with the volume of traffic, have been properly represented in the ICS and it is inappropriate to allocate NTS costs to usage services or to adjust the incremental cost of exchange service by applying the interstate revenue requirement procedures (Separations). It argues that the company essentially provides three basic services (basic exchange service which provides the customer with access to the public switched network, local usage and toll usage), and that the study properly attributes the NTS costs associated with the installation and maintenance of the loop on a cost-causative basis to the various classes of Exchange Service. Allocating a portion of NTS costs to the incremental cost of toll services violates the economic principles underlying incremental cost theory in that it attributes NTS costs, which by definition do not change with usage, to the incremental cost of a usage service. NET argues that the assignment of cost, as with any allocation method, would be arbitrary, would encourage uneconomic bypass of the public switched network by customers with high levels of toll usage, would result in an artificially high price floor for toll service and would recover NTS cost based on mere tariff definitions without a relationship to the underlying cost. The company also argues that adjusting the incremental cost of exchange service in accordance with the interstate revenue requirement procedures confuses cost with price: the incremental cost of exchange service should include all NTS costs associated with providing access that occur outside of the central office and should represent the economic cost of providing an additional access line, while the End User Common Line charge is the interstate price that provides recovery for a portion of the

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NTS costs.

NET believes that the equi-proportional (E-P) methodology for reconciling the aggregate incremental cost to the revenue requirement provides appropriate short term pricing guidelines. It states that from an economist's viewpoint, the ideal price for a service is the incremental cost

of providing that service. The next best set of prices are those where the shortfall between incremental cost and revenue is allocated to the various service groups in inverse proportion to their relative elasticities (Ramsey pricing). However, following discussions with staff, NET can accept for the instant proceeding a modified E-P approach which unbundles incremental costs into NTS and non-NTS costs by service. Further, while it prefers assigning NTS costs to the exchange services, it would accept that the E-P methodology, whether applied by access lines or minutes of use, represents a reasonable step in the direction of Ramsey pricing.

NET does not believe that it would be appropriate to adjust the ICS by application of the Separation procedures or by reference to the COSS. Separations procedures separate all classes of plant between inter-state and intra-state and should not be applied only to NTS, if applied at all. Allocation of the reconciliation based on the difference between incremental cost and embedded cost would result in using embedded costs to set prices. NET argues that comparison of the two studies is meaningless as they are expressed in different dollars, reflect different time periods, and the ICS is not separated by jurisdiction.

NET contends that its proposed pricing conforms to the E-P methodology. It argues that the E-P pricing guidelines together with ICS results are a proper starting point for the implementation of its price regulation plan and can provide the comparison to determine if prices are just and reasonable under the plan. During the pricing plan, actual revenues earned could be the proxy for the revenue requirement to which the ICS would be reconciled.

The company strongly recommends that the commission reject any recommendation that would require basic exchange rates to be set at incremental costs. It argues that basic exchange rates should bear a portion of the common overhead costs. In particular, as New Hampshire moves toward a competitive telecommunications market, competition will appear first in the intrastate toll, WATS and 800 service markets. As the marketplace is likely to force these prices towards their incremental costs and they are able to provide less contribution, services that are less competitive, such as basic exchange service, will be required rather to provide additional contribution to the recovery of overhead costs.

NET has not proposed any changes to Centrex rates as those rates were extensively litigated in previous dockets. The company argues that Direct Inward Dialing (DID), Touch-tone and Station Number Assignment (SNA) are service options rather than essential services for PBX customers. Further, the company contends that it is not proper to compare PBX trunks to Centrex lines as a PBX system with 100 stations may require only 10 PBX trunks while a Centrex system would require one for each station.

In Private Line Service, the company proposes that non-recurring charges recover the costs incurred by NET to install or remove private lines to reduce inward and outward movement. It established monthly rates at 50% above incremental cost and proposed a uniform mileage rate element. It also proposes several structural changes in the rates.

The company proposes to increase the local coin usage rate for calls originated at Public and Semi-Public telephones from 10 cents to 25 cents in order to recover the incremental cost of local coin usage and contribute toward the recovery of the incremental cost of the public coin telephone access line. NET estimates that local coin usage will decrease by one-third as a result of the increase.

In Directory Assistance Service (DAS), the company proposes to increase the charge for directly dialed DAS from 23 to 40 cents and for operator handled DAS from 46 to 55 cents. It would reduce the monthly free call allowance for DAS from ten to three for residence and zero for business. Finally, it offers to exempt from DAS charges any calls that originate from coin telephones and the registered telephones of

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handicapped users.

Service and Equipment charges apply to service that is ordered or connected at the customer's request. The company proposes to increase these charges so that they cover their incremental costs. It also recommends increasing the General Services and Equipment charges for services that are adjunct to basic service (*e.g.*, Call Waiting) by a uniform percentage. The increase would not apply to services where there has been little demand growth.

NET proposes to move the price for Business Message Telecommunications Service (MTS) closer to its incremental cost and merge it with outward WATS. A volume discount MTS schedule for one to three year contract periods is proposed for business customers based upon their total toll usage at each location. 800 Services will be restructured and repriced. The company does not propose to reduce Residential MTS. Since 60% (vs. 15%) of residential MTS occurs in the evening, night-time or weekends, the Average Revenue per Minute (ARPM) for the Business MTS customer is greater than the ARPM for Residential. Following the proposed reduction, Business ARPM will approximate Residential.

The company intends to keep basic exchange rates at their current levels, but would disaggregate basic exchange rates into dial tone and local usage. The company would eliminate two and four party residence exchange service on an exchange by exchange basis when the percent of two and four party lines in service drops below 1%. It would accept as a reasonable compromise grandfathering the existing multi-party customers as long as they continued to use the service.

NET also proposes a Lifeline Plan in which qualified subscribers would receive a $3.50 monthly reduction in their basic exchange rate. This reduction would be matched by an additional $3.50 reduction under the Federal Communications Commission's (FCC) Lifeline Program. Funding for the New Hampshire portion would be provided by a surcharge to every New Hampshire exchange access line.

Finally, NET argues that its rate design proposal should be approved in its entirety. It argues that its rates were designed to produce just and reasonable rates, to move NET's rates toward a cost-based structure, to maintain universal service and to be revenue neutral in generating the revenues authorized by the commission in Phase I.

B. Granite and Merrimack

Granite and Merrimack argue that the two remaining parts of this docket (cost studies and rate design, and changes in the form of regulation) are tied by NET's approach of assigning substantially all of the fixed costs of its business to monopoly services and virtually none of them to services that may be the subject of competition. They recommend that the costs

associated with joint facilities should be assigned to the various services that utilize those facilities.

Specifically, Granite and Merrimack contend that NET's position that costs associated with joint non-traffic sensitive facilities should be assigned to end users, and, therefore, to basic exchange, is analytically flawed, produces unreasonable results and should be rejected. They believe that the ICS is flawed in its failure to allocate costs for NTS facilities to the services that use those facilities, in its failure to remove from the intrastate cost study those costs for which compensation is already provided from the federal jurisdiction, and in the blanket use of the E-P methodology with the result that what are essentially sunk costs for traffic sensitive facilities are being allocated to the non-traffic sensitive service categories.

They note that NET's assignment of all NTS costs, which make up 70% of the total incremental costs, to the "network access" service category makes the customer the cost driver and allocates all NTS costs to basic exchange, even though the NTS facilities are used for many services. This assignment is wrong, they argue, first because "network access" is not a meaningful ultimate service category for cost study purposes: customers buy communications services, not loops. Second, the cost drivers of NTS costs are not limited to the number of access lines, but rather vary with features of the system configuration like distance and density that have nothing to do with

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the customer's decision to have and use the telephone. Third, certain plant characterized as non-traffic sensitive in NET's cost studies may, in reality, be traffic sensitive because of the multiplexing and demultiplexing equipment which allows 24 or 48 voice channels over a single pair of wires; the number of channels made available is based on an engineering estimate of the number of subscribers making calls at the same time. Finally, they argue that the economic evidence is that NTS costs are joint or common and that at least in the case of residential customers, most customers subscribe to access lines for the purpose of making local calls, intrastate toll calls and interstate tolls calls and therefore NET's assignment of NTS costs entirely to local service is arbitrary. They note that the record contains, and regulatory agencies have employed, numerous methods of allocating non-traffic sensitive costs to the services that use NTS facilities and recommend that the commission adopt a percentage allocator similar to that adopted by the FCC, namely an allocation of 25% of the NTS costs to intrastate toll, leaving 50% left for basic exchange.

Merrimack and Granite contend that the E-P factor should not be applied to NTS costs. They observe that the incremental costs total just over one-half of the intrastate revenue requirement; the balance are sunk costs that nevertheless must be recovered. However, based on NET's cost studies, NTS costs in the ISC are fairly close to those developed in the COSS. Therefore, they argue, the sunk costs are likely to be associated with traffic sensitive facilities. Since the NTS costs are 70% of the total incremental costs, the E-P method would allocate 70% of the sunk traffic sensitive costs to the final amount shown for NTS costs. They conclude that the E-P factor must not be applied to NTS costs, since doing so loads traffic sensitive costs on to non-traffic sensitive cost categories. Exempting NTS costs from the E-P reconciliation would ensure that basic exchange customers are not in any manner subsidizing competitive usage services. An

exemption would also promote universal service.

Granite and Merrimack also contend that the ICS is an intrastate New Hampshire study and therefore it is inappropriate to keep NTS costs properly allocable to the interstate jurisdiction within the study. They argue that the incremental costs for NTS facilities should be reduced by the 25% amount received from the interstate jurisdiction. They also recommend that the commission should consider Ramsey Pricing as an alternative to the E-P factor and state their belief that a heavy contribution could be maintained from the intrastate business toll service, since NET's evidence indicates that little or no stimulation or repression results from changes in the price of business toll.

Finally, they suggest that the use of the ICS for allocation purposes, adjusted as they have recommended, will provide a sound basis for the establishment of access charges. They believe that the cost of access should be established as the cost of toll service less any decremental costs saved in providing access rather than toll.

C. Union

Union stated that although it participated in both DR 85-182 and the instant docket, it could not conclude that the studies had been either properly or improperly performed. Further, even if the ICS and the COSS had been performed properly, neither should be the exclusive or even preferred method of measuring costs for the purposes of determining rates. Rather, they suggest that each type of study yields valuable information regarding costs that is relevant to pricing. Union believes that a COSS provides information that may be useful in determining the maximum price for a service while an ICS can provide a useful guide in establishing price floors for services. However, it argues that the results of a COSS are flawed by the inherently arbitrary allocation of joint and common costs, and of an ICS by the arbitrary choice in a method of reconciling the incremental cost to the revenue requirement.

Union expressed its concern that sole reliance on the results of the ICS elevates efficiency to the primary rate-setting criterion and urges the commission to assess NET's proposed rate design against the ten criteria articulated by James C. Bonbright in his *Principles of*

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Public Utility Rates.

Union did not take a position on the proper or preferred method of closure between the ICS and the revenue requirement. However, it states its belief that Ramsey Pricing is simply value-of-service pricing in disguise, and that the E-P methodology is but a variant of it. Union is concerned that the commission be aware of all of the policy considerations and objectives that flow from the choice of the reconciliation methodology.

Finally, Union asserts that Lifeline as proposed constitutes social rate-making, deviates from cost-based rates and encourages economic inefficiency. Further, to the extent that the program is funded by a flat surcharge on customers, it is a regressive tax.

D. MCI

MCI argues that with or without the authorization of intrastate competition, NET remains the

monopoly provider of local exchange and toll services within its service territories in the state of New Hampshire. In access, NET controls a bottleneck input that all other providers must use and is able to price intrastate carrier access service at levels that are so high that it can preclude any effective competition to NET's toll services. NET can create a price squeeze whenever it both sells a bottleneck input (*e.g.,* switched carrier access) to another firm and also uses it to provide its own competing retail service. In such a circumstance, it can set the price of its retail service below the price it charges its competitors for the bottleneck input plus other costs it incurs to provide the service.

MCI asserts that NET can also bundle competitive and monopoly services to disadvantage competitors by setting a lower price for a monopoly service for customers who also buy a potentially competitive offering from NET rather than from a competitor. For example, NET can offer a loop for interconnection to a customer's PBX, or it can offer the customer an entire package of loop and switching software in its Centrex product.

MCI's solution to these problems (and others relating to relaxed regulation) is that the commission should require NET to break down the functions provided by NET's network into their basic elements ("building blocks"), examine each building block to determine if it is a bottleneck monopoly or could be subject to competitive entry, determine the cost of each building block, and then translate that cost into non-discriminatory tariffed rates for the bottleneck offerings provided to NET's dependent competitors and NET's own services. In particular, MCI argues that NET's carrier access charges should be set at cost based levels and that NET be required to impute in its own toll rates the same access charges that it would charge competitors.

E. AT&T

AT&T's position focuses on the issue of PBX versus Centrex. It argues that virtually every substantial business needs a telecommunications system that combines internal and external communications into a single integrated system. Currently, businesses choose between PBX and Centrex and AT&T argues that if the prices of the bottleneck access components of these competing systems are distorted, businesses will be compelled to make inefficient, uneconomic choices.

AT&T asserts that NET has priced four essential bottleneck services, which it claims all PBX based systems must have and which can only be obtained from NET, at discriminatory and anti-competitively inflated rates. It argues that individually and in their aggregate effect, NET's rates to PBX customers for exchange access, DID, SNA and Touchtone unfairly disadvantage PBX vendors when they compete with Centrex.

NET charges its PBX customers a monthly rate of $13.85 for a central office line compared to the monthly rate to a Centrex customer of $4.04 for the same line. AT&T argues that the fact that PBX systems use fewer access lines than a Centrex system for comparable usage reflects a genuine efficiency of the PBX system and does not justify price discrimination of a bottleneck service simply because the discrimination is needed to offset an inefficiency in a competitive NET service.

Based on a comparison of the rates available to PBX and Centrex customers, AT&T argues that NET's rates for DID, SNA and Touchtone are equally discriminatory and anticompetitive, and that at least DID and Touchtone are necessary parts of business service. It concludes that the commission should establish a rule that all NET bottleneck services provided to Centrex customers must be offered on an unbundled basis at the same rates as offered to customers using PBX systems, and that if there are any differences in the actual services provided to the two groups of customers, those differences should be reflected in cost justified rates.

F. U.S. Sprint (Sprint)

Sprint argues that local exchange carriers like NET remain bottleneck providers of local exchange and carrier access services and that NET's price regulation plan does not contain sufficient protection against abuses such as cross-subsidization and predatory pricing. Specifically, it asserts that access is a necessary component of interexchange carrier provision of toll services and is not generally available from providers other than the local exchange carriers. It believes that NET's toll services should be priced to cover all incremental costs, including coverage in the aggregate of the access services an interexchange carrier would be required to purchase for provision of the same type of services.

G. Office of the Consumer Advocate (OCA)

The OCA believes that the threshold question is how the cost of "Plain Old Telephone Service" (POTS) is recognized in the cost studies performed by NET. It notes that there is no study in the record that identifies POTS' costs and argues that without any reliable figures in the record of the cost of POTS, the commission should not allow rates to be based on NET's studies: doing so runs the absolute risk of assigning costs to the residential class which were incurred to provide a more sophisticated product than the residential class desires or can use.

The OCA argues that the COSS must be dismissed as even NET did not recommend it. The ICS, which the company recommends as indicating the floor price for services under the price cap plan, represents only a "first cut", and its reconciled results are only second best compared to setting prices equal to incremental prices. The OCA argues that the arbitrary adjustment to the revenue requirement defeats the argument of economic efficiency. The OCA is also concerned that while judgments must be made in developing an ICS, NET did not act impartially in making those judgments and asserts that NET filed elasticity of demand studies only when they benefitted the company. The ICS also does not reflect anticipated productivity gains. The OCA argues that NET's proposed allocation of all NTS costs to local exchange is contrary to actions taken by other states, and that the loop study on which the ICS is based, a 1983 Massachusetts study, is not reliable for determining future New Hampshire costs.

H. VOICE

VOICE believes that it is premature at this time to accept or reject NET's embedded and incremental cost studies. Acceptance of the NET cost studies will now serve little purpose as NET has already received its Phase I rate increase and new and improved cost studies will be necessary for the next rate case. VOICE argues that a properly performed COSS is an essential tool for determining the reasonableness of rates. The commission should not allow NET to use its failure to satisfy its burden of proof by providing an embedded study whose results it disavows to force the commission to render decisions on rate design based on an incomplete

record.

If the commission deems it appropriate to render a decision on NET's cost studies, VOICE recommends that it reject both the COSS and the ICS. It believes that both are seriously flawed and their application would result in rates that are excessive, unreasonable and unjust, particularly in regard to the basic residence exchange ratepayers.

VOICE argues that in both methodologies

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NET improperly allocated most of its fixed NTS costs by creating a category called "network access" that has no correlation to any of NET's currently tariffed services and then assigning all network access costs to basic exchange. A fair proportion of the NTS costs has therefore not been allocated to the intrastate and interstate toll services or to the enhanced and supplemental services, which rely on the quality of the public switched network to provide a base for these offerings. VOICE identifies specific problems with the ICS including its non-recognition of common or overhead costs or costs of marketing, the lumpiness of investment, the frequency, size, timing, and estimated cost of the loop investment, and lack of confidence in critical data input assumptions. As a result, costs for local exchange have been greatly overstated and its rates are currently too high, and costs and rates for the more competitive services have been understated. VOICE recommends that the E-P method of reconciliation be rejected as it exacerbates NET's already unfair method of assigning a disproportionately high percentage of NTS costs to basic exchange. It contends that an embedded cost study should at least be used as a `sanity check' to assure that rates based on incremental costs are within the realm of just and reasonable.

VOICE avers that a properly performed "stand-alone" cost of service study could identify and allocate NTS costs based on principles of cost causation and relative cost savings. A stand-alone cost study identifies the fixed costs necessary to provide each service as if the system were designed and constructed to provide only that one service. Total system costs for a combined system can then be allocated to each service based on the percent of cost savings that results from constructing facilities that are jointly used. VOICE recommends that NET be required to perform such a study and its results be substituted for allocations of NTS costs according to usage or access lines.

VOICE believes that the commission should base rates on traditional principles of rate design rather than give economic efficiency paramount consideration. Such traditional principles include fairness, equity, rate continuity and rate stability. In particular, fairness requires recovery of costs from cost causers, and it is unlikely that basic local exchange customers are the primary cost causers of the expenditures for a fiber optic and digital network.

VOICE also addresses a number of NET's rate design proposals. It believes that the commission should reject the proposed increases in public coin pay phone charges, arguing that the service is profitable on an embedded basis, and that NET is fully recovering the incremental costs of coin usage and is also receiving a substantial contribution from local coin toward the NTS costs of the coin access line and set. It believes that NET has improperly allocated all of its NTS coin access costs to its local coin service and not to intrastate or interstate toll. NET could

also enhance its coin phone revenues by removing or transferring to more profitable locations the low earning sets located in "leisure" locations. Noting NET's estimate that the proposed increase would result in 33 percent fewer local coin calls, VOICE argues that the proposal will lead to a serious welfare loss, borne particularly by low income persons who rely on public coin pay phones for necessary calling.

VOICE argues that the commission should reject NET's proposal to eliminate two and four party line service, as it provides a low cost alternative for low income customers who make the average number of outgoing local calls (14 minutes per day) for single party flat rate customers, and who therefore cannot benefit from low use measured service options. Alternatively, it recommends that two party service be retained if four party must be eliminated for cost reasons, and multi-party rates grandfathered for customers who are forced to transfer to another service option. VOICE also believes that NET's low use measured service options should be modified to increase the calling allowance and reduce the overtime charge of 16 1/2 cents, which it argues is not justified by NET's incremental cost of usage. The overtime charge is particularly burdensome for low income or elderly customers who are frequently put on hold when calling government agencies.

VOICE objects to NET's Directory Assistance Service proposals, contending that

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customers should not be charged for numbers that are not listed in the phonebook. If the commission deems it necessary to reduce the DAS calling allowance, VOICE suggests that at least six free DAS calls per month be allowed. VOICE also believes that NET's proposed increases for DAS charges are unnecessary and excessive.

Finally, VOICE recommends that the commission approve NET's proposal to implement a Lifeline payment assistance program as in keeping with ratemaking goals and the promotion of a public policy of universal service, and as a means to increase the residential customer base. It believes that a critical need has been demonstrated, that it is not improper for a utility to perform a social function, and that the surcharge is neither a regressive tax nor unduly discriminatory. However, it recommends several modifications. It believes that the potentially eligible customer base should be expanded to include all low income customers, and application and income verification requirements should not be made so burdensome as to discourage applications. It also recommends elimination of NET's policy requirements of advance payment of arrears and security deposits for customers with poor credit histories. Further, it recommends that the funding of the program should be shared equally between NET's stockholders and customers.

VOICE concludes by listing 23 specific proposed findings of fact and rulings of law regarding cost studies and 87 regarding rate design proposals.

I. Staff

Staff believes that the goal of economic efficiency in the context of traditional regulation and the pressure of competitive forces in the context of relaxed regulation point toward the establishment of rates with reference to NET's ICS. NET, on its own, will tend to move rates for its competitive services toward incremental costs; staff believes that the public good requires that the commission assure that the less competitive services, and in particular basic exchange, also

move over time to the level of incremental cost.

NET's notion that all NTS costs should be exclusively allocated to basic exchange services has been rejected as improper in numerous states and at the federal level and makes little sense in view of the ubiquitous nature of the telecommunications network and the multiplicity of services provided over the NTS loop. The loop represents a fundamental and necessary building block for most of NET's services, including the provision of residential and business basic local exchange, intrastate toll services and interstate toll access. Since NTS accounts for approximately 70% of total incremental costs, NET's allocation of all such loop costs to basic exchange results in grossly overstating the incremental cost of providing local service and grossly understating the incremental cost of providing toll services. Accordingly, staff believes that the commission should reject NET's method of allocating NTS costs exclusively to basic exchange services and rather allocate them among all services that make use of the network. Absent such an allocation, NET's ICS is useless for current and future rate design, including the setting of floor prices to avoid cross-subsidization and anti-competitive predation with respect to toll services in the event of future competition.

Concerning methodologies for properly allocating NTS costs, staff made the following recommendations and observations. It believes that it is appropriate to recognize that 25% of NET's New Hampshire NTS costs are supported by revenues generated by the interstate settlement process and thus eliminate any double-counting in NET's intrastate cost recovery. It recommends allocating NTS costs among local, intrastate and interstate toll services by minutes of use, which, although not necessarily a cost driver, fairly apportions costs according to the proportional use of the network. Moreover, in the long run, some of the network costs identified as NTS are usage driven. Third, it recommends allocating NTS costs within particular intrastate services (*e.g.*, basic exchange) between customer classes by access line since the costs are generated by the demand for access lines.

Staff makes the further observation that once the 25% reduction in NTS costs is

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performed, NET's basic exchange services are priced at or above incremental cost. The introduction of toll competition to New Hampshire will not change this positive cost/revenue relationship and staff argues that the fact that NET anticipates that competition will reduce toll prices and revenues does not mean that NET should receive offsets through higher basic exchange rates. The evidence raises the issue of whether local services should be burdened by a reconciliation adjustment, E-P or other, between incremental cost and the revenue requirement under traditional rate of return regulation. The deficiency is created because the total average (total embedded) costs of a natural monopoly in a declining cost industry exceed the sum of the firm's marginal cost (subadditivity of costs). However, while NET is a subadditive firm with decreasing unit costs over time on an aggregate basis, it is not always subadditive on a disaggregated basis. Specifically, with respect to NTS facilities, average unit costs have been increasing over time to the extent that currently NET's marginal cost for each NTS loop is "close" to its average cost. For average cost to be increasing, marginal cost must necessarily lie above average cost. Since provisioning the loop constitutes over 95% of the incremental cost of basic exchange, NET's analysis suggests that pricing basic service at incremental cost will enable

NET also to recover its average/ embedded cost of providing basic exchange service. The evidence suggests that NET's aggregate subadditivity of cost results, not from the characteristics of basic exchange, but from the characteristics of NET's non-basic services. However, the fact that these services do not generate sufficient revenues at incremental cost to cover average cost, is a problem that should be solved by the services that cause it. Otherwise, any contribution from basic exchange above incremental cost to reconcile to the revenue requirement is simply a subsidy to the services that trigger the subadditivity problem. Staff believes that the commission should make clear that since basic exchange service rates, both residential and business, currently cover incremental costs, NET will not be allowed to raise these rates in the future merely to allow NET to lower toll rates.

Staff believes that most of its input data concerns in the ICS have been resolved and that any remaining flaws in the study are not sufficiently serious to render it unreasonable, especially since NET has agreed to update and refine the ICS in 1993. Therefore, it agrees that assuming that NTS costs are properly allocated the commission should find that NET's ICS provides a reasonable cost of service based guide for determining the future direction of rates for New Hampshire.

Staff also makes recommendations regarding specific rate design proposals. Staff recommends that the coin rate for calls originating at public semi-public telephones be raised from 10 to 25 cents per call. The rate increase appears reasonable in order to cover the incremental cost of access, equipment and usage.

Staff generally supports NET's proposal to eliminate two and four party residence exchange service. NET estimates that 70% of subscribers with two party service and 33% of subscribers with four party service are the only party on the line. As NET modernizes its network and makes the transition to a fully digital network, party lines will become increasingly rare and the remaining lines more costly to maintain. Staff supports the concept that customers should pay for the services they enjoy, consistent with the objective of moving to greater cost accountability. Although current party line customers would experience an increase in rates with the elimination of multi-party service, NET provides a variety of low and measured service options which could mitigate this potential rate increase. Staff does believe that subscribers must be made aware of the least costly service option and suggests that the commission monitor NET's marketing practices to ensure low income subscribers are able to make informed choices.

Staff recommends that Touchtone be incorporated into basic service regardless of whether the NET regulatory reform proposal is implemented. NET views the combination of Touchtone and basic service as the first step in a redefinition of basic service and staff agrees, especially since Touchtone service imposes no additional cost on an all digital network.

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Staff recommends a rate increase for DAS to generate revenues sufficient to recover incremental costs plus the E-P adjustment if the commission determines that closure to the revenue requirement is necessary. Staff also recommends retaining a minimum three call allowance for residential customers, to minimize rate shock and to maintain consistency with Maine and Vermont. Staff suggests a review of the exemption procedures to assure that those

eligible for free DA are fully informed and that the exemption reaches all who need it, and an investigation of the feasibility of providing free DA to reach new subscribers who are not yet listed in phonebooks.

Staff believes that, based on NET's recent limited increases in residential service rates, implementation of a lifeline program is not warranted at this time. Although staff endorses the concept of universal service, it is concerned that other ratepayers would be obligated to fund the costs of the program and that the goal of promoting universal service should not compromise the implementation of a rational cost based rate structure for other subscribers. It would prefer a statewide lifeline program rather than a piecemeal approach and believes that prior to implementation the commission should consider a governmental commitment to aid those in financial need, the ability to supplement the state program with participation in federal lifeline programs and the future direction of residential service rate design.

III COMMISSION ANALYSIS

[1-10] Historically, commissions have sought to achieve the twin goals of an ubiquitous telephone network and universal service by relying heavily on value of service pricing. In its last rate case, DR84-95, NET moved to adopt a cost of service standard as the basis for its ratemaking analysis. In its Report and Order no. 17,639 issued on June 3, 1985, the commission determined that in the absence of adequate cost studies to accompany the DR84-95 rate case, the company should be required to apply its authorized increase in intrastate revenue in an across-the-board manner.

The Commission subsequently opened Docket 85-182 with the express purpose of developing adequate fully allocated embedded cost studies and marginal or incremental cost studies and to consider the rate design that would flow from these studies.

In seeking to determine NET's costs of providing service, the commission recognized that embedded cost methods could be used to determine the revenue requirement for monopoly services and whether the rates flowing from them were compensatory. Incremental costs would permit the establishment of a minimum cost below which the price of a given service should not fall. The commission recognized that no one costing method could adequately meet all of these needs and that only a variety of costing methods would permit the establishment of the upper and lower bounds on the company's cost of service.

On November 2, 1987, the parties to Docket 85-182 agreed that NET would perform the following cost of service studies (COSS): two based on NET's proposed embedded methodology, one using combined inter and intrastate costs, and a second using intrastate costs as designated by the FCC separation procedures; two further studies applying the National Regulatory Research Institute's Peak Responsibility cost allocation overlay to the intra and combined embedded COSS; an incremental cost study modelled after one performed by NET for the Massachusetts Department of Public Utilities; and, finally, a variant of the intrastate COSS utilizing a cost matrix that was closely to resemble NET's current tariff structure.

The commission takes note of the tortuous negotiation and discovery process that accompanied the cost studies, not least the apparent inability on the part of the Company to restate the various embedded COSS on a tariffed service by service basis, and the subsequent repudiation by the Company of the embedded study and its findings for rate making purposes.

We are also well aware of the reasons advanced in favor of using embedded costs as the basis for rates, *i.e.*, providing for a fair apportionment of costs among customer classes; promoting stable rates, since costs incurred in a single year are recovered over a much longer period; and rate

continuity. However, the commission is also mindful that embedded costs suffer from the need to allocate joint and common costs; that historical embedded costs may no longer be relevant when compared to current levels of investment and expense per service; and that embedded costs may thus not lead to rates which promote an efficient use of resources either by the company or the customer.

Incremental costs, on the other hand, by virtue of being forward looking and long run, address the relevant time period for evaluating production and consumption requirements and can overcome possible distortions that may arise from too short a view of demand changes. The commission recognizes that incremental or marginal costs may contain an element of ambiguity, *i.e.*, should short run or long run costs be measured. Further, while marginal or incremental cost pricing might provide for the most efficient allocation of the firm's resources, this prescription applies to every commodity in the economy, and when other prices are not set at marginal cost, problems of `second best' may apply. Finally, under traditional rate of return regulation, rates based on marginal costs may result in deficient total revenues relative to the commission approved revenue requirement. Nevertheless, the commission believes that efficiency objectives are best served by the use of marginal cost pricing, and at the very least, marginal analysis can provide a sound basis for determining the minimum price to be charged for a service.

While lack of progress over the embedded analysis foreclosed its application for rate design purposes, the commission notes that staff and the company were able to reach agreement on the incremental cost study methodology. The use of an engineering-economic model based on functional subdivision of the network into four primary components (loop, central office switching; interoffice transport and tandem) not only permits the estimation of the average incremental cost of the telephone network but also generates costs that are relevant for other business and regulatory decisions such as assessing the conditions for entry into potentially competitive markets, weighing the costs and benefits of introducing a new technology, and measuring how the burden of costs is shared among different consumers.

The commission also notes that the following changes to NET's original incremental cost methodology were adopted:

a. A 15 year study period was used to determine loop, end office, interoffice and tandem center costs in order to balance the competing need to minimize short term cost variations, with consideration of future technological advancement and its impact on costs.

b. Incremental cost study updates will examine the impact of usage on concentrator costs and the resulting impact on loop costs. This will permit consideration of the impact of both access and usage cost drivers on the incremental costs associated with that portion of the loop located on the central office side of the concentrator.

c. The study assumes a 3% access line growth rate. While use of the 3% figure

represents a compromise, it more readily reflects New Hampshire telecommunications companies, which having enjoyed rapid growth in the 1980's are now experiencing a leveling off in demand for access lines.

d. In calculating the incremental loop cost per month the ICS assumes a constant 70% initial fill ratio. The application of the 70% figure approximates the weighted average fill ratio for all of the company's sample exchanges, and serves to minimize the sensitivity of the incremental loop cost to the time frame. It also recognizes that as the company seeks to synchronize its construction practices statewide, existing variations in fill ratios will diminish.

e. Costs of digital conversion were to be applied to existing demand. Since a switch that is converted to digital continues to serve existing demand as well as new growth, the conversion costs more appropriately should be applied to existing demand; only that portion of the conversion costs that reflects expanded capacity need be attributed to incremental demand.

f. In order to ensure that usage data accurately reflect changes in usage trends, all

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future ICS updates will contain the latest available usage data. The ICS will be updated in April 1993, utilizing 1992 usage data in the analysis.

For the reasons outlined above, the commission finds these changes to be useful and in the public good.

It is the commission's intention to utilize the results of the ICS to provide guidance for the level of revenue recovery attributable to each class of service under traditional rate of return regulation, and to establish price floors for services and determine current levels, if any, of cross subsidy. Our attribution of the revenue responsibility must reflect the fact that under Separations procedures, the Joint Board has determined that the interstate jurisdiction will provide recovery for 25% of NTS costs and that only 75% of NTS costs must be supported by the intrastate jurisdiction. In determining whether a given service is recovering its total traffic sensitive and non-traffic sensitive incremental costs, a crucial role is played by the allocation of nontraffic sensitive costs. Once NTS costs are incurred they become common costs, *i.e.*, they are used to provide a number of services including interstate toll, intrastate toll and basic exchange. Thus the commission must determine the fair and appropriate allocation of these costs among all the services which utilize the distribution system.

The commission is well aware of the company's claim that basic local exchange service has been and continues to be subsidized by toll. In the past, the notion of various services contributing to the support of basic exchange has been reinforced by cost studies that have served to demonstrate that the `contribution' paid by customers of other services represents a disproportionately greater share of the company's incurred costs. These studies have served to mislead due to the company's decision to assign NTS costs to local exchange services despite the fact that both interstate and state toll services are provided over local NTS facilities. Without local exchange facilities there would be no mechanism to connect interexchange services to the majority of customers premises. Since clearly the availability of the local network for toll use is

a benefit to interexchange carriers and all toll customers, the Commission believes that assignment of NTS costs solely to local exchange services is unreasonable.

VOICE has argued that a stand-alone cost of service study would provide an appropriate mechanism for distributing nontraffic sensitive costs, and we do not reject the methodology as a concept. Stand-alone costs of service studies attempt to determine the cost of providing each service alone, independent of the provision of any other service. In so doing, they recognize the inherent benefits of plant used jointly by customers of various services. Clearly, the sharing of common facilities by a variety of services should reduce the overall cost of operating each service as compared to each service being provided over its own unique facilities. By comparing the difference in the costs of providing each service on a stand-alone basis with cost allocations flowing from traditional costing methods, it is possible to estimate the beneficial nature of joint use plant. While recognizing that stand-alone costing may provide a mechanism to allocate nontraffic sensitive costs, the absence of a completed stand-alone cost study in this proceeding leaves the commission disinclined to require the performance of such a study at this time or to delay adoption of a cost reflective rate structure pending the completion of such a study.

Accordingly, the commission finds, first, that the company's NTS costs should be reduced by 25% to reflect an equivalent amount that will be received from the interstate jurisdiction through the application of the End User Common Line charge. The balance of NTS costs will then be allocated among all services utilizing the distribution system by the application of a minute of use allocator. This allocation will apportion costs based on the proportional use of the network by each service and reflect the fact that, in the long run, part of network costs may be usage driven. However, since NTS costs are generated not through usage but via the demand for access lines, intraservice (basic exchange) NTS allocations will reflect relative numbers of access lines.

A final problem with the adoption of

incremental cost pricing is the discrepancy between total incremental costs and the revenue requirement approved under traditional rate of return regulation. When a utility faces declining costs, the firm's total average costs, on which its revenue requirement is based, will exceed its total marginal costs. The problem persists when incremental costs are utilized as a proxy for marginal. It is then necessary to establish a mechanism to close the gap between incremental costs and total average costs (or revenue requirement) to enable the firm to cover its costs and be afforded the opportunity to earn its authorized return on investment. The commission is aware of three methodologies for closing the gap: lump sum transfer, application of Ramsey pricing (inverse elasticity rule), or utilizing an equi-proportional adjustment.

We are mindful of the company's testimony that average unit costs of NTS facilities have been rising such that the incremental cost of NTS loops approximates its average cost (Baker Tr. Day 4 at p.87). Given that NTS loop provisioning represents approximately 95% of the incremental cost of basic exchange service, the commission concludes that pricing basic exchange service at its incremental cost will enable the company to recover the average cost of providing basic exchange service without the need to apply any closing methodology.

The absence of specific measures of elasticity and the equity concerns raised by a strict

application of Ramsey pricing lead the commission to conclude that application of the E-P adjustment to close the gap between incremental costs and the revenue requirement is the preferable methodology. In this instance, the permanent rate increase and the April 1, 1990 tax adjustment results in a net revenue gain of approximately $6 million. In addition, we will adopt the company's proposals as specified hereafter to adjust the rates in a number of service categories to cover their incremental costs. These two factors will enable NET to capture the allowed revenue increase and obviate the need for the commission to apply any overall adjustment between incremental cost and the revenue requirement.

IV. RATE DESIGN

a. Basic Exchange

[11] Based on the foregoing analysis of the incremental cost study and the application of NTS costs, we find that basic exchange services are not only recovering their incremental costs but are also contributing towards common overhead costs. Therefore, the commission will accept NET's recommendation to keep basic exchange rates at their current level, that is, the level authorized on April 1, 1990 which encompasses both the permanent revenue and tax effects as modified by our finding in section (j) TouchTone.

b. Toll Service

[12] The commission approves NET's proposal to merge MTS with outward WATS and supports NET's objective of improving the level of efficiency of the toll price structure by moving prices closer to their incremental costs. However, we believe that there is no difference between residential and non-residential customers in the actual cost of providing toll service, Thus, we will require that toll rates offered for business and residential customers should be the same and that any discount plans offered to one customer group be extended to the other. The commission notes NET's argument that residential MTS collects less than business MTS on the basis of an Average Revenue Per Minute calculation. The discrepancy is due to residential versus business calling patterns which involve greater residential MTS usage in the off-peak hours. The discrepancy in the ARPMs is therefore apparently cost based. If the company does not believe that its peak/off-peak pricing is appropriately costed, it should proffer a cost study and modify the off-peak discounts, rather than price the same service (MTS) differentially across customer classes.

The commission will require that NET track both business and residential toll service following the price reduction in order to determine whether any stimulus to demand has taken place and file quarterly reports on the results.

c. Public Telephone Service

[13] In proposing to raise the local coin usage rate for calls at Public and Semi-Public telephones from 10 cents to 25 cents, NET chose first to disaggregate Public Telephone Service into three components: Semipublic service, Public service and local coin usage. Then by examining the incremental costs of local coin and the incremental costs of Public Telephone access line and set, the Company calculated that the current 10 cent rate recovered the

incremental cost of coin usage, but not the cost of the access line and equipment. Despite suppression, the proposed increase would provide a greater contribution toward these latter components.

The commission notes the fact that the Company chose to analyze the local coin usage component without recognizing total coin class earnings. NET's coin class comprises various service categories both combined and intrastate, including local public coin, intrastate and interstate toll, non-sent paid charge calls and credit card calls. By the Company's own admission, the overall coin operation is profitable and makes a positive contribution to NET's total costs.

While we recognize that it may be desirable in the long run to enable local coin usage to make a greater contribution towards the incremental cost of both access line and set, such a determination will need to be preceded by a more extensive and complete analysis of Coin service as a class. Finally, in a time of economic austerity it is likely that many low income customers may need to make greater use of pay phones for necessary calls. We therefore conclude that local coin usage should remain at 10 cents at this time.

d. Directory Assistance

[14] The commission has taken note of the significant increases that have occurred in Directory Assistance Services (DAS) usage since 1981, and that without a modification to the pricing structure, DAS will be unable to recover their incremental costs, thereby burdening other services. We will approve the increase in the charge for directly dialed DAS calls that exceed the call allowance, from 23 to 40 cents, and the increase in the charge for operator handled directory assistance calls from 46 to 55 cents. We further endorse NET's decision to exempt from DAS charges, calls that originate from coin telephones and the registered phones of handicapped users.

However, the substantial movement of customers both within the service territory and also in or out of the state results in many customers whose numbers will not appear in phone books until new books are published. Since the primary legitimate purpose of DAS is to locate numbers of persons or businesses not listed in the phone book, the commission will retain a five call allowance for both business and residence users.

We will also require that the Company provide written clarification of its currently unwritten policy of exempting from DAS charges customers who are sight impaired or who have difficulty in reading small print in the phone directory. Further, NET shall supply additional foreign exchange directories upon request to enable customers to avoid additional DAS costs.

e. Service Charges

[15] The Dual Element Service charge structure includes two components: Service and Equipment charges and Premises Work charges. In keeping with its policy of ensuring that all services at least recover their incremental costs, the commission will approve NET's proposed increases for all those services which currently find themselves priced below their incremental cost.

f. General Services and Equipment

The primary services contained within this category are adjuncts to basic exchange. As such, the commission will require that within this category, the rates for all services with the exception

of Touch Tone, Centrex and those services for which there has been little or no demand growth, will mirror the approved adjustment to basic exchange. That is, relevant components of General Services and Equipment rates will remain at the level attained on

April 1, 1990, reflecting permanent revenue and tax effects. Since all General Service and Equipment charges were subjected to the Phase 1 across the board increase, we will permit a reduction in rates back to March 3, 1989 levels, for those services experiencing little or no demand growth.

g. Private Lines

[16] The company has chosen to group private line services into three categories: tariff structure changes, nonrecurring charges, and monthly rates.

With respect to the structural changes, the commission adopts the company's proposal in its entirety. We find that these changes will facilitate the administration of the tariff, and reflect the changing availability of facilities, removal of services no longer being offered and the application of uniform rate elements to correspond with standardized facilities utilization.

The company has testified that present low non-recurring charges send misleading economic signals to customers, encouraging temporary use and generating associated costs that must be recovered from other customers. Therefore, the commission will accept the company's proposal to increase prices in this service category. Specifically with respect to service charges, the rates will cover installation and removal costs, and reduce temporary inward and outward movement.

Finally, we will adopt the Company's proposed increase in monthly rates in order to ensure that all monthly channel rates are recovering their incremental costs and providing a contribution.

h. Rate Group Reclassification

Based on its recent Order No. 20,059, dated February 19,1991, in Docket DE 90-174, the commission will defer the issue of rate group reclassification at this time. We recognize that the present methodology for classifying rate groups is clearly value of service based. Rate group reclassification, if at all necessary, would result in diametrically opposite results if based on incremental cost guidelines: more densely populated exchanges are generally less costly to serve, rather than more costly. However, in order to avoid a major disturbance to existing rate group classification, and to safeguard rate stability during a time of economic austerity, the commission will retain the existing number of rate groups and defer active reconsideration of a more cost reflective methodology until a later date.

i. Multi-Party Service

[17] The commission recognizes that NET's proposal to eliminate two and four party residence service when the percent of two and four party lines in service in a given exchange drops below 1% is consistent with precedents set in other recent rate proceedings, (*e.g.*, Order No 19,761, Chichester Telephone Company). The commission notes the fact that currently 70% of the two party lines and 30% of the four party lines in NET's service territory have only one

party on them, and is concerned about the inequity of offering party-line customers effective single party service at reduced rates. We are also persuaded that as the network becomes increasingly modernized the Company will face additional costs in order to maintain party line service.

On the other hand, the commission has no desire to penalize party line customers who continue to subscribe to party line service simply because other customers have dropped this service. We are aware that a low use measured service option is currently available as an alternative to single party service, but that many multiparty customers cannot limit the number or length of their calls. Therefore, in order not to penalize existing multiparty customers who need to make more frequent calls, the commission will require that NET grandfather existing multi-party customers until such time as they either request additional service or the service is discontinued for the customer of record.

j. TouchTone

[18] Consistent with its findings in two other recent telephone proceedings, (DR 89-69 and DR 89-70, Chichester and Kearsarge

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Telephone Companies), the commission will require that NET incorporate TouchTone into basic service. We are persuaded that such a revised definition of basic service will allow the ubiquitous delivery of numerous types of information products to all segments of society, and that bringing these `information age' advantages to all will continue to expand the universal service objective of current telecommunications policy.

In all exchanges that are capable of offering TouchTone, the company will eliminate the residence and business TouchTone rates ($1.48 and $2.62 per month) and absorb the resulting revenue deficiency by increasing basic exchange rates.

k. Lifeline

[19, 20] The commission actively endorses the principle of universal service, as demonstrated by the approximately 92.5% total penetration rate for telephone service in New Hampshire. However, it is concerned that other ratepayers would be obligated with part of the costs of a lifeline program. The provision of lifeline assistance would require that the state further establish a system of income verification according to FCC guidelines, and offer matching funds. Without matched state funding, the FCC cannot approve a lifeline program. Having accepted the rate guidelines provided by the incremental cost study, we are unwilling to have the implementation of a rational cost based rate structure compromised by the goal of universal service.

Link-Up New Hampshire already offers qualified customers a reduction in the service and equipment charge of one half the cost of installing a line, not exceeding $30.00. Since the commission does not intend to raise residential or business basic exchange rates beyond the levels already approved on April 1, 1990, and NET's studies confirm that discontinuation of basic residence service will be minimal as a result of the proposed rate increases, we find that it is premature to implement a lifeline service at this time

l. Centrex/PBX

[21, 22] The commission is concerned that NET, as the monopoly provider, is pricing bottleneck services at discriminatory and anti-competitively inflated rates. The evidence indicates that it is appropriate to include PBX and Centrex in a single `business customer switching' market. We recognize NET's contention that Direct Inward Dialing, Station Number Assignment, and Touch-Tone are not essential services, but only service options which a typical PBX customer may consider purchasing. However, the fact that PBX and Centrex are in competition, and that NET chooses to bundle and sell these services in its Centrex offerings, enables NET to engage in price discrimination by setting a lower price for a monopoly service for customers who also buy a potentially competitive offering from NET rather than a competitor.

Competing services like Centrex and PBX should be offered on a non-discriminatory basis so that the judgement of the marketplace reflects the perceived relative merits of each service. Although NET argues that Centrex costs and prices were extensively litigated by the PUC in Docket DR 86-236 and that the rates were found to be just and reasonable, it is equally true that a decision on an appropriate cost methodology for comparing Centrex costs and rates was deferred until the outcome in Docket DR 85-182. A determination cannot be made at this time because the company chose not to provide an updated incremental cost analysis of Centrex service in its ICS, but rather excluded its consideration from any further analysis.

The commission will require that NET include in its updated 1993 ICS an analysis of the incremental costs of Centrex service. Furthermore, to foreclose the possibility that price distortions within bottleneck services may lead businesses to make inefficient or uneconomic choices, the commission will require that all NET bottleneck services provided to Centrex customers be offered on an unbundled basis at the same rates to customers using PBX systems; and that any differences in actual services provided to Centrex and PBX customers be reflected in updated incrementally cost justified rates.

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m. Access Charges.

[23-25] Based on its order no. 20,042 in Dockets DR87-249, DR90-002, DR90-108 and DR90-127, the Commission signalled its decision to open the intrastate toll market to interim competition. The commission is well aware that local exchange companies (LEC's) remain bottleneck providers of local exchange and carrier access services. Since access is a necessary component of toll services and is not generally available from providers other than the LEC's, the Commission wishes to safeguard competition by foreclosing a LEC's ability to price its toll services below the cost of access services to competing carriers.

Thus the Commission will require that NET file carrier access charges at incrementally cost based levels, and impute access to the local exchange to NET's toll rates in the same amount as such access to the local exchange is charged to other users of interexchange facilities. The commission believes that imputation of access charges to LEC toll services will forestall any improper subsidy of intralata toll service at the expense of other services, limit inefficient use of

toll facilities and avoid any possible bypass of local exchange facilities. Moreover, it will ensure the development of effective intralata telecommunications competition.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Incremental Cost Study with its attendant modifications as the cost standard for ratemaking purposes, be adopted as specified in the foregoing report; and it is

FURTHER ORDERED, that NET file tariffs in compliance with the Rate Design, as specified in the foregoing report; and it is

FURTHER ORDERED, that docket DR 85-182, The Generic Rate Structure Investigation, be and hereby is closed.

By order of the Public Utilities Commission of New Hampshire, this eleventh day of March, 1991.

EDITOR'S APPENDIX

Citations in Case

[N.H.] Re New England Teleph. & Teleg. Co., DR 85-182, Order No. 18,977, 73 NH PUC 23, Jan. 18, 1988. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 85-182, DR 89-010, Order No. 19,442, 74 NH PUC 195, June 27, 1989. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 85-182, DR 89-010, Order No. 19,544, 74 NH PUC 322, Sept. 28, 1989. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 85-182, DR 89-010, Order No. 19,747, 75 NH PUC 147, Mar. 8, 1990. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 89-010, Order No. 19,479, 74 NH PUC 254, July 19, 1989. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 89-010, DR 85-182, Order No. 19,429, 74 NH PUC 183, June 12, 1989. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 89-010, Order No. 19,430, 74 NH PUC 189, June 12, 1989. [N.H.] Re U.S. Sprint Communications Co. of New Hampshire, DE 90-127, Order No. 20,042, 76 NH PUC 61, Jan. 21, 1991.

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NH.PUC*03/12/91*[27098]*76 NH PUC 147*EnergyNorth Natural Gas, Inc.

[Go to End of 27098]

Re EnergyNorth Natural Gas, Inc.

DR 90-183
Order No. 20,081

76 NH PUC 147

New Hampshire Public Utilities Commission

March 12, 1991

ORDER authorizing a gas distribution utility to implement temporary rates effective for services rendered on or after the date of this order. Commission denies request by the utility to implement temporary rates on a bills rendered basis.

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1. RATES, § 85

[N.H.] Jurisdiction and powers — State commissions — Temporary rates — Statutory authorization. p. 147.

2. RATES, § 648

[N.H.] Practice and procedure — Evidence — Temporary rates. p. 147.

3. RATES, § 630

[N.H.] Temporary rates — Refund and recoupment — Gas distributor. p. 147.

4. RATES, § 630

[N.H.] Temporary rates — Effective date — Services rendered basis. p. 147.

APPEARANCES: EnergyNorth Natural Gas, Inc. by Jacqueline Lake Killgore, Esquire; and Eugene F. Sullivan, Esquire, for the Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On December 17, 1990, Energy North Natural Gas, Inc. (ENGI) filed a petition seeking to increase existing base rates by 3.47%, resulting in an increase in ENGI's annual revenues of $2,428,469.

On January 4, 1991, the Company filed a Petition for Temporary Rates pursuant to RSA 378:27, requesting additional revenues on a temporary basis, effective with bills rendered on or after January 17, 1991, at existing rate levels. The Commission suspended the Company's filing for investigation by Order No. 20,028 dated January 14, 1991.

On January 31, 1991, the Commission ordered that a hearing on the merits of the temporary rate petition and a prehearing conference to establish a procedural schedule for the permanent rate proceedings be held on February 27, 1991.

II. *Commission Analysis*

[1-4] The Commission's power to set temporary rates is explicitly authorized by statute. RSA 328:27. The Commission's power to set such rates is discretionary and shall be exercised only when such rates are in the public interest. Id. The commission's duty to investigate temporary rate requests is less than is required in setting permanent rates. *Public Service Co. of New Hampshire v New Hampshire*, 102 NH 66, 70, 28 PUR 3d 404 (1959). Any overrecovery or underrecovery resulting from the temporary rates will be addressed by giving the customers a

refund of the overrecovery or by allowing the company to recoup any underrecovery. See *New Hampshire v New England Telephone & Telegraph Co.*, 103 NH 394, 40 PUR 3d 525 (1961).

The Commission finds that fixing temporary rates at the current level as agreed to by the Company and staff is reasonable "... [S]uch temporary rates shall be sufficient to yield not less than a reasonable return on the cost of property of the utility used and useful in the public service less accrued depreciation, as

shown by the reports of the utility filed with the commission, unless there appears to be reasonable ground for questioning the figures in such reports." RSA 378:27. At present there does not appear to be any grounds for questioning the Company's representations, though the Commission reserves the right for further investigation during the pending permanent rate case.

We now move to the issue of whether the effective date for temporary rates is on a bills rendered or service rendered basis. The Company proposes an effective date of bills rendered and cites several orders in support of its position, *Re Gas Service Inc.* 71 NHPUC 190 (1986); *Re Concord Natural Gas Corporation* 72 NHPUC 93 (1987); *Re Manchester Gas Company* 72 NHPUC 95 (1987); *Re Concord Natural Gas Corporation* 73 NHPUC 179 (1985). Although these orders do reflect that temporary rates were ordered effective on a bills rendered basis, the record is silent as to whether this particular aspect of the order was expressly considered.

Staff cites *Re Concord Natural Gas Corporation* 69 NHPUC 27 (1984), to support its position that temporary rates become effective on a service rendered basis. The Order states, "... since the temporary rates cannot be changed until they have been reviewed and approved by the commission, the Company's customers could not make knowledgeable decisions about gas usage before the date of this Order." This rationale explains the public policy considerations in having an effective date from the date of the order on a service rendered basis.

The Company's request to have temporary rates effective on a bills rendered basis if granted would treat equal customers unequally depending on when a customer's meter is read for billing. That is, if customer A has her meter read on March 1 for 30 days of prior gas usage, on a bills rendered basis effective after March 1 she will pay the changed rate on 28 days of February and two days of January usage without prior notice that a new rate will apply to that usage. If customer B has his meter read on March 15 for 30 days of prior usage he will have 15 days of February usage billed at the new rate and will have only notice of the change for his March usage. Customer B gets more notice than customer A but neither receives adequate notice to make knowledgeable decisions about gas usage.

However, if the effective date is on a service rendered basis, all customers will know that any usage after the date of the order will be charged the temporary rate, whether it is set at the existing rate or a changed rate. The Company has not presented sufficient evidence of financial hardship to override the rationale for giving the customer adequate notice of proposed changes.

The commission finds the Stipulation Agreement (Appendix A) to be in the public good to the extent that it proposes to set temporary rates at existing rate levels. These rates shall be effective as for service rendered on and after the date of the order.

The commission further finds the recommended procedural schedule, as contained in the stipulation, reasonable and shall, by the order attached hereto, order the schedule to govern the 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 EnergyNorth shall be authorized to file and implement temporary rates for service rendered on and after the date of this Order which set such temporary rates at existing rate levels; and it is

FURTHER ORDERED, that the procedural schedule set forth in the Stipulation Agreement will govern the proceedings in the permanent rate case.

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1991.

APPENDIX A

TEMPORARY RATE
STIPULATION AGREEMENT

This Agreement is entered into this 27th day of February, 1991, by and between

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EnergyNorth Natural Gas, Inc. (the "Company") and the Staff of the New Hampshire Public Utilities Commission (the "Staff" and the "Commission", respectively) (collectively the "Parties"), with the intent of resolving all of the issues that were raised or could have been raised by the Company's Petition for Temporary Rates filed in the above-captioned proceedings on January 4, 1991. This Agreement and resolution of the issues relating to the Company's temporary rates herein shall have no effect on the resolution or disposition of any issue relating to the Company's request for permanent rate relief filed on December 17, 1990.

ARTICLE I

INTRODUCTION

1.0 This proceeding originates from the filing by the Company, on December 17, 1990, of revised pages to Tariff NHPUC No. 13 — Gas for effect January 17, 1991 and to generate approximately an additional $2,428,369 or 3.47% of total annual revenues on a permanent basis. On January 4, 1991, the Company filed a Petition for Temporary Rates pursuant to RSA 378:27 requesting additional revenues on a temporary basis, effective with bills rendered on or after January 17, 1991, in the amount of the permanent rate request. By Order No. 20,028 dated January 14, 1991, the Commission suspended the Company's filing for investigation.

1.1 On January 31, 1991, the Commission issued an Order of Notice scheduling a hearing on February 27, 1991 at which several issues, including temporary rates, were to be addressed, and

requiring related Company, Staff and Intervenor testimony to be filed prior to said hearing.

1.2 On January 11, 1991 the Company filed written testimony and exhibits in support of its rate filing and its Petition for Temporary Rates.

1.3 During January and February, 1991, representatives and attorneys for the Parties discussed the issues raised by the Company's Petition for Temporary Rates. This Agreement is the result of the Company's rate filing, the testimony and exhibits provided in connection with the Petition for Temporary Rates, and the settlement discussions between the Parties.

1.4 The Parties are prepared to present testimony in support of this Agreement at the hearing scheduled for February 27, 1991.

ARTICLE II

TEMPORARY RATES

2.0 The Parties agree that it is in the public interest for the Commission to set temporary rates at current permanent rate levels.

2.1 The Parties agree that the Company shall be permitted to place its existing rates, as reflected by Fifth Revised Pages 2, 3 and 6, Sixth Revised Page 4 and Fourth Revised Page 5 of its tariff NHPUC No. 1 — Gas, in effect as temporary rates in accordance with the provisions of RSA 378.27, to be effective for the duration of these proceedings on or after the date of the Commission's order approving this Agreement; provided, however, that the Parties do not object to the rates becoming effective on March 1, 1991 and further that in the event said tariff pages do not become effective on or before March 1, 1991, then this Agreement shall be voidable at the option of the Company and the temporary rate issues shall be heard by the Commission at a hearing held as soon as permitted by the Commission's schedule. Notwithstanding the above, the parties agree to submit to the Commission the issue of whether the effective date is on a bills rendered or service rendered basis.

2.2 The Company shall file tariffs by the date of the Commission's order, consistent with the above indicating that such rates are temporary.

ARTICLE III

SCHEDULE

3.0 The Parties agree that the procedural schedule for establishing a just and reasonable level for the Company's permanent rates shall be as follows:

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

Through April 1, 1991	Rolling discovery for the PUC Economics Department
April 1, 1991	Staff and Intervenor Data Requests of Company Due
April 15, 1991	Company Responses to Data Requests Due
May 15, 1991	Staff and Intervenor Direct Testimony

	and Exhibits Due
May 31, 1991	Data Requests on Staff and Intervenor Testimony and Exhibits Due
June 21, 1991	Responses by Staff and Intervenors to Data Requests Due
July 16 and 17, 1991	Off the Record Prehearing Settlement Conference (If DR 90-187 is not heard)
July 23, 1991	Off the Record Prehearing Settlement Conference
July 24, 1991	Off the Record Prehearing Settlement Conference (If DR 90-187 is heard July 16, 17)
August 12, 1991	Off the Record Prehearing Settlement Conference
September 19, 24, 25 and 26	Permanent Rate Hearings

ARTICLE IV

CONDITIONS

4.0 The making of this Agreement shall not be deemed in any respect to constitute an admission by any Party that any allegation or contention in these proceedings is true and valid, and nothing in this Agreement shall have any impact on the final determination of the just and reasonable level for the Company's permanent rates.

4.1 This Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not accept it in its entirety, without change or condition, the Agreement shall be deemed to be null and void and without effect, and shall not constitute any part of the record in this proceeding not be used for any other purpose.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of his principal.

ENERGYNORTH NATURAL GAS, INC.
Dated: Feb 27, 1991

STAFF OF THE PUBLIC UTILITIES COMMISSION
Dated: 2-27-91

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NH.PUC*03/13/91*[27100]*76 NH PUC 172*Atlantic Connections, Ltd.

[Go to End of 27100]

Re Atlantic Connections, Ltd.

DE 90-042
Order No. 20,083

76 NH PUC 172

New Hampshire Public Utilities Commission

March 13, 1991

ORDER denying rehearing of a prior order that had required a telecommunications company to cease and desist from all intrastate telecommunications operations and imposed a fine of $5,000 for operation without a franchise. Commission finds no merit in the allegation that it violated due process requirements by using its staff to assist in the drafting of the prior order, noting that the analysis proffered by the staff was impartial and that state statute authorizes it to hire staff to aid it in the performance of its statutory responsibilities.

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1. COMMISSIONS, § 51

[N.H.] Investigation and action — Prejudice or bias — Staff analysis and assistance — Due process. p. 172.

2. COMMISSIONS, § 53

[N.H.] Personnel — Commission staff — Impartiality — Due process. p. 172.

BY THE COMMISSION:

REPORT

[1, 2] On January 15, 1991, the commission issued Order No. 20,031, *inter alia*, to provide Atlantic Connections, Ltd. (ACL) timely notice of the commission's determination that ACL is a public utility under RSA 362:2. The commission required ACL to cease and desist all intrastate resale operations until it obtained a franchise to operate pursuant to RSA 374:22 and RSA 374:26 and pay a fine of Five Thousand Dollars ($5,000) pursuant to RSA 365:41. On February 12, 1991, the commission denied, in part, ACL's Motion for Rehearing of Order No. 20,031 for the purpose of allowing the company an opportunity to perfect its request for a stay of Order No. 20,031 from the New Hampshire Supreme Court (Order No. 20,056). The commission deferred ruling on the remaining issues raised in Atlantic's Motion until it issued its substantive report. Report and Order No. 20,063 was subsequently stayed by the New Hampshire Supreme Court on February 22, 1991. On February 22, 1991, the commission issued Order No. 20,063, *inter alia*, reaffirming its finding that ACL is a public utility subject to the commission's regulatory jurisdiction and denying ACL's request for a stay of Order No. 20,031. Pursuant to RSA 541:3, on March 5, 1991, Atlantic filed a Motion for Rehearing of Order 20,063.

The Motion for Rehearing reiterates many of ACL's earlier arguments relative to its claim that it is not a public utility. These arguments were addressed in Report and Order No. 20,063 and rehearing is, therefore, not necessary.

ACL is further alleging that the commission's use of staff to assist in the drafting of Orders No. 20,031 and 20,063 violated its due process rights. The commission finds no merit to this allegation.

RSA 363:27 authorizes the commission to hire staff to aid it in the performance of its statutory responsibilities. *Appeal of Public Service of New Hampshire*, 122 N.H. 1062, 1077

(1981). When it appears that a staff member or members are so committed to single result in a particular proceeding that the proffered analysis cannot be characterized as impartial, N.H. Rules, P.U.C. 203.15 grants the commission discretionary authority to designate the affected employees as staff advocates. No motion to designate was made in this proceeding and, in retrospect, the commission finds that such designation was not necessary or appropriate. The facts relating to ACL's operations as a reseller were not seriously disputed. What was in dispute was the application of law and policy to these facts and in this regard staff's testimony

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was in accordance with its understanding of commission and supreme court precedent. ACL's desire to modify this precedent does not support a finding that staff did not act impartially in recommending that the commission assert jurisdiction over ACL.

Moreover, RSA 363:16 and 17-b require a majority of the commission to approve and sign final orders. As a multi-member body the commission's normal practice is to deliberate orally first either during a public meeting or in executive session, RSA 91-A, and then to reduce its decision to writing subject to approval and signing at a public meeting, *Id*. This was specifically the manner in which the commission conducted itself in this proceeding. Thus, to the extent staff members assisted the commission by drafting orders in this docket, they acted subject to the commission's direction and final approval. We believe that this practice serves to preserve the commission's impartiality and allows expeditious resolution of matters before the commission.

Our order will issue accordingly.

ORDER

For the reasons set forth in the foregoing report, Atlantic Connection's Motion for rehearing is hereby denied.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Atlantic Connections Ltd., DE 90-042, Order No. 20,031, 76 NH PUC 47, Jan. 15, 1991. [N.H.] Re Atlantic Connections Ltd., DE 90-042, Order No. 20,056, 76 NH PUC 83, Feb. 12, 1991. [N.H.] Re Atlantic Connections Ltd., DE 90-042, Order No. 20,063, 76 NH PUC 91, Feb 22, 1991.

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NH.PUC*03/18/91*[27101]*76 NH PUC 173*Hanover Water Works Company

[Go to End of 27101]

Re Hanover Water Works Company

DR 90-105

Order No. 20,085

76 NH PUC 173

New Hampshire Public Utilities Commission

March 18, 1991

ORDER adopting a stipulated 30.09% increase in rates for water utility service, based on 12.43% return on equity. The parties agreed that the utility would revise its two step declining consumption rate to a single block rate and would remove the consumption allowance from its customer charge. The stipulation authorizes the utility to recoup through a surcharge over a 3-month period the difference between the stipulated revenue level and the level of revenues provided for under temporary rates.

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1. RATES, § 595

[N.H.] Water — Permanent rate increase — Customer charge — Consumption allowance — Stipulation. p. 174.

2. RATES, § 596

[N.H.] Water rate design — Blocks or steps — Single block rate. p. 174.

3. RETURN, § 26.4

[N.H.] Cost of equity — Stipulation — Water utility. p. 174.

4. RATES, § 260

[N.H.] Surcharges — Temporary rate deficiency — Recoupment — Water utility. p. 174.

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APPEARANCES: S. John Stebbins, Esq. on behalf of Hanover Water Works Company; John S. Rohrbach representing the Office of Consumer Advocate; Eugene F. Sullivan III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On July 31, 1990, Hanover Water Works Company (Hanover) filed with the Public Utilities Commission proposed rate schedules and supporting documents, which would result in an increase of annual water revenues of $167,449 or a 29.33% increase in rates. On August 28, 1990, the commission issued order no. 19,927 suspending the proposed rate increase and ordering an investigation prior to the issuance of decision. Said order also established a pre-hearing conference and temporary rate hearing for October 3, 1990. On October 15, 1990 the commission issued report and order no. 19,957, setting temporary rates at existing levels and

establishing a schedule for the duration of the proceeding. Throughout the proceeding the parties engaged in discovery and met on January 17, 1991 for the purposes of narrowing issues and reaching a proposed stipulation. On January 25, 1991 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*

[1-4] The parties agreed to the following terms:

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

Rate Base	$1,205,697
Overall Rate of Return	11.64%
Return on Equity	12.43%
Annual Revenue Increase	$175,594
Revenue Requirement	$759,115

The parties agreed that the company would revise its two step declining consumption rate to a single block rate. The customer charge will no longer include a consumption allowance and all consumption will be billed in accordance with a single block.

It was further agreed that the company shall be allowed to recover the difference between the revenue level filing approved and the revenue level provided for in the company's temporary rates as authorized by order no. 19,957 dated October 15, 1990 by a surcharge over a three month period in accordance with RSA 378:29. The methodology and supporting data for recoupment of the difference between temporary and permanent rates will be submitted with revised tariffs reflecting the permanent rate increase. The parties further agreed that the rate case expenses shall be surcharged over a one year period.

III. *Commission Analysis*

The commission adopts the stipulation (attached hereto) of the company and staff as just and reasonable pursuant to RSA 378:7. The Office of the Consumer Advocate took no position on the stipulation. The company requested a 29.33% increase; the stipulation results in a 30.09% increase in rates. The stipulated increase is higher than the request because the actual test year property tax figure included by staff was in excess of the estimate used by the company. The commission bases its findings of reasonableness on the testimony and exhibits of the parties placed on file.

This 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 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 for service rendered on or after the date of this order which reflect the rate structure and permanent rate level 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; and it is

FURTHER ORDERED, that a tariff supplement be filed specifying the rate case expense surcharge as well as supporting documentation for rate case expenses.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1991.

STIPULATION AGREEMENT

INCREASE IN RATES

1.0 This agreement is entered into this 25th day of January, 1991 between Hanover Water Works Company ("Hanover Water") and the Staff ("Staff") of the Public Utilities Commission ("Commission") for the purpose of and subject to the terms and conditions hereinafter stated.

2.0 *Introduction.* On July 31, 1990, Hanover Water filed with the Commission proposed rate schedules and supporting documents which would have resulted in an increase of annual water revenues of $167,449 or a 29.33% increase in rates.

On August 28, 1990, the Commission issued Order No. 19,927 suspending the proposed rate increase and ordering an investigation prior to the issuance of a decision. Said order also established a prehearing conference which would address procedural matters, temporary rates and interventions on October 3, 1990.

2.0 A prehearing conference addressing procedural matters and temporary rates was held on October 3, 1990. Subsequently the Commission issued Order No. 19,957 on October 15, 1990 granting Hanover Water temporary rates at current levels and setting a procedural schedule. Since that date the parties have engaged in discovery and settlement discussions. This stipulation is a result of said discovery and settlement discussions. There are attached hereto certain revisions of the company's exhibits and schedules all marked "Stipulation", which reflect the agreement reached between Hanover Water and the Staff on the issues of rate base, rate of return, operating revenues, overall revenue requirement, rate structure, temporary rates and rate case expenses.

3.0 *Rate Base*. It is agreed that the company shall be allowed an opportunity to earn at the conclusion of this proceeding a return on a rate base of $1,205,697.

4.0 *Rate of Return*. It is agreed that the company shall be allowed an opportunity to earn an overall rate of return of 11.64% consisting of a rate of return on equity of 12.43%.

5.0 *Operating Revenues*. It is agreed that the company has operating and maintenance expenses of $618,821.

6.0 *Revenue Requirement*. It is agreed that the company shall be authorized to charge rates designed to collect annual revenues in the amount of $759,115 or a 30.09% increase in rates.

7.0 *Rate Structure*. It is agreed that the company's rate structure shall contain a single block consumption rate. The customer charge will not include any consumption allowance, and all consumption will be billed in accordance with a single block.

8.0 *Temporary Rate Recoupment*. It is agreed that the company shall be allowed to recover the difference between the revenue level filing approved and the revenue level provided for in the company's temporary rates as authorized by Order No. 19,957 dated October 15, 1990 by a surcharge over a three month period in accordance with RSA 378:29. The methodology and supporting data for recoupment of the difference between temporary and permanent rates will be submitted with revised tariffs reflecting the permanent rate increase. It is further agreed that in the case of customers taking service after the effective date of the temporary rate order the surcharge will be prorated for such customers' actual usage during the recoupment period.

9.0 *Rate Case Expense*. It is agreed by the parties that the rate case expenses shall be surcharged over a one year period.

10.0 *General Conditions*. This agreement is subject to the following further conditions:

10.1 The making of this agreement shall

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not be deemed in any respect to constitute an admission by any party that any allegation in these proceedings other than those specifically agreed to herein is true and valid.

10.2 The making of this agreement establishes no principles or precedents in any other proceeding or investigation.

10.3 Commission approval of this agreement shall not in any respect constitute a termination as to the merits of any allegations made in this rate proceeding.

10.4 This agreement is expressly conditioned upon the Commission's acceptance of all of its provisions without change or conditions and if the Commission does not so approve, the agreement may be withdrawn by either Staff or Hanover Water and shall not constitute any part of the record in this proceeding nor be used for any other purposes at the call of the parties.

10.5 This agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

10.6 The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS WHEREOF, the parties' fully authorized agents have executed this agreement.

HANOVER WATER WORKS COMPANY
By Its Attorneys
By: S. John Stebbins, Esq.

STAFF OF PUBLIC UTILITIES COMMISSION
By Its Attorney

By: Eugene F. Sullivan, III, Esq.

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

HANOVER WATER WORKS COMPANY STIPULATION
TABLE OF CONTENTS
DR 90-105

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

HANOVER WATER WORKS COMPANY
REVENUE REQUIREMENT

STIPULATION
EXHIBIT 1

RATE BASE (EX 2)	1,205,697
RATE OF RETURN (EX 1A)	11.64%
REVENUE REQUIREMENT	140,294
OPERATING INCOME (EX 3)	21,761
DEFICIENCY	118,533
TAX EFFECT (EX 1C)	57,061
REVENUE INCREASE REQUIRED	30.09% 175,594

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

HANOVER WATER WORKS COMPANY
OVERALL RATE OF RETURN

STIPULATION
EXHIBIT 1A

	COMPONENT RATIO AMOUNT	*COMPONENT COST RATE (PERCENT)*	*WEIGHTED AVERAGE COST RATE (PERCENT)*	*(PERCENT)*
EQUITY	879,740	58.86%	13.48%	7.32%
LONG TERM DEBT	615,000	41.14%	10.59%	4.32%
TOTAL	1,494,740	100.00%		11.64%

Note: Percentages from Economics Department.

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

HANOVER WATER WORKS COMPANY
EFFECTIVE TAX FACTOR

	STIPULATION EXHIBIT 1B
TAXABLE INCOME	100.00%
LESS: BUSINESS PROFITS TAX	8.00%
FEDERAL TAXABLE INCOME	92.00%
FEDERAL INCOME TAX RATE	34.00%
FEDERAL INCOME TAX	31.28%
ADD: BUSINESS PROFITS TAX	8.00%
EFFECTIVE TAX RATE	39.28%
PERCENT OF INCOME AVAILABLE IF NO TAX	100.00%
EFFECTIVE TAX RATE	39.28%
PERCENT USED AS A DIVISOR IN DETERMINING THE REVENUE REQUIREMENT	60.72%

HANOVER WATER WORKS COMPANY
INCOME TAX COMPUTATION

	STIPULATION EXHIBIT 1C
TOTAL RATE BASE (EX 2)	1,205,697
EQUITY COMPONENT OF CAPITAL COST (EX 1A)	7.32%
NET INCOME REQUIRED	88,206
TAX EFFECT – FEDERAL INCOME TAX (EX 1B)	49,391
TAX EFFECT – BUSINESS PROFITS TAX (EX 1B)	7,670
OVERALL TAX EFFECT	57,061

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

HANOVER WATER WORKS COMPANY
INTEREST SYNCHRONIZATION

				STIPULATION EXHIBIT 1D
	AMOUNT	*COMPONENT RATIO (PERCENT)*	*COMPONENT COST RATE (PERCENT)*	*WEIGHTED AVERAGE COST RATE (PERCENT)*

EQUITY	879,740	58.86%	12.43%	7.32%
LONG TERM DEBT	615,000	41.14%	10.56%	4.32%
TOTAL	1,494,740	100.00%		11.64%

	AMOUNT	*COMPONENT RATIO (PERCENT)*	*COMPONENT COST RATE (PERCENT)*	*AMOUNT*
EQUITY	20,635	58.86%	12.43%	2,565
LONG TERM DEBT	14,425	41.14%	10.50%	1,515
TOTAL INVESTMENT TAX CREDIT	35,060	100.00%		4,080
AMOUNT SUBJECT TO STATE INCOME TAX			1,515	
STATE BUSINESS PROFITS TAX (ABOVE ITEM × 8%)				121
FEDERAL TAXABLE INCOME			1,393	
FEDERAL TAX (ABOVE ITEM × 34%)				474
EARNINGS EFFECT				595

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

HANOVER WATER WORKS COMPANY
RATE BASE

		STIPULATION EXHIBIT 2 *PRO FORMED AVERAGES*
PLANT IN SERVICE (EX 2A)		2,845,989
LESS: CWIP (EX 2A)		0
TOTAL PLANT IN SERVICE		2,845,989
LESS: ACCUMULATED DEPRECIATION (EX 2A)		1,001,074
CONTRIBUTIONS IN AID OF CONSTRUCTION (EX 2A)		719,945
NET PLANT IN SERVICE		1,124,971
ADD WORKING CAPITAL:		
TOTAL O&M EXPENSES (EX 3)	371,227	
TIMES 20.55% (75 DAYS/365 DAYS)	20.55%	
CASH WORKING CAPITAL		76,287
ADD: MATERIALS AND SUPPLIES (EX 2A)	33,773	
PREPAYMENTS (EX 2A)	28,091	
DEFERRED TAXES	(18,264)	
INVESTMENT TAX CREDIT	(35,507)	
CUSTOMER ADVANCES	(16,258)	
TOTAL WORKING CAPITAL		(8,165)
ADD: AMORTIZATION OF PRIOR YEAR CIAC (SEE 1)		12,604
RATE BASE		1,205,697

(1) APPROVED IN SETTLEMENT ORDER NO. 16,801 (DOCKET DR 83-187)

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

HANOVER WATER WORKS COMPANY
DETAILS OF RATE BASE

STIPULATION
EXHIBIT 2A

	TEST YEAR 12/31/89	*PRO FORMED* 12/31/89	*AVERAGE*	
PLANT IN SERVICE	2,845,778	2,846,200	2,845,989	SEE (1)
C.W.I.P.	0	0	0	
ACCUMULATED DEPRECIATION	975,115	1,027,032	1,001,074	SEE (2)
CONTRIBUTIONS IN AID OF CONSTRUCTION	719,945	719,945	719,945	SEE (3)
MATERIAL & SUPPLIES	33,773	33,773	33,773	
PREPAYMENTS	28,091	28,091	28,091	SEE (4)
DEFERRED TAXES	(18,264)	(18,264)	(18,264)	
INVESTMENT TAX CREDIT	(35,060)	(35,953)	(35,507)	
CUSTOMER ADVANCES	(16,258)	(16,258)	(16,258)	

(1) PLANT INCREASES OF $421.50 FROM PUC AUDIT RECOMMENDATION.

(2) ACCUMULATED DEPRECIATION REDUCED BY $6,020 AND $7,059 DUE TO AN AGREEMENT THAT TO THE EXTENT DEPRECIABLE ASSETS ARE PURCHASED WITH THE PROCEEDS FROM FORESTRY OPERATIONS THE ASSETS WILL BE TREATED AS FINANCED BY CIAC, I.E. IT WILL REDUCE THE RATE BASE AND NO DEPRECIATION WILL BE ALLOWED.

(3) THE CIAC EACH YEAR ARE INCREASED BY $56,654. THIS ADJUSTMENT REPRESENTS FORESTRY FUNDS WHICH WERE UTILIZED FOR THE CONSTRUCTION OF THE NEW SHOP BUILDING. (DR 83-187)

(4) AMOUNT REPORTED IN THE COMPANY'S ANNUAL REPORT.

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

HANOVER WATER WORKS COMPANY
OPERATING INCOME STATEMENT

STIPULATION

EXHIBIT 3

	12/31/89	*REFERENCE*	*PROFORMA ADJUSTMENTS*	*TEST YEAR PROFORMA*	*REFERENCE*	*PROPOSED INCOME*	*TEST YEAR PROFORMA*
OPERATING REVENUES	583,299	EX 3A-(1,2,3)	222	583,521	EX 1	175,594	759,115

OPERATING EXPENSES:					
PRODUCTION	54,069	EX 3B-7	381	54,450	54,450
TRANSPORTATION & DISTRIBUTION	115,197			115,197	115,197
CUSTOMER ACCOUNTING	5,471			5,471	5,471
ADMINISTRATIVE & GENERAL	180,562	EX 3B-(4,5,6)	(9,329)	171,233	171,233
SALARY & BENEFITS		EX 3B-(1,3)	24,876	24,876	24,876
TOTAL O & M EXPENSES	355,299		15,928	371,227	371,227
TAXES:					
FEDERAL INCOME TAX	1,731	EX 1D	(2,205)	(474)	EX 1C 49,391 48,917
STATE (B.P.T)	1,003	EX 1D	(1,124)	(121)	EX 1C 7,670 7,549
PROPERTY	108,918	EX 3B-(8)	15,314	124,232	124,232
UTILITY	1,014			1,014	1,014
OTHER (PAYROLL)	12,810	EX 3B-(2)	2,048	14,858	14,858
DEPRECIATION	49,258	EX 3B-(9)	2,659	51,917	51,917
AMORTIZATION OF I.T.C.	(893)		(893)	(893)	
TOTAL EXPENSE	529,140		32,620	561,760	57,061 618,821
NET OPERATING INCOME	54,159		(32,398)	21,761	118,533 140,294

NOTE: FEDERAL INCOME AND STATE INCOME TAXES ARE PRO FORMED AS FOLLOWS:

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

	FEDERAL	*STATE*
TAXES AS AT 12/31/89	1,731	1,003
PRO FORMA ADJUSTMENT	(1,731)	(1,003)
INTEREST SYNCHRONIZATION (EX 1D)	(474)	(121)
	(474)	(121)

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

HANOVER WATER WORKS COMPANY
DETAIL OF OPERATING REVENUES

STIPULATION
EXHIBIT 3A

COMPANY FILING:	*ACTUAL 12/31/89*	*PRO FORMA ADJUSTMENTS*	*SEE NOTE*	*ADJUSTED 12/31/91*

GENERAL SALES	— METERED	436,598			436,598
" "	— UNMETERED	1,121			1,121
FIRE PROTECTION	— MUNICIPAL	111,606	189	(1)	111,795
" "	— PRIVATE	21,347			21,347
RENT ON FARMHOUSE		2,990	1,210	(2)	4,200
MISC. WATER REVENUES		4,749			4,749
RETURN ON INVESTED FUNDS	— FORESTRY	4,888	(1,177)	(3)	3,711
		583,299	222		583,521

(1) INCREASE ALLOWED IN TARIFF FOR THE INCREASE IN "INCH-FOOT UNITS"
IN THE COMPANY'S DISTRIBUTION SYSTEM.

(2) AMOUNT OF INCREASE IN FARMHOUSE RENT FOR 1990.
($350 PER MONTH OR $4,200 ANNUAL)

(3) AN AVERAGE ANNUAL INTEREST RATE OF 7% ASSUMED ON FORESTRY FUND BALANCES FOR DECEMBER 1989.

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

COMBINED BALANCE AT 12/31/89	75,399
LESS: AMOUNT REQUIRED FOR TAXES	(13,649)
LESS: SURVEY	(8,740)
LESS: NET AMOUNT	53,010
INTEREST RATE — 7% ASSUMED	0.07
ASSUMED EARNINGS	3,711
PRIOR YEAR'S EARNINGS	4,888
AMOUNT OF ADJUSTMENT REQUIRED	(1,177)

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

HANOVER WATER WORKS COMPANY
DETAILS OF PROFORMED EXPENSES

STIPULATION
EXHIBIT 3B

(1) SALARY & WAGES ADJUSTMENT

SALARY & WAGES PAID THRU 12/31/89	
EXECUTIVE VICE PRESIDENT	$20,438.40
SUPERINTENDENT	37,627.50
ASST. TREASURER	11,122.86
OFFICE MANAGER	20,602.92
FOREMAN	28,665.03
LABORER	23,481.98
LABORER	23,355.75
TOTAL 1989 SALARY	$165,294.44
PAY RAISE ADJUSTMENTS IN 1990	
1/01/90 THRU 6/30/90 — 6% (165,294 * 6%/2)	4,958.83
7/01/90 THRU 12/31/90 — 4% ((165,294 ÷ 4,959) * 4%/2)	3,405.07
ADDITIONAL REPLACEMENT LABORER (HIRED IN MAY 1990)	

(ANNUAL SALARY $17,680 / 12 MOS. * 8 (MAY TO DEC. = 8 MOS.)		11,786.67
		$20,150.57
(2) TAXES — OTHER		
a) PAYROLL TAX ADDITIONS		
1) PAY RAISE ADJUSTMENT FOR 1990	20,151	
FICA TAXES (7.65%)	7.65%	
	1,542	
2) FICA RATE INCREASE ADJUSTMENT FOR 1990		
(7.51% - 7.65% = +0.14% * 165,294)	231	
TOTAL PAYROLL TAXES		1,773
b) FRANCHISE TAX		275
TOTAL PAYROLL AND OTHER TAXES		2,048
(3) EMPLOYEE BENEFITS ADJUSTMENT		
INCREASE IN BLUE CROSS AND BLUE SHIELD PREMIUMS		4,725

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

HANOVER WATER WORKS COMPANY
DETAILS OF PROFORMED EXPENSES

	STIPULATION EXHIBIT 3B
(4) INSURANCE INCREASE	
CASUALTY AND LIABILITY	851
WORKMAN'S COMPENSATION	1060
AMOUNT OF PROJECTED INSURANCE INCREASE	1,911
(5) MATERIALS & SUPPLIES ADJUSTMENT	
MATERIALS & SUPPLIES INVENTORY BALANCES:	
1988	44,715
1989	33,773
DIFFERENCE	(10,942)
AMOUNT OF INVENTORY WRITE OFF REQUIRED	(10,991)
(6) OTHER MISCELLANEOUS ITEMS	
IRS PENALTIES INCURRED DURING 1989	(669)
INCREASE IN OFFICE RENT ($35/MO. × 12 MOS.)	420
MISCELLANEOUS ADJUSTMENTS	(249)
(7) WATER QUALITY TESTING:	

a) SURFACE SUPPLY —		
SANITARY SURVEY $475/3	158.33	
QUARTERLY BACTERIA TESTING		
$8 × 4 TESTS PER YEAR	32.00	

b) SUBSURFACE SUPPLY — ONE WELL		
SANITARY SURVEY $475/3	158.33	
QUARTERLY BACTERIA TESTING		
$8 × 4 TESTS PER YEAR	32.00	
ADJUSTMENT FOR TESTING		380.67

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

HANOVER WATER WORKS COMPANY
DETAILS OF PROFORMED EXPENSES

		STIPULATION EXHIBIT 3B
(8) PROPERTY TAXES		
1989 PROPERTY TAXES — PER ANNUAL REPORT	108,918	
MUNICIPAL RATE $13.55 PER $1,000 VALUATION		
1990 PROPERTY TAXES — PER COMPANY STATEMENT	124,232	
MUNICIPAL RATE $16.42 PER $1,000 VALUATION	124,232	
ACTUAL INCREASE IN PROPERTY TAXES		15,314
(9) DEPRECIATION		
a) DEPRECIATION ADJUSTMENT FROM DR 83-187	(1,129)	
b) DEPRECIATION ADJUSTMENT FROM DR 86-50	(36)	
c) FULL YEAR ADJUSTMENT FOR 1989 ADDITIONS	3,805	
d) ADJUSTMENT FOR ASSET ITEMS THAT SHOULD HAVE BEEN CAPITALIZED IN 1989 — (PUC AUDIT RECOMMENDATION)		
1989 — ($421.50 × 3% STRUCTURE RATE) ADJUSTED BY THE FIRST YEAR HALF YEAR CONVENTION	6.32	
1990 — ($421.50 × 3% STRUCTURE RATE) FULL YEAR	12.65	
NET DEPRECIATION ADJUSTMENT		2,659

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hanover Water Works Co., DR 90-105, Order No. 19,957, 75 NH PUC 677, Oct. 15, 1990.

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NH.PUC*03/18/91*[27102]*76 NH PUC 187*Wormser Engineering, Inc.

[Go to End of 27102]

Re Wormser Engineering, Inc.

Additional party: Martin Energy, Inc.

DR 86-001
Order No. 20,086

76 NH PUC 187

New Hampshire Public Utilities Commission

March 18, 1991

ORDER rescinding a long-term rate order granted to a small power production project. Commission finds that delays and material changes in project specifications require rescission of the rate order.

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1. COGENERATION, § 24

[N.H.] Long-term rate order — Rescission — Grounds — Project delays — Material changes. p. 188.

APPEARANCES: Thomas Getz, Esq., on behalf of Public Service Company of New Hampshire, Francis X. Reilly, on behalf of Wormser Engineering, Inc., Martin Energy, Inc., and Bayonne Marine Facilities, Inc., and Eugene F. Sullivan III, Esq., on behalf of the Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

By Order No. 18,576 dated February 19, 1987, the New Hampshire Public Utilities Commission (commission) granted Wormser Engineering Inc., and Martin Energy, Inc. (Wormser) a 20-year rate order pursuant to *Re Small Energy Producers and Co-generators,* 71 N.H.P.U.C. 408 (1985). *See Re Wormser Engineering, Inc.,* 72 N.H.P.U.C. 67 (1987). On November 6, 1989, the commission issued order 19,363 directing Wormser to appear before the commission on December 8, 1989, to show cause why the above referenced rate order should not be revoked because Wormser had failed to timely obtain commercial operation.

After a series of postponements for various reasons, including the failure of Wormser to serve its pleadings properly on the parties, bad weather, and attempts by Wormser to transfer its interest in the rate order to third parties, a hearing was held on October 3, 1990. At the request of Bayonne Marine Facilities, Inc. (Bayonne) on behalf of Wormser, the commission allowed the company 30 days to submit supplemental information. On November 2, 1990, Bayonne filed additional information including the testimony of Mr. Chakra J. Santhanam and requested a continuance until February 26, 1991, at which time it would be able to present a more definitive report on the project's status. The continuance was granted and a hearing was scheduled for ten o'clock in the forenoon of February 26, 1991. On February 25, 1991, Bayonne sent a facsimile

letter indicating that it would be able to supply definitive information to the commission by the close of business on February 26, 1991. Bayonne did not appear at the February 26th hearing and, to date, has not filed any further information.

II. *Positions of the Parties*

Bayonne, on behalf of Wormser argues that the long term rate order should be upheld.

Public Service Company of New Hampshire (PSNH) contends the project has not yet been begun and has been materially changed and therefore the rate order should be rescinded pursuant to *Re Minnewawa Hydro*

Company, Inc. 74 N.H.P.U.C. 368 (1989) and *Re New England Alternate Fuels*, 71 N.H.P.U.C. 423 (1986). Staff likewise maintains that commission precedent requires rescission of the rate order.

III. *Commission Analysis*

[1] At a hearing held on October 3, 1990, Bayonne appeared on behalf of Wormser and presented testimony regarding the status of the project. The testimony revealed that the project had not yet been begun and had materially changed. In his November 2, 1990, filing, Mr. Santhanam listed arguments why the long term rate order should not be rescinded. Specifically, he contended that changes to the project were not material and any delay in achieving commercial operation was caused by factors beyond the developers' control, *i.e.*, an appeal by PSNH of the long term rate order and PSNH's filing in bankruptcy. We do not find this testimony persuasive, particularly in regard to the project's proposed size, location and technology.

In *Re New England Alternate Fuels* the commission stated that "long term rate orders are project specific. They are granted to projects with stated locations, sizes, technologies, design and commercial operation dates". *Re New England Alternate Fuels* 71 N.H.P.U.C. at 426. The commission has further held that it will not "assign to ratepayers the additional risk of purchasing power at rates higher than current estimates of avoided costs from facilities whose commercial operation is delayed beyondccial operas delayed d four yeaf2Rer four years" *Re Minnewawa Hydro Inc.,* 74 N.H.P.U.C. at 371.

Based on these standards, we will rescind the long term rate order granted to Wormser Engineering, Inc. and Martin Energy Inc., and purportedly assigned to Bayonne Marine Facilities, Inc. The unrefuted evidence is that the project was not in commercial operation within four years of the date of the long term rate order and has materially changed from that project approved by the commission in its long term rate order. *Re Wormser Engineering, Inc., and Martin Engineering, Inc*., 71 N.H.P.U.C. 617 (1986). We encourage Wormser to assess whether its current project is viable in today's market for long and short term capacity, and if the results of such an analysis are positive, to explore the possibility of contractual arrangements with New Hampshire utilities within the framework of their least cost planning process.

Our order will issue accordingly.

ORDER

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

ORDERED, that the long term rate order granted to Wormser Engineering, Inc. and Martin Energy, Inc. be, and hereby is, rescinded.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1991.

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NH.PUC*03/20/91*[27103]*76 NH PUC 188*New Hampshire Electric Cooperative, Inc.

[Go to End of 27103]

Re New Hampshire Electric Cooperative, Inc.

DR 90-205
Order No. 20,087

76 NH PUC 188

New Hampshire Public Utilities Commission

March 20, 1991

ORDER authorizing an electric cooperative to provide a credit to its interruptible load customers for the November/December 1991 billing period. Authorization was made subject to the provision that no corresponding adjustment be made to the bills of other customers.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Credit. p. 189.

BY THE COMMISSION:

ORDER

On February 6, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC) submitted a letter to the Commission indicating NHEC's

intention to provide a credit to its seven interruptible load customers for the November/December billing period; and

WHEREAS, the NHEC has in prior years been a part of Public Service Company of New

Hampshire's (PSNH) Rate WI winter interruptible program that has and does provide credit whether or not an interruption is called; and

WHEREAS, PSNH did not offer the NHEC participation in its 1990-1991 Rate WI program; and

WHEREAS, the NHEC did not file its 1990-1991 winter interruptible load program until November 15, 1990, at which time, due to the lateness of the filing, it sought and was granted an expedited proceeding; and

WHEREAS, unlike PSNH's Rate WI program, the program filed by the NHEC and approved by the Commission on December 11, 1990, Order No. 20,004, does not include a participation incentive credit; and

WHEREAS, the NHEC did not call for an interruption during the November/December billing period; and

WHEREAS, while the cause of the November/December missed interruption can be partially ascribed to unseasonably warm weather, it is primarily a result of the NHEC's late filing and prolonged program implementation; and

WHEREAS, the Commission is sympathetic to the program participants who wish to lower their bills; and

WHEREAS, although the Commission also understands the NHEC's desire to lower bills to its interruptible customers and the importance of interruptible programs in the NHEC's resource plans, given management's responsibility for the delay the Commission cannot approve the NHEC's proposed credit to the interruptible customers if those payments will in any way or at any time be paid for by the NHEC's remaining customers; it is therefore

[1] ORDERED, that the New Hampshire Electric Cooperative, Inc. be, and hereby is, allowed to credit the interruptible customers for the November/December billing period subject to the provision that no corresponding adjustments be made to remaining customers; and it is

FURTHER ORDERED, that the NHEC provide the Commission with a written explanation of how, should the NHEC provide credit payment to the interruptible customers for the November/December billing period, such payment will not affect other ratepayers of the NHEC; and it is

FURTHER ORDERED, that the NHEC, if it is to offer a winter interruptible program for the 1991-1992 winter period, submit its 1991-1992 program no later than October 1, 1991.

By order of the New Hampshire Public Utilities Commission this twentieth day of March, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-205, Order No. 20,004, 75 NH PUC 753, Dec. 11, 1990.

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[Go to End of 27104]

Re Granite State Electric Company

DR 90-190, DR 90-194
Order No. 20,088

76 NH PUC 189

New Hampshire Public Utilities Commission

March 25, 1991

ORDER reducing the purchased power cost adjustment factor of a retail electric utility, subject to the approval by the Federal Energy Regulatory Commission of the wholesale rate settlement offer of its power supplier. The reduction reflects the wholesale rate settlement offer, a credit based on savings associated with tax exempt bond financing, and receipt of a bonus share of the New England/Hydro Quebec Project. Commission orders a refund of prior period overcollections and sets a hearing on the merits of the proposed refunding methodology.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchase power cost adjustment — Reduction — Wholesale rate settlement — Hydro Quebec project share — Financing credit — Electric utility. p. 190.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Overcollections — Purchased power cost adjustment — Refunding methodology — Electric utility. p. 190.

BY THE COMMISSION:

REPORT

On March 1, 1991, Granite State Electric Company ("Granite State or "Company") filed a proposal to reduce its currently effective Purchase Power Cost Adjustment ("PPCA") factor by $0.00277 per kilowatt-hour. As explained in the filing, this reduction reflects the pending settlement of New England Power Company's ("NEP") W-12(a) Wholesale Rate Case, the elimination of the Reconciling Adjustment, the Federal Energy Regulatory Commission ("FERC") approval of the NHIDA Bond Credit, and Granite State's Hydro-Quebec Bonus Share.

In addition, Granite State's filing proposes a rate settlement credit of $0.00224 per kWh for the period of April 1, 1991 through December 31, 1991. This credit reflects rate settlement refunds for over-collections from January 1, 1989 through April 1, 1991. Granite State expects

FERC approval of W-12(a)(S) effective April 1, 1991, pending review by the FERC of NEP's settlement offer.

I. *Discussion*

A. *NEP's W-12(a) Offer of Settlement*

[1, 2] On August 1, 1990, NEP filed with the FERC in Docket Nos. ER90-525-000 and ER90-526-000 a rate increase request designated as W-12, and two alternative rate proposals designated as W-12(a) and W-12(b). NEP's alternative rate proposals provided for stepped rates reflecting its purchased power expenses and transmission support expenses associated with entitlements in the Ocean State Power Units and the Hydro-Quebec Phase II Interconnection. The W-12(a) base rate, as modified to include costs associated with Ocean State Power Unit II, was accepted by the FERC and allowed to go into effect, subject to refund, on January 1, 1991. As accepted by the FERC, NEP's W-12(a) base rate increased its revenues by $72.7 million annually. In addition, the step increases, or riders, associated with the Hydro-Quebec Phase II Interconnection and Ocean State Power Unit I were accepted by the FERC to become effective on the respective in-service dates of those projects, subject to refund.

This Commission approved increases in Granite State's PPCA factor to be pro-rated for usage on and after these same dates. Accordingly, PPCA W-12(a) (HQ), reflecting costs associated with the Hydro-Quebec rider, became effective for usage on and after November 1, 1990, the date upon which the Hydro-Quebec Phase II Interconnection entered commercial operation. Ocean State Power Unit I entered service on December 31, 1990. The purchased power costs associated with both the W-12(a) base case and Ocean State Power Unit I were reflected in PPCA W-12(a), which became effective for usage on and after January 1, 1991.

On February 22, 1991, NEP filed a Settlement Offer with the FERC which would reduce its W-12(a) base rate increase from $72.7 million to $31.1 million annually. Under the settlement proposal, the settlement rates will have an effective date of January 1, 1991, and NEP will make refunds of all amounts collected in excess of the settlement level within 60 days of FERC approval.

Along with its Offer of Settlement, NEP also filed a motion for an interim rate reduction. If approved, NEP would be allowed to place the settlement rates into effect on April 1, 1991, pending FERC action on the Settlement Offer.

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Thus, Granite State is estimating that its purchased power expense will be reduced to W-12(a) settlement levels beginning on April 1, 1991. In addition, a refund to Granite State will be forthcoming from NEP for purchased power payments in excess of settlement levels during the months of January, February and March, 1991. Granite State's filing in this docket has been made in anticipation of complete FERC approval of the W-12(a) Settlement.

Upon final determination of the W-12(a) rate level by FERC, the Company proposes to bill, as a surcharge or credit, with interest, any difference between PPCA W-12(a) and the PPCA based on NEP's settlement rate level retroactive to January 1, 1991.

B. *NHIDA Bond Credit*

Granite State's proposed PPCA factor recognizes a credit based on 50% of the estimated savings associated with a $20 million tax exempt bond financing authorized for NEP by the Industrial Development Authority of New Hampshire ("NHIDA"). On February 1, 1991, the FERC approved an amendment to the Service Agreement between Granite State and NEP, whereby NEP will credit monthly billings to Granite State in the amount of $16,643 for the period January 1, 1991 through December 31, 1995. These savings are being passed through the proposed PPCA factor to Granite State's customers.

C. *Hydro-Quebec Bonus Share*

Effective on November 1, 1990, the commercial operation date of the Hydro-Quebec Phase II, Granite State became entitled to a bonus share of both Phase I and Phase II of the New England Hydro-Quebec Project.

The Company states that the proposed PPCA reflects Granite State's allocation of the New Hampshire bonus share less any support payments associated with the allocation.

D. *Reconciling Adjustment*

Pursuant to Staff's request, Granite State's proposed PPCA reflects the elimination of its Reconciling Adjustment. This adjustment, first proposed by the Company and accepted by the Commission in Docket No. DR 81-361, had previously adjusted the Company's PPCA to reflect changes in load growth.

E. *Credits*

Granite State's filing proposes a rate settlement credit for overcollections in purchased power revenues from January 1, 1989 to April 1, 1991. This credit allocated to customers over the remainder of the calendar year, results in a proposed temporary credit of $0.00224 per kWh for the period of April 1, 1991 through December 31, 1991. This refund will reduce the typical 500 kWh bill by $1.12, or 2.1 percent.

II. *Proposed PPCA Factor*

The Company states that the proposed PPCA, designated as PPCA W-12(a)(S), results in a factor of $0.00979/kWh, a decrease of $0.00277/kWh from the current level. For a typical 500 kWh residential bill, this represents a decrease of $1.38, or a 2.6% reduction of the current typical bill of $52.90/month.

III. *Commission Analysis*

Based on the evidence provided, the Commission finds that Granite State's proposal to reduce its PPCA factor by $0.00277 per kWh is just and reasonable. Therefore, the Commission will approve the rate change effective the date the FERC approves W-12(a)(S). Should the FERC approve an amount different to that supported by the parties in the Settlement, deny NEP's motion for an interim rate reduction or allow an interim rate different than that which the Company bases its proposal, a filing reflecting the new FERC wholesale rates will be expected. Similarly, the Commission finds, subject to the conditions mentioned above, that the proposed rate settlement credits are in the public interest. We are, however, concerned that a credit spread evenly throughout the remaining months of 1991 may not fairly reimburse some customers, especially weather sensitive customers, whose annual usage is disproportionately

spread throughout the year. We will, therefore, set a hearing on the merits of the refund proposal.

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 proposed PPCA, designated as W-12(a)(S), which reduces Granite State's currently effective PPCA factor by $0.00277 per kWh, resulting in a new factor of $0.00979 per kWh, is hereby approved, subject to FERC approval of W-12(a)(S) on either a permanent or temporary basis, effective for service rendered on or after issuance of an order by the FERC on W-12(a)(S); and it is

FURTHER ORDERED, that Granite State's proposed rate settlement credit for overcollections in purchased power revenues through April 1, 1991, to be refunded to customers is hereby approved, the manner of refund to be heard on the merits within 30 days after issuance of this order; and it is

FURTHER ORDERED, that Granite State shall notify the Commission of FERC's final decision on NEP's Offer of Settlement in rate proposal W-12(a); and it is

FURTHER ORDERED, that Granite State file compliance tariff pages within 30 days following the issue date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1991.

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NH.PUC*03/25/91*[27105]*76 NH PUC 192*Rosebrook Water Company, Inc.

[Go to End of 27105]

Re Rosebrook Water Company, Inc.

DR 91-032
Order No. 20,091

76 NH PUC 192

New Hampshire Public Utilities Commission

March 25, 1991

ORDER directing the principals and managers of a water utility to appear and show cause whether cash reserves should be dispersed as dividends or placed in a depreciation reserve account.

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1. DIVIDENDS, § 3

[N.H.] Jurisdiction and powers — State commissions — To prohibit payment — Water utility. p. 193.

BY THE COMMISSION:

ORDER

On March 21, 1991, the commission become aware that Rosebrook Water Company, Inc., (Rosebrook) had cash reserves of approximately $35,000; and

WHEREAS, upon information and belief it is the intent of the principals of Rosebrook to declare a dividend of some portion of the cash reserves; and

WHEREAS, upon information and belief capital additions are required to Rosebrook to upgrade the water distribution system in order to insure quality of service; and

WHEREAS, pursuant to RSA 374:1 the commission must insure that the service of a public utility is safe and adequate; and

WHEREAS, pursuant to RSA 374:12 no

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utility shall declare a dividend unless they have retained earnings; and

WHEREAS, upon information and belief Rosebrook's books do not contain an account for depreciation reserves; and

WHEREAS, an audit of the books of Rosebrook is required to determine how much, if any, of the cash reserves should be placed in a depreciation reserve account and held by the company pursuant to RSA 374:10, it is

[1] ORDERED, that the principals and the managers of Rosebrook appear at the commission offices on May 14, 1991 to show cause whether these cash reserves should be dispersed as dividends or used to insure the quality of water of the water distribution system pursuant to RSA 374:10 and RSA 374:12 and; it is further

ORDERED that no dividend be declared until the resolution of this docket and; it is

FURTHER ORDERED Rosebrook give notice of this proceeding by mailing a copy of this order first class mail to each of its customers and by publication in a newspaper of general circulation in that area in which the water company transacts business, on or before April 17, 1991.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1991.

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[Go to End of 27106]

Re Pennichuck Water Works, Inc.

DR 89-120
Order No. 20,093

76 NH PUC 193

New Hampshire Public Utilities Commission

March 25, 1991

ORDER adopting a stipulated increase in rates for water utility service, reflecting an allowed rate of return on equity of 12.33%. The stipulation consolidates for rate-making purposes certain community water systems, including one system not yet physically interconnected. Assets used to serve incomplete housing developments are included in rate base, subject to an agreement by the utility to pro rate the total revenue requirement on the basis of the present number of customers served in each incomplete development. The utility is authorized to recoup its revenue deficiency under temporary rates and to recover its rate case expense through a surcharge applied proportionately to base rates for each of its community systems.

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1. RATES, § 595

[N.H.] Water — Rate settlement — Consolidation of community systems — Step adjustment. p. 194.

2. RATES, § 141

[N.H.] Reasonableness — Consolidation of systems — Physical interconnection — Water utility. p. 194.

3. RETURN, § 26.4

[N.H.] Cost of equity — Stipulation — Water utility. p. 194.

4. VALUATION, § 211

[N.H.] Property included or excluded —

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Property used and useful — Facilities to serve incomplete housing developments — Water utility. p. 194.

5. RATES, § 630

[N.H.] Temporary rates — Recoupment of deficiency — Water utility. p. 194.

6. RATES, § 260

[N.H.] Surcharges — Recovery of rate case expense — Water utility. p. 194.

7. EXPENSES, § 89

[N.H.] Rate case expense — Surcharge — Water utility. p. 194.

BY THE COMMISSION:

REPORT

On June 22, 1990, Pennichuck Water Works, Inc. (Pennichuck) filed revised permanent tariff pages and supporting documentation designed to (i) consolidate rates for all of its East Derry community water systems and to increase its East Derry revenues by $48,183 (56.31%) on an annual basis effective for July 22, 1990, and to (ii) increase its revenues for its Twin Ridge community system in Plaistow, New Hampshire by $3,796 (19.9%) on an annual basis effective July 22, 1990.

On June 22, 1990, the company also filed a petition for temporary rates pursuant to RSA 378:27. On July 16, 1990, by order no. 19,888 the commission suspended the proposed revisions to the company's permanent rate tariffs pursuant to RSA 378:6, pending investigation and decision thereon. Order no. 19,888 also scheduled a hearing for September 6, 1990 to address, among other things, the merits of the temporary rate request and procedural matters regarding proposed permanent rates.

On September 6, 1990, a duly noticed hearing was held regarding the above mentioned issues. Staff and Pennichuck agreed upon a procedural schedule, and, in addition, recommended that the commission authorize temporary rates for the company at the then current levels. By Report and Order No. 19,934 dated September 10, 1990, the commission authorized Pennichuck to implement temporary rates at current levels for service rendered on or after September 10, 1990. The commission also approved a procedural schedule governing the permanent rate proceedings.

During the following months, staff and the company entered into discovery and staff filed testimony. As a result of the testimony and discovery process and a meeting held on February 19, 1991, between staff and the company, the parties entered into a stipulation agreement with respect to all issues in the case. At a hearing held on February 22, 1991, the company and the staff presented testimony in support of the agreement.

II. *Stipulation and Agreement*

[1-7] In its testimony staff took the position that systems physically interconnected with one another would be considered a single system for ratemaking purposes and systems not so interconnected, would be considered separately for ratemaking purposes. Although the Birchfield's community systems were not and are not yet physically interconnected to the Drew and All system, staff and the company agreed that Birchfield's may remain consolidated with the Drew and All for ratemaking purposes for the time being because (i) Birchfield's has been consolidated with the Drew and All systems for ratemaking purposes since the commission authorized the company's franchise to serve Birchfield and the rates applicable to that service

area two years ago; (ii) the relatively close proximity of the Birchfield and the Drew and All system and (iii) the company's commitment to construct physical interconnection of the systems as soon as it is economically feasible to do so.

The agreement was also based on the fact that staff and Pennichuck agreed that if the Birchfield/Drew interconnection was not

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constructed within three years from the date of the commission's permanent rate order in this case, Pennichuck would notify the commission and the commission had the right to initiate proceedings to separate Birchfield and Drew and All for ratemaking purposes. Staff and the company further agreed that if said interconnection did take place while Birchfield and Drew and All are consolidated for ratemaking purposes, the company would be allowed a step adjustment to its permanent rates for the Drew and All systems after such interconnection is completed and in operation. The step adjustment would be collected by increasing proportionately the company's permanent base rates for the Drew and All system agreed to in the stipulation agreement.

Staff and the company stipulated to the following components of rates:

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

Richardson Estates

Rate Base	$28,443
Overall Rate of Return	11.03%
Rate of Return on Equity	12.33%
Revenue Increase Required	$4,026

Hi and Lo Estates

Rate Base	$68,966
Overall Rate of Return	11.03%
Rate of Return on Equity	12.33%
Revenue Increase Required	$19,485

Glen Ridge Estates

Rate Base	$57,340
Overall Rate of Return	11.03%
Rate of Return on Equity	12.33%
Revenue Increase Required	$12,980

Twin Ridge Estates

Rate Base	$65,779
Overall Rate of Return	11.03%
Rate of Return on Equity	12.33%
Revenue Increase Required	$8,122

Drew and All

Rate Base	$364,199
Overall Rate of Return	11.03%
Rate of Return on Equity	12.33%
Revenue Increase Required	$81,832

Staff and the company stipulated that the allowed return on equity would be 12.33%

consistent with the direct testimony of Elaine Ouellet Planchet, staff economist, filed on February 6, 1991 in *Re Southern New Hampshire Water Company, Inc*., DR 89-224.

In regard to rate design, the company had requested that all of its investment in these partially developed developer systems be included in rate base. Staff and the company agreed to decrease the revenue requirement for each of the systems not as yet built out on a pro rata basis. The company agreed to accept this approach in this limited instance. Staff and the company agreed that the rates would be effective with all bills rendered on or after April 1, 1991 with recoupment of temporary rates from September 10, 1990. The company was also allowed to recoup its rate case expense through a surcharge over an eighteen month period. The temporary rate revenue deficiency and the rate case expense would be recovered by a surcharge applied proportionately to the company's base rates for each of the four community systems over an eighteen month period beginning April 1, 1991 (with interest at 10% on the portion to be collected after March 31, 1992).

III. *Commission Analysis*

The commission finds the stipulated rates sufficient to yield not less than a reasonable return on the cost of the property of Pennichuck used and useful in the public service less accrued depreciation, and therefore, will adopt the stipulation agreement appended hereto as Appendix A.

However, the commission notes that the question of the used and usefulness of assets used to serve a partially developed housing development is a question we wish to explore in detail in any subsequent cases in which the

issue surfaces. Therefore, we will be reluctant to accept any future stipulations which do not adequately address this issue.

Our order will issue accordingly.

ORDER

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

ORDERED, that the stipulation appended hereto as Appendix A be, and hereby is, adopted.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1991.

Appendix A

SETTLEMENT AGREEMENT

This Agreement is entered into this 22nd day of February, 1991, by and among Pennichuck Water Works, Inc. ("Company") and the Staff ("Staff") of the Public Utilities Commission ("Commission"), with the intent of resolving all of the issues that were raised or could have been raised in the above-captioned proceedings. In consideration of the mutual agreements set forth herein the parties hereto agree as follows:

I *INTRODUCTION*

On June 22, 1990, the Company filed revised permanent tariff pages and supporting documentation designed to (i) consolidate rates for all of its East Derry community water systems and to increase its East Derry revenues by $48,183 (56.31%) on an annual basis, effective on July 22, 1990, and to (ii) increase its revenues for its Twin Ridge community water system in Plaistow, New Hampshire, by $3,796 (19.9%) on an annual basis, effective July 22, 1990.

On June 22, 1990, the Company also filed a petition for temporary rates pursuant to New Hampshire RSA 378:27. On July 16, 1990, by Order No. 19,888, the Commission suspended the proposed revisions to the Company's permanent rate tariffs, pursuant to RSA 378:6, pending investigation and decision thereon; scheduled a hearing for September 6, 1990 to address, among other things, the merits of the temporary rate request and procedural matters regarding the proposed permanent rates; and ordered that the Company publish notice of said hearing. The Company duly noticed the hearing in accordance with the Commission's order of notice.

On September 6, 1990, a hearing was held regarding the above-mentioned issues. All parties to this Agreement filed appearances. The parties agreed upon a procedural schedule and, in addition, recommended that the Commission authorize temporary rates for the Company at then current rate levels.

By Report and Supplemental Order No. 19,934 dated September 10, 1990, the Commission authorized the Company to implement temporary rates at current rate levels for service rendered on and after September 10, 1990. The Commission also approved a procedural schedule to govern the permanent rate proceedings.

On October 11, 1990 and December 31, 1990, the Staff filed data requests to which the Company duly responded. On January 29 and January 30, 1991, Staff filed its testimony and exhibits. On February 19, 1991, representatives of the Company and the Staff met to discuss all issues involved in the Company's filing for permanent rate relief.

As a result of the discovery process and this meeting, this Agreement has been reached with respect to all issues in this case. The Company and Staff are prepared to present testimony in support of this Agreement at the February 22, 1991 hearing.

II *CONSOLIDATED RATES FOR EAST DERRY SYSTEMS*

In its testimony, Staff took the position that systems physically interconnected with one another will be considered a single system for ratemaking purposes and systems not so interconnected will be considered separately for ratemaking purposes. Although the Birchfields community systems is not yet physically connected to the rest of the Drew and All systems, Staff and Company have agreed that Birchfields

may remain consolidated with the Drew and All systems for ratemaking purposes for the time being because (i) it has been consolidated with the Drew and All systems for ratemaking purposes since the Commission authorized the Company's franchise to serve Birchfields and the

rates applicable to that service two years ago; (ii) the relatively close proximity of the Birchfields and Drew and All Systems and (iii) the Company's commitment to construct the physical interconnection of the systems as soon as it is economically feasible to do so.

In further reference to this issue, the parties have agreed that if the Birchfields/Drew interconnection is not constructed within three years from the date of the Commission's permanent rate order in this docketed case, the Company shall notify the Commission and the Commission may initiate proceedings to separate Birchfields from Drew and All for ratemaking purposes. If said interconnection is constructed while Birchfields and Drew and All are consolidated for ratemaking purposes, the Company shall be allowed a step adjustment to its permanent rates for the Drew and All system, after such interconnection is completed and in operation. The step adjustment will be collected by increasing proportionately the Company's permanent base rates for the Drew and All system agreed to herein. Specifically, the step will reflect adjustments to the following plant-related components of the revenue requirement: 1) the cost of the interconnection, to the extent not included in the rate base reflected in Exhibits attached hereto; 2) related depreciation reserve and property taxes; and 3) deferred taxes and depreciation expenses related to the rate base adjustment. The rate of return agreed to in these proceedings and set forth in Exhibit 4 hereto shall remain in effect, without change at the time of the step adjustment.

The Company shall file revised tariff pages embodying the step adjustment to the Company's permanent rates, accompanied by all supporting documentation to show the adjusted revenue requirement in accordance with the specific adjustments discussed above, as soon as possible after such interconnection is completed and in operation. These tariff pages will become effective for service rendered on and after the first day of the first calendar month which commences more than 30 days after such filing.

The Commission may schedule a hearing, if it deems one necessary, and shall issue an order with respect to the step adjustment effective no later than the effective date of the adjustment as provided above. The scope of any such step adjustment filing or proceeding shall be limited to a verification of the actual increases or decreases in, prudency of and used and usefulness of the items set forth in this Section II.

The parties agree that the Richardson Estates, Hi and Lo Estates and Glen Ridge community water systems shall not at this time be consolidated with the Drew and All system for ratemaking purposes.

III *REVENUE DEFICIENCY*

Revised Computations of Revenue Deficiency, and supporting settlement schedules, which are attached and identified as set forth below, reflect the agreement of the parties regarding adjustments to the original exhibits for purposes of this Agreement. Exhibits RE 1 (showing a revenue deficiency of $4,026 for Richardson Estates), HL 1 (showing a revenue deficiency of $19,485 for Hi and Lo Estates), GR 1 (showing a revenue deficiency of $12,980 for Glen Ridge), DA 1 (showing a revenue deficiency of $81,832 for Drew and All) and TR 1 (showing a revenue deficiency of $8,122 for Twin Ridge) summarize the computation of the Company's stipulated revenue deficiency for each of the systems for the test year ending March 31, 1990, on the basis of the adjusted rate base (reflected in Exhibits RE 2, HL 2, GR 2, DA 2 and TR 2), pro forma net

operating income (Exhibits RE 3, HL 3, GR 3, DA 3 and TR 3) and rate of return (Exhibit 4) agreed to by the parties.

More specifically, for the purposes of this proceeding, revenue deficiency shall be calculated using the following components:

1. *Stipulated Rate Base*: The overall rate of return which the Company is authorized to earn shall be applied for the test year to each of the 13-month average pro forma rate bases of (i) $28,443 calculated as shown on Exhibit RE 2

and supporting schedules 1-4 with respect to Richardson Estates, (ii) $68,966 calculated as shown on Exhibit HL 2 and supporting schedules with respect to Hi and Lo Estates; (iii) $57,340 calculated as shown on Exhibit GR 2 and supporting schedules with respect to Glen Ridge Estates; (iv) $364,199 calculated as shown on Exhibit DA 2 and supporting schedules with respect to Drew and All; and (v) $65,779 calculated as shown on Exhibit TR 2 and supporting schedules with respect to Twin Ridge Estates.

2. *Stipulated Net Operating Income*: The pro forma test year net operating income for the Company would have been (i) $1,380, as shown on Exhibit RE 3 with respect to Richardson Estates; (ii) ($6,377), as shown on Exhibit HL 3 with respect to Hi and Lo Estates; (iii) ($2,081), as shown on Exhibit GR 3 with respect to Glen Ridge Estates; (iv) ($12,612), as shown on Exhibit DA 3 with respect to Drew and All; and (5) $4,380, as shown on Exhibit TR 3 with respect to Twin Ridge Estates.

3. *Stipulated Rate of Return*: In view of the Commission's practice of applying the Company's last approved overall rate of return for its core system to its community water systems, the parties have agreed that the Company shall be allowed to earn a rate of return equal to its cost of capital of 10.92% found in DR 87-224, with one exception — the allowed return on equity of 12.03% in DR 87-224 has been increased to 12.33% consistent with the direct testimony of Elaine Ouellet Planchet, Staff Economist, filed on February 6, 1991 in Southern New Hampshire Water Company's pending rate proceeding (DR 89-224). As shown on Exhibit 4, this results in the Company being entitled to a rate of return of 11.03% in these proceedings.

IV *RATE DESIGN*

Staff's testimony focused in part on the excess capacity of certain of the community water systems existing in communities not completely built out. Staff cites, *inter alia* as one of the reasons for this phenomenon, the requirements of the New Hampshire Department of Environmental Services which require developers to construct community water systems sized to serve the entire potential development, even though initially not all of the living units will be constructed. In addition, Staff admits that for ratemaking purposes, a commission may find that most of the entire investment in the water facilities was prudent because ultimately it would be more economic to construct the larger plant to serve the development as it would eventually be configured, than to attempt to "phase in" construction to match the number of existing customers to the plant needed to serve them.

Nevertheless, Staff and the Company have agreed that rates be established, with respect to

community systems in this proceeding which are not fully built out (Hi and Lo and Drew and All), as if the number of customers planned for the entire potential development were taking service. Staff's recommendation of this agreement is based *inter alia* on its desire to avoid those customers who are presently being served from having to carry the financial responsibility for the full build out of the water system. This agreement would be accomplished by pro rating the total revenue requirement on the basis of the present number of customers served by the water system in each incomplete development, compared to the number of customers planned for the entire potential development, and by making certain minor adjustments in rate base.

The Company has agreed to accept this approach in this limited instance, principally because of its concern for the capacity of the relatively small number of customers in these incomplete developments to absorb the total revenue requirements at this time and because its revenues will increase as each new customer is added to the system, up to its total revenue requirement when all of the customers planned for the system have been added to the system. Due to the unique situation existing in these small satellite water systems, the parties further agree that the Company's concession in this respect shall not be used by Staff or the Commission as precedent in any other proceeding involving the Company and that the approach utilized in this instance has no relevance whatsoever to the Company's core system.

In establishing rates for these community

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systems the minimum meter charge shall be based upon annual depreciation expense, amortization expense and property taxes. Accordingly, the minimum meter charge for each system shall be calculated by dividing the total consolidated depreciation expense, amortization expense and property taxes by the proformed number of customers for the test year. The volumetric charge shall be calculated in order to produce the balance of the revenue requirement (based upon full customer build out as set forth above) after subtracting the revenue to be produced by the minimum charge.

The Company shall base its monthly volumetric billings upon meter readings not less frequently than quarterly (and estimates for the intervening months), provided that each customer shall be given the option to self read his or her meter and notify the Company of the result thereof in which event the customer reading shall form the basis for volumetric billings for such intervening months.

V *EFFECTIVE DATE AND RECOUPMENT OF TEMPORARY RATE REVENUE DEFICIENCY AND RATE CASE EXPENSE*

These rates shall be effective with bills rendered on and after April 1, 1991 with recoupment from September 10, 1990, the date temporary rates became effective. More specifically with regard to revenue recoupment, the Company will be allowed to collect and recover, in accordance with RSA 378:29, the difference between (a) the revenue actually billed by the Company pursuant to the temporary rates (its existing rates) which were approved by the Commission by Report and Supplemental Order No. 19,934 dated September 10, 1990, and (b) the revenue the Company would have billed had it charged rates reflecting the permanent rate increase (the "temporary rate revenue deficiency") agreed to herein. The Company shall also be

entitled to recoup its rate case expense shown on Exhibit 5. The temporary rate revenue deficiency and rate case expense will be recovered by a surcharge applied proportionally to the Company's permanent base rates for each of the four community systems. The surcharge shall recoup the amount over an 18 month period beginning April 1, 1991 (with interest at 10% on the portion to be collected after March 31, 1992). Upon receipt of the Commission rate order, the Company shall file a compliance tariff supplement stating the approved recoupment rates.

VI *NON WAIVER*

By this Stipulation, the Company has not waived its right to seek additional revenue at a future time by means of a full rate proceeding, or otherwise, and the Staff has not waived the right to seek a reduction in the Company's rates at a future time by means of a show cause proceeding or otherwise. However, the filing by the Company of a request for a rate increase for the Drew and All system before the effective date of the step adjustment provided for in Section II shall render the Company's right to a step adjustment pursuant to Section II null and void.

VII *CONDITIONS*

The making of this Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in these proceedings is true or valid.

This Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not accept it in its entirety, without change or condition, the Agreement may be deemed to be null and void and without effect should Staff or the Company object to any Commission modification within seven days after the date of the Order. However, if either Staff or the Company makes such an objection this Agreement shall not constitute any part of the record in this proceeding nor be used for any other purpose.

The Agreements of the parties reflected herein, and the Commission's acceptance of this Agreement, do not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptances does constitute a determination that (as the parties believe) the adjustments and provisions set forth herein, including those relating to the step increase, are just and

reasonable and that base rates increased to yield the revenues contemplated by this Agreement will be just and reasonable.

The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in any manner in connection with any future proceeding or otherwise.

Staff and the Company further agree that any concessions made herein by the Staff or the sp 44P Company may not be used in any manner by ENNICHUCER WORKS, a24R1C.brh any party whatsoever for any purpose whatsoever.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of his principal.

PENNICHUCK WATER WORKS, INC.
By Gallagher, Callahan & Gartrell
Dated: 2/22/91

STAFF OF PUBLIC UTILITIES COMMISSION
Dated: 2-22-91
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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Pennichuck Water Works, Inc., DR 89-120, Order No. 19,934, 75 NH PUC 640, Sept. 10, 1990.

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NH.PUC*04/01/91*[27107]*76 NH PUC 271*Northern Utilities, Inc.

[Go to End of 27107]

Re Northern Utilities, Inc.

DR 91-030
Order No. 20,095

76 NH PUC 271

New Hampshire Public Utilities Commission

April 1, 1991

ORDER approving an interruptible service arrangement between a gas distribution utility and an industrial customer. The distributor is directed to develop a separate cost-based rate for its largest users as part of its next permanent rate case.

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1. RATES, § 386

[N.H.] Gas — Kinds of service — Industrial customers — Special supply arrangement — Transportation — LNG processing — Balancing — Local distribution company. p. 271.

BY THE COMMISSION:

ORDER

On March 18, 1991, Northern Utilities, Inc. (Northern) petitioned the commission for

expedited approval for a third interim gas supply arrangement with Domtar Gypsum, Inc. (Domtar). The previous arrangements covered the 1990 summer and 1990/91 winter periods and involved interruptible and firm transportation services respectively. The instant petition, if granted, would enable Domtar to receive interruptible service effective April 1, 1991; and

WHEREAS, commission approval for the currently effective transportation, LNG processing, and balancing arrangement expires March 31, 1991; and

WHEREAS, the revenues received as a result of the above mentioned transportation, vaporization and balancing services are being held in a deferred account pending a commission decision on an appropriate allocation method; and

WHEREAS, absent a gas supply from Northern, Domtar's wallboard manufacturing plant would be without a fuel supply; and

WHEREAS, Northern anticipates interruptible service continuing through October 31, 1991, or the date commission approval is received for a special firm service contract, whichever comes first; and

WHEREAS, Northern expects to file the proposed special contract by March 31, 1991 but in a letter filed with the commission on March 21, 1991, conceded that it has yet to prepare cost studies to support it; and

WHEREAS, Northern has indicated its intent to file a permanent rate case on or about July 1, 1991, and as part of that case will submit studies and analyses to support the rate levels and rate designs for all customers, including Domtar; it is hereby

[1] ORDERED, that the proposed interruptible arrangement be, and hereby is, approved for the period April 1 through October 31, 1991; and it is

FURTHER ORDERED, that the issue of a special firm service rate for Domtar be deferred until Northern files its next permanent rate case; and it is

FURTHER ORDERED, that as part of its next permanent rate case Northern develop a separate cost based rate which could be made generally available to its largest users; and it is

FURTHER ORDERED, that Northern file cost studies that support, on a consistent basis, the proposed rate levels and rate designs for all customers, including the largest users; and it is

FURTHER ORDERED, that the transportation, vaporization and balancing revenues currently held by Northern in a deferred account be transferred to appropriate revenue accounts for incorporation in the company's next rate case.

By order of the New Hampshire Public Utilities Commission this first day of April, 1991.

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NH.PUC*04/01/91*[27979]*76 NH PUC 236*Eastern Utilities Associates

[Go to End of 27979]

Re Eastern Utilities Associates

DF 89-085
Order No. 20,094

121 PUR4th 441

76 NH PUC 236

New Hampshire Public Utilities Commission

April 1, 1991

ORDER rejecting a petition for approval of the proposed merger of two public utility holding companies. Commission finds that the proposed takeover of UNITIL Corp., by Eastern Utilities Associates, would result in net harm to the public.

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1. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Grounds for approval — Public benefit — "No-harm" test. p. 251.

2. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Grounds for approval — Public benefit — Legal standard. p. 251.

3. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Grounds for approval — Public benefit — Legal standard — "No-harm" test — Merger of utility holding companies. p. 251.

4. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Grounds for disapproval — Public detriment — Net loss to ratepayers — Merger of utility holding companies. p. 251.

5. INTERSTATE COMMERCE, § 28

[N.H.] Stock transactions — Public utility holding companies — State commission review. p. 253.

6. CONSOLIDATION, MERGER, AND SALE, § 21

[N.H.] Grounds for approval — Rate considerations — Other factors — Holding company merger. p. 254.

7. CONSOLIDATION, MERGER, AND SALE, § 28

[N.H.] Grounds for disapproval — Financial risk — Net harm to ratepayers — Holding company merger. p. 255.

8. CONSOLIDATION, MERGER, AND SALE, § 22

[N.H.] Grounds for approval — Power supply benefits — Holding company merger. p. 257.

9. CONSOLIDATION, MERGER, AND SALE, § 22

[N.H.] Grounds for disapproval approval — Power supply benefits — Resource planning — Holding company merger. p. 257.

10. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Grounds for disapproval — Economy and efficiency — Holding company merger. p. 260.

11. PROCEDURE, § 16

[N.H.] Disclosure of evidence — "Right to Know Law" — Privacy — Balancing of interests. p. 261.

12. PROCEDURE, § 16

[N.H.] Disclosure of evidence — Projected earnings — Exemption from disclosure. p. 261.

13. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Grounds for disapproval — Public detriment — Holding company merger. p. 264.

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14. CONSOLIDATION, MERGER, AND SALE, § 42

[N.H.] Conditions on disapproval — Correction of deficiencies — Holding company merger — Separate opinion. p. 266.

15. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Grounds for approval — Public benefit — Legal analysis — Holding company merger — Separate opinion. p. 266.

16. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Approval or disapproval — Statutory test — Contingent denial — Holding company merger — Separate opinion. p. 266.

17. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Approval or disapproval — "No-harm" test — "Net benefit" test — Holding company merger — Separate opinion. p. 266.

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A. by Richard A. Samuels, Esq. and Steven V. Camerino, Esq. and Gaston & Snow by David A. Fazzone, Esq. and Donald B. Williamson, Esq. for Eastern Utilities Associates; Ransmeier & Spellman by Dom D'Ambruoso, Esq. and LeBoeuf, Lamb, Leiby & MacRae by Elias G. Farrah, Esq., Paul K. Connolly, Esq. and Scott J. Mueller, Esq. for Unitil Corporation; Paul F. Cavanaugh, Esq. for the City of Concord; Michael W. Holmes, Esq. and Joseph W. Rogers, Esq. for the Office of Consumer Advocate; Audrey A. Zibelman, Esq. and James T. Rodier, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. BACKGROUND AND PROCEDURAL HISTORY

In May 1989, Eastern Utilities Associates (EUA) filed a petition for approval to acquire shares of UNITIL Corporation (UNITIL) or, alternatively, for determination of jurisdiction by the commission. This order denies EUA's petition.

A. *Background*

1. *Description of EUA*

EUA is a public utility holding company registered under the Public Utility Holding Company Act of 1935. Exh. EUA-1.01 at 5-1111. EUA was originally organized on April 2, 1928 as a Massachusetts voluntary association. Exh. EUA-1.01 at 5. EUA owns three electric distribution utilities: Blackstone Valley Electric Company (Blackstone); Eastern Edison Company (Eastern Edison); and Newport Electric Company (Newport). Exh. EUA-1.01 at 5. Additionally, Eastern Edison owns Montaup Electric Company (Montaup), a generation and transmission company, which sells electricity in interstate commerce to affiliated and non-affiliated customers. Exh. EUA-1.01 at 5. EUA has established three companies to invest in generation facilities: EUA Power Corporation; EUA Energy Investment Corporation; and EUA Ocean State Corporation. In addition, EUA owns an energy management and cogeneration company, EUA Cogenex Corporation. Exh. EUA-1.01 at 6. All EUA subsidiaries use the services of EUA Service Corporation (EUA Service), also owned by EUA. Exh. EUA-1.01 at 5-6. Each of the retail utilities has its own local executive staff and management and maintains rate schedules in conformity with the regulatory requirements of the state each serves. EUA-1.01 at 8. EUA is the smallest registered public utility holding company in the United States and would remain so after the proposed acquisition of UNITIL. Tr. VIII at 159.

2. *Description of UNITIL*

UNITIL is a public utility holding

company which is not registered under the Public Utility Holding Company Act of 1935. Exh. U-1.01 at 5-7. UNITIL was established in 1984 to acquire the common stock of Concord Electric Company (Concord) and Exeter & Hampton Electric Company (Exeter). Exh. U-1.01 at 6. UNITIL also owns three other subsidiaries, UNITIL Power Corp., UNITIL Service Corp. and UNITIL Realty Corp. Exh. U-1.01 at 5-7. UNITIL has maintained interlocking boards and management with Fitchburg Gas & Electric Company (Fitchburg). Exh. EUA-1.01 at 4; Exh. EUA 9.50 at 1-3. Over the years, UNITIL and Fitchburg have engaged in various business relationships, such as cooperative power and service agreements. In March of 1989, UNITIL and Fitchburg announced an intention to merge. Exh. EUA-1.01 at 12.

3. *Tender Offer*

On April 18, 1989, EUA made simultaneous overtures to UNITIL and Fitchburg to purchase all outstanding stock. Exh. EUA-1.01 at 12-15. EUA'S $40 per share offer to UNITIL represented a 17% premium over the closing price on the day prior to the offer, a 58% premium over book value as of December 31, 1988, and 10.8 times 1988 earnings per share. Exh. EUA-1.01 at 12. After the offer was rejected by UNITIL management, EUA made its offer directly to UNITIL shareholders on April 24, 1989 by means of a tender offer filing. Exh.

EUA-1.01 at 14-15. According to EUA, UNITIL management has refused to discuss the offer with EUA. Tr. XVII at 52.

Pursuant to the terms of the tender offers for UNITIL and Fitchburg and including related fees and expenses, the total cost to EUA is estimated to be approximately $77 million. Exh. EUA-3.01 at 8-11. EUA plans to finance the acquisitions initially by short-term borrowings through an unsecured term loan agreement of up to $75 million, supplemented, if necessary, by short-term borrowings not to exceed $5 million. Exh. EUA 3.01 at 8. This term loan is in addition to the EUA System's bank credit lines of $115 million. Exh. EUA-3.01 at 8-9. EUA's existing lines of credit are provided by nine major banks. Exh. EUA-3.01 at 9-10. Repayment of these loans will be provided by a combination of sources: internally generated cash; cash generated by repayment of loans or advances made by EUA to other EUA subsidiaries; proceeds from EUA's dividend reinvestment and employees' savings plan; application of cash which would be generated by a public offering of additional common shares of EUA at an appropriate time; and a sale of Fitchburg's gas distribution properties.

On December 31, 1989, EUA short-term debt as a percentage of its total capitalization was approximately 5.4%. Exh. EUA-3.01 at 10-11. On a pro-forma basis, if the proposed acquisitions were initially funded with proceeds from the proposed unsecured loan, the effect on the EUA short-term debt ratio, according to December 31, 1989 figures, would be a temporary increase to 11.4%. EUA-3.01 at 11.

B. *Procedural History*

As noted above, on April 18, 1989 EUA announced its intention to acquire the shares of UNITIL. On May 11, 1989, the Office of the Consumer Advocate (OCA) requested the commission to investigate EUA's proposed takeover of UNITIL. On May 15, 1989, EUA filed a Petition for Determination of Jurisdiction or, Alternatively, for Approval to Acquire Shares of UNITIL Corporation and simultaneously moved to dismiss the OCA's petition.

On February 7, 1990, both EUA and UNITIL sought expedited treatment of EUA's Petition by the commission. The commission ordered the OCA's and EUA's Petitions to be joined on February 9, 1990, and established a prehearing conference for March 12, 1990. On February 21 and March 8, 1990 respectively, UNITIL and the City of Concord filed petitions to intervene, which the commission granted. *Re EUA*, Report and Order No. 19,759 (March 15, 1990).

At the prehearing conference on March 12, 1990, EUA filed a Motion to Define Scope of Proceedings and prefiled its direct testimony and exhibits. On March 16, 1990, UNITIL responded to EUA's Motion to Define Scope, and filed a Motion to Compel EUA's discovery

responses and a proposed procedural schedule. On the same day, OCA filed its objection to EUA's Motion to Define Scope of Proceedings and a procedural schedule.

On March 19, 1990, the commission heard oral argument on the issue of the scope of the proceedings and the legal standard to be applied and invited the parties to submit comment. In *Re EUA*, Report and Order No. 19,768 (March 23, 1990) (Scope Order), the commission enunciated the issues to be addressed and established guidelines for discovery and a procedural

schedule. In the Scope Order, the commission listed a number of issues to be explored, including a comparison of EUA's and UNITIL's managements and an analysis of "negative synergies" associated with the proposed acquisition.

On March 21, 1990, EUA filed its response to UNITIL's Motion to Compel and a Motion for Protective Order to address sensitive and confidential material produced during discovery. After oral argument on March 30, 1990, the parties filed proposals and comments on the proposed protective order. In *Re EUA*, Order No. 19,778 (April 4, 1990), the commission set forth the procedures and criteria for protecting certain confidential materials. Pursuant to several motions filed by the parties on the details and ramifications of the protective order, the commission issued *Re EUA*, Report and Order No. 19,816 (May 8, 1990) clarifying the burden of the party seeking to establish the need for confidentiality under the protective order.

On April 6, 1990, EUA filed supplemental prefiled testimony and exhibits setting forth a proposed allocation of alleged benefits to New Hampshire. On May 25, 1990, UNITIL filed its direct case with prefiled testimony and exhibits. The commission granted UNITIL's Motion for an Extension of Time regarding discovery. *Re EUA*, Report and Order No. 19,843 (May 28, 1990).

EUA then filed a Motion to Compel UNITIL to produce responses to EUA's Second Set of Document and Information Requests on June 8, 1990. These data requests related primarily to UNITIL's relationship with Fitchburg, the Fitchburg merger, and UNITIL's internal analyses of the EUA tender offer, which UNITIL argued are privileged and irrelevant to the issues in this proceeding. On June 13, 1990, UNITIL filed its objections to EUA's "Fitchburg-related" data requests, and its Opposition to EUA's Motion to Compel. After oral argument, the commission denied EUA's Motion regarding "Fitchburg related" matters and tender offer data, but granted EUA's Motion to Compel with regard to UNITIL's financial forecasts. *Re EUA*, Report and Order No. 19,883 (July 17, 1990). The commission also granted UNITIL's request to amend the Protective Order to add the "Confidential Financial Information" category of protected material. *Id.*

During June, 1990, as discovery continued, UNITIL filed objections to EUA's Requests and EUA responded with its Second and Third Motions to Compel, and also moved to "drop" UNITIL from the case. The commission, without oral argument, summarily denied EUA's Motion to Drop UNITIL as an Intervenor. *Re EUA*, Report and Order No. 19,872 (July 3, 1990).

Subsequently, the commission denied an EUA Motion to Extend the proceeding for three months to allow rebuttal and scheduled an August 3, 1990 prehearing conference. *Re EUA*, Report and Order No. 19,882 (July 17, 1990). The commission deferred ruling on whether EUA would be permitted to file rebuttal testimony until after the hearings on the parties' direct cases.

On July 17, 1990, the commission also granted Staff's request for an extension until July 27, 1990, to file the testimony of its consultant, Ernst & Young. Ernst & Young filed its first report on July 30, 1990, and submitted prefiled testimony on August 30, 1990. On September 7, 1990, the day before the Ernst & Young witnesses took the stand, Ernst & Young filed revisions to its report to reflect changes in UNITIL's power supply. OCA filed the testimony of the Tellus Institute (Tellus) on July 3, 1990, and submitted supplemental testimony on September 25, 1990.

At the August 3, 1990 prehearing conference, the Campaign for Ratepayers' Rights (CRR)

petitioned to intervene and EUA objected. The commission granted CRR limited intervenor status. *Re EUA*, Report and Order

No. 19,922 (August 22, 1990).

On August 7, 1990, EUA moved to strike the testimony of Paul R. LePage, Jr., UNITIL's expert witness on EUA's financial reporting. The commission denied EUA's motion on September 14, 1990, and ruled that EUA could argue the relevancy of LePage's testimony on brief. Also on August 7, 1990, the commission held an additional prehearing conference and heard arguments on UNITIL's Objection to EUA's Pre-Marking of Exhibits. The commission issued an order permitting EUA to pre-mark exhibits, but specifically reserved the rights of parties to object to the introduction of those exhibits at hearing. *Re EUA*, Report and Order No. 19,912 (August 9, 1990). The commission conducted 26 evidentiary hearing days from August 9, 1990 to September 28, 1990. On the first day of hearings, OCA and CRR objected to the commission's procedure for handling protected materials. OCA argued that the commission's procedure violated RSA 91-A, the State's "Right to Know Law". The commission overruled OCA's and CRR's objections. *Re EUA*, Report and Order No. 19,923 (August 22, 1990). The commission conducted public hearings in Concord and Exeter on August 21 and August 23, respectively.

On August 24, 1990, EUA filed its Fourth Motion To Compel, seeking UNITIL documents regarding the power supply of UNITIL and Fitchburg, and back-up documents for UNITIL's five-year financial forecast. At the August 31, 1990 hearing, the commission instructed UNITIL to provide the information to the extent that such information existed. Tr. X at 30.

At the hearing on September 28, 1990, UNITIL waived its claim for confidentiality of material entered into the record, thereby releasing all of its materials into the public record and mooting EUA's June 29, 1990, Motion to Remove Designation Of Commercially Sensitive From Documents Produced by UNITIL. On October 10, 1990, EUA filed a Memorandum in Support of its continuing claim of confidentiality. EUA also moved to incorporate revised testimony of its consultants, Arthur D. Little (ADL), into the record on October 16, 1990, and to admit certain responses of UNITIL to Record Requests. UNITIL filed opposition to both of these motions on October 19, 1990. The commission will rule on that motion in the context of the instant report and order.

C. *Witnesses*

The commission began hearings on August 9, 1990 regarding EUA's petition. Testifying on behalf of EUA were: Mr. John R. Stevens, President, Trustee and Chief Operating Officer of EUA; Mr. Clifford J. Hebert, Treasurer of EUA; Mr. Michael P. DiBenedetto, Director of Power Management at EUA; Mr. Donald M. Bishop, Staff Assistant to the Vice Presidents of Planning and Rates at EUA; Mr. John J. Reed of Reed Consulting Group; and Dr. Alan E. Finder and Mr. Glenn G. Wattley, both of Arthur D. Little, Incorporated. Mr. Donald G. Pardus, Chairman of the Board of Trustees and Chief Executive Officer of EUA, also spoke at two public meetings held by the commission in this proceeding.

Testifying on behalf of UNITIL were the following individuals: Mr. Michael J. Dalton,

President and Director of UNITIL; Mr. David K. Foote, Vice President of UNITIL; Mr. George R. Gantz, Vice President of UNITIL Service and Power Corporations; Dr. Lewis J. Perl, a consultant with National Economic Research Associates, Incorporated; Mr. Paul R. LePage, Jr., an independent accounting consultant; and Mr. Michael M. Schnitzer, consultant with Putnam, Hayes & Bartlett, Incorporated.

Mr. Neil Talbot and Dr. Richard Rosen from Tellus Institute testified on behalf of the Office of Consumer Advocate. Mr. Herbert VanderVeen and Mr. Philip Layfield testified with respect to the Ernst & Young Report.

D. *Public Hearings*

Public hearings were held in Concord on August 21, 1990, and in Exeter on August 23, 1990. The purpose of these public hearings was to obtain the comment and opinion of the citizens, businesses, and elected officials of the communities served by UNITIL.

The members of the public who appeared in this case reflected a diverse cross section of

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UNITIL's customer classes — residential, commercial and industrial — from both the Concord and Exeter service areas. They also exhibited a broad range of interest and a fundamental understanding of the significant issues in this case.

The comments and opinions received by the commission at the public hearings were strongly supportive of UNITIL and opposed to the acquisition of UNITIL's shares by EUA.

II. SUMMARY OF THE POSITIONS OF THE PARTIES

A. *Applicable Law*

1. *EUA*

According to EUA, RSA 374:33 requires the commission to approve EUA's petition if it determines that the proposed stock acquisition is "lawful, proper, and in the public interest." This is the so-called public interest standard. EUA Brief at 11. In essence, this standard requires approval of a proposed transaction if the public interest is not adversely affected. For this reason, the standard may be labeled as the "no harm" test.

EUA bases its argument *inter alia* on the *Grafton County Electric Light & Power v. State*, 77 N.H. 539 (1915) in which the Court held that a lawful determination by management to undertake the acquisition of another company must be allowed to proceed unless the commission finds that the acquisition would impair the combined companies' ability to deliver service to the public. EUA Brief at 12.

2. *UNITIL*

Unitil relies on the progeny of *Grafton County*, particularly *Parker-Young Co. v. State*, 83 N.H. 551 (1929), as a basis for interpreting the public interest or public good standard as requiring a "net benefit" test. UNITIL Brief at 11. According to UNITIL, the commission must consider the tangible benefits and costs which have been quantified, the tangible benefits and costs which have not been quantified and the various intangible considerations which could be

affected by the proposed transaction. *Id* at 15. According to UNITIL, failure by EUA to carry its burden of proof will compel rejection of EUA's petition.

3. *OCA*

OCA urges the commission to ensure that benefits exist and that an appropriate allocation of any overall EUA system benefits are actually obtained by UNITIL's ratepayers. OCA Brief at 5. This "net-benefits" test requires that consideration be given to changes in rates, quality of service, management philosophy (including the reasons for the acquisition), effect on operations, benefits to customers and employees, effect on competition, risks to customers, and the financial viability of the merged company. OCA argues that under *Appeal of Easton*, 128 N.H. 205 (984), the commission may also consider other factors, including intangible benefits. *Appeal of Easton*, 125 N.H. 205 (1984).

4. *Commission Scope Order*

In the Scope Order, the commission enunciated the applicable legal standard for deciding whether the proposed transaction is in the public interest under RSA 374:33 and therefore must be granted. The commission ruled that under New Hampshire law, EUA must show that net economic benefits will result from the proposed takeover:

> All parties appeared to agree that New Hampshire case law, statutes and commission precedent require that in order to support a judging of "public good", the commission would have to find that the proposed EUA acquisition of UNITIL's shares is lawful and reasonable under all of the circumstances, and that said acquisition will not impair service but will provide tangible net benefits for the EUA system post-acquisition.

Scope Order at 3.

As discussed, *infra*, we conclude that our ruling in the Scope Order pertaining to the applicable legal standard for determining when

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a petition to acquire shares under RSA 373:33 must be granted, does not preclude the commission from adopting a more stringent "no harm" test for determining when a petition must be denied.

B. *Rates*

1. *EUA*

EUA contends that an important factor in analyzing whether this acquisition is in the public good is the rate levels Concord and Exeter customers will be paying after the acquisition is completed. EUA asserts that the future looks better for Concord and Exeter customers after the affiliation. Mr. Stevens testified that EUA is so confident of its analysis of the net savings that will result from the merger that it is willing to guarantee an immediate rate decrease of $750,000 for Concord and Exeter customers. Tr. I at 45-47; Tr. III at 6-10; Tr. VIII at 120. The first $500,000 of this decrease represents EUA's commitment to ensure that customers pay rates are

based upon UNITIL's cost structure. Tr. VII at 175-176. This also reflects EUA's voluntary offer to accept a lower allowed rate of return on equity of 12.5%, rather than the currently estimated weighted average allowed rate of return of 14.14% for UNITIL. Tr. I at 45-47, Tr. VII at 80-81, 175-176. The remaining $250,000 reflects immediate merger synergies. Tr. IX at 184. EUA asserts that during the two years after the acquisition, while EUA works to implement economies and improve the value of electric service, EUA will not institute any base rate increase for Concord and Exeter customers. In light of Concord and Exeter's purportedly low operating and maintenance expenses, EUA maintains that customers should pay rates based more closely on the value that they receive. EUA has stated that under present conditions, Concord and Exeter customers pay well in excess of that value while they receive far fewer services than EUA customers.

EUA also asserts that the EUA System's rates compare favorably with those of the UNITIL system; that in recent years have they have been more stable than UNITIL's rates; and that they more fairly represent the quality and cost of service than do UNITIL's rates.

2. *UNITIL*

UNITIL contends that comparison of UNITIL's and EUA's rates and underlying costs demonstrates that UNITIL has outperformed EUA in the past and is positioned to continue to provide lower rates in the future. In the face of the overwhelming evidence of negative impacts from a takeover, EUA has promised a rate reduction which amounts to nothing more than a "loss-leader" to mask the deficiencies in its direct case. Unitil Initial Brief at 134. The promised reduction is based on a calculation using a hypothetical rate of return and fictional operational savings. The same reduction in rates could be accomplished by the commission without the takeover if the resulting return was found to be just and reasonable.

C. *Power Supply*

1. *EUA*

EUA contends that, along with the rate guarantee, EUA has provided to Concord and Exeter customers a power supply commitment at costs below what UNITIL can offer. Exh. EUA-2.65. This commitment likewise reflects EUA's confidence in power supply synergies and economies of scale.

According to EUA, the power supply commitment consists of three parts: a 30 MW slice of system from EUA's base/intermediate generating units; a 60 MW slice of system from a cross section of EUA's generating units; and a study and recommendation for this commission's approval for a long-term power supply program for Concord and Exeter after the year 2000. Exh. EUA-2.65. The first slice, 30 MW, will transfer at competitive low rates a mix of mature units for their remaining life beginning November, 1993. Exh. EUA-2.65. The second slice, 60 MW, will transfer at competitive rates a diversified mix of units from November 1, 1996 through October 1, 2000. Exh. EUA-2.65. By 1998, EUA will file a least-cost plan with this commission to provide

power to Concord and Exeter, as either contract demand customers of Montaup, all

requirements customers of Montaup, recipients of slices of the Montaup System, or a combination thereof. Exh. EUA-2.65. This overall power supply commitment will result in savings for Concord and Exeter totalling $20.6 million with additional savings of $6.4 million possible over the years 1993-2000. Exh. EUA-8.04.

EUA contends that this power supply commitment significantly enhances UNITIL's current production-planning program and provides UNITIL with available, effective, least-cost planning and access to sufficient, low-priced generation supply options. Additionally, EUA integrates its supply planning with proven demand-side management programs. EUA further contends it will immediately remedy UNITIL's current inability, because of size, experience and planning philosophy, to plan effectively its long-term power supply. Concord and Exeter customers will benefit from a stable, long-term supply of power which should result in lower and more stable rates associated with EUA's less costly, more reliable power supply. EUA also denied the contention of UNITIL and the OCA that the proposed transaction is a means of obtaining a captive market for its EUA Power Seabrook output at above-market prices. EUA committed to adhere to a condition *inter alia* that it will not sell EUA Power Seabrook output to a UNITIL Company without first seeking and obtaining the approval of this commission.

2. *UNITIL*

According to UNITIL, EUA alleged, in its direct case, "hypothetical", long-term power supply benefits totalling between $58-$95 million through the year 2000 which would result from the takeover of UNITIL and Fitchburg. In its supplemental testimony filed on April 6, 1990, EUA proposed a 17-18% allocation of these alleged savings to UNITIL. EUA reduced its estimate of total savings to $43 million on August 1, 1990.

During the course of hearings in mid-August, UNITIL claims that EUA abandoned its original methodology in favor of a specific commitment to transfer power to UNITIL. EUA estimated the savings to UNITIL from these specific transfers to be $17 million. EUA subsequently revised its estimate of savings to $21 million, but admitted that, under a more "realistic" scenario, the claimed savings to UNITIL would only be $13.8 million. UNITIL also claims that in cross-examination, it established that EUA's remaining $13.8 million of alleged savings for UNITIL was actually only $7.5 million when its methodology is corrected for errors. Moreover, UNITIL contends it has other existing power supply offers that provide at least $2-$2.5 million more savings than the EUA proposals. Furthermore, EUA admitted that its proposed transfers over the period 1993-2000 would be economic for EUA and that it would, therefore, be willing to discuss those transfers outside the context of an acquisition. Thus, the alleged benefits cannot be attributed to the takeover; there are no power supply savings hypothesized by EUA that could not be achieved in the marketplace. In fact, according to UNITIL, allowing EUA to avoid the marketplace through sales to UNITIL would increase costs for New Hampshire ratepayers.

According to UNITIL, EUA's power supply presentation was inadequate. The only analyses performed were those presented by EUA's sole power supply witness, Michael P. DiBenedetto, in his direct testimony filed in March 1990. Those analyses were performed between May and December 1989. Mr. DiBenedetto later admitted that the alleged demonstration of benefits in his prefiled direct testimony was based in large part on a "hypothetical" transfer of 100 MW from EUA's Canal 2 unit that would constitute a gross violation of UNITIL's power supply guidelines.

UNITIL contends it is not surprising that UNITIL, OCA and Ernst & Young witnesses have all rejected Mr. DiBenedetto's presentation of power supply savings. UNITIL characterizes the testimony of those witnesses as stating that EUA's presentation is flawed for failing to consider other power supply alternatives available to EUA and UNITIL in the marketplace.

UNITIL argues that after learning that

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UNITIL has better alternatives than EUA's proposed 30 MW and 60 MW slices, EUA now attempts to rely on its willingness to commit to meet UNITIL's long-term power needs. EUA has made vague references to making UNITIL an all-requirements customer of Montaup under terms and conditions to be determined eight to fifteen years from the present time. EUA cannot explain the economic result of such an occurrence because the necessary Montaup supply to meet such a commitment is not in place. According to UNITIL, EUA's commitment is no more than an empty promise to supply power which it does not currently have, at some unspecified price to be determined eight to fifteen years in the future. UNITIL contends that to exchange higher power costs for the next ten years for such an illusory proposal would be a serious mistake.

According to UNITIL, Ernst & Young indicated that EUA and UNITIL are equally capable of dealing in the power supply market. UNITIL does not agree and contends that it is much more capable of serving its ratepayers' power supply needs. UNITIL states that it is an astute buyer in a buyer's market, while EUA is a seller attempting to avoid selling in a market in which it cannot compete. UNITIL contrasts itself with EUA in claiming that it acts solely for the benefit of its ratepayers and does not have a corporate goal of investing in power supply projects to earn above-normal utility returns. UNITIL argues that, unlike EUA, it does not have conflicts between regulated and non-regulated power supply activities. UNITIL further asserts that it is not burdened by the major power supply blunders that will consume EUA's time and effort. UNITIL states that, unlike EUA, it operates according to reasonable, pre-established power supply guidelines that have been articulated and explained to regulators.

3. *OCA*

According to OCA, power production savings account for between 86 and 90 percent of the alleged economic benefits of the proposed merger. Exh. OCA 3.0 at 3. This issue concerning EUA's proposed power supply is whether the long term savings alleged by EUA can only be achieved by it or whether the same level of savings can be achieved by a stand-alone UNITIL.

In analyzing EUA's Slice of the System, OCA asserts that it should be recognized that Part I and II violate UNITIL's guidelines which have been approved by the commission. UNITIL's guidelines are designed to avoid the old electric utility practice of "putting all the eggs in one basket." Exh. U-4.02 at 7.

The EUA Part I mix is for the remaining lives of specific units expiring as soon as 2005 for Somerset Six. EUA witness DiBeneditto brings into question the reliability of this guarantee of lower power costs. If EUA were to convert UNITIL to an all requirements customer of Montaup, it would preempt the 30 MW approach. The savings claimed would no longer exist.

The OCA also contends that the second part of EUA's "commitment" is for 60 MW of

undisclosed units for the period November 1, 1996 through October 31, 2000, which only represents a four year period. These units would be sold to UNITIL at a fixed rate of $250 KW/year with an escalator. The OCA argues that this rate is above market price and higher than a benchmark contract between UNITIL and Central Vermont Public Service Company (CVPS). The OCA also argues that the EUA offer comes at a higher cost than NU and other New England utilities offers. Compounding the problem, EUA does not specify the energy cost of units to be assigned. Thus, according to the OCA, New Hampshire gets "pot luck"; any capacity savings could well be "eaten up" by fuel costs. OCA Brief at 9.

The OCA states that EUA and UNITIL take a radically different approach to power supply. EUA has shown itself to be very aggressive in acquiring long term base load power. This can be seen by its ownership in Seabrook and Ocean State Power. The OCA states that UNITIL, on the other hand, has pursued a low risk approach to power supply designed to give the flexibility needed for today's changing power market "... and take advantage of lessons learned in the industry in the 1970's and 1980's." Exh. U-4.01 at 7. It avoided investing

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its own capital in generation sources and it has developed a portfolio of diverse power supply resources. Unlike EUA, "UNITIL Power pursues a diverse mix of generating units and fuel sources in order to insure an economic and reliable power supply for its customers under a wide variety of future scenarios." Exh. U-4.01 at 8.

The OCA contends that there is no advantage to a merger with EUA in the area of power supply; indeed, such a merger presents substantial risks to the consumer. The level of "claimed" capacity savings throughout this case varied drastically. EUA originally claimed $63-64 million (NPV, 1990-1996) of capacity savings. UNITIL claims the merger increases cost by $12.1 million. Exh. U-10.9. There is a $76 million range between these positions.

The OCA claims that energy savings are also clearly non-existent. The OCA cited Ernst & Young's conclusion that, absent composite system treatment by NEPOOL (an extremely remote and not cost effective possibility), energy savings would be relatively small. Tr. XXIII at 112. The OCA argues that no incremental savings will result in the power supply area due to the proposed takeover that cannot be achieved by UNITIL itself. Tr. XXV at 41. The OCA's Tellus witness explained that there are no real capacity savings. In terms of power supply costs and savings in the current buyer's market, UNITIL can acquire short, medium and long term power at prices at least as good and reliable as EUA offers.

D. *Operations, Maintenance and Customer Service*

1. *EUA*

EUA contends that virtually every party who has analyzed the overall effects of the integration of UNITIL into a larger system has recognized potential synergies and economies of scale. Studies by Messrs. Hebert and Bishop have found nearly $600,000 in annual recurring savings exclusive of power supply benefits. Exhs. EUA-3.02 at 2, EUA-4.12B. Specifically, Mr. Hebert calculated $102,034 in financial benefits and Mr. Bishop's analysis showed $179,956 in administrative and regulatory economies, $240,953 in purchasing and inventory savings and $60,990 in customer service benefits, all on an annually recurring basis. Exhs. EUA-3.02 at 2,

EUA-4, 12B.

According to EUA, further independent study by ADL concluded that proposed mergers in the size class of the EUA/UNITIL combination should result in savings of 4.7% of operating revenues from electricity sales. Exh. EUA-6.02 at 6R. The ADL report predicted annual savings of over $20 million (including power supply) from EUA's proposed acquisition of UNITIL. Exh. Eua-6.02 at 29R. Furthermore, although Ernst & Young witnesses VanderVeen and Layfield did not quantify these potential synergies and economics of scale, they concurred with EUA's position that improvement should result in the areas of "engineering, energy control, purchasing, stores, customer service types of functions" and power supply. Tr. XXIII at 117. EUA asserts that in two separate instances, UNITIL management itself has recognized the potential for these economies of scale and synergies: first, in the reorganization of Concord and Exeter under a holding company; second, with its own proposed merger with Fitchburg. With respect to the latter, in its 1989 Integrated Resource Plan (IRP), UNITIL illustrated a series of benefits which UNITIL expects in the power supply area due to economies of scale through a coordinated UNITIL/Fitchburg joint power purchasing system. EUA. EUA-10.33. Additionally, UNITIL implicitly anticipates further synergies in the administrative and operational areas from its merger with Fitchburg.

EUA asserts that its management has consistently provided better leadership in delivering high-quality, reliable and cost-effective service to retail customers. EUA quotes Ernst & Young to state that "EUA management has a broader range of capabilities and has demonstrated a more comprehensive capability to install system improvements and to improve practices and procedures. EUA management experience in coping with other merger situations is a potential asset to be considered as part of their contribution to this merger opportunity." Exh. Staff 1.01 at V-1. More particularly, EUA

demonstrated to Ernst & Young its "superior management systems, data processing, engineering depth and capability, as well as customer service capability and management." Exh. Staff 1.01 at V-1.

EUA claims that one consistent theme in EUA's management is its policy of thoroughly analyzing any potential change in its operations before implementation. By example, EUA cites the formation of EUA Service Corporation in 1971, and the gradual centralization of those functions which met cost-benefit criteria for centralization: *e.g.*, engineering in 1974, data processing in 1976, customer service in 1976, purchasing in 1976, planning in 1980, rates in 1980 and accounting in 1988. Exhs. EUA-4.01, DMB-1. Currently, EUA is carefully studying and gradually integrating Newport Electric Company (Newport), its new retail affiliate. Tr. VIII at 128-139. In addition, Mr. Bishop made clear that any centralization of current Concord and Exeter or UNITIL Service Corp. functions would be subject to careful and deliberate analysis. Tr. VIII at 67, 74-75. EUA claims that, in contrast, UNITIL has repeatedly made operational decisions without formal studies, such as centralizing and then decentralizing purchasing, and reducing and then expanding customer service hours. Tr. XVII at 58-60; Exh. U-2.01 at 11; Exh. EUA-4.85.

EUA concludes that the overwhelming evidence proves that integration of UNITIL into a larger system, and particularly into EUA, will result in significant synergies and economies of scale, and strongly supports a conclusion by the commission that EUA's proposal is in the public interest. EUA contends it has quantified potential benefits and has demonstrated the skill to effect further benefits, both qualitative and quantitative, on behalf of Concord and Exeter customers.

2. *UNITIL*

According to UNITIL, it is uncontroverted that EUA's existing and projected O&M expenses, including allocated service company expenses, are substantially higher than UNITIL's existing and projected O&M expenses. In UNITIL's view, the increased O&M cost burdens which UNITIL customers would experience under EUA's cost allocations and management are, in fact, so large as to dwarf any of EUA's alleged benefits in both O&M and power supply. UNITIL contends that under reasonable assumptions, considering both allocation and management factors, the economic burden of an EUA takeover to New Hampshire customers would be more than $6.5 million per year. This would amount to $52.4 million in cumulative net present value of economic burden through the year 2000. Furthermore, using only EUA Service's cost data and its allocation formulae, this increased cost burden would be, at a minimum, $1 million per year.

Since filing its original testimony in this proceeding, UNITIL asserts that EUA's prediction of the amount of O&M expense savings has steadily eroded. Because UNITIL's prefiled testimony clearly demonstrated that no savings would result from the takeover, EUA presented new quantifications of claimed savings on the eve of cross-examination. However, UNITIL claims that in cross-examination it was revealed that virtually all of these new predicted savings were derived from incomplete, biased analyses and were based on insufficient data samples. UNITIL further contends that within the first half hour of questioning, EUA revealed that all of the predicted savings in the customer service area were no more than "gross potential" savings because more studies were needed to determine if positive synergies could actually be achieved through consolidation. UNITIL Initial Brief at 25, 26. EUA made similar statements regarding savings from purchasing and inventory standardization and centralization.

UNITIL contends that EUA's presentation of predicted O&M savings is a moving and constantly shrinking target. EUA first told the commission in its prefiled testimony, dated March 12, 1989, that the merger would result in one-time O&M savings of $554,900 and annual recurring savings of $593,228. In its supplemental testimony, dated April 6, 1990, EUA revealed that New Hampshire ratepayers could only expect $277,000 of one-time savings and $321,500 of annual recurring savings.

According to UNITIL, by August 24,

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1990, when EUA next changed its prediction of savings, the one-time savings had become a one-time cost of $59,138 and the annual savings had changed to $481,899. Moreover, all savings related to payment remittance processing and virtually all savings associated with the mailing function were eliminated. EUA also included severely flawed estimates of previously

unquantified savings in the areas of purchasing, materials management and stores, industry association dues and outside consultants. Further, all of EUA's predictions of cost savings are fatally deficient because they ignore the admitted fact that EUA Service's costs will be allocated to Concord and Exeter after a takeover.

UNITIL asserts that EUA makes unsupported claims that it would provide a higher quality of service after a takeover. However, the record in this case does not indicate a need for any service improvements and does not show that EUA could provide improvements more cost-effectively than UNITIL. What the record does demonstrate is that an EUA takeover would result in a substantial increase of O&M costs for UNITIL's ratepayers.

3. *OCA*

According to OCA, whether a historical or projected analysis is used, whether it is compiled on a per customer or trended cost basis, the record clearly shows that the UNITIL's distribution companies operate more economically than the EUA companies. According to Mr. Gantz's calculation, an EUA-UNITIL system would cost UNITIL's customers an additional $50 million plus, at net present value, through the year 2000. Mr. Bishop, EUA's expert, cannot specifically quantify savings until after further studies. EUA has not determined if it is cost effective to implement its plan and it is not definitely saying what it is going to do at this time. Tr. VIII at 111. The OCA concludes that there are no savings in this area; customers get increased services at increased costs whether they need them or not.

E. *Diversification, Management and Intangible Factors*

1. *EUA*

EUA contends that is has invested in diversification in response to a changing utility environment.

In addition to EUA's three retail distribution companies (Eastern Edison, Blackstone Valley and Newport), its generation company (Montaup), and its service corporation (EUA Service), EUA has made investments in companies involved in demand-side management, power production, independent power and qualifying facilities. Tr. VIII at 207. EUA has, in the past, characterized these companies as "non-core, energy-related" to distinguish them from EUA's investments in its businesses which directly serve retail or wholesale customers. Exh. U-7. 01; Tr. I at 113.

EUA asserts that its four non-core energy-related businesses differ from their core counterparts by virtue of how they are regulated, their capability to earn an unregulated return on equity and their isolation of risk from retail customers. Tr. I at 115. All of EUA's non-core subsidiaries are energy-related and are focused on providing discrete customers with reliable energy-related services and/or electricity at a reasonable cost. Tr. VIII at 207-213; Exh. U-7.45 at 3. These businesses shift the burden of risk from 100% customer-supported, rate base treatment to a balancing of risk and support with third parties. Tr. VIII at 208.

EUA purchased EUA Cogenex Corporation (EUA Cogenex) as a start-up company from Citizens Energy in January 1987. Exh. U-7.01 at 21. EUA Cogenex fulfills EUA's objective of investing in energy management and cogeneration. Exh. U-7.45. Since EUA's acquisition, this company has established itself as a national leader in the field of cogeneration and energy

management in the Northeast, working principally with regional utilities.

EUA Ocean State Power Corporation (OSP) is an equity owner in the Ocean State Project (Ocean State), the largest Independent Power Producer (IPP) in New England. *Id.* at 23. OSP is representative of a new trend in the provision of electricity. It combines the talents and resources of three utility companies, including OSP, a Canadian gas pipeline company, and

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a private developer to provide a much needed source of energy to New England with no developmental or construction risk borne by ratepayers or retail customers. Tr. II at 60; Tr. VIII at 110-111; Exh. U-7.01 at 23. In some respects, however, Ocean State resembles the traditional method of constructing new generations plants: it is regulated by the Federal Energy Regulatory Commission (FERC) and retains utility involvement in design, management, financing, and other areas. In contrast to traditional projects, Ocean State is less risky and has the benefits of combined private and public company talents, turn-key construction with a cap, and construction financing isolated from customer risk. Tr. VIII at 110-111; Exh. U-7.01 at 23.

The formation of EUA Energy Investment Corporation was approved by the Securities and Exchange Commission (SEC) in December 1987. Exh. U-7.01 at 23. EUA set up this company to complement EUA's efforts in the field of cogeneration and independent power projects. Tr. I at 53. EUA intends to use this subsidiary as a vehicle for investment in projects somewhat larger than those generally undertaken by EUA Cogenex, but on a smaller scale than OSP. Exh. U.-7.01 at 23. In addition, EUA Energy Investment Corporation researches and evaluates potential sites for projects, strategic partners, and technologies for future project development for EUA and others. Exh. U-7.03.

EUA Power Corporation (EUA Power) is a New Hampshire corporation formed in 1985 as a subsidiary of EUA to purchase the Seabrook entitlement of five utilities in Maine, Vermont and Massachusetts. Tr. I at 53. According to EUA, the commission has authorized EUA Power to engage in business as a public utility in New Hampshire solely for the purpose of completing the construction of Seabrook and selling its share of Seabrook Unit No. 1. Exh. U-7.14 at 6. Its formation allowed the Seabrook project to continue construction to the point of completion and commercial operation. Exh. EUA-1.05.

Contrary to UNITIL's contention that management resources can be diverted from core business to focus on the non-core, EUA asserts that it has demonstrated that energy-related diversification has improved its management through new challenges, new personnel and acquisition of new skills. Tr. XVIII at 17.

EUA contends that the commission "can conclude from a host of studies on diversification by utilities that there is no real evidence that it is harmful to the health of utilities." D. Hawes, *Utility Holding Companies*, Sec. 1.03 (1987). Moreover, "most regulators appear to agree that some degree of diversification, properly regulated, is not adverse to the public interest." D. Hawes, *Utility Holding Companies*, Sec. 6.04 (1987). In conclusion, EUA asserts that the evidence supports a finding that EUA's non-core energy businesses are managed and regulated in a manner which will not undermine the benefits of its ownership of the UNITIL System.

2. *UNITIL*

According to UNITIL, there are substantial differences between the management philosophy and style of UNITIL and EUA which significantly affect rates and services for customers, and the financial stability of the respective companies. UNITIL's management philosophy focuses on providing a reliable and economic power supply to its customers. By concentrating on the operation of its core businesses, cost containment, and obtaining a diverse, least cost power supply, UNITIL has succeeded in providing high quality service at reasonable rates to the customers of Concord and Exeter.

In contrast, according to UNITIL, EUA has followed a corporate philosophy of diversification and risk taking in an attempt to achieve rates of return for its shareholders that are higher than traditional regulated utility returns. Through excessive dividend payout and over-investment in base and intermediate power supplies, EUA uses its ratepayers to backstop its investments in non-core businesses and power supply ventures.

UNITIL contends that EUA has invested heavily in EUA Power, but now cannot recover its investment because there are no buyers for long-term Seabrook power. This will have a substantial detrimental impact on EUA and its

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regulated subsidiaries. In addition, EUA has arguably engaged in improper financial disclosures which may create exposure to lawsuits that will further drain its financial resources and direct management's attention away from the core businesses. UNITIL Initial Brief at 28.

UNITIL claims that EUA's policy of diversification also creates inherent conflicts of interest between EUA's regulated subsidiaries and its non-core ventures — conflicts which are usually resolved in favor of shareholders at the expense of ratepayers. In pursuing its investment in Ocean State, EUA's shareholders bore no risk and made no initial equity contribution, while Blackstone ratepayers provided the site, and all of EUA's ratepayers supplied a guaranteed market for the power and bore the risk of fuel escalation. Similarly, EUA Power and Montaup are now competing in the same market to sell their excess capacity, pitting shareholder interests against ratepayer interests. At the same time, EUA is taking excessive dividends from all of its regulated subsidiaries in an attempt to save its equity interest in EUA Power.

According to UNITIL, EUA's management style is also evidenced by a reckless "act now, think later" approach. EUA admits that it embarked upon its acquisition of UNITIL and this proceeding without conducting any studies to support its petition and lacking the basic information with which to formulate a cost/benefit determination. UNITIL claims that EUA has similarly pursued investments in EUA Power and purchases from OSP without attempting the most basic analysis or study.

UNITIL asserts that there are enormous intangible costs and risks inherent in an EUA acquisition of the UNITIL companies. These costs include a loss of local control with the risk of diminished customer communications and service, competition for the corporate allocation of resources, and loss of local knowledge of the service territories. Under an EUA management, New Hampshire's interest will not be represented in the EUA boardroom and will be overshadowed by problems associated with EUA's struggling subsidiaries, diversified ventures and teetering financial position. Moreover, the acquisition will diminish this commission's

regulatory control over Concord and Exeter.

UNITIL concludes by arguing that the commission must also weigh carefully the unanimous public sentiment in favor of UNITIL in determining if the proposed takeover is, in fact, in the public interest. UNITIL characterizes that sentiment as a loud and clear message that "UNITIL is not broke, but alive, well, and serving the needs of New Hampshire; that EUA's rate proposal and promises are not worth the risk of EUA management; and that an EUA takeover is not in the public interest". UNITIL Brief at 30.

3. *OCA*

According to OCA, EUA is a financially unstable utility on the brink of disaster. "As of mid-1990, EUA is a significantly more risky enterprise than UNITIL." Tellus, Exh. OCA 3.0 at 31. A major concern is the existence of EUA Power and its major financial drain on the resources of EUA. "The financial picture of EUA Power to date is one of a highly leveraged one-asset entity, which has been paying the continuing costs of Seabrook and the interest costs on existing debt by issuing further debt and by obtaining capital infusions from the parent company." Exh. OCA 3.0 at 31. It will continue to weaken EUA until EUA can sell its Seabrook entitlement at least at a break-even price or until EUA Power takes a major writedown for accounting purposes.

The OCA asserts that EUA Power's problems will not go away for years. It will drag down EUA's creditworthiness and cash flow. OCA claims that in order to maintain the current EUA dividend, the subsidiaries are going to have to offset the "hemorrhage". Rather than lower the cost of capital for Concord and Exeter, EUA's ownership is likely to raise it. A write-off of the full equity investment in EUA Power might reduce EUA's total equity by 25 to 30 percent. Exh. OCA 1.01 at 6.

The OCA claims that at a minimum, a cash starved EUA will cast "hungry eyes" at a "cash cow" like UNITIL. "The parent's objective with regard to the subsidiary may become dominated

by cash concerns rather than long-run financial and business planning considerations." Exh. OCA 3.0 at 34. "[T]he parent company will be drawing on the subsidiary, rather than vice versa." *Id*.

The OCA also expressed concern about Montaup, EUA's FERC regulated subsidiary. Montaup's fuel mix over the last three and a half years (through June 30, 1990), was comprised of approximately 50 % oil. Exh. U-4.41, Appendix 4. The OCA agrees with UNITIL that at this point in time, with the uncertainties in the Middle East, it is too risky to rely heavily on one fuel source as Montaup does. UNITIL's guidelines were designed with the errors of the past in mind.

The OCA contends that another problem with Montaup is its investment in Seabrook. That investment is carried on the books at approximately $6,267/KW. Tr. XIX at 63. If FERC treats Montaup like New England Power, the result would be a disallowance of $2,350/KW, or about one-third of the total cost. Tr. XIX at 63. Such a write-off will certainly affect Montaup's corporate owner Eastern Edison and the EUA holding company itself. EUA may have to put some of its own money into its doubled leveraged subsidiaries.

The OCA contends that EUA's policy of diversification also creates inherent conflicts between EUA's regulated subsidiaries and its non-core ventures — conflicts which are usually resolved in favor of shareholders at the expense of ratepayers. The OCA cites Ocean State as an example in which EUA's shareholders bore no risk and made no initial equity contribution, while Blackstone ratepayers provided the site, and all of EUA's ratepayers supplied a guaranteed market for the power and bore the risk of fuel escalation. Similarly, EUA Power and Montaup are now competing in the same market to sell their excess capacity, pitting shareholder interests against ratepayer interests. At the same time, EUA is taking excessive dividends from all of its regulated subsidiaries in an attempt to save its equity interest in EUA Power.

The OCA notes EUA's admission that it embarked upon its acquisition of UNITIL and this proceeding without conducting any studies to support its petition and lacking the basic information with which to formulate a cost/benefit determination. According to the OCA, EUA has similarly pursued investments in EUA Power and purchases from OSP without attempting the most basic analysis or study.

The OCA echoes UNITIL's contentions about the intangible costs and risks inherent in an EUA acquisition of the UNITIL companies. Those costs include a loss of local control with the risk of diminished customer communications and service, competition for the allocation of resources, and loss of local knowledge of the service territories. Under an EUA management, New Hampshire's interest will not be represented in the EUA boardroom, and will be overshadowed by problems associated with EUA's struggling subsidiaries, diversified ventures and teetering financial position. Moreover, the takeover will diminish the commission's regulatory control over Concord and Exeter.

Finally, the OCA concurs in the UNITIL recommendation that the commission weigh carefully the public opposition to an EUA acquisition in determining whether the proposed takeover is, in fact, in the public interest.

F. *The Ernst & Young Report*

In May 1990, the commission retained the services of Ernst & Young to study and to report on the benefits of the proposed acquisition of UNITIL by EUA. In late July 1990, Ernst & Young issued a report which was prepared principally by Messrs. Herbert VanderVeen and Philip Layfield.

Ernst & Young found that EUA's proposed acquisition of UNITIL would result in the following:

— increased quality customer service but at a high cost;

— insignificant cost savings with respect automated payment remittance, customer billing;

— no substantial benefit in the area of purchasing and materials management;

— superior engineering, systems, operations, trouble coverage and reliability but a

higher cost;

— no impact on UNITIL employees;

— access to more experienced and capable management;

— greater access to capital markets at more favorable terms;

— some administrative savings;

— a fair allocation of the benefits of the merger; and

— manageable levels of risk

Tr. Day XXI at 153-155.

With particular regard to power supply issues, the executive summary of the Ernst & Young report concludes:

> As calculated from the filed resource plans of EUA and UNITIL, we have determined that demand and energy savings resulting from the merger will be approximately $25 million based upon calculations using filed resource plan data from both companies. EUA also projected additional benefits associated with achieving single system status. We do not believe that EUA will be able to achieve single systems status without paying a significant portion of those benefits for the transmission service that would be necessary to achieve interconnected status.

Exh. Staff-1.01 at I-2.

The $25 million of savings refers to an alternative analysis conceived and performed entirely by Ernst & Young that they label "Alternative Demand and Energy Approach." *Id*. at VI-6. That analysis looks only at the period 1990-1996 because that is the period for which UNITIL's supply is optimized. *Id*. The $25 million is in 1993 net present value ("NPV") dollars. When stated in 1990 NPV dollars, the $25 million is reduced to $19 million. Ernst & young also revised the $19 million calculation to reflect recent revisions to UNITIL Power's cost of power over the period 1990-1996. Staff-1.02. In that revised calculation, the total savings are reduced to $5 million NPV 1990. *See* U-10.02. In addition, Ernst & Young admitted during cross-examination that the revised calculations contained a $3 million mathematical error that reduces the alleged savings to $2 million NPV 1990. TR. XXI at 181-182.

Ernst & Young also raised the question that is of paramount importance:

> A final question is, what could UNITIL do on its own? In an independent mode, and given the present power market conditions in New England, it is conceivable that UNITIL could do almost as well or as well as the Montaup power projections.

Exh. Staff-1.02 at VI-9.

Subsequently, when asked by the commission whether EUA's petition should be approved, Mr. Layfield of Ernst & Young responded, "Obviously this is a difficult question. I believe that there are benefits to the merger ... " Tr. XXIII at 115-116.

> In response, UNITIL has argued that in light of the limited scope of Ernst & Young's review of adequacy of service, and its one-sided treatment of costs resulting from the takeover, Ernst & Young's conclusions with respect to the potential for benefits to UNITIL's customers should be ignored.

Initial Brief of UNITIL at 118.

III. COMMISSION ANALYSIS

A. *Introduction*

[1-4] The evidence before us in this proceeding is a massive body of information: 5,145 transcript pages and 637 exhibits. On the basis of this record, we conclude that EUA's petition must be denied.

In order to reduce this record to manageable proportions for purposes of analysis, we have identified four core areas that encompass only those issues that necessarily must be balanced and adjudicated:

Rates
Financial Fundamentals and
Risk Exposure
Resource Planning
Operations, Maintenance and

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Customer Service

Before proceeding with our analysis of each area, we must first rule on the applicable legal standard for adjudicating this proceeding and discuss EUA's contention that RSA 374:33 is unconstitutional.

B. *Legal Standard*

1. *The Statutory Standard*

This proceeding is governed by RSA 374:33 (Supp. 1990) which provides:

> Acquiring Stocks, etc. No public utility or public utility holding company as defined in section 2(a) (7) (A) of the Public Utility Holding Company Act of 1935 or cooperative marketing association organized for purposes of rural electrification shall directly or indirectly acquire the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state, unless authorized to do so by order of the commission *issued upon a finding that such acquisition is lawful, proper and in the public interest*; provided, that nothing in this section shall prevent a public utility being in fact the owner on June 1, 1911, of the majority of the capital stock of any other public utility, or leasing or operating such other public utility, from acquiring the balance or all of the outstanding capital stock of such other public utility a majority of which stock is so owned or which is so leased or operated.

(Emphasis supplied). The public interest standard set forth in the statute is no different than the analogous public good standard found in other sections of the public utility code. *See e.g.*, RSA 369:1.

The issue in this proceeding is whether the public interest standard requires the commission to apply the "no harm" test or the "net benefit" test to the evidence. If we apply the "no harm"

test, the commission would grant the petition so long as we conclude that the acquisition does not adversely affect the public's interests. The "net benefit" test imposes a greater burden on the petitioner to demonstrate that the acquisition benefits the public. EUA argues that the "no harm" test is required, while UNITIL contends that the "net benefit" test is the appropriate legal standard.

All parties agree that the leading case on the public good standard is *Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539 (1915). *See*, UNITIL Brief at 9; EUA Brief at 11-12. There, the Court stated at 540:

> The measure by which the matter is to be determined is described by the legislature as "the public good." Laws 1911, c. 164, s. 13, as amended by Laws 1913, c. 145, s. 13. This is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case. If it is reasonable that a person or a corporation have liberty to take a certain course with his or its property, it is also for the public good. It is the essence of free government that liberty be not restricted save for sound reason. Stated conversely: it is not for the public good that public utilities be unreasonably restrained of liberty of action, or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service.

The above language, which speaks in terms of the liberty of public utilities to act as other corporations if the action is not forbidden by law and warranted under the circumstances, supports a "no harm" test. Corporate liberty should not be restrained if the public is not harmed by the proposed transaction. UNITIL argues that the Court refined the standard to provide for a "net benefit" test in *Parker-Young Co. v. State*, 83 N.H. 551 (1929). In that case, the Court emphasized that its *Grafton County* "all the circumstances" language is a broad standard which requires the commission to weigh properly the effect of the proposed action on all affected interests. UNITIL claims that the proper weight to be assigned to the various interests requires the application of a "net benefit" test. *See also, Appeal of Conservation Law Foundation*, 127 N.H. 606, 653 (1986)

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("The PUC's primary responsibility is to protect the ratepaying public's interest in adequate utility service at reasonable rates. Its secondary responsibility is to ensure that utility investors obtain a reasonable return on their investments." King, C.J. and Batchelder, J. dissenting); *Boston and Maine Railroad Company v. State*, 102 N.H. 9, 10 (1959).

In the context of the instant matter, which involves the acquisition of one utility holding company by another utility holding company, we believe the better reading of our enabling authority in combination with the Court's holdings leads to a "non harm" test.

RSA 363;17-a defines the role of the commission. It provides:

> Commission as Arbiter. The commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities as provided by this title and all powers and duties provided to the commission by RSA 363 or any other provisions of this title shall be exercised in a manner consistent with the provisions of this section.

In this proceeding, the commission's task is to arbitrate between the interests of UNITIL's customers and UNITIL's investors.[1](32) UNITIL's customers have an interest in safe and reliable electric service at just and reasonable rates. UNITIL's investors have an interest *inter alia* in being freely able to market their securities. The investors' right freely to market their shares is a more definitive right than the rights associated with ratemaking.[2](33) This must be appropriately weighted in the balancing undertaken by the commission, particularly in view of the Court's *Grafton County* language which speaks of the liberty of utilities to engage in the same conduct as non-regulated corporations when such conduct is not inconsistent with the public good. Given this investor interest, it is not rational to prohibit the conveyance of securities if the proposed transaction is otherwise lawful and customers are not harmed thereby.

Although we believe that the "no harm" test is most consistent with the Court's articulation of the public good standard, as that standard should be applied to a proposed merger or acquisition, application of either the "no harm" or "net benefit" standard leads us to the same conclusion on EUA's petition. We recognize the important interests of all parties and are mindful that this proceeding was hotly contested, that the record contains voluminous and conflicting information, and that the parties' views are wildly disparate. However, upon thorough review and consideration of the record and the parties' arguments, we have determined that UNITIL's ratepayers will sustain a "net loss" from the takeover. Hence, we find that EUA has not met the threshold public interest standard under either the "no harm" or "net benefit" test, and accordingly, conclude that the petition must be denied.

2. *Constitutionality of RSA 374:33 as Amended*

[5] The New Hampshire legislature amended RSA 374:33 effective April 13, 1990, to broaden the commission's control over certain acquisitions of stock by public utility holding companies.

In its Brief, EUA asserts that RSA 374:33, as amended, raises important and novel questions as to its constitutionality under: (a) the Commerce Clause of the United States Constitution (Art. I, Sec. 8, Cl. 3); and (b) the Supremacy Clause of the United States Constitution (Art. IV, Cl. 2). Moreover, in Appendix A to its Brief, EUA has submitted an argument that RSA 374:33 as amended is unconstitutional because it "violates the Commerce Clause of the United States Constitution because it directly burdens interstate commerce and the burden is excessive in relation to any legitimate state interest." Appendix A at 1.

In response, UNITIL argues that:

> RSA 374:33 requires the commission to review the structure of transactions involving public utilities, including public utility holding companies, and changes in ownership of utilities. The statute does not discriminate in favor of local commerce or against out-of-state commerce. In arguing that Section 33 violates the commerce clause, EUA ignores the legitimate interest of the State of New

> Hampshire in protecting local consumers by approving changes of control of its public utilities.

UNITIL Reply Brief at 10 and 11.

It is unnecessary for the commission to offer a definition on the constitutionality of RSA 374:33:

> [As] an administrative agency created by the legislature, the commission must follow the clear language of our enabling legislation and the inferences that can reasonably be drawn therefrom. It is not our function to tell the legislature that its statutes either meet or do not meet constitutional tests. Therefore, we must assume that all applicable statutes are constitutional.

Re Public Service Company of New Hampshire, 69 N.H.P.U.C. 174, 178 (1984).

To be sure, it is possible that the legislature could enact a statute that the commission cannot apply because it is clearly unconstitutional.[3](34) RSA 374:33 is not such a statute.[4](35) Under the "no harm" test adopted by the commission for denial of a RSA 374:33 petition, the liberty of investors freely to convey their stock in interstate commerce is accorded its due weight. Accordingly, we cannot conclude that RSA 374:33 clearly and unduly burdens interstate commerce in a manner that overcomes the presumption that the statute is not violative of the commerce clause of the United States Constitution. We decline to accept the invitation of EUA and UNITIL to comment further on the constitutionality of RSA 374:33.

C. *Rates*

[6] As noted earlier, EUA contends that an important factor in the commission's evaluation of whether the proposed acquisition of UNITIL is consistent with the public good is the rate levels that UNITIL's customers would be paying after the acquisition is completed. EUA argues that its promise of a rate decrease of $750,000 in annual revenues with a concomitant moratorium on base revenue increases in the two years following the acquisition constitutes net tangible benefits to UNITIL's customers from EUA's acquisition. UNITIL asserts that the rate reduction is nothing more then a "loss leader" that has been offered by EUA to mask deficiencies in its direct case.

While immediate rate promises may be a factor in our analysis, such promises must be weighed in accordance with the underlying financial strength of the enterprise. This ensures that our evaluation is an objective analysis of the merits of the proposed acquisition. To do otherwise would be to risk illusory benefits to ratepayers based upon unsound fundamentals. Accordingly, we decline to place any substantial weight *per se* upon EUA's promised rate reduction. Similarly, we place minimal weight upon the numerous and often conflicting comparisons that appear in the record of EUA's and UNITIL's recent and current rate levels.

We also find it unlikely that EUA's claim to greater access to capital markets would translate into lower costs to ratepayers. Debt is generally incurred at the distribution company level where it can be secured by local assets, and the cost of debt incurred by Concord or Exeter is unlikely to be affected by the specific holding company structure. The cost of equity for ratemaking purposes is calculated by a Discounted Cash Flow (DCF) methodology. While that calculation could vary between UNITIL and EUA if it were performed on a company specific basis, the commission's analysis for the determination of a revenue requirement employs a sample of

electric utilities, the selection of which is not likely to vary significantly between UNITIL and EUA.

Our determination of whether the proposed acquisition is consistent with the public interest must go beyond superficial rate comparisons and offers of temporary rate reductions. It must closely analyze the financial soundness issues, power supply issues, operation, maintenance and customer service issues which comprise the enduring underlying fundamentals upon which any approval for the proposed acquisition must be based.

D. *Financial Fundamentals and Risk Exposure*

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[7] The record reflects that there exist serious risks concerning the financial viability of EUA Power and its financial impact upon the EUA System in the event that EUA Power is unable to enter into long term power sales contracts. From 1986 through 1989 EUA Power has contributed significant net income to EUA. The earnings, however, have been substantially in the form of Allowance For Funds Used During Construction (AFUDC)[5(36)] and tax savings. The AFUDC is attributable to the fact that the Seabrook nuclear plant was not completed. With Seabrook in service since July 1, 1990, AFUDC will no longer be booked, and the earnings must now be provided by revenues from the sale of power. EUA stated that in the unlikely event that EUA Power is unable to enter into long-term contracts at some point in the future, EUA Power would not be able to pay interest and principal on its existing notes and would be in default of the indenture concerning those notes. Tr. VI at 113, 114. In the event of default, EUA might be required to write-off its investment in EUA Power. As of December 31, 1989, EUA had approximately $93.4 million of equity investment in EUA Power.

In a study of the financial impact of the inability of EUA Power to enter into long-term power contracts, EUA stated that, in the event of a write-off of its equity investment, there would be a significant impact on the common equity component of the consolidated EUA System. Exh. EUA 1.02. EUA stated that such an event would not impair its ability to maintain its common dividend. However, EUA's dividend policy is of concern to the commission. Some of the factors considered by EUA when deciding to issue dividends are net earnings of the company, available cash flow and the amount of retained earnings available for cash dividends. Exh. U-7.14. Application of this dividend policy to UNITIL could prove harmful to ratepayers' interests.

For example, UNITIL has been able to retain a higher ratio of common equity to total capitalization by maintaining a lower payment ratio of its earnings. UNITIL's common equity ratio at the end of 1989 was 45 percent compared to EUA's common equity ratio of 34 percent. Exh. U-2.01 at 24. When comparing the payout ratio of dividends as a percent of earnings, UNITIL's payout ratio ranged from 50 percent in 1985 to 59 percent in 1989, while EUA's payout ratio ranged from 76 percent in 1985 to 83.9 percent in 1989. *Id*. Thus, as compared to EUA, UNITIL retains more of its earnings to fund its capital needs. *Id*. There is a risk that following the merger EUA will treat UNITIL's retained earnings as a funding source for cash dividends. This in turn will cause UNITIL to seek external funding for its capital needs, thereby altering its debt to equity ratio and increasing its debt related expenses.

It is also necessary to examine the quality of earnings. There was evidence during the hearing

that EUA treats cash from depreciation as a source of earnings available for cash dividends. RSA 374:11 and 12 prohibits utilities from using cash from depreciation to pay dividends. Rather, utilities should use depreciation earnings for plant replacement and additions. Thus, while New Hampshire law would prohibit EUA from imposing its policy on UNITIL, the commission believes that EUA's practice of diverting depreciation cash from capital investments to cash dividend payments represents corporate policy that is less favorable to ratepayers' interests than is demanded of New Hampshire utilities.

Moreover, over the five year period from 1985-1989, AFUDC has been a significant percentage of the earnings of EUA. AFUDC has ranged from 54 percent in 1985 to over 200 percent in 1989. *Id*. As a result of the ratio of AFUDC to net earnings, EUA has informed its stockholders that a substantial portion of its dividends may be considered a return of capital and thus non-taxable for federal income tax purposes. *Id*. During the same period of time, UNITIL's interest coverage has exceeded EUA's. UNITIL's interest coverage ratio ranged from 3.92 times in 1986 to 2.49 times in 1989 in spite of significant costs to avoid EUA's takeover. *Id*. During the same period, EUA's interest coverage ratio ranged from 2.73 times in 1986 to 1.76 times in 1989, when AFUDC, was included. *Id*. Excluding AFUDC, in 1986 the ratio would have been 2.3 times and in 1989 would have dropped to .86 times. Without AFUDC, EUA did not cover its interest

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costs in 1989.

A major uncertainty associated with a merger of EUA and UNITIL is EUA Power's ability to market its Seabrook capacity successfully. The risks to UNITIL if EUA Power cannot successfully market its Seabrook share are: 1) that UNITIL will be required to purchase Seabrook output at a higher than market price[6(37)] ; and 2) that the negative financial consequences of EUA Power's inability to market its share of Seabrook output will flow back through EUA to affect UNITIL's financial health[7(38)] .

As the last five years have demonstrated, the market supply situation in New England can change rapidly. A few years of higher than expected sales growth and/or the loss of a major existing generating resource can reduce a comfortable reserve margin to a critical point in a short period of time. Thus, it would not be prudent to rely upon today's current surplus over the long term. However, the size of the current surplus, the fact that it is not held by only one company, and the number and range of future options that are available as evidenced by recent solicitations and offers for power reduce the likelihood that EUA Power will be able to sell its capacity at its cost of service. The relevant question, therefore, becomes the definition of the probable long-term market price or value of power, and whether sales of Seabrook output at this price are likely to generate sufficient revenues for EUA Power to recover and earn a return on its investment. On the basis of the record, we must find a substantial risk exists that EUA Power will not be able to market its Seabrook output at a price that will allow it to earn a reasonable return on its investment.

UNITIL's witness, Dr. Perl, testified that the long term levelized market price of power in New England is about five to six cents per kWh while the cost of service for EUA Power's

Seabrook output is between eight and nine cents per kWh. Exh. U-1 at 10. The short-term market would support a price of only about two to three cents. To earn a 13 percent return on its investment, EUA Power would have to receive between 7.5 and 8.6 cents.

EUA's witness, Mr. Reed, was somewhat more optimistic, estimating a short-term (two to three year) market value of three to five cents and the possibility of long term market prices sufficient for EUA Power to recover and earn at least some return on its investment. Tr. XV at 93 and 135; Tr. XVI at 67. Mr. Reed did not denote the return, but discussed a range well below 13 percent. He did not think it likely that EUA Power could sell its Seabrook output at any price approaching its cost of service, particularly in the near term. While Mr. Reed discussed at length EUA Power's prospects for sales of the Seabrook output, much of this discussion highlighted economic and institutional factors making such sales less, rather than more, probable.

At current market rates for the sale of Seabrook power, EUA's proformed earnings in 1991 would be significantly below those of recent years and could possibly be negative.[8](39) As discussed above, this exposes EUA to significant financial risk. In addition to a potential substantial write-off, EUA's future earnings could also be significantly impacted.

The risks to UNITIL's ratepayers should the commission approve the takeover would be many. A further deterioration of EUA's earnings would place substantial pressure on the operating companies of the EUA system, including UNITIL, to increase earnings and cash flow. This, in turn, could either result in higher retail rates or lower expenditures to maintain existing service, quality or both. The commission can, of course, seek to protect UNITIL ratepayers from these pressures through the regulatory process. RSA 369:1. "The primary concern of the commission in ascertaining the public interest for purposes of capitalization is the protection of the consuming public." *Appeal of Easton*, 125 N.H. 205, 210 (1984) quoting *Petition of the New Hampshire Gas & Electric Co*. 88 N.H. 50, 57 (1936). However, as we point out in Footnote 7, reliance on regulation to prevent these harms from occurring carries with it costs in terms of personnel time and adjudicatory expenses. Additionally, the complexity involved in monitoring EUA's treatment of UNITIL presents a degree of risk that the commission will not be able to prevent certain abuses as they are occurring. Additionally, the commission has witnessed, in other circumstances involving financially distressed utilities,

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that a financial crisis diverts management's attention away from normal utility operations. Moreover, it is impossible to predict all of the adverse consequences that can result from financial distress. Under these circumstances, we believe it imprudent to expose UNITIL's ratepayers to these risks and uncertainties.

Thus, if all other factors evaluated for EUA and UNITIL are comparable, we must find that the financial exposure results in net harm to the ratepayers of UNITIL subsidiaries and, accordingly, EUA's petition must be denied. Our analysis must therefore evaluate the other comparative factors and, if not equal, evaluate whether or not UNITIL negatives outweigh the financial negatives of EUA.

E. *Resource Planning*

1. *Introduction and Analytical Framework*

[8, 9] The major portion of the benefits that EUA claims that it will bring to UNITIL in a merger are power supply benefits. They constitute 86 percent of the net benefits claimed for the UNITIL system. The commission's decision on EUA's petition, therefore, must rely heavily on our assessment of the nature and magnitude of the claimed power supply savings. Two questions must be answered: 1) whether the power supply benefits claimed by EUA are only available through the proposed merger; and 2) if they are not, whether UNITIL has the capability of obtaining those benefits on its own.

EUA argues that the power supply benefits can only be achieved through a merger of the two companies because UNITIL has shown neither the will nor the ability to capture those benefits on its own. EUA bases this argument, in part, on UNITIL's power supply planning to date.

UNITIL's position is that EUA offers neither the only nor the best power supply benefits available. UNITIL contends that it is capable of achieving equivalent or greater power supply benefits on its own. Thus, according to UNITIL, EUA's offer involves substantial additional risks and potential associated costs for the UNITIL system. UNITIL claims that in the power supply market it can achieve savings $2-2.5 million greater than those offered by EUA. UNITIL also contends that its power supply philosophy is more risk adverse for its customers than is EUA's and that in a merger the costs of some of this risk would be passed on to UNITIL customers.

Ernst and Young testified that while EUA's and UNITIL's filed resource plans indicate some benefits to UNITIL from a merger, it is conceivable (Exh. Staff-1.02 at VI-9) that UNITIL could do almost as well as or as well as EUA. Similarly, Tellus rejected EUA's allegation of general power supply benefits based on its belief that long-term power is available to UNITIL in the current New England market. *Id*. at 29. In short, Tellus found that EUA's alleged savings "can be achieved without the merger". *Id*. at 4. Tellus concluded:

> Our review of the claims made by EUA and of the various arguments for and against them does not convince us that EUA has succeeded in showing any significant power supply cost savings from the merger.

Id. at 5.

On the basis of substantial evidence of record, the commission finds that EUA does not have the exclusive ability to provide power supply savings. The record persuades us that UNITIL's power supply can and should be improved. However, we do not believe it appropriate to compare EUA's offered power supply with UNITIL's current resource plan. Rather, the correct comparison to assess the power supply benefits of a merger of EUA and UNITIL is between what UNITIL could and should be doing and what EUA offers to provide. This is in contrast to the EUA position which asks the commission to compare what UNITIL is currently doing with what EUA offers. Upon consideration of what UNITIL can and should be doing to satisfy its power supply obligations, we conclude that any power supply savings EUA offers can be achieved by UNITIL independent of being acquired by EUA.

2. *UNITIL's Current Resource Planning*

At the time UNITIL was formed and acquired its initial power supply in 1986,

there existed a relatively tight capacity market in New England. Generally, UNITIL's initial power supply was made up of some long term, relatively expensive QF/IPP[9(40)] units and short term purchases from other utilities. In 1989, UNITIL negotiated a slice of system contract with Northeast Utilities for power through 1996 at what then appeared to be market cost, but now appears to be at a cost which exceeds current market alternatives (a situation not unique to UNITIL). In the current market, UNITIL has been able to contract for some lower cost power, such as Vermont Yankee, and has cancelled commitments to higher cost QF/IPP projects.

UNITIL's power supply, however, continues to consist primarily of shorter term commitments of less than ten years. Thus, UNITIL must contract for up to 150 to 175 MW, or approximately 50 percent of its power supply, in order to meet its projected resource needs after 1996. Exh. EUA-2.04. UNITIL indicates that should it be unable to contract for the capacity it needs, it will build its own generation. To support this, UNITIL refers to estimates it has received for the cost of constructing a gas turbine. In its assessment of the feasibility of constructing its own generation, UNITIL does not appear to have accounted adequately for complete construction management costs given its lack of corporate construction experience. Additionally, there has been no demonstration that a combustion turbine would be the proper addition to UNITIL's resource portfolio, if, as it has been argued, UNITIL will be deficient in the area of base load power.

3. *Risks and Uncertainties Facing UNITIL*

To some extent, all utilities are affected by contemporary power supply markets. Because of its small size, UNITIL may have a relatively high exposure to market risk because some options, such as large IPPs[10(41)] (*e.g.*, Ocean State), may not be available to it if the owners and developers of such projects are not interested in selling small enough pieces to meet UNITIL's needs consistent with its power supply guidelines. UNITIL may be able to participate in such projects only through another larger utility or NEPOOL.

The potential loss of Fitchburg Gas and Electric Company (FG&E) may exacerbate this situation. UNITIL Power, which now plans for FG&E's power supply along with its own, would become an even smaller market player, because its power requirements would be reduced from approximately 250 MW to 180 MW. In addition, because FG&E now shares UNITIL's administrative costs for power planning and acquisition, its loss means that UNITIL would bear the entire administrative cost burden. On the other hand, there are possible savings in regulatory costs as a result of consolidating regulation to one retail jurisdiction.

UNITIL has the opportunity over time to improve its power supply situation. Operating through both deficient and surplus capacity markets, UNITIL can diversify its power supply mix in terms of lengths of commitments and thus stabilize costs which are high in deficient markets and low in surplus markets. The current surplus capacity market in New England provides an excellent and timely opportunity.

4. *EUA's Proposed Resource Plan*

EUA offers UNITIL a power supply commitment consisting of three parts that it will guarantee to produce approximately $21 million in savings over UNITIL's current power supply plan. The power supply commitment includes a 30 MW slice made up of a mix of mature units beginning in 1993 and continuing for the life of the units; a 60 MW slice made up of diversified units from 1996 to 2000; and a commitment to file by 1998 a least cost resource plan for UNITIL that will provide it with cost-effective resources into the future.

In ascertaining whether EUA's power supply offer produces savings to UNITIL, the relevant question is whether these same savings could be achieved by UNITIL absent a merger with EUA. The commission finds that sufficient savings can be achieved by UNITIL by modifying its resource planning methodology.

The sale of the 30 MW slice to UNITIL provides significant benefits to the EUA system itself and could be expected to be pursued independent of a merger. Tr. XII at 149-150. While

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EUA contends that it would not make a life-of-unit commitment outside a merger, the savings which EUA estimates will accrue to UNITIL occur over that same time period benefits will also accrue to the EUA system. Similarly, the 60 MW slice could be expected to be made up of a mix of units that provide benefits to the EUA system as well as to UNITIL. If this were not the case, regulators in other jurisdictions whose customers would be economically disadvantaged could be expected to intervene to prevent a sale to UNITIL. Additionally, EUA's commitment to submit a least cost plan for UNITIL by 1998 does not meet this commission's requirement of biennial least cost planning filings.[11](42)

EUA also contends that a merger offers UNITIL benefits due to the size of the resulting company in that a larger company could access a wider range of options in the power supply market. EUA's larger size offers the clearest advantage to UNITIL in the area of demand side management (DSM) as EUA has developed an internal DSM capability which UNITIL has not yet demonstrated. However, while there may be advantages associated with being a larger company, the commission does not find such advantages to be sufficient in and of themselves to warrant an EUA preference as they are offset by some advantage available to UNITIL to pick up increments of power at favorable prices. Moreover, once UNITIL revises its planning guidelines in the manner outlined in the next section, we believe UNITIL's size will continue to be an advantage serving its ratepayers.

5. *Required Changes to UNITIL's Resource Planning*

As we have indicated, the commission believes that certain revisions should be made to UNITIL's resource planning process. We disagree with the Chairman to the extent that he recommends we condition our denial of EUA's petition on UNITIL's compliance with our recommended modifications. We find no reason to believe that UNITIL will fail to make the necessary revisions. Further, we believe that UNITIL's 1990 LCIP, currently pending before the commission in Docket No. DE 90-071, is an appropriate proceeding for UNITIL to address the commission's concerns.

UNITIL's resource planning guidelines specify the mix of resources to be maintained; *i.e.*,

how much power may come from one fuel, one unit or one source. UNITIL has provided testimony that the guidelines are not hard and fast rules, but are viewed as flexible. The company may ignore a guideline if the economics associated with an acquisition are particularly beneficial to ratepayers. The commission has found previously this perspective on the guidelines to be acceptable.

The guidelines also state that a balance between long and short-term resources should be maintained; however, UNITIL does not define what this balance should be. UNITIL's power supply planning to date has relied heavily on short term resources. At the present time approximately 60 percent of UNITIL's resource commitments are for under ten years. Exh. EUA-2.04. The commission finds this degree of reliance on short term resources to be inappropriate. In order to address this concern, UNITIL should revise its resource planning guidelines to define and to specify the balance to be maintained between long, intermediate, and short term resources.

While UNITIL's resource planning guidelines state that it should "maintain a diversified balance of demand- and supply-side resource acquisitions" Exh. EUA-2.04, its resource planning to date has not approached this standard. The record reflects that UNITIL's current DSM consists of three customers who participate in interruptible or load shifting programs and its own participation in a pilot residential lighting project developed and administered by the Audubon Society of New Hampshire. Several suggested programs are only in the earliest planning stages.

UNITIL should revise its resource planning guidelines to reflect a goal of making DSM an integral part of its resource mix. While DSM may be a relatively new option for utilities, it is one that appears to hold the promise of significant benefits over the long term and UNITIL should make every effort in its resource planning to tap the full cost-effective potential

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of this resource.

12(43)

We note UNITIL's acknowledgement that its retail subsidiaries' current rate structures do not allow it to take full advantage of DSM opportunities. *Re UNITIL Service Corporation*, supra. We had previously required UNITIL to make complete rate design filings in the third quarter of 1990. *Id*. Recognizing UNITIL's pre-occupation with the instant docket, the commission granted a waiver of one quarter for this filing. The lack of cost-reflective rate structures will unquestionably affect UNITIL's ability to pursue resource planning as required herein. We will, therefore, require UNITIL management to place a high priority on the completion of its rate design filing, and require submission by May 15, 1991.

The commission is alerting UNITIL to requisite revisions to UNITIL's resource planning guidelines. Prudent resource planning consistent with commission orders and requirements remains the utility's responsibility. If future circumstances warrant changes, UNITIL management has the responsibility of bringing this to the commission's attention.

UNITIL should submit a plan that addresses the commission's concern as part of its current

least-cost integrated planning docket and work with staff on the development of this compliance plan. At a minimum, the plan must include:

(1) Revised resource planning guidelines addressing the commission's concerns.

(2) A detailed DSM development and implementation plan.

(3) A complete least cost integrated resource planning filing that fully complies with prior commission orders on UNITIL's least cost planning filings and this order by April 30, 1992.

F. *Operations, Maintenance and Customer Service*

[10] The operations, maintenance and customer service controversy between EUA and UNITIL reduces to EUA's claim that it will produce high quality, cost-effective service, and UNITIL's allegation that the merger would result in significantly increased operation and maintenance expenses, with no evidence of synergies and no need for the customer services EUA offers to provide. We find many of EUA's claims of lower cost enhanced service unsupported by the evidence or of minimal significance. We shall address in turn the claims of benefits in: 1) administrative benefits; 2) service reliability; and 3) customer service.

The record indicates that EUA's claimed administrative economies are outweighed by the additional burden of the allocation of its service company expenses. Further, there appears to be little opportunity for near-term savings in purchasing, given the differences in the EUA and UNITIL systems. EUA did not proffer evidence of long-term savings that would be cost-effective, including the costs of converting UNITIL equipment so that bulk purchasing is feasible.

In EUA's initial testimony, Mr. Bishop predicted that in the customer service area, the takeover would result in one-time savings of $554,900 and in annually recurring savings of $359,736. EUA 4.01, Appendix 1. The one-time savings were reduced to $277,000 when adjusted to remove the portion related to Fitchburg Gas and Electric Light Company ("FG&E"). Exh. EUA-4.02 at 2. Likewise, the annually recurring savings for the New Hampshire ratepayers were reduced to $442,000 when the FG&E related portions were removed. *Id.*

After reviewing the information submitted by UNITIL in its prefiled testimony and in discovery responses, EUA again reduced its prediction of savings in the Customer Service area. Mr. Bishop subsequently revised his estimate of one-time savings in the customer service area to a negative $2,500 and reduced his recurring annual savings to $60,990. Exh. U-7.93.

EUA and UNITIL provided extensive evidence to support claims that each offers superior service reliability. Based on this record, we cannot find that the comparison of reliability indices offered in Exhibits EUA-4.01, DMB-1, Attachment C, EUA-11.01 and EUA-11.02 is valid, that UNITIL's level of service reliability is inadequate, or that the improvements offered by EUA would be cost effective. The indices can be used to measure the efforts of each

company in relation to the standard of good utility practice, and in this instance, they indicate

that the service levels maintained by each company are reasonable. The indices cannot be used to compare the reliability of two companies that operate in service territories whose geography is markedly different. Further, they do not support a finding EUA would necessarily attain higher levels of reliability or that it would be cost effective to do so if it operated in the UNITIL service territory. EUA has designed its own distribution system so that it exceeds the NEPOOL reliability standard of 99.96 percent (*i.e.*, expected loss of firm customer load one day in ten years). Given that incremental expenditures on reliability produce sequentially smaller increases in reliability, it is at least questionable whether designing a distribution system with a higher level of reliability than that of the total system is cost justified.

While we do not, based on this record, find UNITIL's service reliability to be inadequate, we do not endorse UNITIL's performance at current levels. The record reveals that EUA's performance in the area of after-hours customer service is superior, albeit more costly, than UNITIL's. For example, EUA offers twenty-four hour telephone coverage for billing and service inquiries, including trouble and emergency calls. While we do not find that 24 hour customer billing service is a necessary feature of utility service, utilities must be able to timely respond to customer reports of emergency conditions and non-emergency electric outages. By example, UNITIL's reliance on a single telephone line to an answering service for reports of after-hours trouble calls may be inappropriate. The one line limitation makes it difficult for customers to contact UNITIL when there is an outage affecting more than one customer. Additionally, an answering service does not allow UNITIL to respond to customer concerns regarding outages or safety in a manner that is timely and comprehensive.

The commission believes that UNITIL's performance in the area of after-hours service is well within UNITIL's capability to resolve, and we, therefore, require UNITIL to take the steps necessary to improve its practice in this area.

G. *Miscellaneous Issues*

1. *Protection of Confidential Information*

[11, 12] On March 21, 1990, EUA filed its response to UNITIL's Motion to Compel and a Motion for Protective Order to address sensitive and confidential material produced during discovery. After oral argument on March 30, 1990, the parties filed proposals and comments on the proposed protective order. On April 4, 1990, in Order No. 19,778, the commission set forth the procedures and criteria for protecting certain confidential materials. Pursuant to several motions filed by the parties on the details and ramifications of the protective order, the commission issued an Order on May 8, 1990, clarifying the burden of the party seeking to establish the need for confidentiality under the protective order. Report and Order No. 19,816.

Pursuant to these protective orders, a significant portion of the record was initially kept sealed. Certain portions became automatically unsealed to the extent that motions to keep those portions sealed were not made within ten days pursuant to our procedural orders. At the conclusion of the hearings, the commission indicated that it was a close question in many cases as to whether the remaining portions of the record should be kept permanently sealed pursuant to RSA 91-A. The commission also expressed its interest in keeping sealed and withholding from public view as little as possible of the record in this proceeding. Tr. XXV at 124 and 125. On October 5, 1990, EUA filed a Memorandum in Support of Motion for Confidentiality asserting

that the only record material (*i.e.*, documents and testimony) it wished to continue to protect from public disclosure was "(1) EUA and EUA System projected earnings and (2) income, revenue and expenses projections from which the projected earnings can be directly calculated". Subsequently, on October 19, 1990, UNITIL filed its Memorandum in Opposition to EUA's Motion for Confidentiality.

In Attachment A to EUA's Memorandum, EUA claimed the need to maintain the sealing and confidentiality of the following documents and portions of the transcript:

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

Hearing Day	*Transcript Pages and Documents Remaining Confidential*
Day 2 8/10/90	p.86, line 14 - p.94, line 17; Exhibit U-7.47
Day 6 8/23/90	p.30, lines 2 - 6; p.31, lines 9 - 16; p.32, line 21 - p.33, line 3; p.38, line 21 - p.39, line 7; p.39, line 10 - p.40, line 6; p.47, line 20 - p.48, line 13; p.49, line 6 - p.49, line 21; p.50, lines 5 - 23; p.56, lines 1 - 19; p.57, line 16 - p.64, line 7; p.69; p.76, lines 1-4, 13-20; p.88, lines 4-20; p.104, line 11 - p.106, line 21; p.152, lines 6-12; p.152 line 20 - p.153, line 3; p.153, lines 12-22 Exhibits U-7.64. U-7.65, U-7.67 U-7.70, U-7.71, U-7.71A, U-7.72, U-7.77
Day 7 8/27/90	p.44, lines 14-17; p.49, lines 4-7 Exhibits U-7, 10, U-7.77, U-7, 77A

On October 23, 1990, and November 6, 1990, respectively, UNITIL filed its Initial and Reply Briefs in this proceeding under seal because they contained references to information which, according to UNITIL, EUA continued to designate as "protected material." However, UNITIL asserted that neither its Initial Brief nor Reply Brief contain information which can be reasonably protected, and should, thus be made part of the public record in this proceeding.

On November 6, 1990, EUA indicated to the commission that the only portions of UNITIL's Initial Brief that EUA intended to be permanently protected were as follows:

Final paragraph on page 141, through the first two lines of page 142.

The first full paragraph on page 155.

Second paragraph on page 152, with note 48. and the initial sentence of the first full paragraph on page 170.

On January 30, 1991, at the request of the commission, EUA submitted a letter to the commission which indicated that EUA has no objection to public disclosure of all parties of UNITIL's Reply Brief, with the exception of:

> First sentence of Section III.A., towards the bottom of page 14.
>
> First full sentence, the second sentence of the first full paragraph, and footnote 11 on page 17.

In response, on December 12, 1990, UNITIL reiterated its position that all documents and information on the record in this proceeding should be made available to the public. Specifically, UNITIL asserted that EUA was improperly seeking to prevent disclosure of portions of UNITIL's initial brief which address EUA's projections of the amount of its investments in non-core subsidiaries, dividend payments, dividend increases, and future rate cases.

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On January 3, 1991, EUA replied that it continued to request the confidentiality of the materials listed in Attachment A to its October 5th Memorandum. Additionally, EUA reiterated its request that the four pages of UNITIL's Initial and Reply Briefs letter of November 6th should be protected and remain confidential because it was susceptible to use in calculating EUA's future incomes. EUA's assessment of federal securities law disclosure responsibilities is that disclosure of this material for which it continues to seek protection for would create potential liabilities for EUA and would be an invitation to costly litigation.

Before turning to our analysis and determination pertaining to which, if any, materials and portion of the record should be permanently sealed and withheld for public view, we believe it appropriate and necessary to review our protective orders in this proceeding and our interpretation of RSA 91-A, New Hampshire's "Right to Know Law".

In RSA 91-A, the preamble reads as follows:

> Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter 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.

The first issue that we are presented is whether the record in this proceeding is a "public record" within the meaning of RSA 91-A. We do not believe that a finding that the record in this proceeding is a public record could be reasonably disputed; indeed, none of the parties have so argued.

The exceptions to the "Right to Know Law" are set forth in RSA 91-A:5 (IV). The only exception applicable is the one involving "records pertaining to ... confidential, commercial or financial information ... " Again, the statute does not define these terms. A term like "confidential" could be broadly interpreted to include every commission document. We do not believe that was the Legislature's intent when it enacted RSA 91-A. Having in mind the purpose of the statute, the commission finds and
rules that the term "confidential" must be interpreted narrowly.

Nonetheless, we also find and rule that the aforementioned four pages of UNITIL's Initial

Brief as well as those portions of the transcript and documents cited in EUA's October 5th Memorandum do unquestionably involve "records pertaining to ... confidential, commercial or financial information ..."

We now address the ultimate issue of whether "confidential or financial information" which appears to be exempt from disclosure to the public by virtue of RSA 91-A:5 should nevertheless be disclosed in accordance with the balancing test employed by New Hampshire Supreme Court.

The Supreme Court first announced the balancing test requirement in the case of *Mans v. Lebanon School Board*, 112 N.H. 160 (1972). The subject matter in issue in that case was the disclosure of teachers' salaries. However, even though the Court could have found that the exemption applied and therefore deny access to the salary information, it recognized that with some exempted documents, the public's right to know outweighs an individual's right to privacy and therefore ordered the information disclosed.

In other cases, however, the court has found that the benefits of non-disclosure and the individual's right to privacy have outweighed the benefits of disclosure to the public. In *Lodge v. Knowlton*, 118 N.H. 574 (1978), the issue was investigatory records compiled for law enforcement purposes. In *Perras v. Clement*, 127 N.H. 603 (1986), the issue was real estate appraisals in eminent domain proceedings; and finally in *Society for the Protection of New Hampshire Forests v. Water Supply and Pollution Control Commission*, 115 N.H. 192 (1985), the issue was the applicability of the attorney/client privilege to receipt of legal advice at a public meeting.

The issue at hand is whether the information and material for which EUA seeks permanent protection and non-disclosure rise to the level of the confidentiality of the information protected by the Court. In applying the balancing test, the commission considers the following factors as a method of balancing competing interests:

(1) Whether the information is customarily confidential and not otherwise publicly available;

(2) What specified injury or liability the public disclosure of the information will cause and how the injury or liability would be caused;

(3) the nature and extent of the anticipated harm (quantified to the maximum extent practicable);

(4) the length of time for which nondisclosure is sought and the rationale therefore; and

(5) how nondisclosure outweighs the public benefit of disclosure.

In Re Public Service Company of New Hampshire, 72 N.H.P.U.C. 502-508 (1987).

We find and rule that EUA has articulated very specific reasons as to why this information should not be disclosed. We are persuaded that disclosure of this information appears likely to create potential liabilities for EUA under federal securities law and would be an invitation to costly litigation. Moreover, and in any event, we have not found it necessary to rely on this

information in adjudicating the issues in this proceeding. Thus, the benefits of non-disclosure outweigh the benefits of disclosure.

2. *EUA Motion to Incorporate Revised Testimony into the Record*

On October 16, 1990, EUA filed a Motion to Incorporate Revised Testimony into the Record.

In support of its Motion to Incorporate Revised Testimony into the Record, EUA stated the following:

1. The Arthur D. Little report was filed as part of the original filing of EUA testimony on March 12, 1990.

2. At the outset of the testimony of Messrs. Finder and Wattley before the commission on August 31, 1990, EUA notified the commission that the tables in the Arthur D. Little report did not reflect changes embodied in studies by other EUA witnesses and reserved the opportunity to provide those tables to the commission so that the data used in the tables was consistent with that used by other EUA witnesses.

3. On September 28, 1990, EUA filed such revised tables.

4. The information reflected in the revised tables is consistent with the information used by Messrs. Finder and Wattley during the course of their testimony before the commission, including the cross-examination by the interveners and commission staff.

In a filing with the commission on October 18, 1990, UNITIL opposed EUA's Motion because ADL's revised tables constitute rebuttal testimony which would be grossly unfair to allow into the record after the close of proceedings. Specifically, UNITIL asserts that ADL's revised submission is inconsistent with the representations made by EUA's counsel and witnesses at the hearings that the revised tables would only reflect revisions to certain calculations and numbers, that they would be provided in three to four days, and that they would include all supporting workpapers. In fact, according to UNITIL, the revisions primarily consist of corrections to errors and omissions pointed out on cross-examination and substantial changes in the methodology and analysis employed by ADL. The primary charge in ADL's revised testimony, according to UNITIL, is a change in methodology to reflect a two-way merger between EUA and UNITIL rather than the three-way combination contained in ADL's initial report.

Upon review of the foregoing arguments of the parties, we find that EUA's Motion should be granted and the revised ADL testimony will be allowed into the record. What weight, if any, that we ascribe to the revised testimony is addressed elsewhere in this decision.

H. *Summary and Conclusion*

[13] After due consideration of the extensive record developed in this proceeding and the argument proffered by counsel, the commission has determined that EUA's petition should be denied.

RSA 374:33 provides in part that a public

utility holding company may acquire the stock of any other public utility doing business in New Hampshire only if the commission finds that such acquisition is lawful, proper and in the public interest. Accordingly, EUA has petitioned the NHPUC for a determination that the tender offer for the common stock of UNITIL is lawful, proper and in the public interest.

EUA's acquisition of common shares of UNITIL is contingent upon, among other things: 1) the valid tender to EUA of a number of shares of UNITIL's common stock which would represent at least a majority of the outstanding common stock, which tender is not withdrawn prior to the expiration of the offer; and 2) the granting of all regulatory approvals necessary in order to acquire the shares of UNITIL, including *inter alia* the approvals of this commission and the United States Securities and Exchange Commission (SEC). The SEC's review of the proposed transaction will consider, among other things, whether such acquisition will serve the public interest by tending towards the economical and efficient development of an "integrated public-utility system."

Thus, we note that were the commission to grant EUA's petition to acquire the shares of UNITIL, it would still be necessary for EUA to obtain voluntary tender of the common stock of at least a majority of UNITIL's shareholders. Whether there is a price that would be mutually acceptable to both UNITIL shareholders and EUA is unknown. EUA would further have to demonstrate to the SEC that the proposed acquisition would be economical and efficient.

As developed in detail in the foregoing sections of this report, our analysis involves comparing the two companies to ascertain whether the public would suffer any "harm" from the acquisition. Under this standard, we would approve the proposed transaction unless the public experiences a net loss.

The record in this proceeding supports a finding that although EUA may offer near-term benefits to UNITIL ratepayers in the areas of power supply and service standards, it has offsetting significant financial exposure as a result of its ownership of EUA power.

EUA's present financial problems could affect its continuing ability to maintain current capabilities, and UNITIL, with appropriate regulatory directives, can reasonably be expected to remedy cited deficiencies. To base our evaluation on a snapshot — whether it be EUA's initial filing prior to discovery and its opportunity to supplement, or UNITIL as it exists in this moment of time — would be to rule based on a distorted and incomplete picture. If we give EUA the benefit of the doubt that it would be able to maintain current capabilities despite its financial difficulties, the appropriate comparison is between what EUA offers and what UNITIL can reasonably be expected to offer by remedying its power supply and service deficiencies. We have serious concerns that given its financial difficulties of record, EUA cannot reasonably be expected to maintain current capabilities. It is a basic tenet of public utility regulation that a financially healthy utility is a prerequisite to the provision of adequate service to the public at reasonable rates over the long term.

Under this standard of comparison, we find that the two companies' power supply and service can be equal, but, on balance, EUA Power's financial exposure yields a net harm to UNITIL ratepayers. Thus, under the "no harm" standard, EUA's petition must be denied.

A comparison of EUA with a future UNITIL that has remedied its power supply and service deficiencies carries a risk that UNITIL will either be unable or unwilling to engage in the

appropriate corrective actions. However, we find it not necessary nor desirable to make our denial of the petition contingent upon certain UNITIL corrective actions in order to ensure that our requirements of UNITIL are realized. The commission has both authority and jurisdiction to require UNITIL to meet the standards specified *supra* and in the accompanying order.

Although there is a risk that UNITIL will not remedy its current deficiencies, this risk is slight and there is the countervailing risk that EUA would not be able to maintain its current level of offerings. We conclude that, on balance, there would be net harm to the public if we were to approve the petition.

Our order will issue accordingly.

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ORDER

Based on the foregoing Report, which is made a part hereof; it is hereby

ORDERED, that EUA's Petition for Approval to acquire the shares of UNITIL Corporation is hereby denied; and it is

FURTHER ORDERED, that UNITIL must consult with staff on the development of a plan for compliance with the requirements stated in the foregoing Report and hereinafter; and it is

FURTHER ORDERED, that said compliance plan must at a minimum include:

(1) A schedule for compliance with the commission order and revised resource planning guidelines consistent with the foregoing Report within 3 months;

(2) A detailed DSM development and implementation plan within 6 months, with implementation scheduled to begin within 9 months;

(3) A complete least cost integrated resource planning filing that fully complies with prior commission orders on UNITIL's least cost planning filings and this order by April 30, 1992;

(4) A plan for remedying customer service deficiencies;

and it is

FURTHER ORDERED, that UNITIL file with the commission a rate design proposal prior to May 15, 1991; and it is

FURTHER ORDERED, that EUA's request for permanent sealing and non-disclosure of certain limited portions of the record as specified in the foregoing report is granted; and it is

FURTHER ORDERED, that EUA's Motion to Incorporate Revised Testimony into the record is hereby granted.

By order of the Public Utilities Commission of New Hampshire this first day of April, 1991.

SEPARATE OPINION OF
CHAIRMAN SMUKLER

I. *INTRODUCTION*

[14] I agree with the majority's conclusions: 1) that EUA's petition cannot be granted at this time; and 2) that UNITIL must remedy deficiencies in the areas of resource planning and service. Indeed, I participated in much of the drafting of the majority opinion. At the end, however, the majority determined that it could not accept the interconnection of the two conclusions and the majority opinion was amended accordingly. Because I believe that an essential element of a proper legal analysis requires the tying of the two conclusions by conditioning the first (*i.e.*, the denial of EUA's petition) on the attainment of the second (*i.e.*, UNITIL's demonstration that it can and will remedy its resource planning and service deficiencies), I am constrained to file this separate opinion.

II. *ANALYSIS*

A. *Legal Standard*

[15-17] The majority's legal analysis is flawed in that it fails to come to grips with the alternative outcome that should result if UNITIL cannot remedy its deficiencies.

The starting place of this analysis must be the matter that was placed before the commission: EUA's petition for approval to acquire shares of UNITIL pursuant to RSA 374:33. Under the statute, the commission is required to engage in an inquiry into whether the proposed acquisition is "... lawful, proper and in the public interest ... ." Presumably, if the commission makes the requisite findings, it will grant a petition and authorize the acquisition of shares. If the commission does not make the specified findings, a RSA 374:33 petition cannot be granted. Where, as here, the commission's findings that the statutory test was not met are dependent on a contingency — that the target utility can and will remedy resource planning and service deficiencies — the denial of the petition should likewise be contingent. Thus, the majority's denial of EUA's petition should have been conditioned on a demonstration by UNITIL that it can and will meet commission requirements to remedy deficiencies and commission approval thereof. The majority's failure to so condition its denial

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will have an adverse effect on both UNITIL customers and UNITIL investors in the unlikely event that UNITIL cannot or does not satisfy the specified commission requirements.[1(44)]

The issue is more important than a mechanical application of the statute. The commission correctly concluded that it should apply the "no harm" test to ascertain whether the granting of the EUA petition is consistent with the public interest. Under this test, the majority found that the interests of UNITIL's investors are outweighed by the harm to UNITIL's customers if UNITIL can equal (or exceed) EUA in the resource planning and service areas.[2(45)] I agree with this finding — the record convinces me that if UNITIL can remedy its resource planning and service deficiencies, the acquisition of UNITIL by EUA would result in net harm to the public caused by the financial exposure of EUA Power. The next rational inquiry, however, is to define the benefit and harm if UNITIL cannot or does not remedy comparative deficiencies. The record convinces me that under that contingency, the acquisition of UNITIL by EUA would result in net benefits to UNITIL's customers. While it is true that denial of a RSA 374:33 petition is mandated if the petitioner cannot satisfy a "no harm" test, it is also true that the granting of a RSA 374:33

petition is mandated if the petitioner satisfies the "net benefit" test.[3(46)] Where net benefit is proved, both customers and investors gain and there can be no rational reason for the commission to prevent the consummation of a proposed transaction. Thus, EUA's petition should be granted if UNITIL cannot or will not remedy its resource planning and service deficiencies.

An additional problem results from the majority's determination to treat the two conclusions independently. The majority recognized that Constitutional due process and New Hampshire statutes require that parties before the commission be provided with notice of the issues to be addressed by the commission. *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062 (1982); RSA 541-A:16, III. The independent treatment of the two conditions forced the majority to defer the imposition of requirements to remedy UNITIL's resource planning and service deficiencies. While the commission can certainly engage in a properly noticed subsequent investigation of UNITIL's resource planning and service, I do not believe we can prejudge the record to be developed under proper notice and the commission requirements that would result therefrom. In any event, as previously noted, such a proceeding would have to be in the context of whether UNITIL crosses the threshold of compliance with the absolute standard of commission requirements, rather than the context of whether UNITIL customers may do better under the EUA benchmark of the relative comparative standard required in a RSA 374:33 proceeding. Thus, the failure to condition the denial of EUA's petition on actions that will remedy UNITIL's resource planning and service deficiencies (compared to EUA) denies customers the assurance that they will attain the incremental level of benefits now offered by EUA beyond the bare minimum needed to satisfy commission requirements. It also implicitly abandons the comparative legal standard required by RSA 374:33 and instead adopts a more absolute standard that inquires into whether the target utility will comply with commission requirements.

B. *Comparison of EUA and UNITIL*

The desire of the majority to avoid the imposition of conditions apparently caused it to water down the discussion of UNITIL's deficiencies, while it emphasized EUA's financial exposure. Under the assumption that UNITIL can and will remedy its resource planning and service deficiencies, I agree with the majority that the financial exposure caused by EUA Power causes harm that requires us to find that the proposed acquisition is not in the public interest. However, I do not believe that the majority report adequately recognizes the seriousness of UNITIL's problems. At the same time, the majority report appears to treat EUA's financial situation under an inconsistent and higher standard.

The seriousness of UNITIL's resource planning deficiencies is starkly highlighted by the fact that supply for the second half of this decade consists almost entirely of combustion

turbine placeholders. Thus, for the period of time when supply is expected to be tightest, UNITIL has presented us with no viable plan to fulfill its obligations. This is exacerbated by UNITIL's lack of demand side programs to address resource requirements in a least cost manner. If this situation is not remedied, UNITIL will be forced to rely on supply options (as distinguished from conservation and other demand options) through "spot market" purchases at a

time when cost will be high. Because the commission must flow through actual purchase power costs to ratepayers, *Appeal of Sinclair Machine Products, Inc*, 126 N.H. 822 (1985), customers directly suffer the consequences of these poor resource planning decisions.

In contrast, EUA offers a defined source of life-of-unit supply well into the next century combined with a significantly more advanced demand-side component. This commitment offers an appropriate hedge against the expected period of tight supply. Given the fact that power supply is the most significant cost component of either utility, I am forced to find that a snapshot comparison favors EUA.

This snapshot comparison is not overcome by EUA's financial exposure. It is true that there are significant risks attendant with marketing EUA Power's share of Seabrook output at a sufficient price. It is equally true that if adverse marketing contingencies materialize, EUA ratepayers will ultimately be negatively affected. While the record reflects that there was disagreement about the extent of the risk, there was no material disagreement about its existence. While I would assign less weight to this risk than the majority

[4(47)] , I do not believe such risk to be *de minimis* and the difference between the majority and myself on this point is not in itself material. The EUA Power financial risk factor is significant enough to compel a finding that an acquisition would result in net harm to the public *ceteris paribus*. I cannot agree, however, with the remaining analysis of the majority which draws adverse determinative inferences from EUA's retained earning and dividend policies.

The majority criticizes EUA and praises UNITIL for retaining a higher percentage of its earnings to invest in capital needs. The majority fails, however, to recognize that UNITIL's resource requirements leave it exposed to a need for significant capital investment, while EUA has, if anything, a surplus of base load capacity and therefore less need for significant capital investment.

The majority's criticism of EUA's dividend policy is equally overstated. I do not mean to imply that I endorse the policies of EUA management in this respect; however, I do believe that we should accord proper weight to the commission's ability to regulate EUA on the issues of concern to the majority. The majority expressed concern that such policies could adversely affect UNITIL's debt to equity ratio because of an increased incentive to borrow. However, the majority did not give due weight to the fact that utility borrowings are fully regulated by the commission. RSA 369; *Appeal of Easton*, 125 N.H. 205 (1984); *see also, New England Telephone & Telegraph Co. v. State*, 98 N.H. 211 (1953) (the commission has the authority to impute a just and reasonable capital structure for ratemaking purposes). Indeed, our control over the issuance of utility debt and equity instruments and our concomitant ability to control capital structure is far stronger than our ability to control resource planning, which depends to a large extent on a FERC regulated UNITIL Power and the market availability of supply and demand options. In view of this, the majority's treatment of the dividend issue leads to an inference that it applied different standards to EUA and UNITIL.

The inference of different standards is further supported by the manner in which the majority treated the issue of the use of depreciation cash for dividends. The majority recognized that RSA 374:11 and 12 prohibit in New Hampshire the practice followed in other jurisdictions that causes

concern, but stated that such a practice "represents a corporate policy that is less favorable to ratepayers' interests than is demanded of New Hampshire utilities." Report at 53. While I do not disagree with this statement, I cannot distinguish this EUA dividend policy from UNITIL management policies that expose customers to a "spot" power supply market at precisely the time when supplies are

Page 268

expected to be tight. I also cannot distinguish this EUA policy (in terms of ratepayers' interests) from UNITIL management's determination to make available only one off-hours telephone line to a commercial answering service, leaving customers exposed to health and safety problems during downed-line and other outage situations. The point here is that both managements have allowed situations to develop that can and will be remedied. The majority could not rationally explain why in its view EUA management deficiencies support a finding of "harm" to the public, while UNITIL management deficiencies do not.

In my view, it is appropriate to accord UNITIL management the opportunity to remedy its resource planning and service deficiencies, but I am not as confident as the majority in UNITIL's ability successfully to take advantage of this opportunity. It may be fair to assume that UNITIL management has always done the best job that it could and, if this is true, the best was not good enough. On the other hand, it is possible that UNITIL management has not yet had the opportunity to perform optimally because it has been preoccupied with the EUA tender offer and has not previously had the benefit of concentrated commission attention to its deficiencies. Thus, the opportunity to remedy deficiencies should be accorded so that we can satisfy ourselves that the EUA promised benefits can indeed be achieved absent the acquisition. However, an opportunity to succeed carries with it the opportunity to fail. Conditioning the denial of EUA's petition protects customers from this contingency.

I. *CONCLUSION*

The foregoing convinces me that it is critical to tie together the commission's two conclusions. Because I would find a net benefit if UNITIL could not or does not remedy comparative deficiencies, I would be compelled to grant the petition under that circumstance. It is unfair to EUA as a petitioner who would have met its burden under that contingency to deny it the relief to which it is entitled. Thus, it is essential to condition denial on UNITIL actions that negate the net benefits of an EUA acquisition, leaving only the harm. Because the majority has declined to so condition its order, I must therefore submit this separate opinion.

FOOTNOTES

[1]We equate "the interests of the regulated utilities" specified in RSA 363:17-a with those of the debt and equity investors in that utility because management has a fiduciary duty to serve those investors.

[2]With respect to ratemaking, the law is clear that investors are not guaranteed a return; rather are guaranteed the *opportunity* to earn a return. *See e.g., Bluefield W. W. & Imp. Co. v. West Virginia P.S.C.*, 262 U.S. 679, P.U.R. 1923D 11 (1923).

[3]For example, it is possible, albeit highly improbable, that in the absence of a compelling state interest the legislature could prohibit the acquisition of a public utility by persons who are members of a suspect class as defined by the United States Supreme Court.

[4]1990 Laws 113:1 amended RSA 374:33 *inter alia* to include public utility holding companies within the terms of the statute. The inclusion of public utility holding companies as an addition to the utility subsidiaries of such holding companies is not material for the purposes of a commerce clause analysis.

[5]AFUDC is a non-cash item representing the estimated composite, cost of debt and a return on equity of funds used to finance construction.

[6]The commission recognizes EUA's commitment that this would not happen absent commission approval. This does not, however, entirely remove risk. EUA management has an incentive to structure transactions to provide it with a market for Seabrook capacity. The burden will be on the commission to examine each transaction to ensure that the interests of UNITIL's ratepayers are protected. Because any contract between UNITIL and EUA Power will not be at arm's length, there is a risk that the record will not be sufficiently developed to allow proper adjudication of all of the issues. The mere devotion of the resources of the commission and parties necessary to either the successful or unsuccessful adjudication of such a proposal also has attendant costs.

[7]We recognize that EUA Power's debt is non-recourse and thus the possibility of adverse financial consequences to the parent corporation resulting from a default are limited. The consequences do exist, however. Even if it is assumed that a bankruptcy court would not disturb the "non-recourse" term of the notes, EUA's equity investment of more than $93.4 million is at risk.

[8]On February 28, 1991, EUA Power filed a

voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code. In a press release, EUA Power stated that at current market prices it will be selling power below its cost and the result would be a negative impact on its earnings. While the Chapter 11 filing of EUA Power is consistent with our analysis, it has not affected it. We recognize that our decision must be based upon the record and cannot be based on facts which have occurred after its closure unless the proper procedural steps are taken to include those facts in the record.

[9]QF stands for Qualifying Facilities under the Public Utility Regulatory Policies Act of 1978 (PURPA) and the New Hampshire Limited Electrical Energy Producers Act (LEEPA), RSA 362-A.

[10]IPP stands for Independent Power Producer. An IPP provides non-utility power, but does not meet the technical requirements necessary to be defined as a QF.

[11]We, of course, recognize that the commission has the authority to compel EUA to comply with this obligation.

[12]We note that as a result of our order approving UNITIL's first attempt at a least cost plan, the commission similarly required UNITIL to provide a detailed demand side assessment as part of its next least cost plan filing. *Re UNITIL Service Corp*., 74 N.H.P.U.C. 357 (1989). Thus, the company was previously aware of the commission's belief that DSM should be integrated with supply side options.

Separate Opinion of Chairman Smukler

[1]Customers will be adversely affected because UNITIL's failure to meet commission requirements will mean that they will not be entitled to the superior resource planning and service offered by EUA under that contingency. Investors will be adversely affected because their ability to sell their shares will be restricted.

[2]In this context, it is important that we are not engaging in an inquiry of whether UNITIL's resource planning and service are or are not adequate under the *absolute* standards of our regulatory requirements. In a RSA 374:33 proceeding, we must engage in a *relative* inquiry of how UNITIL's resource planning and service compare to EUA's. Thus, a finding that UNITIL's resource planning and service are deficient when compared to EUA does not necessarily mean that UNITIL's resource planning and service fail to cross the threshold of meeting commission standards.

[3]On this record, the commission is not confronted with a situation where there is a lack of harm, but no net benefit to customers. Thus, we need not now define what the statute requires under such a circumstance. Here, either UNITIL remedies comparative deficiencies and there is net harm or UNITIL fails to remedy comparative deficiencies and there is net benefit.

[4]For example, I do not believe the majority adequately recognized how the non-recourse nature of the EUA Power debt limits risk. In addition, I would not have cited or relied upon the testimony of Dr. Perl, whose overconfidence in his own prescience undermined the credibility of his analysis.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Eastern Utilities Associates, Inc., DF 89-085, Order No. 19,759, 75 NH PUC 179, Mar. 15, 1990. [N.H.] Re Eastern Utilities Associates/UNITIL Corp., DF 89-085, Order No. 19,768, 75 NH PUC 188, Mar. 23, 1990. [N.H.] Re Eastern Utilities Associates/UNITIL Corp., DF 89-085, Order No. 19,778, 75 NH PUC 207, Apr. 4, 1990. [N.H.] Re Eastern Utilities Associates/UNITIL Corp., DF 89-085, Order No. 19,816, 75 NH PUC 269, May 8, 1990. [N.H.] Re Eastern Utilities Associates/UNITIL Corp., DF 89-085, Order No. 19,843, 75 NH PUC 304, May 28, 1990. [N.H.] Re Eastern Utilities Associates/UNITIL Corp., DF 89-085, Order No. 19,883, 75 NH PUC 382, July 17, 1990. [N.H.] Re Eastern Utilities Associates/UNITIL Corp., DF 89-085, Order No. 19,912, 75 NH PUC 547, Aug. 9, 1990. [N.H.] Re Eastern Utilities Associates/UNITIL Corp., DF 89-085, Order No. 19,922, 75 NH PUC 580, Aug. 22, 1990. [N.H.] Re Eastern Utilities Associates/UNITIL Corp., DF 89-085, Order No. 19,923, 75 NH PUC 583, Aug. 22, 1990. [U.S.Sup.Ct.] Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Comm'n, 262 U.S. 679, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675, June 11, 1923.

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NH.PUC*04/02/91*[27108]*76 NH PUC 272*Indian Mound Water Corporation

[Go to End of 27108]

Re Indian Mound Water Corporation

DE 90-104
Order No. 20,096

76 NH PUC 272

New Hampshire Public Utilities Commission

April 2, 1991

ORDER granting a water utility franchise and approving temporary rates.

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1. RATES, § 249

[N.H.] Effective date — Operation prior to regulation — Water utility. p. 272.

2. CERTIFICATES, § 88

[N.H.] Grant or refusal — Factors considered — Public good standard. p. 273.

3. CERTIFICATES, § 125

[N.H.] Water — Grant or refusal — Factors considered — Approval of State Department of Environmental Services. p. 273.

4. RATES, § 630

[N.H.] Temporary rates — New franchise — Refund or recoupment — Stipulation — Water utility. p. 273.

5. RATES, § 595

[N.H.] Water — New franchise — Stipulation. p. 273.

APPEARANCES: Robert Zimmerman, Esq. on behalf of Indian Mound Water Corporation; Audrey A. Zibelman, General Counsel on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

On June 4, 1990, Indian Mound Water Corporation (the Company) filed a petition to provide water service to a limited area in the Town of Ossipee, New Hampshire and implicitly to establish rates therefore pursuant to RSA Chapter 378. On August 2, 1990, the commission

issued an order of notice setting a prehearing conference for September 25, 1990, to establish a procedural schedule and to address matters on intervention. On September 20, 1990, the Indian Mound Property Association filed a timely Motion To Intervene. At the prehearing conference on September 25, 1990, the Motion To Intervene was granted. The matter of temporary rates was not addressed at the prehearing conference in that the Company had not submitted an appropriate temporary rate request. At the hearing the parties stipulated to a procedural schedule. On November 19, 1990, the commission issued order no. 19,985 accepting the stipulated procedural schedule. On December 5, 1990, by its attorney, Indian Mound requested a hearing on a franchise and temporary rates.

On January 15, a hearing was held before the commission on the issue of temporary rates and a franchise. The Company prefiled its testimony on both issues. The parties stipulated to a temporary rate level of $100.12 per year to be billed quarterly in arrears. At the January 15th hearing the parties presented the provisions of the attached stipulation concerning the temporary rate level to the commission. The parties orally agreed to recommend the issuance of a franchise pending receipt of the requisite letters from the New Hampshire Department of Environmental Services and the Town of Ossipee.

[1] Pursuant to previous commission decisions, a public utility is not allowed to charge rates for the provision of service until it has obtained a franchise. See *Re Southern New Hampshire Water Company, Inc*., 74 NHPUC 304 (1989); *Re Quin-Let Trust*, 74 NHPUC 415 (1989). Indian Mound Corporation has

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complied with these orders since the Company has requested a franchise and temporary rates pursuant to a petition for permanent rates.

II. *Commission Analysis*

A. Franchise

[2, 3] RSA 374.22 and RSA 374.26 provide that the commission shall not issue a franchise unless it would be for the public good. The public good standard requires the petitioning utility to demonstrate, *inter alia*, the legal, technical, managerial and financial expertise to operate a public water utility and the acquiescence of the municipality in which the franchise is located. See e.g., *Re Pennichuck Water Works, Inc*., 73 NHPUC 279 (1988). In addition, RSA 374:22, III specifically requires the approval of the Department of Environmental Services, Water Supply and Pollution Control Division (WSPC) and Water Resources Division (Water Resources).

Indian Mound Corporation has supplied the commission with letters from WSPC and Water Resources indicating their support for the grant of a franchise.

On January 30, 1991, the commission received a letter indicating the selection of the Town of Ossipee have no objection to a franchise being granted or rates set.

In regard to the legal, technical, managerial and financial expertise of the petitioner to own and operate a public water utility the commission notes that Indian Mound Corporation has been providing water service to its customers since 1989 without complaint, the Company has retained a professional operator licensed by the Department of Environmental Services, and

retained legal counsel for this proceeding.

Based on these facts the commission will grant the requested franchise in that area of Ossipee known as Indian Mound Water Corporation and more particularly described as follows:

> Those lots bordering Ossipee Lake Drive, Weetamoe Road, Lovewell Lane, Cold Spring Circle, Fairway Drive, Ossipee Lake Drive, Lattie Lane, Leisure Loop, Woodland Drive, Pequaxet Road, Golf View Drive, Deer Run Road, Pine Land Road and Forest Lane in the Town of Ossipee.

B. Temporary Rates

[4, 5] In regard to the request for temporary rates pursuant to RSA 378:27, staff, the petitioner and interveners have stipulated to a flat rate fee of one hundred dollars and twelve cents ($100.12) per year to be billed for the duration of the proceeding, quarterly in arrears in that the customers are not currently metered.

Because the temporary rates are based on annual operation and maintenance costs and are subject to recoupment or refund at the time of a permanent rate order, the commission will reconcile any over or under collection of rates at that time. See RSA 378:29, RSA 378:30. The commission, therefore, approves the attached stipulation between staff, the petitioner and the intervener as the result appears just and reasonable.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report and attached stipulation which is made a part hereof; it is hereby

ORDERED, that Indian Mound Water Corporation be and hereby is granted a franchise to conduct business as a public water utility in that area of Ossipee, New Hampshire described in the foregoing report; and it is

FURTHER ORDERED, that Indian Mound Water Corporation be, and hereby is, granted temporary rates in the amount of $25.03 per quarter effective the date of this order; and it is

FURTHER ORDERED, that a copy of this report and order be served on the Town of Ossipee via first class mail to provide said commission with notice of this order.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1991.

AGREEMENT

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1.0 This agreement is entered into on this sixteenth day of January, 1991 between Indian Mound Water Corporation (Petitioner), Indian Mound property Owners Association (Intervenor) and the Staff of the Public Utilities Commission (Commission) for the purposes and subject to the terms and conditions hereinafter stated.

2.0 *Introduction*: Pursuant to RSA 374:22, on June 7, 1990, Indian Mound Water Corporation filed a petition to provide water service to a limited area in the Town of Ossipee,

New Hampshire, in a development known as Indian Mound.

Pursuant to RSA 541:A:16 and PUC Rule 203.05 a prehearing conference was held at the Commission at 8 Old Suncook Road, Concord, New Hampshire on the twenty-fourth day of September, 1990, to establish a procedural schedule and to address matters of intervention. At the scheduled prehearing conference, the motion to intervene filed by Indian Mound Property Association was granted.

On November 19, 1990, the Commission issued Order 19,985 which adopted the schedule agreed to by the parties for the purpose of establishing a hearing on the franchise and permanent rates. The Company submitted testimony and supporting documentation concerning the revenue level for Indian Mound Water Corporation on December 4, 1990. Staff will stipulate, based upon a review of the documentation submitted, that Indian Mound Water Corporation has the financial, managerial and technical ability to provide water service in the proposed service area. The Company estimated total annual operation and maintenance costs for the Indian Mound Water Corporation System at $10,532.00 or $164.56 per customer.

Staff has estimated annual operation and maintenance costs at $9,411.46 or an annual water rate of $100.12 per customer for temporary rate purposes. Staff's schedule is attached.

At the December 4 meeting and subsequent discussions with the Company it was agreed that the staff level of operating and maintenance expense at $9,411.46 was just and reasonable for temporary rate purposes.

Staff's estimated operating and maintenance expenses are based on actual company data and expenses used in similar small water companies.

3.0 *Rate Structure*: It is agreed that as a temporary rate the Company shall be allowed to charge each residential customer a flat annual fee of $100.12 billed *Pro-Rata* in arrears on a quarterly basis, effective the date of the issuance of a temporary rate order in this proceeding.

4.0 *General Conditions*: This agreement is subject to the following conditions:

4.1 The agreement shall be promptly presented to the Commission for approval, and approval shall be issued without delay.

4.2 The making of this agreement shall not be deemed in any respect to constitute an admission by any party that any allegation in these proceedings other than those specifically agreed to herein is true and valid.

4.3 The making of this agreement establishes no principles or precedent in any other proceeding or investigation.

4.4 The Commission approval of this agreement does not establish any principles or precedents.

4.5 The Commission approval of this agreement shall not in any respect constitute determination as to the merits of any allegations made in this rate proceeding.

4.6 This agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not approve it, the agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose.

4.7 This agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

4.8 The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participation in any such discussion, and are not to be used in any manner in connection with this proceeding or

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otherwise.

IN WITNESS THEREOF, the parties fully authorized agents have reviewed this agreement.

Indian Mound Water Corporation
Robert Zimmermann, Esq.
Staff of Public Utilities
Commission by its attorney
Audrey A. Zibelman
General Counsel

Indian Mound Property Owners Association by its attorney
Paul A. Savage, Esq.

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

INDIAN MOUND WATER CORPORATION
ESTIMATED OPERATION & MAINTENANCE EXPENSES
TEMPORARY RATES

COST OF POWER ($1,587/68 = $23.34 × 94)		$2,193.79
(ELECTRIC BILLS OF $1,587 FOR THE PERIOD OCT 89 THRU NOV 90 WAS BASED ON 68 CUSTOMERS - WHEN COMPLETELY BUILT OUT THERE WILL BE 94 CUSTOMERS.)		
PRODUCTION EXPENSES:		
SUPERINTENDENCE	$1,040.00	
DES PERMIT FEE	590.00	
WATER TESTING:		
WELLS ($475 × 2/3) ($475 per well every 3 years. The Company has 2 wells.)	316.67	
BACTERIA TEST ($8 × 12) ($8 per system per month. The Company has one system.)	96.00	
MAINTENANCE	1,000.00	
TOTAL PRODUCTION EXPENSES		3,042.67
CUSTOMER ACCOUNTING (Bill heads, postage, telephone, rent)		1,200.00
ADMINISTRATIVE & GENERAL:		
PROFESSIONAL FEES (PUC Annual report, IRS returns, and ongoing accounting services)		2,300.00

PUC ASSESSMENT	40.00
FRANCHISE TAX (Secretary of State)	275.00
PROPERTY TAXES	360.00
TOTAL ESTIMATED OPERATION & MAINTENANCE EXPENSES	$9,411.46
ANNUAL FLAT RATE PER CUSTOMER (Based on FULL build out - 94 customers)	$100.12

NOTE: THIS RATE WILL PROVIDE THE COMPANY WITH $6,808.29 IN REVENUES FROM THE CURRENT 68 CUSTOMERS.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Indian Mound Water Corp., DE 90-104, Order No. 19,985, 75 NH PUC 720, Nov. 19, 1990.

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[Go to End of 27109]

Re Public Service Company of New Hampshire

DR 91-025
Order No. 20,097

76 NH PUC 276

New Hampshire Public Utilities Commission

April 3, 1991

ORDER authorizing an electric utility to offer its high pressure sodium vapor lighting rate to state highway departments.

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1. RATES, § 362

[N.H.] Electric — Street and outdoor lighting — High pressure sodium vapor lighting program. p. 277.

2. RATES, § 322

[N.H.] Electric — Peak load reduction — High pressure sodium vapor lighting program. p. 277.

3. CONSERVATION, § 1

[N.H.] Electric — High pressure sodium vapor lighting program. p. 277.

APPEARANCES: Gerald Eaton, Esquire for Public Service Company of New Hampshire; Robert Barry and Greg Placey for the New Hampshire Department of Transportation; Tom Frantz for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

On March 1, 1991, Public Service Company of New Hampshire (PSNH or Company) filed revised tariff pages to NHPUC No. 31 - Electricity to reflect its proposal to expand the Outdoor Lighting Energy and Maintenance Service High Pressure Sodium Rate ML-HPS to State highway departments. Currently, Rate ML-HPS is only available to municipalities served by PSNH. A duly noticed hearing was held March 28, 1991, at 10:00 a.m. at the offices of the New Hampshire Public Utilities Commission.

II. *Position of The Parties*

The Company presented one witness, Ms. Lydia Richardson. Ms. Richardson explained that the proposed tariff changes will allow the New Hampshire Department of Transportation (NHDOT) to convert the less energy efficient existing luminaires to energy efficient high pressure sodium vapor (HPS) lighting. Since February 1, 1984, Rate ML-HPS has been, due to PSNH personnel limitations, available solely to municipalities. During that time period PSNH has converted most of the larger municipalities to HPS lighting. Over 23,000 mercury, incandescent and fluorescent lights have been converted. PSNH Ex. 2. PSNH estimates the conversion has reduced demand by 1,644 kW.

The Company indicated it will continue to convert mercury vapor luminaires to HPS for the remaining municipalities, but that it now has the personnel to convert approximately 1,500 streetlights for NHDOT to HPS. Ms. Richardson presented an exhibit that estimated conversion will save NHDOT $13,100 per month and reduce monthly energy consumption by 21,652 kWh. PSNH Ex. 5. The estimated payback period for NHDOT for the approximately $450,000 conversion is 34 months. Ms. Richardson explained that NHDOT could

Page 276

reduce its up front costs by aiding PSNH at the conversion sites. Mr. Barry indicated NHDOT's willingness to contribute to the safe and efficient management of traffic at the work areas. Ms. Richardson stated that conversion will reduce PSNH's load by 93 kW, thereby helping PSNH ratepayers.

The Company and Mr. Barry both noted that they would like approval in time for NHDOT and the Company to enter into a service agreement before the summer work schedule begins. Mr. Barry also stated that NHDOT has received a $25,000 grant from the Governor's Energy Office

for HPS conversion.

On cross-examination, Ms. Richardson indicated that it was her belief that the Company has not undertaken any marketing studies concerning opening up the rate to customers other than the municipalities or NHDOT.

Staff expressed its support for the Company's petition and stated the support of the Office of Consumer Advocate (OCA) as requested by the OCA. The staff did not believe the Company's responses to record requests necessitated postponement of Staff's support.

Mr. Barry expressed NHDOT's strong support for the Company's proposed tariff changes.

The Company indicated it would comply with the five record requests in a timely manner.

III. *Commission Analysis*

[1-3] The Commission supports cost effective energy conservation, which we believe to be in the public good. The record in this case clearly indicates that the Company's proposal will save energy. It will also save NHDOT money, thereby benefiting the people of New Hampshire. Conversion to HPS lighting will reduce the Company's peak load, which will benefit the Company's ratepayers. We will therefore approve the Company's petition.

We would, however, encourage the Company to reexamine its lighting tariffs to encourage the cost effective conversion to HPS lighting.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Company's petition to expand Rate ML-HPS to include the State Highway Departments be, and hereby is, approved effective April 1, 1991; and it is

FURTHER ORDERED, that PSNH submit the following properly annotated tariff pages:

1st Revised Pages 64, 66 and 67
5th Revised Page 65;

and it is

FURTHER ORDERED, that PSNH conduct and provide to the Commission a study within 120 days which evaluates allowing customers other than the municipalities and the NHDOT to benefit from ML-HPS type options in its lighting tariffs.

By order of the Public Utilities Commission of New Hampshire this third day of April, 1991.

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NH.PUC*04/03/91*[27110]*76 NH PUC 277*EnergyNorth Natural Gas Company, Inc.

[Go to End of 27110]

C OKing 27110 a14R1C916

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Re EnergyNorth Natural Gas Company, Inc.

DR 90-183
Order No. 20,098

76 NH PUC 277

New Hampshire Public Utilities Commission

April 3, 1991

ORDER amending a prior order to authorize a gas distribution utility to implement temporary rates as of the date of execution of the prior order, but retaining the designated issuance date of the order to preserve the full 20 day period within which an aggrieved party may file for reconsideration.

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1. RATES, § 249

[N.H.] Formalities — Effective date — Temporary rate order — Execution date versus issuance date. p. 278.

BY THE COMMISSION:

ORDER

WHEREAS, EnergyNorth Natural Gas Company, Inc., having filed on March 19, 1991 a request to amend the date of Order No. 20,081 from March 12, 1991 to March 11, 1991; and

WHEREAS, said Order No. 20,081 was executed on March 11, 1991 but was not released in final form until March 12, 1991; and

WHEREAS, the March 12, 1991 effective date has an adverse financial impact on the company; and

WHEREAS, granting the request could prejudice potential movants for reconsideration by curtailing the one day the twenty day time period within which an aggrieved party may file a Motion for Consideration pursuant to RSA 541:3; it is hereby

[1] ORDERED, that Order No. 20,081 is hereby amended so as to authorize EnergyNorth Natural Gas Company, Inc. to file and implement temporary rates for service rendered on and after March 11, 1991, which set temporary rates at existing rate levels; and it is

FURTHER ORDERED, that Report and Order No. 20,081 remains in full force and effect in all other respects, including the designated issuance date of March 12, 1991, thereby preserving full appellate rights of any affected party pursuant to RSA 541:3.

By order of the New Hampshire Public Utilities Commission this third day of April, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-183, Order No. 20,081, 76 NH PUC 147, Mar. 12, 1991.

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NH.PUC*04/04/91*[27111]*76 NH PUC 278*T'n'T Enterprises

[Go to End of 27111]

Re T'n'T Enterprises

DE 91-037
Order No. 20,099

76 NH PUC 278

New Hampshire Public Utilities Commission

April 4, 1991

ORDER denying a request for a waiver of rules regarding the accessibility of customer-owned, coin-operated telephones to disabled individuals.

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1. SERVICE, § 456

[N.H.] Telecommunications — Customer-owned, coin-operated telephones — Accessibility to disabled individuals — Denial of waiver. p. 279.

BY THE COMMISSION:

ORDER

T'n'T Enterprises, by and through Trudi S. Rutherford, filed a request for a waiver to N.H. Admin. Code Puc 408.06 regarding the authorized height above the ground of a customer owned coin operated telephone (COCOT) located at Capital Farms/Milano Pizza, at 3 Broadway in Concord, New Hampshire, telephone number (603)224-2602, owned by T'n'T Enterprises, Certification No. 90-103; and

WHEREAS, the COCOT in question is installed at a height of 61 inches from the ground to the top of the pay phone; and

WHEREAS, the only reason cited in support of the request for waiver was that the "site was in place" when the present COCOT was installed and the petitioner had no prior knowledge of height requirements; and

WHEREAS, N.H. Admin. Code Puc 408.06 requires the coin slot of a coin operated telephone to be no higher than 48 inches from

the floor; and

WHEREAS, a comparable rule promulgated by the Governor's Commission on Disability, N.H. Admin. Code Han 409.03, requires that the highest operating part of the coin operated telephone be no more than 54 inches above the floor; and

WHEREAS, the New Hampshire Public Utilities Commission is in the process of amending N.H. Admin Rule Puc 408.06 to conform with the requirements of N.H. Admin Rule Han 409.03; and

[1] WHEREAS, until such conformance is achieved, N.H. Admin. Code Puc 408.06 will be waived only when the coin operated telephone in question either conforms with N.H. Admin. Rule Han 409.03 or if the COCOT owner can demonstrate that an appropriate waiver from the Governor's Commission on Disability has been obtained; it is hereby

ORDERED, that the request by T'n'T Enterprises for a waiver of N.H. Admin. Code Puc 408.06 is hereby denied.

By order of the New Hampshire Public Utilities Commission this fourth day of April, 1991.

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NH.PUC*04/04/91*[27112]*76 NH PUC 279*New England Telephone Company

[Go to End of 27112]

Re New England Telephone Company

DE 91-036
Order No. 20,100

76 NH PUC 279

New Hampshire Public Utilities Commission

April 4, 1991

ORDER authorizing a change in the name of an existing, tariffed telecommunications service offering. Remote Call Forwarding is changed to REMOTELINE service to eliminate customer confusion between Call Forwarding Service and Remote Call Forwarding service.

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1. SERVICE, § 433

[N.H.] Telecommunications — Change in tariff name — Remote Call Forwarding to

REMOTELINE — Elimination of customer confusion — Local exchange carrier. p. 279.

BY THE COMMISSION:

ORDER

[1] On March 25, 1991, New England Telephone, submitted a filing for effect on April 24, 1991, seeking to change the name of an existing tariffed offering, Remote Call Forwarding to REMOTELINE service; and

WHEREAS, the objective of the change is to remove existing customer confusion between Call Forwarding Service and Remote Call Forwarding Service; and

WHEREAS, there is no revenue effect associated with this filing; it is hereby

ORDERED, that New England Telephone Company Tariff Pages:

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

NHPUC No 75
Supplement No. 38 Title Page
                  Original Page 1
Part A, Section 6 Revision of Table of
                    Contents Page 1
                  Fourth Revision of Page 4
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be and hereby are approved.

By order of the New Hampshire Public Utilities Commission this fourth day of April, 1991.

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NH.PUC*04/04/91*[27113]*76 NH PUC 280*Contel of New Hampshire, Inc.

[Go to End of 27113]

Re Contel of New Hampshire, Inc.

DE 91-034
Order No. 20,101

76 NH PUC 280

New Hampshire Public Utilities Commission

April 4, 1991

ORDER approving a telecommunications tariff filing that corrects a mistake in the list of exchanges as stated in a prior tariff filing.

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1. SERVICE, § 445

[N.H.] Telecommunications — Exchange areas and boundaries — Tariff correction. p. 280.

BY THE COMMISSION:

ORDER

On March 1, 1991, Contel of New Hampshire, Inc., (the Company) submitted a tariff filing seeking to correct the stated list of exchanges in Antrim's Local Service Area, to include the Granite State Telephone Company exchange of Washington; and

WHEREAS, Antrim customers can currently call the Washington exchange on a toll-free basis, and have been able to do so at least since 1974; and

[1] Whereas the object of this petition is to correct a mistake in the Company's 1986 filing submitted in compliance with NHPUC Order No 18,129, in Docket DR 85-219, dated February 21, 1986; it is hereby

ORDERED, that the proposed Contel of New Hampshire, Inc., General Exchange Tariff, NHPUC No. 11,

Section 3

Sixth revised Sheet 2,
be, and hereby is approved.

By order of the New Hampshire Public Utilities Commission of New Hampshire this fourth day of April, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Continental Teleph. Co. of New Hampshire, DR 85-219, Order No. 18,129, 71 NH PUC 130, Feb. 21, 1986.

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NH.PUC*04/04/91*[27114]*76 NH PUC 280*Claremont Gas Corporation

[Go to End of 27114]

Re Claremont Gas Corporation

DR 90-167
Order No. 20,102

76 NH PUC 280

New Hampshire Public Utilities Commission

April 4, 1991

ORDER revising the winter cost of gas adjustment rate of a gas distributor. The revised rate reflects the fact that the cost of propane was lower than projected.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Winter cost of gas adjustment — Rate revision — Gas distributor. p. 281.

BY THE COMMISSION:

ORDER

WHEREAS, Claremont Gas Corporation on March 22, 1991 filed a revised tariff, 130th Revision, Page 12-2, N.H.P.U.C. No. 9 — Gas, issued February 28, 1991, to change the winter cost of gas adjustment from $0.3754 per therm, before the franchise tax, to $(0.0279) per therm;

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and

WHEREAS, the revised rate is based upon actual data for the period from November 1, 1990 through January 31, 1991 and projections of costs for the remainder of the winter period; and

WHEREAS, the cost of propane during the winter period has been lower than projected and a reduction in the cost of gas adjustment is warranted; it is

[1] ORDERED, that Claremont Gas Corporation revise its cost of gas adjustment to $(0.0279) per therm for all bills rendered on and after April 1, 1991; and it is

FURTHER ORDERED, that Claremont Gas Corporation refile an annotated 130th Revision, Page 12-2, N.H.P.U.C. No. 9 — Gas with an April 1, 1991 effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1991.

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NH.PUC*04/08/91*[27115]*76 NH PUC 281*New Hampshire Electric Cooperative, Inc.

[Go to End of 27115]

Re New Hampshire Electric Cooperative, Inc.

DR 90-227
Order No. 20,104

76 NH PUC 281

New Hampshire Public Utilities Commission

April 8, 1991

ORDER denying a request by an electric cooperative for emergency rate relief. Commission refuses to further extend emergency rate relief granted by prior order finding that the

precipitating cause of the emergency — i.e., a threat by the United States Rural Electrification Administration to force the cooperative into bankruptcy by exercising its right to impose personal liability on the board members of the cooperative for outstanding debt to the federal government — had been avoided independent of the emergency rate relief.

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1. RATES, § 631

[N.H.] Emergency rates — Refusal to further extend relief — Electric cooperative — Waiver of creditor rights — United States Rural Electrification Administration. p. 282.

APPEARANCES: Merrill & Broderick by Mark Dean, Esquire, for New Hampshire Electric Cooperative, Inc.; Gerald Eaton, Esquire, for Public Service Company of New Hampshire; Day, Berry & Howard by Robert Knickerbocker, Esquire and William Ardinger, Esquire for Northeast Utilities Service Company; Robert Cushing, Jr. for the Campaign for Ratepayers' Rights; McLane, Graf, Raulerson and Middleton by Richard Samuels, Esquire, for New Hampshire Business and Industry Association; Harold Judd, Esquire, and Diane German, Esquire, Attorney Generals Office, for the State of New Hampshire; Office of the Consumer Advocate by Michael Holmes, Esquire, Joseph Rogers, Esquire, and Kenneth Traum; Audrey Zibelman, Esquire and Susan Chamberlin, Esquire for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On December 21, 1990, the New Hampshire Electric Cooperative, Inc., (NHEC or the Cooperative) petitioned the Commission for emergency relief pursuant to RSA 378:9. The NHEC requested a rate increase of approximately 27% of all retail rates. The Cooperative alleged that the emergency was caused by the demand of the United States Rural Electrification Administration (REA) that the Cooperative file for the requested increase by December 21, 1990 and receive affirmative relief from the Commission by January 21, 1991, as a condition to the REA's continuing waiver of its right to impose personal liability

on its board members and directors for the company's outstanding debt to the federal government under 37 U.S.C. Sec. 3713(b).

In *Re NHEC*, DR 90-227, Report and Order No. 20,049 (January 28, 1991) the commission engaged in a three part inquiry and concluded that the record supported a finding that the threatened action of the REA precipitated an emergency for the Cooperative. The principal evidence of an emergency was the testimony of the Cooperative's manager Jon Bellgowan that if the REA did not extend the Sec 3713(b) waiver beyond January 21, 1991, the Cooperative would immediately seek protection under Chapter 11 of the United States Bankruptcy Code. Order No. 20,049 supra at 9. Mr. Bellgowan also testified that a comprehensive settlement of the parties'

dispute was imminent and due to a pending proceeding at the Federal Energy Regulatory Commission (FERC), would occur no later than February 6, 1991. The commission found that the threat of bankruptcy coupled with the assurance of an imminent settlement justified the granting of emergency relief and granted NHEC's petition for rate relief effective February 6, 1991, subject to the condition that the parties reach "a comprehensive settlement before the effective date of the rate increase ... ". *Id*. at 14.

On February 6, 1991, the State of New Hampshire filed a motion to extend the effective date of the emergency rate increase until February 8, 1991, to aid the comprehensive settlement process. Public Service Company of New Hampshire, Northeast Utilities, the Cooperative and the REA concurred in the motion. On February 6, 1991 the commission granted the requested modification. Order No. 20,049 (February 6, 1991).

On February 8, 1991, Northeast Utilities and PSNH on behalf of themselves and the State of New Hampshire Attorney General's Office and the New Hampshire Electric Cooperative, Inc. filed a Joint Report Of The Parties As To Status Of Settlement. The parties requested a continuance of the February 8, 1991, deadline until the close of business on February 11, 1991, based on the continuing need for time to negotiate. The Report stated that the REA agreed to extend its waiver of liability pursuant to 31 U.S.C. Section 3713(b) until the requested deadline if the Commission granted the extension. The Commission granted the extension and ordered a hearing for February 13, 1991, to obtain information on the status of the negotiations. Order No. 20,054 (February 11, 1991).

II. *Commission Analysis*

[1] In Order No. 20,049, the Commission found that the threatened action of the REA to withdraw the so-called Sec. 3713(b) waiver and force the Cooperative to file for bankruptcy protection was an emergency for the Cooperative. The Commission relied on the testimony of Mr. Bellgowan that a comprehensive settlement was imminent and by granting the requested relief NHEC's bankruptcy could be avoided. However, at the commission's February 13, 1991, hearing, REA witness Thomas Heath testified that the Sec. 3713(b) waiver was independent of the Commission's action in this docket, thus removing the precipitating cause of the emergency. Mr. Heath also testified that any settlement among the parties was highly unlikely.

On the basis of this testimony, the commission finds the original rationale for granting the emergency rate relief is no longer extant. The Cooperative's requested relief was dependent upon the threatened conduct of the REA and it has not posited additional justification for its petition. We, therefore, refuse the request to extend the deadline to achieve settlement and will close 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 New Hampshire Cooperative's request for emergency rates is denied and Docket DR 90-227 is closed.

By order of the Public Utilities Commission of New Hampshire this eighth day of April 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-078, DR 90-227, Order No. 20,054, 76 NH PUC 82, Feb. 11, 1991. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-227, Order No. 20,049, 76 NH PUC 72, Jan. 28, 1991.

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NH.PUC*04/08/91*[27116]*76 NH PUC 283*Claremont Gas Light Company, a Subsidiary of Synergy Corporation

[Go to End of 27116]

Re Claremont Gas Light Company, a Subsidiary of Synergy Corporation

DE 90-161, DE 89-236, DE 87-256
Order No. 20,105

76 NH PUC 283

New Hampshire Public Utilities Commission

April 8, 1991

ORDER imposing a fine of $25,000 on a gas distribution utility for failure to provide adequate service to its customers. The utility is directed to improve its training, and to maintain adequate emergency, operation, and maintenance plans.

Commission warns utility management that it will monitor marketing efforts carefully to evaluate load growth, customer density, and customer satisfaction.

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1. FINES AND PENALTIES, § 5

[N.H.] Grounds for imposition — Inadequate service — Failure to correct deficiencies — Inadequate training — Gas distribution utility. p. 288.

2. GAS, § 5.1

[N.H.] Safety — Training procedures — Emergency plans — Gas distribution utility. p. 288.

3. GAS, § 7

[N.H.] Operation — Service deficiencies — Gas distribution utility. p. 288.

4. SERVICE, § 334

[N.H.] Standards — Inadequate service — Gas distribution utility. p. 288.

5. SERVICE, § 123

[N.H.] Duty to service — Adequate service within scope of duty — Gas distribution utility. p. 288.

APPEARANCES: for the petitioner, R. Stevenson Upton, Esquire; for the staff, Eugene F. Sullivan, III, Esquire: Jacqueline Lake Killgore, Esquire for EnergyNorth Natural Gas, Inc.

BY THE COMMISSION:

REPORT

On September 28, 1990, the commission, on its own motion, opened docket DE 90-161 to investigate incidents and problems at the facilities of Claremont Gas Light Company. It directed Claremont to show cause why it should not lose its franchise to serve in the Claremont area pursuant to, *inter alia,* RSA Chapter 371, and it further directed Claremont to show cause why they should not be fined or subject to criminal prosecution pursuant to, *inter alia,* RSA 365:41 or RSA 365:42.

In its order of notice, the commission referenced a November 19, 1987 incident which "... caused an outage affecting approximately 800 to 900 customers, most probably due to improper implementation of emergency plans and procedures and a lack of training", which was the subject of docket DE 87-256. The order of notice also referenced an incident in December of 1989, " ... in which (Claremont) was unable to operate its equipment due to a

lack of training and improper maintenance at the plant ..." which was the subject of commission docket DE 89-236.

The issues in each docket were addressed separately in public hearings which were duly noticed and which addressed the specific issues in each proceeding. It has become clear, through an analysis of the testimony and exhibits, that the issues in the three dockets are inextricably intertwined. This report and order will address all pertinent issues of the three proceedings and will dispose of the three proceedings.

DE 87-256

On December 28, 1987, this commission opened docket DE 87-256 upon being advised of an incident on November 19, 1987 which caused an outage affecting approximately 800 to 900 customers. Staff recommended a formal investigation of the incident. The commission ordered Claremont to submit a written report by January 8, 1988 explaining in detail all of the circumstances concerning the November 19, 1987 incident and requesting specifically:

1) a chronological sequence of events leading up to and following the incident, such as the time of the outage, the time and type of response, the time of light-up, start and finish and other related events.

2) the cause of the outage, including diagrammatic description.

3) the number and type of Claremont employees involved in the incident, including

their responsibilities.

4) the number of customer service interruptions.

5) a list of all actions required by emergency plans in effect pursuant to 49 CFR Section 192.615.

6) an explanation as to whether each required procedure under the emergency plans was carried out and, if so, by whom.

7) if any applicable procedures in the emergency plans were not carried out, an explanation of why not.

8) a list of public officials contacted regarding the incident including the time and method of contact.

9) a list of company officials responsible for compiling the report, including their position with Claremont.

10) a list of all customer complaints received by Claremont relating to the outage.

11) any known customers who had gas leakage into structure due to the incident or due to Claremont action.

12) a list of any non-residential customers impacted by the outage.

13) the results of any surveys of large customers taken due to the outage.

14) a list of any customers that were contacted by Claremont during or after the outage, regarding the outage and the reason for the contact.

On December 17, 1987, the company submitted a report (Exhibit 1) in response to the commission's order.

On January 11, 1988, the company submitted a supplemental report (Exhibit 2) regarding the incident. Submitted with the supplemental report was a document entitled "Claremont Gas Light Company, Adoption of Safety Rules, Operation, Maintenance, and Emergency Plans" (Exhibit 3).

The company's witness confirmed the extent of the outage and testified that the company's own investigation revealed that local responsible people "... didn't seem to be aware of the full operation of the plant and the consequences". (Tr. p. 15) The company committed to implement a " ... complete review of our emergency plans and procedures." (Tr. p. 15) The company's analysis revealed (1) a need to review emergency plans and procedures; (2) a review to see whether some type of standby system may be needed on the vaporization capacity and in the air mix plant; and (3) there may need to be some emergency valves in the system to be able to segregate it. The company further confirmed a need for a better definition of what an interruption of service is, and admitted their own reservations about the quality of training at that point in time. (Tr. p. 16)

R1C.in 1m Following the hearing, the commission issued its order no. 19,242 which, acknowledging the company's admission of a lack of training and improper implementation of their

emergency plans, ordered Claremont to submit a report to the commission by December 15, 1988 explaining in detail their completed training programs, studies and reviews of emergency plans and procedures, and directed that the report should address, but not necessarily be limited to, the following information:

1) submit revised emergency plans and procedures showing modifications and/or updates and date this was completed.

2) training personally given by regional manager to all employees with dates and list of attendees.

3) results of system analysis and copy of map that was developed to show load characteristics and determination of valves sectionalizing of system and include the dates the company completed each of these studies.

The commission's order was dated November 29, 1988.

On December 15, 1988, Claremont filed a copy of the report required by the commission's order no. 19,242. Staff's analysis found the report inadequate. Accordingly, the commission, by order no. 19,424, issued June 6, 1989, directed that a hearing be held 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 day that the violation persists. That hearing was continued at the request of both Claremont and the staff in order to give Claremont an opportunity to submit a revised emergency plan. No action has been taken to date by this commission with regard to the company's emergency plans.

DE 89-236

On December 7, 1989, the commission opened another docket upon notification by its Gas Safety Engineer that operational problems had occurred in the Claremont system. Preliminary investigation had revealed equipment failures which prevented satisfactory operation of the plant, and further revealed a shortage of available propane supply.

Its order no. 19,633 directed the company, *inter alia*, to immediately initiate all necessary steps to place the plant into full winter operating mode, and to provide around-the-clock manning of the plant by trained operating staff to ensure that any further malfunctions are detected and corrected quickly. It required that management provide daily telephonic briefing to the commission's engineering staff on the progress of corrective action.

Hearings were held on December 15, 1989, December 27, 1989, and January 5, 1990. By its order no. 19,884, the commission fined Synergy Corporation $1,000 for failure to keep adequate supplies of propane on hand at its Claremont facilities. It also ordered Synergy Corporation to engage a consultant approved by this commission to analyze its Claremont facilities and to make recommendations as to what improvements needed to be made in maintenance, plant, operations, and staff. It directed that the consultant should, within 60 days of the date of its order (December 17, 1990), supply the commission with said recommended improvements and reasonable dates upon which accomplishment of said recommended improvements should be made.

On August 17, 1990, Synergy Gas Corporation filed with this commission a list of

consultants for the commission's consideration.

DE 90-161

On September 28, 1990, the commission opened a third docket, DE 90-161, on the basis that it become aware, through its Gas Safety Engineer, of "... disturbing incidents and problems with the Claremont facilities." The docket was opened in order to investigate and for Claremont to show cause why it should not lose its franchise and be fined or subject to criminal prosecution pursuant to, *inter alia*, RSA 365:41 or RSA 365:42.

A hearing on the merits was scheduled on October 12, 1990. That hearing subsequently became a procedural hearing, at which November 19, 20, 29 and 30 were proposed for hearings on the merits.

Staff called three company employees as witnesses.

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Mr. Barry Raymond, Claremont's foreman, testified in response to cross-examination that a flexible connector which was to be installed between a pump and a tank was not installed as of a date which the company advised the commission staff it had been installed, but was rather installed by him at a later date. He also testified that leaks which had been identified by consultants between July 21 and July 31, 1990 and which, according to NHPUC rules, were required to be repaired immediately, were not initially investigated until " ... a week later or maybe longer." (Tr. 1-20) Of the eleven class I leaks which were identified by the consultant, there were two which had not yet been fixed at the date of the hearing (November 30, 1990) (Tr. 1-26). An additional leak, which had been identified as a class II leak in the July survey, was repaired on the date of the hearing. Gas was found in the cellar of a house near the leak, which, by commission regulation, automatically reclassified it as a class I leak. Mr. Raymond confirmed a staff exhibit confirming that the last of the class I leaks was initially investigated, but not repaired, on August 27, 1990 — more than three weeks after the survey. (Tr. 1-28)

The witness testified that the consultant also identified seven class II leaks. (Tr. 1-30) Class II leaks must be repaired within six months of identification, by commission rules. (Tr. 1-29) None had been repaired at the date of the hearing. (Tr. 1-29) The company does not have manpower to make the repairs within the time requirements of the commission's regulations. (Tr. 1-30)

Mr. Raymond also testified to a lack of training regarding the testing of leaks. (Tr. 1-32) Bar holes were driven in available cracks in the road and on the side of the road (Tr. 1-31-32) rather than every five to ten feet directly over the main. Repair schedules were left to Mr. Raymond without management guidance. (Tr. 1-34) Tests for gas accumulation were made with a Combustible Gas Indicator which was calibrated for natural gas, not the propane/air mix gas of the Claremont system. (Tr. 1-37)

Mr. Raymond was given no training or schooling regarding forced propane air systems during 1990. (Tr. 1-37) Monthly safety meetings did not focus on any utility oriented issues. (Tr. 1-38)

In response to questions, Mr. Raymond testified that operating and maintenance manual

information was out-dated. The listed branch manager is no longer with the company. The plant manager no longer holds that title. The phone numbers were incorrect. The listed office manager is no longer with the company. (Tr. 1-39-40)

Mr. Raymond testified that on July 4, 1990, alarms were activated which indicated a malfunction at the plant. Mr. Raymond responded and found extinguished pilot lights in sensing equipment. Relighting the pilots solved the problem. (Tr. 1-44) The alarm was reactivated later in the day and Mr. Raymond's corrective actions again corrected the problem. (Tr. 1-45) Mr. Raymond learned the following day that the alarm had gone off a third time during July 4 and that the manager had gone to the plant and turned the alarm off. (Tr. 1-45) Since the alarm is connected to high and low pressure controls in addition to those controls over which Mr. Raymond had taken earlier action, the shutting off of the alarm eliminated any opportunities for the company to be aware of high or low pressure problems. (Tr. 1-48)

Joint testing fluid was not available to servicemen. (Tr. 1-57) For approximately two months, spark-proof flashlights were not available until shortly before the hearing. (Tr. 1-60)

Customers who requested gas service were denied service. (Tr. 1-64) At the request of higher management, personnel were told to identify all the serial numbers of all utility appliances in the Claremont facility so that they could ultimately be converted to pure propane. (Tr. 1-60) One customer, BankEast, was denied utility service even though underground gas mains extended along three of the four sides of BankEast's lot.

Mr. Robert Shambo, a service man for Claremont, testified that he was assigned to respond to the leaks that had been identified by the consultant. Approximately two weeks after the survey was concluded (Tr. 2-8) he was aware that the company's operation and maintenance manual required response to class I leaks within 24 hours, and mentioned that to his branch manager:

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Q. And what was the response, if you recall?

A. The response was more or less "we'll get to it".
(Tr. 2-9)

Mr. Shambo reiterated Mr. Raymond's earlier testimony that safety meetings did not have anything to do with utility operations:

Q. What did they deal with?

A. Delivery trucks, tanks, driving, DOT physicals, nothing really relating to what Barry and I were doing.
(Tr. 2-19)

Mr. Shambo also testified to a lack of repair clamps as spare parts. The three or four bell clamps for four inch mains were used up as repairs were made, and personnel were sent to Keene Gas for additional repair clamps. (Tr. 2-24) Some repair clamps were made up of bits and piece clamps found at the plant. (Tr. 2-27)

Mr. Shambo testified that in June, 1990, he was called to 24 Severance Street for report of a gas odor in a cellar. No spark-proof flashlight was available, so a regular flashlight was used.

(Tr. 2-29) A leaking service was found in the basement. Doors and windows of the cellar were opened. Stoppers were installed in the service line to halt the flow of gas. As repairs in the cellar were attempted, the service line broke off at the foundation wall. Mr. Shambo's recommendation to dig up the service outside the foundation was denied by management. Stoppers were the sole preventive measure to prevent gas from entering the cellar. Repairs were made about two weeks later. (Tr. 2-35) A back-hoe which would normally have been available for digging the service pipe was in Concord doing retail work at the time of the incident. (Tr. 2-35)

Mr. Shambo explained that on the night that the leak was discovered, he had suspicions that there was also a leak in the service pipe outside the building. (Tr. 2-36) No further tests were made until the pipe was repaired two weeks later, although he offered that night to dig up the service.

A leak was discovered by the consultant near St. Joseph's Church during the June, 1990 survey. Repairs were not made until November, 1990, even though it was classified by the consultant as a class I leak. Periodic testing of the area was done prior to the leak being repaired.

Mr. Robert Egan, General Manager, Keene Gas Corporation, was called as a staff witness. Mr. Egan and his crew were called to assist Claremont in leak repairs. He confirmed that the CGI's (combustible gas indicators) used by Claremont revealed different readings than the properly calibrated CGI's used by Keene. (Tr. 2-71) He also testified that expansion plugs used to stop the leak at Severance Street should have been used only as a preliminary safety tool, and that using them for capping of a service contributed to an unsafe condition. (Tr. 2-75)

Kenneth Wood, Gas Engineer for the Department of Public Service, State of Vermont, was called as a staff witness. Mr. Wood testified as to why explosion-proof flashlights are necessary when working in an explosive atmosphere. He also testified to the effectiveness of therm meters and calorimeters in measuring the heat content of gas.

Mr. Richard G. Marini, the commission's Gas Safety Engineer, testified that the company had reclassified the leaks reported by Survey and Analysis from class I to class III. (Tr. 2-133) The particular leak, near St. Joseph's Church, was downgraded in September because the company was unable to find the leak, and then regraded to class I in October based on further reports. His concern for the frequent regrading caused him to visit the site to investigate their leak reporting procedures. (Tr. 2-133)

Mr. Marini testified that Claremont is not in compliance with applicable gas safety regulations. Class I leaks were not investigated and repaired promptly. (Tr. 2-136) Personnel do not have the knowledge or supervisory authority to do the work that is supposed to be done. (Tr. 2-138) Training is inadequate. (Tr. 2-139) Leaks were improperly investigated. (Tr. 2-140) Personnel need training. (Tr. 2-142)

On January 14, 1991, a further hearing was held. Company witnesses testified as to the internal reorganization that had taken place within Claremont Gas Light Company. There

are now a new regional manager, area manager and branch manager. The regional manager and branch manager have technical expertise in propane operations. (Tr. 3-12) There is a

corporate commitment to keep the utility going. (Tr. 3-20) A door to door marketing program has been developed. (Tr. 3-20) The company is committed to addressing leaks promptly and to meet the requirements of the commission's rules in terms of repairing leaks. (Tr. 3-29) Training is a major goal. (Tr. 3-31) The reactivation of unused services will be pursued. (Tr. 3-34) Local personnel have been given specific authority to react to emergencies. Management is committed to providing guidance, support and oversight of operations. (Tr. 3-51) Personnel have been assigned to work solely for Claremont Gas. (Tr. 3-61) A two-tiered training program has been developed consisting of in-house training as well as outside vendor training. (Tr. 3-62) In excess of $36,000 has been paid to outside vendors for leak repairs. Emergency notification lists have been updated. Approximately $110,000 has been paid to outside vendors for leak repairs. Emergency has been invested in improvements. (Tr. 3-108)

Mr. Richard Marini was recalled at the January 23, 1991 hearing to review the actions taken by the company and to make recommendations for commission actions.

Mr. Marini testified (Tr. 4-40) that revisions to the emergency plans which were the subject of docket DE 87-256 are now adequate, and that it is no longer necessary to maintain an open docket. A system analysis has been made (Tr. 4-41), valve sectioning has been investigated and generally, the addition of additional valves is unnecessary. (Tr. 4-42) Both the emergency plan and the system analyses are live documents which require continued evaluation. (Tr. 4-43) Training is being addressed and Mr. Marini recommended that the company submit a schedule detailing the training program for the ensuing year. (Tr. 4-43)

Since the central issue of docket DE 89-236 revolved around training, and since training has been addressed by the company, he recommends the closing of that docket. (Tr. 4-46) There has been a 200% change in the facilities themselves; issues of corrosion, problems with regulators, and maintenance on other facilities at the plant have been addressed. (Tr. 4-46) The modifications to the plant, which the company estimates to have cost over $100,000, have been responsive to the commission's earlier concerns about the inadequacy of the plant. (Tr. 4-47)

Mr. Marini also recommended the closing of docket no. DE 90-161 on the basis that the company has demonstrated its commitment to resolve the deficiencies noted in that docket. His scheduled visits to Claremont — expected to be two to three times a month (Tr. 4-50) — will allow the commission to monitor the company's operations.

Mr. Marini recommends that the company be fined upwards of $25,000 (Tr. 4-52) in view of the violations that have been identified during the proceedings of these three dockets.

Commission Analysis

[1-5] In view of the testimony and evidence presented in docket DE 87-256, DE 89-236 and DE 90-161, the commission finds that Claremont Gas Light Company has failed to render adequate service to its customers. The incident on November 19, 1987 caused an outage affecting approximately 800-900 customers, and the commission finds that the outage was caused by inadequately trained personnel who were inadequately supervised by local, regional, and corporate management. A substantial contributing factor to the lack of service was the unacceptably poor state of operational readiness of the plant which was caused by improper construction procedures and improper maintenance operations. The company's own investigation revealed that local responsible people were not aware of the full operation of the plant. The

company admitted to a need to review emergency plans and procedures. The company admitted to a lack of quality training for personnel.

The commission finds that the company lacked adequate knowledge of its plant operations during times of crisis to maintain the system without assistance from non-company personnel. Indeed, during a severe cold period in

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December, 1989, the company relied heavily on the technical assistance of the gas safety engineers of the New Hampshire Public Utilities Commission and Vermont Department of Public Utilities, as well as representatives of Keene Gas Corporation, in order to assure continued operation. The commission notes that these state agency and company personnel spent well over 24 continuous hours at the plant to prevent its failure during that critical period.

The commission ordered the company to update its emergency plans. The filed plans were clearly copied from a company in another jurisdiction, since there were geographic references which did not relate to Claremont, and provisions which did not relate to Claremont's operations. Emergency notification lists remained inadequate and outdated throughout the pendency of the three proceedings.

The company demonstrated extreme irresponsibility in its unresponsiveness to repairs to underground gas leaks, and it demonstrated an unacceptable unawareness — at its best — or a deliberate ignorance — at its worst — of this commission's rules and regulations.

As a result of the commission's opening of docket DE 90-161, the company has demonstrated a new willingness and ability to respond to its problems. It has changed management at all levels. It has reassigned personnel within the company to address continued plant problems and to separate their responsibilities from an affiliate LPG distribution company. It has expended over $100,000 in plant repairs. It has updated its emergency plan and operating and maintenance plans. It has committed to training programs which will address the specific deficiencies noted throughout these proceedings.

Based on an evaluation of the deficiencies which have been thoroughly analyzed in this proceeding and based on the company's clear failure to address deficiencies as they have occurred, the commission will impose a fine of $25,000. This fine shall be payable on or before April 15, 1991.

The commission finds that in view of the actions taken by the company, as demonstrated on the record, that it is not appropriate to take further action to transfer the franchise of Claremont Gas Light Company to another gas utility. Although it found persuasive evidence that the company had failed to render adequate service to its customers, it is also satisfied that the company has taken corrective action which leads it down a path of providing continuous adequate service in the future. We will hold the company to its commitments to improve its training, to maintain adequate emergency plans and operating and maintenance plans, and to pursue further system analyses to maintain an adequate level of service.

We find staff's recommendation to provide conditional approval unnecessary. Staff will continuously monitor Claremont's operations through plant visits and inspections. We find those

visits adequate to keep the commission aware of any departures from the company's commitments, should they develop.

We will require the company to file with this commission, by May 1, 1991, a schedule of training activities specifically addressing the operation of the Claremont plant and facilities. We will direct the engineering staff to monitor their training program in a manner which will satisfy it that the training is accomplishing its objectives. We will rely on the staff to advise us if it does not.

The commission has not in the past, and will not here, impose its regulatory judgement over management issues. However, it warns the company that it will monitor its marketing efforts carefully to evaluate load growth, customer density and customer satisfaction. An analysis of the company's annual reports reveals a continuous trend of reduced customers. An apparent policy by Claremont's parent corporation to maximize its opportunities to serve its bulk propane customers, frequently at the expense of its regulated customer load, causes a reallocation of high operating costs to a reduced customer base which result in higher rates to regulated customers, and at the same time denies regulated gas service to customers who may desire it. The company has a responsibility to its customers to provide adequate and reasonable service at just and reasonable rates. We expect them to do so.

Our order will issue accordingly.

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ORDER

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

ORDERED, that Claremont Gas Light Company be fined $25,000, to be payable on or before April 15, 1991, for failure to provide adequate service to its customers and/or failure to adequately respond to deficiencies addressed in these proceedings; and it is

FURTHER ORDERED, that a training plan shall be submitted to this commission by May 1, 1991, which shall set forth the training be conducted, at a minimum, during the remainder of calendar year 1991; and it is

FURTHER ORDERED, that dockets DE 87-256; DE 89-236 and DE 90-161 are hereby closed.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas & Light Co., DE 87-256, Order No. 19,242, 73 NH PUC 480, Nov. 29, 1988. [N.H.] Re Claremont Gas & Light Co., DE 87-256, Order No. 19,424, 74 NH PUC 179, June 6, 1989. [N.H.] Re S/G Propane of New Hampshire, Inc., DE 89-236, Order No. 19,633, 74 NH PUC 471, Dec. 7, 1989. [N.H.] Re S/G Propane of New Hampshire, Inc., DE 89-236, Order No. 19,884, 75 NH PUC 388, July 17, 1990.

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NH.PUC*04/08/91*[27117]*76 NH PUC 290*New England Telephone Company

[Go to End of 27117]

Re New England Telephone Company

DE 90-150
Order No. 20,106

76 NH PUC 290

New Hampshire Public Utilities Commission

April 8, 1991

ORDER authorizing a telephone local exchange carrier to introduce selective blocking service. The service would allow customers to block access from their telephone lines to existing inter- and intrastate "900" area code audiotex services.

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1. SERVICE, § 449

[N.H.] Telecommunications — Audiotex — Selective blocking — "900" area code — Local exchange carrier. p. 291.

2. RATES, § 553

[N.H.] Telecommunications — Audiotex services — Selective blocking — "900" area code — Local exchange carrier. p. 291.

BY THE COMMISSION:

ORDER

On September 4, 1990, New England Telephone (NET or the Company) submitted a filing providing for the introduction of Selective Blocking Service (SBS), for effect on October 4, 1990; and

WHEREAS, this service would allow customers to block existing inter and intrastate 900 area code Audiotex services, and would also enable customers to block Audiotex services in the future, if they were offered on the following area codes, 976, 940 and 550; and

WHEREAS, the commission was already in the process of drafting rules governing intrastate pay per call services; and

WHEREAS, NET filed a substitute tariff on November 7, 1990 deleting references

pertaining to the blocking of any service not presently available to New Hampshire customers; and

WHEREAS, NET's substitute filing provides for 900 blocking service on both an intrastate and interstate basis, and further requires that the one party residence and single line business customer be charged $5.00 and $10.00 respectively for each Selective Blocking Service change; and

WHEREAS, the incremental costs associated with one party residence and single line business, SBS service are $9.22 and $15.03 respectively; it is hereby

[1, 2] ORDERED, that NET's proposed substitute, tariff be amended to specify that Selective Blocking Service be available for all calls placed to information services with a 900 area code; and it is

FURTHER ORDERED, that NET's proposed substitute tariff be clarified by replacing references to `initial changes in a customer's blocking arrangement' with `initial activation of a customer's blocking arrangement'; and it is

FURTHER ORDERED, that the charge for successive Selective Blocking Service changes for one party residence and single line business be set at the incremental costs of $9.22 and $15.03 respectively; and it is

FURTHER ORDERED, that since NET currently does not have the capability to presumptively block at the interstate level, that proposed tariff pages PART A, Section 6 Page 11, be withdrawn; and

FURTHER ORDERED, that the Company submit a Selective Blocking Service compliance filing incorporating the above mentioned changes.

By order of the New Hampshire Public Utilities Commission this eighth day of April, 1991.

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NH.PSC*04/09/91*[50951]*75 NH PUC 211*AT&T Communications of New Hampshire

[Go to End of 50951]

75 NH PUC 211

Re AT&T Communications of New Hampshire

DE 90-002
Order No. 19,779

New Hampshire Public Service Commission

April 9, 1991

ORDER establishing procedures for the review of a proposal by the dominant telephone interexchange carrier for authorization to provide intrastate custom network services.

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1. MONOPOLY AND COMPETITION, § 94 — Telecommunications — Custom network services — Intrastate toll competition — Dominant interexchange carrier.

[N.H.] Parties to a proceeding to review a request by the dominant telephone interexchange carrier for authorization to provide intrastate custom network services were directed to prepare memoranda on whether the request should be addressed on its individual merits or in the context of a generic investigation of whether to allow intrastate toll competition. p. 212.

2. SERVICE, § 468 — Custom network services — Intrastate toll competition — Dominant interexchange carrier.

[N.H.] Pending a determination as to whether a request by the dominant telephone interexchange carrier for authorization to provide intrastate custom network services should be addressed on its individual merits or in the context of a generic investigation of whether to allow intrastate toll competition, the commission ordered that the proceeding should go forward on parallel tracks. p. 212.

APPEARANCES: AT&T Communications of New Hampshire by Harry M. Davidow, Esquire; New England Telephone Company by John E. Reilly, Esquire; Granite State Telephone, Inc. and Merrimack County Telephone Company by Frederick J. Coolbroth, Esquire; Contel of New Hampshire, Inc. and Contel of Maine, Inc. by Thomas C. Platt, III, Esquire; Union Telephone Company by Dorothy M. Bickford, Esquire; Long Distance North of New Hampshire by David William Jordan, Esquire; Residential Ratepayers of New Hampshire by Michael W. Holmes, Esquire, Office of the Consumer Advocate; Staff of New Hampshire Public Utilities Commission by Eugene F. Sullivan, III, Esquire.

By the COMMISSION:

REPORT ON PREHEARING
CONFERENCE OF MARCH 5, 1990

This docket was opened on January 4, 1990 on receipt of a petition filed by AT&T Communications of New Hampshire (AT&T) for authority to provide any telecommunications service, as a public utility pursuant to RSA 362:2, within the State of New Hampshire. In its petition, AT&T specifically requests authority, effective February 5, 1990, to offer custom network services in the form of AT&T MegaCom Wats, AT&T MegaCom 800, AT&T 800 Readyline and AT&T MultiQuest.

The commission issued order No. 19,691 on January 31, 1990, suspending the filing and scheduling a prehearing conference to address matters of intervention and procedural matters at two o'clock in the afternoon of March 5, 1990 at the commission offices

INTERVENTIONS

Timely motions to intervene were filed on behalf of New England Telephone (NET), Granite State Telephone, Inc. (Granite State), Merrimack County Telephone Company (Merrimack),

Contel of New Hampshire, Inc. (Contel of N.H.), Contel of Maine, Inc. (Contel of Maine), Union Telephone Company (Union), and Long Distance North of New Hampshire, Inc. (LDN). The Office of the Consumer Advocate appeared as a party of right. There were no objections filed to any of the motions to intervene. With the exception of the motion from Long Distance North, the commission granted all motions to intervene. The commission
deferred consideration of the LDN motion because LDN did not appear at the hearing.

PROCEDURAL SCHEDULE

[1, 2] The staff of the public utilities commission, on behalf of all parties except for AT&T, proposed a procedural schedule to address whether or not this proceeding should be expanded into a generic investigation of intra-state competition issues and, if so, what the scope of that generic investigation should be. The proposed schedule is as follows:

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

April 10, 1990 All parties to file memoranda with
               affidavits on issue of scope
May 1, 1990    Reply memoranda with affidavits to be
               filed by all parties
May 14, 1990   Hearing on the issue of scope
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AT&T argued that it would be prejudiced if the generic issues in this docket were addressed before the commission addressed the merits of AT&T's specific request for authorization to offer custom network services in the form of AT&T MegaCom Wats, AT&T MegaCom 800, AT&T 800 Readyline and AT&T MultiQuest. AT&T argued that the process of considering the very broad generic issue of whether to allow intra-state toll competition could hold the proposed services "hostage for 1 or 2 or 3 years." 1 Tr. at 12. AT&T did not object to the briefing schedule proposed by the other parties but requested that the staff investigation of the proposed custom network services begin immediately so that the proceedings would go forward on two parallel tracks.

The consumer advocate argued that the commission should address the competition issue first. Allowing even limited competition on an interim basis could adversely impact the revenues of other telephone companies in this state, and thus could ultimately and adversely affect ratepayers. The consumer advocate further argued that the competition issues in this docket affect the integrity of telephone company franchises. He suggested that the commission first "look at the whole concept of competition" before examining AT&T's specific requests. Tr. 20.

The commission directed the parties to begin their task of preparing their memoranda on the issue of scope for submission by April 10, 1990, with affidavits to the extent there are factual matters and to otherwise follow the procedural schedule recommended by the parties. The memoranda should address:

1. Should the commission embark on a generic path with respect to competition?

2. If the commission decides that it should embark on a generic path, how should the inquiry be structured?

3. What will the issues be in such an inquiry?

4. What are the facts that will be necessary to adjudicate those issues?

5. How should AT&T's requests for specific authorizations be addressed in these proceedings?

Except as provided below, we will defer further considerations of scope until we have had an opportunity to review the submitted memoranda.

At the March 5, 1990, prehearing conference, the commissioners deferred decision on AT&T's request to address the specific services proposed to be offered by AT&T on a parallel track with the generic issues. Having since had

an opportunity to deliberate on this question further, we hereby direct the parties to address the issue of AT&T's proposed offerings in their initial discovery requests. Subsequent to the hearing on scope, to be held on May 14, 1990, the commission will determine whether the proceedings should continue to go forward on parallel tracks, as requested by AT&T, or proceed on some other basis.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is hereby incorporated by reference, it is hereby

ORDERED, that the parties follow the procedural schedule and directives set forth in the foregoing report; and it is

FURTHER ORDERED, that the parties, in their initial data requests, address AT&T's specific request for authority to offer custom network services in the form of AT&T MegaCom Wats, AT&T MegaCom 800, AT&T 800 Readyline and AT&T MultiQuest; and it is

FURTHER ORDERED, that all timely motions to intervene filed in this docket are granted with the exception of the motion to intervene filed by Long Distance North regarding which decision has been deferred without prejudice.

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1990.

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NH.PUC*04/10/91*[27118]*76 NH PUC 291*Blanchette v. Birchview by the Saco

[Go to End of 27118]

Blanchette
v.
Birchview by the Saco

DC 91-012
Order No. 20,107

76 NH PUC 291

New Hampshire Public Utilities Commission

April 10, 1991

ORDER ruling that a water utility must bear the cost of disconnecting a customer from a gravity main and reconnecting him to a high pressure main. The work was done on property owned and maintained by the utility and its tariff had no provision for charging the customer for such work.

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1. SERVICE, § 188

[N.H.] Burden of cost — Correction of improper connection — Connection to high pressure main — Water utility. p. 292.

2. SERVICE, § 285

[N.H.] Connections — Duty to install, own, and maintain — Water utility. p. 292.

3. SERVICE, § 473

[N.H.] Water — Equipment and facilities — Connection to mains — Correction of improper connection — Cost responsibility. p. 292.

4. RATES, § 308

[N.H.] Disconnection and reconnection charges — Correction of improper connection — Cost responsibility — Water utility. p. 292.

BY THE COMMISSION:

I. *Procedural History*

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On January 30, 1991, Mr. Philip Blanchette filed a complaint with the New Hampshire Public Utilities Commission ("commission") against Birchview by the Saco ("Birchview"). Mr. Blanchette had complained of low water pressure and often no water at all to Birchview's superintendent, Mr. Ed Holmes for about two years. Over time, Birchview discovered that Mr. Blanchette's water line was incorrectly attached. The cost of reconnecting the line was $655 and Birchview billed Mr. Blanchette for it. Mr. Blanchette refused to pay the bill stating that none of the excavation work was done on his property and he was not responsible for the incorrect water line attachment. Birchview disconnected his service for lack of payment. Mr. Blanchette filed a complaint with the commission and the service was reinstated the following day pending a Commission decision. A hearing was scheduled for February 6, 1991.

II. *Positions of the Parties*

A. *Mr. Blanchette*

Mr. Blanchette claims he has been having problems with his water pressure for approximately two years. He testified that at times he had no water at all and had notified the

development supervisor, Mr. Ed Holmes, repeatedly, of the problem. Mr. Holmes tried at various times to increase the pressure by adjusting valves and looking for leaks. Although Mr. Holmes repaired the problem temporarily, it always returned. Eventually Birchview fixed the problem by tying into the pressure main instead of the gravity feed line. The excavation work to tie in the line was done across the street from Mr. Blanchette's property; none of it was done on his property. Mr. Blanchette testified that he pays an annual fee of $120 for his water service.

Mr. Blanchette believes that Birchview should pay the cost of reconnecting his line because he was not at fault for the problem and the work to repair it was not done on his property.

B. *Mr. Carlton Bacon, President of Birchview by the Saco.*

Mr. Bacon believes that the customer should bear the cost of the reconnection because the original connection was made incorrectly by the previous owner without notification or inspection by Birchview. Birchview also does not have a record of whether or not the original owner paid the initial hook up fee of $600. Mr. Bacon argues that if the proper procedure to connect the house had been followed in the first place the problem would not have occurred and since the work done did fix Mr. Blanchette's water problems he, not Birchview, should bear the cost.

C. *Staff*

Staff's position is that the costs involved to reconnect the customer to the system should be borne by the utility in that there is no provision under the existing tariff to charge the customer for the work done beyond his property line for fixing low pressure problems. (Tariff for Water Service in Bartlett, New Hampshire, p. 5)

III. *Commission Analysis*

[1-4] We find that the tariff does not support charging the customer for excavation work done to reconnect the customer to the proper pressure line. Although Birchview may not have been aware of the improper connection and not have had an opportunity to inspect it, the responsibility for the repair does not shift to the present owner, Mr. Blanchette. Nor does the fact that Birchview cannot verify whether or not the original hook up fee was paid by the prior owner cause the cost to shift to Mr. Blanchette. The repair work was done on property owned and maintained by Birchview; therefore, Birchview must bear the cost of reconnecting the service.

Our order will issue accordingly.

ORDER

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

ORDERED, that the utility, Birchview on

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the Saco, bear the $655 cost of disconnecting the customer, Mr. Blanchette, from a gravity main and reconnecting him to a high pressure main because there is no provision in the tariff for charging a customer for this work.

By order of the Public Utilities Commission of New Hampshire this tenth day of April, 1991.

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NH.PUC*04/11/91*[27119]*76 NH PUC 293*New England Telephone and Telegraph Company

[Go to End of 27119]

Re New England Telephone and Telegraph Company

DR 85-182, DR 89-010
Order No. 20,109

76 NH PUC 293

New Hampshire Public Utilities Commission

April 11, 1991

ORDER authorizing a telephone local exchange carrier to implement an interim reduction to its rates for Wide Area Telephone Service (WATS) and 800 Service. Commission finds that the interim relief is an appropriate response to its decision authorizing interim competition in the intrastate telecommunications market.

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1. RATES, § 593.1

[N.H.] Intrastate toll service — Wide area telephone service — 800 service — Interim rate reduction — Response to competition — Local exchange carrier. p. 293.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competition toll service — Intrastate service — Wide area telephone service — 800 service — Local exchange carrier. p. 293.

BY THE COMMISSION:

ORDER

On March 27, 1991, New England Telephone and Telegraph (NET) filed proposed tariff revisions to its Private Line, WATS and 800 Service to comply, in part, with Report and Order No. 20,082 (March 11, 1991), in which the Commission decided the rate design portion of this docket. In NET's filing the Company requested a waiver of the Commission rules on public notice, N.H. Administration Rules PUC 1601.05(j), to permit the tariff changes to become effective on April 10, 1991. The Commission, having reviewed the proposed tariff changes, states and finds as follows:

WHEREAS, it is the policy and practice of this Commission to exact full compliance with Commission orders in a timely fashion in order to protect the interests of utilities and their customers; and

[1, 2] WHEREAS, the Commission will allow utilities to depart from timely full compliance only when the utility establishes good cause for departure and the Commission finds that such departure is in the public good; and

WHEREAS, NET's proposed rate reductions of WATS and 800 Service are being filed as an immediate, interim response to the Commission's authorization of interim competition in Dockets No. DE 90-002, *et al*; and

WHEREAS, NET asserts that interim relief is necessary because, at their current levels, the relationship between price and cost for WATS and 800 Service would cause customers to choose carriers other than NET for these services on the basis of uneconomic competition; and

WHEREAS, the Commission's decision to allow interim competition pending resolution of the generic investigation of competition in the telecommunications industry could not have been foreseen by NET; and

WHEREAS, NET states that it is willing to accept any revenue shortfall that occurs as a consequence of this interim change in the rates of WATS and 800 Service; and

WHEREAS, NET's desire to reduce its rates in response to the commission's authorization for interim competition does not excuse the company from expeditiously complying with the Report and Order No. 20,082; and

WHEREAS, the company has

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demonstrated that under the particular circumstances present in this proceeding, accepting the new rates on an interim basis forwards the Commission's decision to study the impact of competition on telecommunication customers during the pendency of the generic investigation and is in the public good; it is hereby

ORDERED that NET's proposed interim rate reduction of WATS and 800 Service are accepted effective the date of this order; and it is

FURTHER ORDERED that the Commission's acceptance of these interim rates is expressly subject to the company's filing tariffs in full compliance with the Commission's Order No. 20,082, by May 10, 1991.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1991.

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NH.PUC*04/11/91*[27120]*76 NH PUC 294*New England Telephone and Telegraph Company

[Go to End of 27120]

Re New England Telephone and Telegraph Company

DR 89-010, DR 89-182

Order No. 20,110

76 NH PUC 294

New Hampshire Public Utilities Commission

April 11, 1991

ORDER clarifying a prior order that approved changes in the rate design of a telephone local exchange carrier (LEC) and adopted an incremental cost study performed by the LEC as the basis for rate design.

Commission reaffirms its determination that existing rates for basic exchange service were recovering incremental costs and contributing towards common overhead. Its also lets stand its directive requiring that all LEC bottleneck services provided to Centrex customers must be offered on an unbundled basis at the same rates as charged to customers using private branch exchange systems.

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1. RATES, § 553

[N.H.] Telecommunications rate design — Basic exchange service — Incremental cost recovery — Contribution to common overhead — Local exchange carrier. p. 295.

2. RATES, § 566

[N.H.] Telecommunications rate design — Private branch exchange service — Centrex — Unbundling — Cost justification — Local exchange carrier. p. 295.

3. MONOPOLY AND COMPETITION, § 84

[N.H.] Telecommunications — Anticompetitive pricing — Bottleneck services — Centrex service — Unbundling — Local exchange carrier. p. 295.

APPEARANCES: as previously noted.

BY THE COMMISSION:

I. *Introduction*

In Report and Order No. 20,082, dated March 11, 1991, the New Hampshire Public Utilities Commission (commission), *inter alia*, adopted the parties' revised Incremental Cost Study as its cost standard for New England Telephone and Telegraph Company (NET) for ratemaking purposes. The commission required NET to file tariffs in compliance with specified Rate Design changes and closed docket DR 85-182, the Generic Rate Structure Investigation. On April 1, 1990, NET filed a Motion for Clarification or in the Alternative, Rehearing, on three aspects of Order No. 20,082. Specifically, NET sought clarification that: a) when establishing pricing guidelines through the application of the Equi-Proportional methodology, basic exchange services will be incorporated in the closing adjustment and, therefore, basic exchange rates may increase in the future; b) Centrex prices should be re-examined and, if

appropriate, changed in 1993 following the completion of an updated incremental cost study; and c) the structure and level of permanent intra-state access charges will be addressed in the generic competition docket, DE 90-002, et al.

Objections to NET's motion were filed by AT&T Communications of New Hampshire (AT&T), MCI Telecommunications Corporation (MCI) and Long Distance North of New Hampshire, Inc. (LDN). The commission will clarify its Order in the manner set forth below. In all other respects, NET's motion is denied.

II. *Commission Analysis*

[1-3] NET initially seeks clarification/ rehearing on the commission's order concerning the rates of basic exchange service. In Order No. 20,082, the commission accepted NET's recommendation to leave the rates for basic exchange service at their current levels. Based upon its analysis of the incremental cost study and NTS costs, the commission found that basic exchange services are not only recovering their incremental costs, but are also contributing towards common overhead costs.

In its motion, NET seeks clarification that the commission's decision relative to basic exchange rates does not suggest that the Company is foreclosed from seeking to raise those rates in the future. It hardly needs to be said that in finding that basic exchange rates should remain at their current levels, the commission is not precluding NET or others from the opportunity to demonstrate in future proceedings that basic exchange rates should be changed. The commission's determination that basic exchange services are recovering not only their incremental costs but also are contributing towards common overhead costs was based, in part, on our acceptance of the testimony of the company's witness, Mr. Stanley N. Baker. NET is now suggesting that the commission took Mr. Baker's testimony out of context. The company argues that the comparison of incremental costs to average costs is not an "apples-to-apples" comparison. (NET motion at 4, note 2). The Company then asserts that there is no support in the record for the conclusion that the current rates for basic exchange cover its average cost.

The commission found Mr. Baker's testimony relative to the correlation of the incremental cost with average cost of basic exchange service to be credible. If in future proceedings Mr. Baker seeks to supplement this testimony to demonstrate that the incremental cost of basic exchange does not cover the average cost of the service and the commission finds this testimony to be credible, NET will be given the opportunity to change the rates for the service accordingly.

NET is also seeking clarification/rehearing of the commission's order concerning the pricing of Centrex and PBX. In the order, the commission expressed concern that NET, as the monopoly provider, was providing bottle-neck services at discriminatory and anti-competitively inflated rates. The commission noted that the Company had elected not to provide an updated incremental cost study for Centrex service and accordingly, ordered NET to include Centrex in its updated 1993 incremental cost study. In the interim, the commission ordered NET to offer all NET bottle-neck services provided to Centrex customers on an unbundled basis at the same rates to customers using PBX. The commission further found that if any differences in actual services provided to Centrex and PBX customers are reflected in NET's updated incremental cost study,

NET will be able to reflect those differences in rates for those services.

Contrary to NET's argument, Order No. 20,082 does not require NET to change its existing Centrex rates. By requiring NET to unbundle Direct Inward Dialing, Station Number Assignment and Touch-Tone from its Centrex offerings, the commission sought to avoid enabling NET to engage in price discrimination by setting a lower price for monopoly service for customers who will also buy a potentially competitive service offering from NET as opposed to another company. If these three services when priced individually for PBX customers unfairly disadvantaged PBX vendors when they compete with Centrex, customers can be caused to make inefficient and uneconomic choices when choosing between Centrex and PBX.[1(48)] The commission's decision to

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require that all NET bottle-neck services provided to Centrex customers be offered on an unbundled basis at the same rates to customers using PBX systems serves to ensure that the judgement of the marketplace will reflect the relative merits of the competing services. If in fact there is a cost advantage with the provisioning of PBX, this cost advantage should be reflected in an appropriate price advantage, irrespective of whether or not Centrex can compete over that price.

As in the case of basic exchange service, the commission's decision relative to the unbundling of "bottle-neck" Centrex services does not foreclose the company from seeking to alter the price of Centrex or concomitant services in the future. To the extent that the company's updated incremental cost study demonstrates differences in actual services provided to Centrex and PBX customers, the company will be permitted to amend its rates to reflect these differences.

Finally, NET is seeking clarification of the commission's order relative to the establishment of an intra-state access charge. With respect to this issue, the company is correct that the commission's decision relative to access charges does not prevent NET and other parties from addressing the issues of the appropriate level and structure of access charges in the generic competition docket, DE 90-002, et al. Accordingly, rehearing on this issue is not necessary.

Our order will issue accordingly.

ORDER

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

ORDERED, that Report and Order No. 20,082 is clarified as provided in the foregoing Report; and it is

FURTHER ORDERED, that New England Telephone and Telegraph Company's Motion for Clarification and in the Alternative, Rehearing, is hereby denied in all other respects.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1991.

FOOTNOTES

[1]The crux of NET's argument is that if NET must charge itself the same rate for Centrex loop as it charges for PBX trunk, Centrex will be "competitively disadvantaged". To avoid this "competitive disadvantage", NET contends that it is appropriate to price Centrex services in a manner to recover their incremental costs as well as the contribution the company would have received had the customer chosen the PBX system instead. As support for this pricing standard, NET relies on a recent Maryland decision in which a Maryland Commission Hearing Examiner similarly concluded that the Chesapeake and Potomac Telephone Company were not engaging in discriminatory pricing of Centrex services because the contribution supplied by Centrex as a whole equaled the contribution level of PBX. *Re Investigation By The Commission On Its Own Motion Into The Chesapeake and Potomac Telephone Company of Maryland's Rates for Network Access for Centrex Services*, Case No. 8150 (November 23, 1990).

The pricing standard of equal levels of contribution is fundamentally flawed. In a competitive arena, prices should reflect standards of efficiency. Thus, for example, if there is a comparative advantage in the provisioning of PBX trunks relative to Centrex loops, this advantage should be reflected in price. To the extent any price differential causes a customer to choose PBX over Centrex, the customer's conduct is the natural result of economic competition.

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NH.PUC*04/15/91*[27121]*76 NH PUC 297*Public Service Company of New Hampshire

[Go to End of 27121]

Re Public Service Company of New Hampshire

DE 90-018
Order No. 20,112

76 NH PUC 297

New Hampshire Public Utilities Commission

April 15, 1991

ORDER accepting updated avoided cost information filed by an electric utility. The information was required in lieu of a 1990 integrated least cost plan filing, which had been waived by prior order because the utility was in the process of a reorganization and merger. The utility accepted, without prejudice to its position in future proceedings, staff's calculation of long term avoided capacity costs and long term avoided energy costs. Commission states that it expects to resolve methodological disputes regarding calculation of avoided costs as part of its evaluation of the utility's 1991 integrated least cost plan.

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1. ELECTRICITY, § 4

[N.H.] Least-cost planning — Avoided energy costs — Avoided capacity costs — Method of calculation. p. 298.

2. COGENERATION, § 25

[N.H.] Rates — Avoided costs — Energy costs — Capacity costs — Method of calculation — Integrated least cost plan. p. 298.

APPEARANCES: Thomas B. Getz, Esq. for Public Service Company of New Hampshire; M. Curtis Whittaker, Esq. of Rath, Young, Pignatelli and Oyer for Northeast Utilities; James T. Rodier, Esq. for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

Public Service Company of New Hampshire (PSNH) filed a request to defer filing of its Integrated Least Cost Plan on February 1, 1990. Pursuant to a waiver granted by the commission, PSNH supplemented its filing by submitting an executive summary and certain technical attachments on May 31, 1990.

An initial hearing was held on September 24, 1990 to address procedural matters and scheduling. Subsequently, the commission issued Order No. 19,952 adopting the procedural schedule proposed by the parties, granting Northeast Utilities' (NU) Motion To Intervene and placing the Motion of Biomass Intervenors in abeyance.

II. *Positions of The Parties*

Ms. Janet Gail Besser, Utility Analyst for Energy Planning, testified on behalf of staff. Ms. Besser presented and explained a document entitled "Recommendations of The Parties to Close The Proceedings" (see Attachment I appended hereto). Attachment A of the "Recommendations" is entitled "Summary of Avoided Cost-Nominal Dollars". According to Ms. Besser, the document reports to the commission the resolution of the issues in this docket and recommends that this proceeding be closed.

PSNH filed updated information as required by the commission in order no. 19,745 granting it a waiver for its 1990 Least Cost Planning filing. That information included a 1990 projection of the company's long term avoided costs. These long term avoided costs serve as a reference or benchmark for negotiations with qualifying facilities and small power producers. The updated information that PSNH filed also included information on the current status of its demand side management programs and transmission requirements.

The staff issued a number of data requests and met with the company at several technical

sessions where the responses to the data requests were discussed. During those technical sessions, staff and the company discovered that the only issue that needed attention in this proceeding was setting the long term avoided costs. The company's original filing included a calculation of long term avoided costs with which the staff did not agree. After discussing the

staff's concern, the company agreed to make the changes staff requested with no prejudice or precedent to the company's position. The issue in dispute was a methodological one concerning consistency in the calculation of long term avoided capacity costs and long term avoided energy costs.

Ms. Besser explained that the reason for not fully airing all of the issues in the 1990 update is that Public Service Company of New Hampshire plans to file in April of 1991 a full least cost integrated resource plan. PSNH requested the waiver of its 1990 least cost planning filing because it was in the process of reorganization and merger with Northeast Utilities. In requesting the waiver from the 1990 requirement, the company proposed that it make a filing in April of 1991 which would fully reflect the company's anticipated status as a subsidiary of Northeast Utilities. In the review of the 1991 filing, all of the other issues that were touched on in this update filing will be addressed.

With the issue of the long term avoided costs resolved, staff and the company recommend that the commission approve the long term avoided costs appended to "Recommendations" as Attachment A, find that the remainder PSNH's May 1990 filing complies with commission order 19,745, and close Docket DR
90-018.

III. *Commission Analysis*

[1, 2] Based upon our review of the record, we find that the "Recommendations Of The Parties To Close The Proceedings" are just and reasonable and should be approved.

We understand that PSNH does not agree with the staff's proposed interim resolution of the methodological dispute regarding avoided costs, but in the interest of closing the proceedings PSNH has acceded to staff's position for this proceedings only and without prejudice to its position in any future proceeding. Staff's concern is that in the avoided cost calculation PSNH has reflected energy savings associated with the NU slice of system, but not the capacity costs.

We find that this particular compromise to reflect capacity and energy costs consistently is reasonable and in the public interest for the time being in order to facilitate the availability of a long term avoided cost reference for qualifying facilities who want to negotiate with PSNH. Our expectation is that this issue will be resolved on its merits as part of the commission's evaluation of PSNH's 1991 Integrated Least Cost Plan which will be filed by PSNH in April of 1991.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that the "Recommendations of The Parties to Close The Proceedings" be approved and Docket DE 90-018 be closed.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 1991.

ATTACHMENT I

RECOMMENDATION OF THE PARTIES

TO CLOSE THE PROCEEDINGS

Pursuant to the New Hampshire Public Utilities Commission's Order No. 19,052, issued April 7, 1988 in Docket No. DR 86-41, Public Service Company of New Hampshire (PSNH) is required to file biennially in even numbered years an integrated least cost resource plan. On February 1, 1990, PSNH asked the Commission for permission to defer the 1990 filing because of the uncertainties associated with the merger with Northeast Utilities (NU). The Commission, on March 2, 1990, issued Order No. 19,745, in Docket No. DE 90-018, granting the PSNH request for deferral and requiring that PSNH submit certain information in lieu of the least cost planning filing.

PSNH filed, on May 31, 1990, the

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information directed by the Commission, which it has termed the *1990 Update*. A prehearing conference was convened on September 24, 1990 to address procedural matters and other issues regarding the *1990 Update*. Subsequently, on October 9, 1990, the Commission issued Order No. 19,952 establishing a procedural schedule contemplating data requests and responses, a series of technical sessions, and a status conference to report to the Commission the progress of the parties. The Order noted as well that the Commission's inquiry was primarily concerned with technical issues regarding the calculation of avoided costs and that a hearing was not contemplated.

Commission Staff submitted data requests on October 29, 1990 and PSNH responded on November 20, 1990. Technical sessions to discuss staff follow-up questions were held January 8 and 17, 1991.

The sole explicit issue in this proceeding that the parties were unable to resolve through the data exchange and technical sessions concerns the capacity values for avoided cost projections for the period 1996-1999. PSNH has, however, agreed to incorporate Staff's position on capacity values into the avoided cost projections employed for the standard offer and for the benchmark for QF negotiations. The new projections are included as Attachment A and will be operative until a subsequent Integrated Least Cost Resource Plan is approved by the Commission. The parties acknowledge that PSNH has agreed to incorporate Staff's position into its avoided cost numbers only for the purposes of terminating this proceeding and that a methodological dispute exists that will need to be addressed in other proceedings.

Inasmuch as PSNH, consistent with its response to NHPUC Staff Data Request Set No. 2, Request 1, currently plans to file in April 1991 a new Integrated Least Cost Resource Plan designed to satisfy its biennial requirement, the parties are in agreement that the appropriate time to conduct a thorough review of least cost planning is after PSNH makes its anticipated April 1991 filing. As for the information submitted in the *1990 Update*, while Staff would not agree that the *1990 Update* would satisfy the requirements associated with a biennial filing, it does agree that PSNH has adequately complied with the Commission's abbreviated request for information as outlined in Order No. 19,745.

Accordingly, the parties recommend that the Commission find that PSNH has satisfied the Commission's information request and that this proceeding be closed.

Respectfully submitted,

New Hampshire Public Utilities Commission Staff

Dated: Jan. 24, 1991

Public Service Company of New Hampshire

Dated: Jan. 24,1991

Northeast Utilities Service Company

Dated: Jan 24,1991

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

Attachment A

SUMMARY OF AVOIDED COSTS
NOMINAL DOLLARS

YEAR	COLUMN A AVOIDED COST OF ENERGY BEFORE ADJUSTMENTS	COLUMN B AVOIDED COST OF ENERGY AFTER ADJ. FOR INVENTORY, WORK CAPITAL 1.01	COLUMN C AVOIDED COST OF ENERGY AFTER ADJ. FOR OFF SYS. ARRANGEMENTS	COLUMN D AVOIDED COST OF ENERGY AFTER ADJ. FOR LINE LOSSES 1.00	COLUMN E AVOIDED COST OF ENERGY AFTER ADJUSTMENTS TOTAL
	cents/kwh	cents/kwh	cents/kwh	cents/kwh	cents/kwh
1990	2.66	2.68	2.71	2.71	2.71
1991	2.56	2.59	2.72	2.72	2.72
1992	2.99	3.01	3.12	3.12	3.12
1993	3.22	3.25	3.33	3.33	3.33
1994	3.47	3.50	3.52	3.52	3.52
1995	3.65	3.69	3.73	3.73	3.73
1996	3.78	3.81	3.91	3.91	3.91
1997	4.06	4.10	4.24	4.24	4.24
1998	4.27	4.31	4.46	4.46	4.46
1999	4.83	4.88	4.76	4.76	4.76
2000	5.26	5.31	5.13	5.13	5.13
2001	5.54	5.59	5.58	5.58	5.58
2002	6.00	6.05	6.06	6.06	6.06
2003	6.31	6.37	6.58	6.58	6.58
2004	7.09	7.16	7.14	7.14	7.14

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

YEAR	COLUMN F AVOIDED COST OF GENERATION CAPACITY	COLUMN G AVOIDED COST OF TRANSMISSION CAPACITY	COLUMN H LOSS ADJUSTED AVOIDED COST OF GENERATION CAPACITY	COLUMN I LOSS ADJUSTED AVOIDED COST OF TRANSMISSION CAPACITY	COLUMN J TOTAL LOSS ADJUSTED CAPACITY COST 1.00
	$/kw/yr	$/kw/yr	$/kw/yr	$/kw/yr	$/kw/yr
1990	49.00		49.00		49.00
1991	51.45		51.45		51.45
1992	54.02		54.02		54.02

1993	56.72	56.72	56.72
1994	59.56	59.56	59.56
1995	62.54	62.54	62.54
1996	121.70	121.70	121.70
1997	93.80	93.80	93.80
1998	85.20	85.20	85.20
1999	87.90	87.90	87.90
2000	89.10	89.10	89.10
2001	93.55	93.55	93.55
2002	98.23	98.23	98.23
2003	103.14	103.14	103.14
2004	108.30	108.30	108.30

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 90-018, Order No. 19,745, 75 NH PUC 146, Mar. 7, 1990.

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NH.PUC*04/17/91*[27122]*76 NH PUC 301*Claremont Gas Corporation

[Go to End of 27122]

Re Claremont Gas Corporation

DE 90-161, DE 89-236, DE 87-256
Order No. 20,114

76 NH PUC 301

New Hampshire Public Utilities Commission

April 17, 1991

ORDER directing a gas distribution utility to either pay a fine imposed by prior order or post a bond to ensure payment of the fine. The utility had sought a stay of the fine until the end of the period for rehearing and the exhaustion of all means of appellate review.

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1. FINES AND PENALTIES, § 9

[N.H.] Practice and procedure — Request for stay — Rehearing — Appellate review — Bond requirement — Gas distribution utility. p. 301.

BY THE COMMISSION:

ORDER

On April 8, 1991, the Commission issued Report and Order No. 20,105 requiring Claremont Gas to pay a $25,000.00 fine by April 15, 1991 for certain safety violations at its plant and facilities in Claremont, New Hampshire; and

WHEREAS, by motion filed on April 12, 1991, Claremont Gas requested a stay of this fine until the period for rehearing pursuant to RSA 541:3 had passed and all means of appellate review of Report and Order No. 20,105 had been exhausted; and

WHEREAS, the public good mandates assurance that the fine will be paid unless the fine is found to be inappropriate by this Commission upon rehearing or by the New Hampshire Supreme Court upon appellate review; it is hereby

[1] ORDERED, that Claremont Gas shall pay the $25,000.00 fine or post a bond to insure the payment of the $25,000.00 fine by April 22, 1991; and it is

FURTHER ORDERED, that the bond shall remain in effect until otherwise ordered by the Commission or the New Hampshire Supreme Court; and it is

FURTHER ORDERED that Claremont shall have until April 19, 1991, to address the bonding requirements set forth in this Order.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1991

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Light Co., a Subsidiary of Synergy Corp., DE 87-256, DE 89-236, DE 90-16, Order No. 20,105, 76 NH PUC 283, Apr. 8, 1991.

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NH.PUC*04/17/91*[27123]*76 NH PUC 301*Public Service Company of New Hampshire

[Go to End of 27123]

Re Public Service Company of New Hampshire

DR 91-001
Order No. 20,115

76 NH PUC 301

New Hampshire Public Utilities Commission

April 17, 1991

ORDER authorizing "station service" customers to intervene in a proceeding to revise the retail power sales tariff of an electric utility.

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1. RATES, § 234

[N.H.] Tariff revision — Retail power sales — Intervention — Station service customers — Electric utility. p. 302.

2. RATES, § 641

[N.H.] Practice and procedure — Parties — Intervenors — Tariff revisions — Electric rate design. p. 302.

BY THE COMMISSION:

ORDER

WHEREAS, on April 10, 1991, pursuant to RSA Chapter 541-A:17(II) and Section 203.02 of the Rules and Regulations of the New Hampshire Public Utilities Commission ("commission"), Alexandria Power Associates, Hemphill Power & Light Company, Whitefield Power & Light Company, and Pinetree Power — Tamworth, Inc. (collectively "Biomass Intervenors") petitioned to intervene in this proceeding; and

WHEREAS, the Biomass Intervenors sell their "net" electrical output to PSNH and provide their own generation for "station service" and at times, when the Biomass Intervenors' facilities are not operating, they purchase their "station service" power needs from PSNH under an existing retail sale tariff; and

WHEREAS, in this docket, PSNH requests authority to revise the existing retail tariff rate and prohibit the use of this tariff rate for power sales to the Biomass Intervenors when they require "station service". Moreover, PSNH proposes the implementation of a new tariff rate, Rate B, which by its terms appears applicable to "station service" sales to these Biomass Intervenors, and

WHEREAS, this proceeding raises issues which may substantially affect the interests of the Biomass Intervenors; and

WHEREAS, the Order of Notice in this proceeding required notice for intervention to be filed at least three days prior to the prehearing conference on January 31, 1991; and

WHEREAS, the Biomass Intervenors assert that their intervention would not impair the orderly and prompt conduct of the proceedings; it is

[1, 2] ORDERED NISI, that pursuant to Rule Puc 203.02(b), the petition to intervene of the Biomass Intervenors is hereby granted, subject to the requirement that the participation of the Biomass Intervenors not be the cause, in and of itself, of any delay to the procedural schedule; and it is

FURTHER ORDERED, that this Order NISI will be effective on April 23, 1991; and it is

FURTHER ORDERED, that in the interim, the Biomass Intervenors shall be entitled to fully participate in all matters transpiring in this proceeding; and it is

FURTHER ORDERED, that pursuant to N. H. Admin. Code Puc 203.04(c) any party objecting to the intervention of the Biomass Intervenors may file objections with the Commission by 9:00 A.M. on April 22, 1991.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1991.

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NH.PUC*04/18/91*[50964]*75 NH PUC 234*Coombs/Mores, et al. v. Public Service Company of New Hampshire

[Go to End of 50964]

75 NH PUC 234

Coombs/Mores, et al.
v.
Public Service Company of New Hampshire

DC 90-025
Order No. 19,795

New Hampshire Public Utilities Commission

April 18, 1991

ORDER denying a request for interim relief in a proceeding on a complaint alleged improper termination of electric service.

PAYMENT, § 34 — Enforcing payment — Denial of service — Arrearages of others — Household members — Service at different address.

[N.H.] In a proceeding on a complaint alleging improper termination of electric service, the commission rejected a request for interim relief in the form of a preliminary order prohibiting the utility and its representatives from denying an otherwise qualified customer/applicant the right to contract for electric service based on debts incurred at a prior, different address by a household member other than the individual requesting service; the decision not to grant interim relief was based on the utility's objection regarding inadequate notice of the scope of interim relief and a lack of evidence indicating that denial of service under such circumstances was a widespread problem; however, the commission found that the arguments offered by the proponents of interim relief supported a prohibition on denial of service under such circumstances and directed the utility to address the arguments in a full hearing, unless the matter should become moot in the interim.

APPEARANCES: New Hampshire Legal Assistance by Deborah Schacter, Esq., and Alan Linder; Public Service Company of New Hampshire by Gerald M. Eaton, Esq.; Office of

Consumer Advocate by Joseph Rogers, Esq.; James R. Rodier, Esq. for staff of New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Background*

On February 16, 1990, a letter was issued by the Executive Director and Secretary of the commission scheduling a hearing in this proceeding for February 23, 1990. On February 22, 1990, Ms. Schacter by letter requested that the hearing on the merits scheduled for February 23, 1990 be used as a pre-hearing conference.

Pursuant to the pre-hearing conference, a letter was sent by Public Service Company of New Hampshire (PSNH) to Ms. Schacter on February 27, 1990 in a attempt to settle the outstanding issues in this proceeding. On March 1, 1990, Ms. Schacter advised the commission by letter that a formal complaint on behalf of the clients would be filed with the commission by March 14.

Ms. Schacter's complaint was filed on March 14, 1990, accompanied by a recommendation for a procedural schedule agreed to by the parties. The complaint requested, *inter alia*, interim relief in the form of a preliminary order:

1) prohibiting PSNH and its representatives from terminating service to a residence

with existing service, based on denial of service to a customer/applicant, without providing written notice at least 10 days prior to such termination, in accordance with PUC rules and RSA 363-B:1 and 2;

2) requiring PSNH to comply fully with the provisions of Puc 303.04 and Puc 303.08 as cited herein;

3) prohibiting PSNH and its representatives from denying an otherwise qualified customer/applicant the right to contract for electric service based on debts incurred at a prior, different address by a household member other than the individual requesting service.

Complaint at 13.

By report and order no. 19,770 (75 NH PUC 193) (March 26, 1990), the commission, *inter alia*, scheduled oral argument on complainant's request for interim relief for March 29, 1990 and adopted a procedural schedule providing for a hearing on the merits for May 4, 1990.

II. *Arguments of the Parties*

Three elements of interim relief were requested by complainants. Prior to oral argument, PSNH acceded to policy changes that mooted the first two elements of the requested interim relief. Accordingly, PSNH will provide 14 days notice of termination to existing customers and (2) PSNH will accept in accordance with commission rules a guarantor offered by an applicant for service.

However, the company would not agree that it has an obligation to advise customers of their

option to rely on a guarantor in lieu of a security deposit. (Tr. 7 to 14).

With regard to the third element of interim relief requested, extensive oral argument was heard on whether the commission should prohibit "PSNH and its representatives from denying an otherwise qualified customer/applicant the right to contract for electric service based on debts incurred at a prior, different address by a household member other than the individual requesting service." Complaint at 13.

Although, as we will subsequently note, we do not determine the merits of the arguments presented at this time, we will nevertheless summarize our understanding of the arguments of the parties for the record.

A. *PSNH*

PSNH opposed the granting of interim relief based upon its view that there are no commission rules or regulations regarding denial of electric service. Therefore, PSNH is justified in relying on the provision of its tariff which provides that PSNH "Reserves the right to reject any application for service made by, or for the benefit of, a former customer who is indebted to the company for electric service previously furnished to him." *PSNH Tariff*, Section 3, page 8.

According to PSNH, any and all person(s) residing at a premise for which electric service is sought are "customers" and receive the benefit of electric service. Therefore, in accordance with Section 3 of its Tariff, PSNH is authorized to deny electric service at a location where the applicant (i.e., customer of record) is qualified but another resident is indebted to the Company for service at a different, prior location.

PSNH also opposed the granting of interim relief on the grounds that it had not been provided adequate notice since such relief could affect the practices of the company with many of its customers.

B. *New Hampshire Legal Assistance (NHLA).*

NHLA argued that Section 3 of the Tariff does not authorize denial of service under the circumstances at hand:

> The provision taken as a whole says nothing about denying the right to contract for service to an individual with a clean credit record who owes no money to the company and who seeks to benefit from the contract for electricity. Taken as a whole, moreover the provision appears to have the intent of prohibiting what is sometimes called rotating ... passing of the bill amongst members of the household presumably to avoid having to

> pay for the service.
>
> A reasonable interpretation of the provision is that it refers to situations therefore where co-residents transfer billing amongst themselves. Conceivably it could be interpreted as to authorize the company to deny an applicant for service where the person who seeks to be the customer of record in indebted to the company.
>
> It is not a reasonable reading, however, under the tariff provision that the company can ignore its duties to provide this essential service to someone who applies without any

previous indebtedness to the company and seeking to exercise the individual's right as a member of the public to receive this essential service; based on a debt owed from another residence by someone other than the applicant of record, where that individual seeking service never lived. (Tr. at 16-17)

Secondly, NHLA asserts that the tariff language relied on is not plain and clear on its face and thus cannot be used to deny service according to *Komisarek v. New England Telephone*, 111 N.H. 301 (1971).

Third, under statutory law, PSNH cannot deny service to collect a debt for which there is no remedy at law. Finally, NHLA argued that PSNH has abrogated its common law duty to service and provided citations to extensive authority in support of that position. In essence, NHLA argued that PSNH's practice is forcing persons not legally responsible for a debt to pay the debt in order to obtain electric service.

In support of its request, NHLA also relied on the data response of Northeast Utilities Service Company (NUSCO) No. 248 in Docket No. DR 89-244 which indicates that NU does not deny service under the circumstances before us and thus this issue may become moot if, as expected, the Management Services Agreement between NUSCO and PSNH goes into effect prior to the hearing on the merits.

C. *Office of Consumer Advocate (OCA).*

OCA supported the request for interim relief on the basis that the company's denial of service, in OCA's view, amounts to an illegal debt collection practice. OCA also requested the commission to order the company to notify and disclose to its customers their right to retain a guarantor and other options available to them that may forestall denial of service.

D. *Staff*

The staff attorney supported the granting of interim relief on the basis that the commission rules and regulations have no express provision allowing a utility to deny service and, thus, the utility's only recourse is to require a security deposit to secure payment of future bills at the current location as permitted by commission rules. The staff attorney also argued that the purpose of Section 3 of the company's tariff is to prevent service being requested in the name of a person who will not reside at the service location, for the benefit of the actual resident.

The staff attorney argued that in determining whether to grant the interim relief, the commission should weight the detriment to ratepayers who will be denied service pending the granting of relief on the merits, if any, versus the interests of PSNH.

The staff attorney also represented that contrary to PSNH's practice, Granite State Electric Company, UNITIL, and New England Telephone do not deny service under the circumstances presented.

III. *Commission Analysis*

After review of the record and oral argument, we have decided not to grant interim relief based upon PSNH's objection regarding inadequate notice of the scope of the interim relief requested and the lack of evidence indicating that this is a widespread problem for other PSNH customers. Thus, in balancing the interests of the parties solely for the purpose of interim relief,

we conclude that the maintenance of the *status quo* will be least prejudicial. We understood that the affected customers have had their electric service conditionally restored during the pendency of this proceeding at the request of the staff attorney. We do find that the company's tariff and the commission's rules, as

Page 236

they pertain to the issue before us, are ambiguous. We find the arguments on the merits of the proponents of interim relief persuasive and we expect PSNH to address them during the full hearing on the merits on May 4, 1990, unless this matter should become moot in the interim.

Our order will issue accordingly.

ORDER

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

ORDERED, that the request for interim relief of New Hampshire Legal Assistance is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of April, 1990.

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NH.PUC*04/22/91*[27124]*76 NH PUC 302*Union Telephone Company

[Go to End of 27124]

Re Union Telephone Company

Additional petitioner: New England Telephone Company

DE 91-043
Order No. 20,116

76 NH PUC 302

New Hampshire Public Utilities Commission

April 22, 1991

ORDER granting a joint petition by two telephone carriers to change the franchise boundary between two telephone exchanges and to correct an error on an exchange boundary map.

Page 302

1. SERVICE, § 445

[N.H.] Telecommunications — Exchange areas and boundaries — Boundary relocation — Public good. p. 303.

2. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Telecommunications — Franchise boundaries — Boundary relocation — Joint petition — Public good. p. 303.

BY THE COMMISSION:

ORDER

On April 1, 1991, Union Telephone Company (Union) and New England Telephone Company (NET) (petitioners) filed a joint petition seeking authorization to change the franchise boundary between the Alton and Laconia telephone exchanges in Alton, New Hampshire and to correct an error on NET's Laconia exchange boundary map.

[1, 2] WHEREAS, in compliance with Order No. 8431 in docket D-E4409, NET filed a revised exchange boundary map on September 30, 1965, which included an inadvertent error deviating from the approved boundary change; and

WHEREAS, the current Union and NET exchange boundary maps overlap as a result of this error and the petitioners agree the error should be corrected; and

WHEREAS, the petitioners have also requested that a portion of this boundary be relocated to conform with the natural geographic features of a portion of Smalls Cove to follow the Alton Brook; and

WHEREAS, the proposed boundary line begins at a point on the existing franchise boundary line between NET and Union located at the intersection of Alton Brook and Lake Winnipesaukee at what is known as "Smalls Cove"; turning and running along the center line of Alton Brook in a general southwest direction approximately 2070 feet to the property line dividing Parcel 17-11 and Parcel 60-3 depicted on the Alton Tax Maps attached as Exhibit D on file with this Commission, then continuing in a straight line to the intersection of the three town boundaries of Gilford, Alton and Gilmanton; and

WHEREAS, the proposed change will effect the telephone service of one customer, who has signed an affidavit stating he understands the proposed boundary change will place his business in Union's franchise territory and that Union will make a good faith effort to supply this customer feature parity service as compared to the NET service he currently enjoys, and does not object to the proposed change; and

WHEREAS, the petition states that the proposed change will allow all of the businesses located on land owned by one person to be served by the same telephone company; and

WHEREAS, the Commission's investigation finds the proposed boundary change in the public good because it will correct an unintentional error, and provide for better identification and administration of the exchange boundary due to the boundary relocation which will conform with natural geographic features; and

WHEREAS, the public should be offered an opportunity to respond in support of, or 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 May 22, 1991; and it is

FURTHER ORDERED that the petitioners mail one copy of this order, by first class mail, to customer(s) in the area who will be located in a different telephone exchange as a result of this order, no later than April 29, 1991 and documented by affidavit to be filed with this office on or before May 6, 1991; and it is

FURTHER ORDERED that the convenience of a property owner having all businesses located in one telephone exchange boundary has no bearing on the decision to approve this franchise boundary change; and it is

FURTHER ORDERED, that Union file a revised tariff page to NHPUC No. 7 Part II

Page 303

Section 5, Page 1, Third Revision; and NET file a revised tariff page to NHPUC No. 75 Part II, Section 2, Sheet 48, Seventh Revision, within 60 days from the effective date of this order, incorporating the changes specified above and as depicted and described in Exhibits A through E of the petition on file with this Commission, in accordance with New Hampshire Administrative Rules Puc PART 1600; and it is

FURTHER ORDERED, *NISI* that authority be, and hereby is, granted to the petitioners to revise the exchange boundary as prescribed in the subject petition in the town of Alton, New Hampshire; and it is

FURTHER ORDERED, that such authority be effective May 24, 1991, unless a hearing is requested as provided above or the Commission otherwise orders prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1991.

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NH.PUC*04/29/91*[27125]*76 NH PUC 304*Keene Gas Corporation

[Go to End of 27125]

Re Keene Gas Corporation

DR 91-039
Supplemental Order No. 20,117

76 NH PUC 304

New Hampshire Public Utilities Commission

April 29, 1991; revised May 6, 1991

ORDER authorizing a gas distribution utility to revise its cost of gas adjustment rate.

Commission directs the utility to explore the cost-effectiveness of expanding its production capabilities.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Gas distribution utility. p. 304.

APPEARANCES: Robert F. Egan, General Manager, for Keene Gas Corporation; Richard B. Deres, PUC Examiner, for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

On March 29, 1991, Keene Gas Corporation, (Keene or the Company), a public utility engaged in the business of distributing gas within the State of New Hampshire, filed with this commission certain revisions to its tariff providing for a 1991 Summer Cost of Gas Adjustment (CGA), effective May 1, 1991. The filing requests a CGA rate of $0.0804 per therm, excluding the N. H. State Franchise Tax, which is an increase from the rate of $(0.0875) per therm approved by the Commission for the 1990 summer period.

A duly noticed public hearing was held at the commission's office in Concord, N.H. on April 17, 1991.

It was learned through direct testimony of Company witness, Mr. Robert F. Egan, General Manager, that at this time Keene has not obtained any gas contracts for the forthcoming summer period. Traditionally, the price of gas should decrease coming out of the winter period. This year the Company feels that wholesale prices are artificially high for this time of year and expects a 3 or 4 cent per gallon price drop within the next several weeks.

Product procurement continues to be the responsibility of Mr. Harry Sheldon, President of the Company. Mr. Sheldon intends to continue to purchase product from his normal suppliers by constantly checking and obtaining the best available cost. He tends to prefer 6 month or shorter contracts which allows him some flexibility with suppliers as well as costs.

[1] Other areas discussed were the 50,000 CF moratorium and the limitations this puts on possible Company growth, and whether the Company has looked into augmenting or expanding the production capabilities of the system.

We find it not unreasonable that a gas

company purchases propane from the spot market during the summer period instead of acquiring product through firm contracts.

In regards to the 50,000 CF moratorium issue, the commission directs the Company to provide to the staff any analysis it has conducted exploring the cost effectiveness of expanding

their production capabilities.

The projected costs, sales, and adjustments to the CGA filing are consistent with those approved by the commission in past CGA's. The commission finds that Keene Gas Corporation's proposed CGA of $0.0804 per therm is just and reasonable, therefore accepts such as filed.

Our order will be issued accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the 12th Revised Page 27, Superseding 11th Revised Page 27 of Keene Gas Corporation Tariff, NHPUC No. 1 — Gas, providing for a Cost of Gas Adjustment of $0.0804 per therm for the period May 1, 1991 through October 31, 1991 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff page approved by this order become effective with all billings issued on or after May 1, 1991; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by a one time publication in newspapers having a 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.

By order of the Public Utilities Commission of New Hampshire this 29th day of April, 1991.

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NH.PUC*05/01/91*[27126]*76 NH PUC 305*EnergyNorth Natural Gas, Inc.

[Go to End of 27126]

Re EnergyNorth Natural Gas, Inc.

DR 91-042
Order No. 20,118

76 NH PUC 305

New Hampshire Public Utilities Commission

May 1, 1991

ORDER revising the cost of gas adjustment rate of a natural gas local distribution company (LDC). Commission limits recovery of take-or-pay costs allocated to the LDC by its interstate pipeline supplier, finding that the costs should be borne equally by stockholders and ratepayers.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Take-or-pay cost recovery — Natural gas local distribution company. p. 306.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 25

[N.H.] Cost elements — Purchased gas adjustment clause — Indirect costs — Take-or-pay costs — Natural gas local distribution company. p. 306.

3. EXPENSES, § 126

[N.H.] Natural gas — Take-or-pay costs — Local distribution company. p. 306.

BY THE COMMISSION:

ORDER

On April 1, 1991, EnergyNorth Natural Gas, Inc. (ENGI or Company) filed with the

Page 305

commission its tariff pages containing the cost of gas adjustment for the summer period May, 1991 through October, 1991; and

[1-3] WHEREAS, the only substantive issue in dispute was the company's request to recover in full the take-or-pay costs allocated to it by Tennessee Gas Pipeline; and

WHEREAS, the commission has determined that these costs shall be born equally by the stockholders of ENGI and ratepayers; and

WHEREAS, this summary order is being issued to allow for timely implementation of the 1991 summer cost of gas adjustment; and

WHEREAS, the commission intends to issue a full report and order addressing the take-or-pay issue[1](49) ; it is hereby

ORDERED, that ENGI file revised tariff pages that limit recovery to 50% of its take-or-pay liability over a twenty four month period; and it is

FURTHER ORDERED, that the deadline for requesting re-hearing pursuant to RSA 541:3 shall be enlarged to be 20 days after the commission issues its full report and order on the take-or-pay issue.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1991.

FOOTNOTES

[1]Commissioner Ellsworth will be dissenting in a separate opinion attached to the full report and order. Thus, he is not signing the instant summary order.

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NH.PUC*05/01/91*[27127]*76 NH PUC 306*New Hampshire Yankee

[Go to End of 27127]

Re New Hampshire Yankee

DE 78-34
Supplemental Order No. 20,119

76 NH PUC 306

New Hampshire Public Utilities Commission

May 1, 1991

ORDER dissolving the Brimmer Lane Well Field (BLWF) Monitoring Committee, established in 1981 to monitor the effect on water consumers of the use by an electric utility of the BLWF in connection with the construction of the Seabrook nuclear generating facility. The monitoring was required as a condition on the grant of an exemption of a zoning ordinance as it applied to use of the BLWF. Commission finds no need for the continuation of the committee inasmuch as the wells were no longer used by the utility and a monitoring program had developed and would be implemented if the use of the BLWF were resumed.

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1. ZONING

[N.H.] Exemptions — Utility use of wells — Continued monitoring requirement — Brimmer Lane Well Field — Dissolution of monitoring committee. p. 307.

BY THE COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Public Service Company of New Hampshire (PSNH) petitioned this commission in 1978 for exemption from a zoning ordinance of the town of Hampton Falls as it applied to use of wells on PSNH property in that town, said wells being known as the Brimmer Lane Well Field (BLWF), which PSNH anticipated using during construction of its

Seabrook Nuclear Power Plant; and

WHEREAS, Order 13,407, issued on November 28, 1978, required testing of said BLWF to determine the extent of any negative effect on local water consumers before the issue of a zoning exemption could be resolved; and

WHEREAS, subsequent to such testing, Order No. 14,951, issued on June 22, 1981, granted the zoning exemption but required continued monitoring by PSNH for the impact that use of BLWF wells would have on existing water customers at Brimmer Lane, accepting "the recommendation of the company that a monitoring committee" oversee the monitoring; and

WHEREAS, a three member monitoring committee was established consisting of Dr. Ward S. Motts, a hydrogeologist representing PSNH; Mr. J. Theodore Morine, a hydrogeologist

representing the town of Hampton Falls; and Mr. Glen W. Stewart as an independent third party geologist; and

WHEREAS, a report has been submitted annually to the town of Hampton Falls and to this commission regarding results of the monitoring and the overall use and status of the well field; and

WHEREAS, on February 27, 1990 New Hampshire Yankee (NHY), the current operator of the Seabrook Power Plant and the BLWF, requested in a letter to this commission that, in part, the need for continuation of the monitoring committee be evaluated since a well-defined monitoring program had been developed; and

WHEREAS, the Town of Hampton Falls responded in a letter dated March 13, 1990 that it wished to continue to be informed of the status of the BLWF, but did not address the issue of the monitoring committee; and

WHEREAS, on January 14, 1991, at the suggestion of commission staff, NHY sent a letter to the town of Hampton Falls and to each member of the monitoring committee providing more detailed justification for dissolving said committee, including the history of use of the BLWF, the monitoring performed and results obtained to date, and the extent of the monitoring program now in place; and further proposing to "continue to send an annual report summarizing well operations and monitoring results to both the Town of Hampton Falls and the PUC"; and

WHEREAS, concurrence to this proposal was received from the town and from each member of the monitoring committee and was forwarded by NHY to this Commission in writing on March 18, 1991; and

WHEREAS, NHY has not used the BLWF since 1986 and has no specific plans to do so in the foreseeable future, either for construction purposes or for any other use; and

WHEREAS, the original concerns in this docket relating to protection of existing customers, wells and water supplies in the Town of Hampton Falls from detrimental impact by use of the BLWF appear to be adequately addressed by the monitoring program currently in place; and

WHEREAS, all other requirements of the original and supplemental orders have been met; it is hereby

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 29, 1991; and it is

FURTHER ORDERED, that NHY effect such notification by publication of an attested copy of this order once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Hampton Falls area, said publications to be no later than May 15, 1991. In addition, pursuant to RSA 541-A:22, NHY shall serve a copy of this order to the Hampton Falls town clerk, by first class US mail, postage prepaid, and postmarked on or before June 3, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the Commission on or before June 3, 1991; and it is

[1] FURTHER ORDERED, *NISI* that review by the three member Brimmer Lane Well Field (BLWF) monitoring committee is no longer required and that said committee be dissolved; and it

is

FURTHER ORDERED, that NHY continue to implement its established monitoring program whenever use of the BLWF is resumed; and it is

Page 307

FURTHER ORDERED, that NHY continue to provide an annual update summarizing well operations and monitoring results to both the Town of Hampton Falls and this Commission; and it is

FURTHER ORDERED, that such authority shall be effective thirty 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 first day of May, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Omni Communications, Inc., d/b/a Page Call, DE 81-131, Supplemental Order No. 14,951, 66 NH PUC 223, June 22, 1981. [N.H.] Re Public Service Co. of New Hampshire, DE 78-34, Order No. 13,407, 63 NH PUC 351, Nov. 28, 1978.

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NH.PUC*05/01/91*[27128]*76 NH PUC 308*Northern Utilities, Inc.

[Go to End of 27128]

Re Northern Utilities, Inc.

DR 91-045
Order No. 20,120

76 NH PUC 308

New Hampshire Public Utilities Commission

May 1, 1991

ORDER revising the cost of gas adjustment rate of a natural gas local distribution company (LDC). Commission limits recovery of take-or-pay costs allocated to the LDC by its interstate pipeline supplier, finding that the costs should be borne equally by stockholders and ratepayers.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Take-or-pay cost recovery — Natural gas local distribution company. p. 308.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 25

[N.H.] Cost elements — Purchased gas adjustment clause — Indirect costs — Take-or-pay costs — Natural gas local distribution company. p. 308.

3. EXPENSES, § 126

[N.H.] Natural gas — Take-or-pay costs — Local distribution company. p. 308.

BY THE COMMISSION:

ORDER

On April 1, 1991, Northern Utilities, Inc. (Northern or Company) filed with the commission its tariff pages for the New Hampshire division containing the cost of gas adjustment for the summer period May, 1991 through October, 1991; and

[1-3] WHEREAS, the only substantive issue in dispute was the company's request to recover in full the take-or-pay costs allocated to it by Granite State Gas Transmission; and

WHEREAS, the commission has determined that these costs shall be born equally by the stockholders of Northern and ratepayers; and

WHEREAS, this summary order is being issued to allow for timely implementation of the 1991 summer cost of gas adjustment; and

WHEREAS, the commission intends to issue a full report and order addressing the take-or-pay issue[1](50) ; it is hereby

ORDERED, that Northern file revised tariff pages that limit recovery to 50% of its net take-or-pay liability over a twenty four month period; and it is

FURTHER ORDERED, that the deadline for requesting re-hearing pursuant to RSA

541:3 shall be enlarged to be 20 days after the commission issues its full report and order on the take-or-pay issue.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1991.

FOOTNOTES

[1]Commissioner Ellsworth will be dissenting in a separate opinion attached to the full report and order. Thus, he is not signing the instant summary order.

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NH.PUC*05/02/91*[27129]*76 NH PUC 309*Claremont Gas Corporation

[Go to End of 27129]

Re Claremont Gas Corporation

DR 91-044
Order No. 20,121

76 NH PUC 309

New Hampshire Public Utilities Commission

May 2, 1991

ORDER approving a revision to the cost of gas adjustment rate of a gas distribution utility. Commission directs the utility to submit invoices from its corporate parent for shipments of fixed price utility gas.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Credits — Rental income — Gas distribution utility. p. 309.

2. INTERCORPORATE RELATIONS, § 15

[N.H.] Affiliated interests — Intercorporate arrangements and payments — Utility transactions with nonregulated parent — Propane storage — Compensation — Rental income — Gas distribution utility. p. 309.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 32

[N.H.] Procurement practices — Competitive bidding — Gas distribution utility. p. 309.

4. INTERCORPORATE RELATIONS, § 15

[N.H.] Affiliated interests — Intercorporate arrangements and payments — Utility transactions with nonregulated parent — Shipments of fixed price utility gas — Invoices — Gas distribution utility. p. 309.

APPEARANCES: Dom S. D'Ambruoso, Esquire of Ransmeier and Spellman on behalf of Claremont Gas Company; Stuart Hodgdon and William A. Dodge, for Staff.

BY THE COMMISSION:

REPORT

PROCEDURAL HISTORY

On April 9, 1991, Claremont Gas Corporation, (Claremont or the company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission 131st Revised, Page 12-2 Tariff, N.H.P.U.C. No.9 — Gas. (Exhibit 3). Said tariff was withdrawn prior to the CGA hearing.

On April 17, 1991, Claremont filed with this commission 132nd Revised Page 12-2 Tariff, N.H.P.U.C. No. 9 — Gas. (Exhibit 2). Said tariff provided for a 1991 Summer Cost of Gas Adjustment (CGA) for effect May 1, 1991, of $(0.0407) per therm, before franchise tax. This is a

credit increase of $(0.0128) over the current mid-winter credit of $(0.0279). Due to computation errors Exhibit # 7 has been reserved for the revised filing.

An Order of Notice was issued setting hearings for April 17, 1991. It was further ordered that a copy of the Order of Notice be published in a local newspaper.

ISSUES

[1-4] During the hearing the following

issues were addressed: a.) rental income; b.) competitive bids; c.) computation errors; d.) invoices.

RENTAL INCOME

In Docket DR 89-185, Order # 19,837, an agreement between Synergy Gas and staff provided that Synergy Gas pay to Claremont Gas the sum of $0.026 per through-put gallon and a $150.00 rental fee per month on the 30,000 gallon retail tank used by Synergy. The agreement was to be effective on May 1, 1990. In Docket DR 90-167 it was agreed that Claremont failed to reflect this in their filing of the Summer 1990 Cost of Gas Adjustment and that Claremont's reconciliation would include a credit on its filed CGA for the expected 1991 summer rent as well as a summer 1990 actual rent. These rental fees for Summer 1990 (actual) and Summer 1991 (estimated) are included in Schedule F of this filing.

COMPETITIVE BIDS

In Docket DR 90-167, Order No. 19,972, formal written letters of solicitation seeking bids for propane were to be mailed to suppliers and that the responses be submitted to the commission for the Summer CGA. These bids were presented to the commission and are shown as Exhibit #5 of this hearing. This fulfills the requirements of the previous order by the commission.

COMPUTATIONAL ERRORS

The first summer period filing dated April 9, 1991 was withdrawn. The revised filing dated April 17, 1991, was found to have an error in the computation of through-put gallons of propane during the month of June 1990. This error was corrected and a new Schedule F was submitted as Exhibit #4. Company witness, Mr. James W. Allen Jr., Manager of Corporate Accounting, Synergy Gas Corporation, agreed that this error also affects Schedules C, D and the tariff page. These pages will be revised and resubmitted to the commission by Mr. Allen prior to the effective date of the Summer CGA which is May 1, 1991.

INVOICES

During an audit of Claremont's records it was discovered that invoices from Synergy Gas to Claremont Gas for shipments of fixed price utility gas were not on hand. Synergy Gas was instructed to provide these invoices to staff for their examination. Exhibit #6 was reserved for these invoices. Staff also reserved the right to recall Mr. Allen for cross examination if required.

COMMISSION ANALYSIS

Claremont is to provide the commission with two exhibits. Exhibit # 6 is for invoices from

Synergy to Claremont for utility gas. Exhibit # 7 is for the revised filing.

The CGA for the 1991 Summer period reflects the reconciliation due from the report of DR 90-167. This includes the 1990 actual Summer retail rent and the expected 1991 Summer rent as credits to the filing.

Finally, based on Claremont's projected gas costs, we find the company's revised filing (Exhibit #7) CGA showing a credit rate of ($0.0418), before the franchise tax, to be reasonable.

Our order will issue accordingly.

ORDER

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

ORDERED, that Claremont Gas Corporation, 133rd Revision, Page 12-2, NHPUC No. 9 — Gas, issued April 23, 1991 for effect May 1, 1991 through October 31, 1991, providing for a Summer Cost of Gas Adjustment of ($0.0418) per therm, before the franchise tax, is approved; and it is

FURTHER ORDERED, that public notice of the Cost of Gas Adjustment be given by one time publication in a newspaper having general circulation in the territories served; and it is

FURTHER ORDERED, that Claremont Gas Corporation must submit invoices from Synergy Gas Corporation to Claremont Gas

Corporation for fixed price utility gas shipped during the period May 1, 1990 through October 31, 1990, which are requested to be filed as Exhibit # 6.

By order of the Public Utility Commission of New Hampshire this second day of May, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Corp., Inc., DR 89-185, Order No. 19,837, 75 NH PUC 298, May 24, 1990. [N.H.] Re Claremont Gas Corp., Inc., DR 90-167, Order No. 19,972, 75 NH PUC 691, Nov. 1, 1990.

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NH.PUC*05/03/91*[27982]*76 NH PUC 311*New Hampshire Electric Cooperative, Inc.

[Go to End of 27982]

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 20,122

124 PUR4th 135

76 NH PUC 311

New Hampshire Public Utilities Commission

May 3, 1991

ORDER interpreting a capacity sellback agreement between an electric cooperative and an investor-owned utility. Commission establishes rates, terms and conditions under which the cooperative may sell its share of Seabrook nuclear generating station power to Public Service Company of New Hampshire (PSNH). For order on rehearing, *Re New Hampshire Electric Co-op., Inc.*, see 76 NH PUC 373, *infra*.

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1. RATES, § 46

[N.H.] State commission powers — Rate contracts — Enforcement and construction — Capacity sellback agreement. p. 314.

2. RATES, § 47

[N.H.] State commission powers — Conflicting jurisdiction — Capacity sellback agreement. p. 314.

3. RATES, § 46

[N.H.] State commission powers — Rate contracts — Enforcement and construction — Capacity sellback agreement — Seabrook nuclear plant. p. 314.

4. RATES, § 46

[N.H.] State commission powers — Rate contracts — Enforcement and construction — *Mobil-Sierra doctrine* — Capacity sellback agreement. p. 314.

5. RATES, § 212

[N.H.] Contract rates — Capacity sellback agreement — Validity of terms — Public good. p. 314.

6. CONTRACTS, § 14

[N.H.] Construction — Extrinsic evidence — Capacity sellback agreement. p. 316.

7. RATES, § 367

[N.H.] Electricity — Wholesale — Capacity sellback agreement — Seabrook nuclear plant — Electric cooperative. p. 317.

8. RATES, § 367

[N.H.] Electricity — Wholesale — Capacity sellback agreement — Seabrook nuclear plant — Electric cooperative — Obligation to remain wholesale customer. p. 317.

9. ELECTRICITY, § 2

[N.H.] Jurisdiction and powers — FERC — Wholesale rate contracts — Capacity sellback agreement — Electric cooperative. p. 317.

10. RATES, § 44.2

[N.H.] Jurisdiction and powers — State commissions — Limitations — Constitutional issues — Capacity sellback agreement — Electric cooperative. p. 317.

11. RATES, § 47

[N.H.] Jurisdiction and powers — State commissions — Federal preemptions — Capacity sellback agreement — Electric cooperative. p. 317.

12. RATES, § 367

[N.H.] Electricity — Wholesales — Capacity sellback agreement — Seabrook nuclear plant — Electric cooperative. p. 321.

13. RATES, § 249

[N.H.] Effective date — Retroactive enforcement — Capacity sellback agreement — Seabrook nuclear plant. p. 323.

APPEARANCES: Merrill and Broderick by Mark Dean, Esquire for the New Hampshire Electric Cooperative, Inc; Gerald M. Eaton, Esquire and Sulloway, Hollis & Soden by Martin L. Gross, Esquire for Public Service Company of New Hampshire; Rath, Young, Pignatelli and Oyer, P.A., by Eve Oyer, Esquire and Day, Berry & Howard by Robert P. Knickerbocker, Jr., Esquire for Northeast Utilities Service Company; John P. Arnold, Attorney General and Harold T. Judd, Assistant Attorney General for the State of New Hampshire; United States Department of Justice by Lacy R. Harwell, Jr. for the United States Rural Electrification Administration; Robert R. Cushing, Jr. for the Campaign for Ratepayers Rights; Michael W. Holmes, Esquire, Consumer Advocate; Audrey Zibelman, Esquire and Susan Chamberlin, Esquire for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was opened pursuant to RSA 362-C:7. The statute authorizes the New Hampshire Public Utilities Commission (Commission) to approve a rate plan for the New Hampshire Electric Cooperative, Inc. (Cooperative or NHEC), provided that it finds that the rate plan is consistent with the public good and results in no greater costs or risks to NHEC members than those resulting for the ratepayers of Public Service Company of New Hampshire (PSNH) under its own rate plan as referenced by the legislation. On October 1, 1990, the Commission issued Report and Order No. 19,946 finding *inter alia* that it has statutory authority pursuant to RSA 362-C:7 (granting the Commission plenary authority to regulate with respect to the rate plan); RSA 378:20 (authorizing the Commission to review and approve contracts for the sale of electric energy between utilities); and RSA 378:1 and 7 (granting the Commission general ratemaking authority), to review and approve the sellback agreement between the Cooperative and PSNH.

On October 31, 1990, the Commission issued Report and Order No. 19,969 denying the Cooperative's Motion for partial rehearing of Order No. 19,946. Thereafter, on November 26, 1990, the Commission issued Report and Order No. 19,989 clarifying its authority to allow the Cooperative to obtain retroactive application of the sellback agreement to the July 1, 1990, commercial operation date of Seabrook, provided that the factual circumstances justify such treatment. On December 31, 1990, the Commission issued Report and Order No.20,015 denying PSNH and Northeast Utilities' (NU) joint motion for reconsideration of the November 26, 1990, Order. PSNH/NU argued *inter alia* that retroactive application of the sellback was unconstitutional because PSNH could not recover the cost of the sellback in its own retail rates. The Commission found that the question of the constitutionality of retroactive application of the sellback was factually dependent and, accordingly, denied PSNH/NU's arguments as premature.

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Pursuant to the joint request of the parties and staff, the Commission bifurcated this docket to consider the sellback agreement initially and suspend consideration of the remainder of the rateplan. Evidentiary hearings of the sellback were conducted from March 4, 1991, to March 15, 1991. This Report and Order will address the Commission's findings on the terms and conditions of the sellback agreement and related issues.

II. POSITIONS OF THE PARTIES

A. *The NHEC*

The NHEC argues that the sellback contract represents an agreement by PSNH to immunize the NHEC from any and all Seabrook related costs during the first ten years of Seabrook's commercial operation.[1(51)] The NHEC interprets the sellback to allow it to sell any and all of its Seabrook related capacity and energy to PSNH for the ten year length of the agreement at a price equalling the NHEC's full Seabrook Unit I expenditures of $163 million, without any corresponding obligation to remain a PSNH wholesale customer. The NHEC further maintains that it adequately exercised its rights under the sellback for the 1989/90 power year by orally informing PSNH prior to May 1, 1989, that the Cooperative was exercising its right to sell back to PSNH the Cooperative's entire Seabrook share for the ensuing power year.

The NHEC contends that this interpretation of the parties' relative rights and obligations is correct under standards of New Hampshire contract law and principles developed by the Federal Energy Regulatory Commission (FERC) concerning the modification of wholesale power contracts to protect the public interest. The Cooperative additionally argues that the FERC's January 28, 1991, decision relative to PSNH's wholesale power agreements preempts this Commission from interpreting the sellback to impose an obligation on the NHEC to remain a PSNH customer for the length of the sellback. *Public Service Company of New Hampshire*, Docket Nos. ER 91-143-000 and EL 91-15-000 (February 5, 1991).

B. *PSNH/NU*

PSNH/NU do not dispute the existence of the sellback agreement. They contend, however, that the NHEC's right to sell back its share of Seabrook power to PSNH is dependent on the NHEC's obligation to remain a wholesale customer of PSNH. PSNH/NU are requesting the

Commission to find that the sellback is unenforceable unless the Cooperative undertakes to enter into a contract to become a wholesale customer of PSNH for the duration of the sellback agreement. In contrast to the Cooperative, PSNH/NU argue that FERC's decision relative to the Cooperative's rights under PSNH's wholesale power agreements does not preempt this Commission from issuing apparently contrary findings on the NHEC's sellback obligations because they are distinct contractual undertakings.

PSNH/NU also argue that PSNH's agreement to purchase the NHEC's Seabrook share at the Cooperative's "full cost" referred to ratemaking concepts of cost of service pricing. Under this analysis, the full cost of Seabrook equals the NHEC's booked cost of Seabrook multiplied by its cost of capital. PSNH/NU contend that NHEC's recoverable Seabrook investment is $72.5 million, an amount which the Cooperative's external auditors thought was a reasonable valuation of its Seabrook investment as of March 1989. They additionally assert that enforcement of the sellback must be prospective, because to do otherwise would result in illegal and unconstitutional retroactive ratemaking.

C. *Consumer Advocate*

The Office of the Consumer Advocate (OCA) contends that the sellback agreement does not entitle the NHEC to shift the risk of its Seabrook investment onto PSNH. The OCA interprets the parties' contractual undertaking to consist of an agreement by PSNH to buy back from the NHEC Seabrook capacity and energy in excess of the Cooperative's electric needs. The OCA also agrees with PSNH that the sellback is an interdependent agreement whereby the Cooperative's right to sell back is tied to its

obligation to remain a requirements wholesale customer of PSNH. The OCA recommends that in valuing the worth of the NHEC's Seabrook share, the Commission should adopt the Staff's recommendation of considering the market value of wholesale electric energy as an objective basis for determining recoverable Seabrook costs.

D. *Campaign for Ratepayer' Rights*

The Campaign for Ratepayers Rights (CRR) argues that previous Commission orders authorizing the NHEC's financings for its Seabrook investment provide the NHEC members with a vested interest in recovering from PSNH the Cooperative's full expenditures for this investment. The CRR calculates this amount to be $187 million and asserts that there is no concomitant obligation on the part of the NHEC to remain a PSNH customer for the duration of the agreement.

E. *United States Rural Electrification Administration*

The United States Rural Electric Association (REA) limited its comments to suggestions from other parties relative to the effect of a Commission decision stating that the "full cost" of the NHEC's Seabrook investment is less than the Cooperative's Seabrook related borrowings from the REA. The REA contends that it is a secured lender of the Cooperative and the Commission should avoid any result that impairs its interests as a secured lender.

III. COMMISSION ANALYSIS

A. *Scope of the Proceeding*

[1, 2] The Commission's Report and Order No. 19,946 (October 1, 1990) (hereinafter "Jurisdiction Order") finding that it has statutory authority to review and approve the terms and conditions of the sellback agreement also established the scope of this proceeding. The Commission's assertion of jurisdiction was predicated upon its determination that there is no federal preemption of state regulatory review of wholesale sales of electricity by a cooperative, *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission*, 461 U.S. 375 (1983); *Salt River Agricultural Imprv. & Power Dist. v. Federal Power Commission*, 391 F. 2d 470 (D.C. Cir. 1968), and its finding that RSA 362-C:7, RSA 378:20 and, to a lesser extent, 378:1 and 7 confer regulatory authority over the sellback agreement.

Consistent with these rulings, the Commission will limit its review in this proceeding to issues involving the parties relative rights and obligations should the Cooperative elect to sell back its share of Seabrook power to PSNH. Questions relating to the NHEC's obligations as a wholesale customer of PSNH and the treatment of the sellback in PSNH's wholesale rates are subject to the FERC's jurisdiction and, accordingly, cannot be addressed by this Commission. Further, our inquiry herein is limited to determining the proper wholesale rate of Seabrook power under the sellback. The subsequent treatment of this wholesale rate as a recoverable cost in the retail rates of either the Cooperative or PSNH is a matter that will be addressed in future retail rate proceedings before the Commission.

B. *Applicable Law*

[3-5] The Cooperative and PSNH/NU argue that the Commission's analysis of the sellback agreement should proceed in two steps. The first step requires the Commission to ascertain the terms and conditions of the agreement in accordance with standard common law principles of contract analysis. The second step requires the Commission to determine whether the agreement should be modified to comport with the public good. With respect to the second stage of the analysis, the Cooperative argues that the Commission should look to FERC decisions for guidance in ascertaining the public good. PSNH/NU maintain to the contrary that the Commission should look to its own statutes and case law interpreting ratemaking principles.

At the outset, we disagree with the assertion that standard principles of contractual analysis are the primary body of law by which this Commission should interpret the sellback

agreement. As we observed in the Jurisdiction Order at 7 and the Order on Rehearing at 3-4, the Commission's primary function in this proceeding, as in any rate proceeding involving a significant addition to a utility's rate base, is to allocate the Cooperative's Seabrook investment among its customers and investors (principally the REA) in a manner that rationally and appropriately balances the interests of each. *See, also, Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944): *Appeal of Conservation Law Foundation*, 127 N.H. 606 (1986). A fair apportionment of the responsibility to support the cost of the NHEC's Seabrook investment under the sellback agreement necessarily involves consideration of whether the terms and conditions of the agreement as advocated by the parties results in a contract that is fair,

reasonable and otherwise in the public good. *See, Appeal of PSNH*, 130 N.H. 748, 750 (1988); *Legislative Utilities Consumers' Council v Public Utilities Commission*, 117 N.H. 972,975 (1977).

Although our primary responsibility to the public good causes us to reject the assertion that standard contract analysis is determinative, we do not mean to imply that such analysis should be ignored. Here, our public good evaluation cannot be accomplished in a traditional ratemaking vacuum; public policy supports the protection of the integrity, stability and predictability of the contracting process, where there exist no overriding factors. This important public policy consideration will be a heavily weighted factor in the Commission's interpretation of the sellback. In this context, we will review and consider the analysis which would be applied under standard contract law.

FERC decisions addressing the formulation of the public interest in the interpretation and enforcement of wholesale power contracts provide supplementary guidance on this issue. We note, however, that because the Cooperative's proposed sale of Seabrook power to PSNH is a transaction which lies peculiarly within the jurisdiction of this Commission, the primary authority for a public good analysis must be New Hampshire regulatory statutes and interpretive decisions. Thus, while applicable FERC decisions are worthy of consideration, they are not determinative.

Finally, with respect to the FERC analysis of wholesale power contracts, we disagree with the Cooperative's assertion that the so-called *Mobil-Sierra* doctrine is relevant to our inquiry in this proceeding. The two United States Supreme Court decisions which developed what is generally known as the *Mobil-Sierra* doctrine set forth the rule of law FERC follows when deciding petitions to modify unilaterally existing wholesale power contracts. *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipeline Co. v. Mobil Gas Service Corp.*, 350 U.S. 332 (1956). Under this doctrine, a utility seeking unilaterally to modify existing power contracts bears a heavy burden. As articulated by the Supreme Court, the public policy of protecting the integrity of FERC approved existing power contracts limits a utility's ability to obtain unilateral modification of contract terms to circumstances where the contract rate is so low that it is impairing the financial ability of the utility to continue service or is unduly discriminatory. *F.P.C. v. Sierra Power Co., Supra*, at 355.

There is a distinction, however, between the FERC's authority to approve new contracts under the Federal Power Act and the public policy considerations relevant to a proposal to modify an existing contract that falls within the *Mobil-Sierra* doctrine. In the former situation the parties' desire to contract freely yields to the FERC's full discretionary authority under the Federal Power Act to determine just and reasonable rates. *See, Northern States Power (Minnesota) and Northern States Power (Wisconsin)*, 51 FERC Para. 61,027, *reh'g. denied* 53 FERC Para. 61,039 (October 5, 1990) (hereinafter *Northern States*). In *Northern States* the FERC observed that the *Mobil-Sierra* doctrine does not limit its discretionary authority to reject proposed contracts as contrary to the public interest:

> The *Mobil-Sierra* doctrine provides that utilities may not make unilateral filings which are inconsistent with the terms of their contractual agreements and that relief from a fixed rate, fixed term contractual obligation may be

> obtained only upon a showing that the contact rate is contrary to the public interest. In this case, Northern States has not tendered a filing inconsistent with its contractual obligations. In addition, section 6.10 of the parties' agreement clearly contemplates Commission approval, and nowhere in the agreement is either party limited to seeking review under the *Mobil-Sierra* "public interest" standard. The *Mobil-Sierra* doctrine simply is not at issue here, and under section 205 of the FPA the Commission may reject any part of the agreement that is not just and reasonable or is unduly discriminatory or preferential.

Id., at 61,052, citing, *Central Illinois*, 33 FERC Para. 61,331 (1985); *Southwestern Electric Power Co.*, 33 FERC Para. 61,051 (1985), *clarified* 34 FERC Para. 61,271 (1986).

As we observed in the Jurisdiction Order, this proceeding represents our first opportunity to determine whether the wholesale rates and other terms and conditions of the sellback agreement are in the public good. Jurisdiction Order at 20. Thus, to the extent they are relevant to our decision, the applicable FERC cases are decisions such as *Northern States* where the FERC initially considered contract terms. The analytical approach the FERC uses when considering initial contract filings is to subject the contract to the FERC's full panoply of regulatory authority to reject and require modification of contract terms that are not just and reasonable or otherwise in the public good. Likewise, this Commission's statutory mandate to arbitrate between the interests of ratepayers and utilities, RSA 363:17-a, requires us to reject terms and conditions contained in the sellback agreement which we find to be contrary to the public good.

C. *Terms and Conditions of the Sellback Agreement*

[6] The Cooperative and PSNH do not dispute the existence of a sellback agreement under which PSNH has agreed to purchase some portion of the Cooperative's share of Seabrook related capacity and energy during the first ten years of Seabrook's commercial operation. There is, however, serious disagreement between the parties relative to the circumstances under which PSNH's obligation exists and the wholesale rate PSNH should pay for the power.

To resolve these issues New Hampshire law governing the interpretation of contracts requires us to determine initially whether there was mutual assent to the disputed terms at the time the contract was entered and the nature of this assent. The NHEC correctly observes that the presence or absence of agreement is determined by consideration of the parties' overt acts and verbal statements. *Maloney v Company*, 98 N.H. 78, 81 (1953); *Eleftherion v. Company*, 84 N.H. 32, 34-5 (1929). In *Eleftherion*, the Court succinctly explained this proposition by noting that with respect to the issue of assent the "[e]xpression of thought, and not thought itself, is determinative." *Id.*

The Cooperative argues that the primary source of the parties' intent on the sellback terms is contained in their correspondence of November 8, 1979 (Exh. NHEC-2), March 30, 1981 (Exh. NHEC-3) and March 8, 1985 (Exh. NHEC-4). The Cooperative asserts that the letters constitute the parties' contract and the Commission must interpret them in accordance with their express terms unless we find that they contain an inherent ambiguity. According to the Cooperative, it is only once we determine the existence of an ambiguity that we may resort to other objective

manifestations of the parties' intent.

As a general principle, it is true that written expression of the parties' assent supplies courts with critical evidence of their contractual undertakings. However, while written agreements are often said to constitute primary evidence of the contract, they are not necessarily dispositive evidence. *MacLeod v Chalet Susse International, Inc.*, 119 N.H. 238, 242-3 (1979). Rather, "[i]ntent ... should be determined not only in light of the instrument itself, but also in view of all the surrounding circumstances." *MacLeod, supra*, at 243, quoting *Rogers v Cardinal Realty, Inc.*, 115 N.H. at 286 (1975). Included in the relevant circumstances is the parties' conduct with respect to the agreement. *Spectrum*

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Enterprises, Inc. v. Helm Corp., 114 N.H. 773, 775-76 (1974).

Thus, when reviewing a written document a court will first determine whether it is intended to be a complete integration of the parties' agreement. If upon examination of the written agreement, the court finds that the intent of the parties is unclear or the terms ambiguous, it will consider extrinsic evidence of intent. *Spectrum Enterprises, supra* at 775-76; *MacLeod, supra* at 243-44. In all cases, however, the ultimate goal is to determine what the parties agreed upon at the time of the contract's formation. *R. Zoppo Co. v. City of Dover*, 124 N.H. 666, 671 (1984).

Our review of the three letters which the Cooperative alleges comprise the sellback contract convinces us that they do not represent a complete integration of the parties' agreement. Indeed, in its brief the Cooperative points out that the letters contemplated that future documents would be drafted which would then become the final formal contracts. NHEC Brief at 7. Thus, the final paragraph in the 1979 letter (Exh. NHEC 2) begins as follows:

> The agreements set forth in paragraphs 1-6 above are intended to be firm commitments, subject only to the working out of detailed contractual language, which either PSNH or the undersigned may enforce by appropriate legal action.

The 1981 and 1985 letters contain virtually identical clauses.

Moreover, there are several inherent ambiguities in the language used in the correspondence. For example, under the 1979 and 1981 letters the Cooperative was entitled to sell back to PSNH Seabrook capacity "... temporarily excess to the needs of the ... [Cooperative]." This phrase is not present in the 1985 letter, which the Cooperative labeled as a "clarifying letter". In its place is language suggesting that the Cooperative has full discretion relative to its right to sell back the capacity. The difference in the description of the NHEC's rights creates an ambiguity and requires resort to extrinsic evidence of the parties' intent. Indeed, the mere fact the parties needed a clarifying letter suggests the presence of a mutual misunderstanding of the agreement.

Based upon the above, the Commission finds that it is appropriate to resort to evidence other that the parties correspondence to discern their true intent. Evidence which the parties introduced relative to the disputed contract terms includes prior testimony before this Commission in the NHEC's Seabrook financing dockets, (*see, e.g. Re NHEC,* DE 83-360), documents and testimony filed with the U.S. Bankruptcy Court, and internal company memoranda and correspondence concerning the agreement. Upon careful review of the documentary and oral evidence, the

Commission is satisfied that there was a meeting of the minds on the operative terms of the sellback. For the reasons set forth below, we find that the parties intended the sellback to provide to the Cooperative full discretion to determine the amount of Seabrook capacity and power it wished to sell back to PSNH in each New England Power Pool (NEPOOL) year of Seabrook's first ten years of commercial operation.[2(52)] We further find that the parties agreed that the Cooperative would remain a essentially a total requirements wholesale customer of PSNH[3(53)] during the existence of the agreement and thus, the NHEC's right to sell power to PSNH ceases if the Cooperative elects to rely on another company as its primary source of wholesale power,[4(54)] Finally, we find that PSNH agreed to purchase the power at an amount equal to the Cooperative's full cost. For reasons of public policy, we find this amount is $126 million, the Cooperative's authorized investment in Seabrook Unit 1.

1. *The Cooperative's Obligation to Remain a PSNH Wholesale Customer*

[7-11] For the most part the Cooperative and PSNH do not dispute the circumstances which resulted in the creation of the sellback agreement. In the late seventies PSNH was confronted with rapidly increasing costs related its construction of Seabrook. In an attempt to limit these costs, PSNH sought to reduce its ownership share of Seabrook from 50% to 28% by selling portions of its share to other New England utilities. The Cooperative was one of the

several utilities which ultimately responded affirmatively to PSNH's offer by purchasing approximately a two percent interest in Seabrook Units I and II.[5(55)]

According to the pre-filed testimony of the Cooperative's manager, Jon Bellgowan, the purpose of the sellback agreement was to ensure that NHEC members were not harmed by the Seabrook investment. Since its inception in 1939, the Cooperative has relied on PSNH to meet almost all of its power needs. Because the Cooperative can obtain lower cost federal financing, its investment in Seabrook was a vehicle for ultimately reducing its wholesale power costs during the life of the sellback. This could occur either directly if Seabrook power proved less expensive than power it could purchase from PSNH, or indirectly by reducing the cost of Seabrook generated power that it would purchase as a part of the PSNH supply mix. According to the Cooperative's outside consultants, Whitfield A. Russell and Dennis R. Eicher, the use of sellback agreements to reduce the risks and costs of constructing generating units is standard in the electric industry.[6(56)]

The focal point of the parties' dispute is whether the NHEC correctly construes the sellback as providing a mechanism to the Cooperative to reduce its power costs by selling all of its Seabrook share back to PSNH while at the same time purchasing lower cost wholesale power from another utility. In support of this contention the Cooperative points to the absence of language in the three letters describing the sellback agreement (Exhs. NHEC 2, NHEC 3 and NHEC 4) which *compels* it to remain a PSNH customer. While the NHEC acknowledges that Exh. NHEC 4 contains a statement that "[t]he Cooperative intends to remain ... a ... requirements wholesale customer of Public Service for the 10 year life of the contract ... , " it argues that the language speaks in terms of intent, rather than agreement. The Cooperative also argues that Section VI of the 1981 Partial Requirements Contract between the Cooperative and PSNH gives

the Cooperative the immediate right to cease purchasing power from PSNH if it determines that it has the opportunity of purchasing less expensive power by becoming a member of NEPOOL.

PSNH argues to the contrary that prior to 1985 the agreement limited the Cooperative to selling back the portion of Seabrook power that was in excess of its electrical needs to serve its customers. PSNH maintains that during discussions in 1984 concerning a potential Cooperative purchase of an increased share of Seabrook, PSNH became aware that the Cooperative was claiming that there was no limit to the amount of power it could sell back. PSNH claims this dispute ultimately resulted in a modification of the sellback arrangement that is represented in the March 6, 1985 letter (Exh. NHEC 4). According to PSNH, while this letter entitles the Cooperative to sell back at its discretion any amount of its Seabrook share to PSNH, the letter also commits the Cooperative to remain a customer of PSNH for the duration of the agreement.

At this stage of the parties' relationship, we do not find it necessary to ascertain whether prior to 1985 the Cooperative was limited to selling back only that portion of Seabrook power in excess of its electrical needs. It is undisputed that since at least 1985 that limitation has not existed. Thus, the limited question we will address is whether the Cooperative's right to sell Seabrook power to PSNH is dependent upon its continued status as a PSNH wholesale customer. With respect to this question, we find that the 1985 letter (Exh. NHEC-4), and the testimony of John Pillsbury, the Cooperative's former General Manager, supplies critical objective evidence of the parties's intent.

The third paragraph of the 1985 letter states as follows:

> The Cooperative intends to remain, with the exception of the entitlements defined below, a total requirements wholesale customer of Public Service for the 10 year life of the contract with respect to Unit 1 and Public Service agrees to meet the total power requirements of the Cooperative at those delivery points at which the Cooperative receives power from Public Service.

Contrary to the Cooperative's argument

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we find that a fair reading of this paragraph in conjunction with the remaining portions of the letter demonstrate the Cooperative's assurance that it would remain a PSNH customer for the duration of the sellback agreement. *See e.e.*, *Kilroe v Troast*, 117 N.H. 598 (1977) (contracts must be construed as a whole and words given their plain and ordinary meaning). The third and fourth paragraphs of the agreement refer to the Cooperative's agreement to give PSNH the right of first refusal to serve new load increments and not to solicit actively power purchases from small power producers to replace its Seabrook entitlements. These agreements by NHEC would be meaningless if, as the Cooperative asserts, it had no obligation to remain a PSNH partial requirements customer.

Moreover, to the extent NHEC's intent in the letter appears ambiguous, standard contract analysis requires us to resolve the ambiguity in PSNH's favor. During the hearing, PSNH introduced an earlier March 6, 1985 letter from John Pillsbury to the President of PSNH, Robert Harrison, containing essentially the same assurances. The testimony during the hearing revealed that while PSNH made some changes to the language relative to its right of first refusal, the

provision concerning the Cooperative's intent to remain a PSNH customer originated with Mr. Pillsbury. Thus, to the extent the choice of words describing the parties' agreement creates doubt relative to their intent, the words used will be construed in PSNH/NU's favor. *Trombly v Blue Cross/Blue Shield of New Hampshire-Vermont*, 120 N.H. 764, (1980).

The Cooperative's contention that it does not have an obligation to remain a partial requirements wholesale customer as a precondition of exercising its sellback option is also flatly inconsistent with the testimony of John Pillsbury in DF 83-360, the Cooperative's last financing proceeding regarding its Seabrook investment. As the Commission's Chief Economist Dr. Sarah Voll pointed out in her pre-filed testimony (Staff Exh. 5), the thrust of the Cooperative's testimony relative to its wholesale power relationships was that its only realistic source of power was PSNH. Confronted with a series of questions from individual Commissioners, Staff and Intervenors relative to its commitment to PSNH, Mr. Pillsbury testified that his primary concern at the time was ensuring a secure power supply source for the Cooperative. According to Mr. Pillsbury, because he believed it contrary to the Cooperative's interest to rely on the open market for power, he desired an affirmative commitment from PSNH that it would continue to meet the Cooperative's power needs for the ensuing ten years. In exchange for this commitment, Mr. Pillsbury agreed to remain a total power supply customer of PSNH for the same period. In response to a question from Commissioner Aeschliman, Mr. Pillsbury testified as follows:

> And I also wanted it understood that they were going to meet our requirements, they are not going to say to us, I am sorry, we can't serve, Go out on your own. That was the original terms of the Seabrook offer. And we didn't want that to be creeping back as the amendment, to be creeping back. By the same token if we are going to require of them, we are bound by existing contracts and we can not change a contract without notice. And you see that reflected in the United Electric move where they have given notice and now there is going to be an argument as to whether it is 2 years or 5 before the FERC. We are bound anyway. *But it is — it is logical and I think reasonable that if we are going to have a 10-year sellback right and an absolute guarantee of power resources for the next ten years, and they are going to make the investments and decisions to satisfy those needs, that we agree to stay on as their total requirement customer.*

(PSNH Ex. 11 at 1407-08)(emphasis supplied).

The above quoted testimony represents just one of several occasions during DF 83-360 in which Mr. Pillsbury represented to the Commission that the Cooperative's right to sell back Seabrook power to PSNH was interdependent with its agreement to remain a PSNH customer during the ten year term of the sellback agreement. On several occasions, Mr. Pillsbury reiterated that his primary concern was to

ensure a reliable source of power for the Cooperative and his commitment to PSNH was part and parcel of his obtaining that assurance. PSNH Exh. 11 at 1404-1405; PSNH Exh 14 at 364-69.

We find that this testimony which was supplied shortly after the execution of the March 1985

letter accurately reflects the parties' agreement that the Cooperative's right to sell back Seabrook power is subject to its obligation to remain a PSNH customer. There is simply no record support either here or in DF 83-360 for the Cooperative's requested finding that its right to sell Seabrook power to PSNH is independent of its obligation to remain a customer. In essence, the Cooperative is requesting that this Commission find that in his DF 83-360 testimony, Mr. Pillsbury claimed a greater obligation to PSNH than he in fact had. Such an assertion is contrary to common sense and finds no support in the evidentiary record. Indeed, the only reasonable inference that can be drawn from the testimony heard by the Commission is that Mr. Pillsbury would not make any statements to PSNH during the contracting process that was inconsistent with his statements made under oath in Commission proceedings.

It is also noteworthy that Mr. Pillsbury's testimony concerning the Cooperative's obligations under the sellback before the Commission in DF 83-360 is consistent with other contemporaneous evidence of the Cooperative's understanding of the scope of the parties' agreement. For instance, Mr. Fred Anderson, the Cooperative's Director of Finance and Administration[7(57)] , testified in DF 83-360 that he understood the agreement to require the Cooperative to remain a PSNH customer for the duration of the sellback. Staff Exhs. 2 and 3. Additionally, during the hearing, PSNH/NU introduced as evidence a March 5, 1987, letter from the Cooperative to the REA in which the Cooperative responded to an REA invitation to purchase power from a Vermont Cooperative by noting that replacement of PSNH as a seller would require renegotiation of the sellback agreement. PSNH Exh 12. Under traditional contract analysis, it is appropriate for the Commission to consider these contemporaneous descriptions of the agreement by the Cooperative as extrinsic evidence of the parties' intent. *Auclair v Bancroft*, 121 N.H. 393 (1981).

In summary, the evidence consisting *inter alia* of the parties' letter dated March 6, 1985 and Mr. Pillsbury's testimony before this Commission in May 1985 convinces us that the parties' contemporaneous intent with respect to their mutual rights and obligations under the sellback agreement was that the Cooperative must remain a PSNH customer during the period it sells Seabrook power back to PSNH. We therefore find that under the sellback terms, a condition precedent of the Cooperative's right to sell back power to PSNH is that it continue as a partial requirements wholesale customer of PSNH in each power year that it elects to exercise its sellback rights.

In so holding, we disagree with the Cooperative's assertion that FERC's February 5, 1991, Order in PSNH's wholesale rate filing, *Public Service Company of New Hampshire*, Docket Nos. ER 91-143-000; EL91-15-000, preempts or precludes this Commission from conditioning the Cooperative's sellback rights on an obligation to purchase power from PSNH. The Cooperative argues that under *Mississippi Power and Light Company v. Mississippi*, 487 U.S. 354 (1988), this Commission is bound by FERC's ruling that the March 8, 1985, letter does not compel the Cooperative to remain a PSNH customer for ten years. According to the Cooperative, this Commission does not have the authority to make an independent determination of the parties rights and obligations under the sellback. This argument reflects a fundamental misunderstanding of the preemption doctrine as applied to FERC's authority under the Federal Power Act and the import of FERC's February 5, 1991 Order.

It is well established that under the Federal Power Act FERC has jurisdiction to regulate the

wholesale transmission and sale of electricity in interstate commerce by investor owned utilities. *Mississippi Power & Light v. Mississippi, supra.* Thus, there is no question that FERC has jurisdiction over the rates and terms and conditions of service under the partial requirements service agreement between PSNH and the Cooperative. It is equally well established that FERC does not have regulatory authority over

the wholesale transmission and sale of power by the Cooperative to PSNH under the sellback agreement. *Dairyland Power Co-op*, 67 PUR3d 340 (D.C. Cir. 1967) and, more critically, that our assertion of authority over the sellback is not constitutionally prohibited by either the Commerce Clause or Supremacy Clause of the United States Constitution. *Arkansas Electric Co-op Corp. v Arkansas Public Service Commission*, 461 U.S. 375 (1983). Accordingly, under modern Commerce Clause analysis, FERC's interpretation of the partial requirements wholesale contract preempts this Commission from interpreting the sellback agreement only if it can be determined that compliance with both our order and FERC's decision is impossible or if our order "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Exxon Corporation v Eagerton*, 462 U.S. 176, 182 (1983); *Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822, 827-89 (1985).

Contrary to the assumption implicit in the Cooperative's preemption argument, our resolution of sellback agreement issues does not create conflicting rights and obligations for the Cooperative or other parties. Initially, we note that FERC has yet to issue a final order interpreting the Cooperative's contractual obligations under the partial requirements wholesale contract. In its February 5, 1991 Order, the FERC set for hearing the issue of whether the contract should be amended to require the Cooperative to remain a PSNH customer for ten years. Slip Opinion at 12. *See also*, FERC'S Order of March 28, 1991 *inter alia* Denying Motions of Summary Disposition in Docket Nos. ER91-235-000, ER 91-143-000, EL91-15-000, in which the FERC found the 1981 partial requirements service contract to be ambiguous on the issue of whether the Cooperative can abrogate the notice provisions by becoming a stand-alone member of NEPOOL. Slip Opinion at 12-13. The FERC also consolidated its consideration of the notice issue in Docket No. ER91-235-000 with its determination in Dockets Nos. ER91-143-000 and EL91-15-000 of whether the Cooperative's existing contract with PSNH should be modified to obligate the Cooperative to remain a PSNH customer for ten years. *Id.* Thus, any suggestion that the FERC has affirmatively determined the Cooperative's rights as a PSNH customer is clearly erroneous.

Moreover, even if FERC eventually concludes that the Cooperative is not obligated to remain a PSNH customer for ten years, the Cooperative could not use this decision to override our determination that it agreed to purchase power from PSNH under the partial requirements wholesale contract with PSNH as a condition precedent of its right to compel PSNH to purchase Seabrook power. The FERC does not have jurisdiction to determine the terms and conditions which must be present before the Cooperative can exercise its sellback rights. Thus, just as we may not dictate the Cooperative's obligations as a PSNH customer, the FERC does not the authority to restrict our ability to determine the Cooperative's rights as a vendor of Seabrook power. *See e.g., United States v RCA*, 358 U.S. 334 (1959) and *Thompson Medical Co. v FTC*,

791 F.2d 189, 193 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1986 (1987), holding that the doctrine of preemption does not apply to an issue which is subject to the distinct jurisdictional charges of separate agencies.[8](58)

We also find no merit to any allegation that the FERC's Order bars our decision under principles of *res judicata* or collateral estoppel. These preclusion doctrines are not applicable because the FERC could not and, as a matter of fact, did not adjudicate the issue of whether the Cooperative could compel PSNH to purchase Seabrook power if it was not during the same period a PSNH customer. *United States v RCA*, 358 U.S. 334 (1959); *Appeal of White Mts. Educ. Ass'n*, 125 N.H. 774 (1984).

2. *The Cost of Seabrook Power Under the Agreement*

[12] The November 8, 1979 and March 30, 1981 letters (NHEC Exhs. 2 and 3) describing the sellback agreement expressly provide that for purposes of the sellback the price of Seabrook will be at the Cooperative's cost. With respect to the issue of cost, the March 30, 1981 letter (NHEC Exh. 3) states that PSNH

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will purchase the power at the Cooperative's full cost and proceeds to set forth a formula for the calculation of full cost. The parties do not dispute the existence of the full cost term. However, they do not agree on the figure which represents the Cooperative's full cost.

The Cooperative maintains that under the agreement it is entitled to recover its full cost of capital (interest expense on Seabrook investment less depreciation), based upon approximately $163 million of debt it incurred to invest in Seabrook Unit 1.

PSNH argues to the contrary that full cost under the agreement equals $72.5 million, the amount carried on the Cooperative's books after a write down. In the alternative, PSNH argues that full cost should be defined as parity with the Seabrook valuation inherent in its retail rate plan. PSNH notes that the Commission should not establish a valuation without applying traditional ratemaking principles.

We disagree with the PSNH argument. As developed herein, we conclude that the equities under the facts surrounding the sellback require us to reflect the Cooperative's entire investment in Seabrook in the "full cost" definition unless there is a compelling public policy reason to modify that cost. Here, the Cooperative's willful violation of New Hampshire financing statutes is such a reason and we will modify the cost to exclude such unlawful investment. No further modification is appropriate.

PSNH initially argued that the formula contained in the 1981 letter (NHEC Exh.3) demonstrates that the parties contemplated traditional cost of service ratemaking for the calculation of the Cooperative's full cost. Under this formula, the Cooperative's full Seabrook cost would equal *inter alia* the cost of supporting the Seabrook investment carried on the Cooperative's books. Because the Cooperative's auditors required it to write down its Seabrook 1 investment in March of 1989 to $72.5 million, PSNH contends that this is the amount upon which the Cooperative can recover under the sellback.

We disagree with PSNH's assertion that our determination of the Cooperative's Seabrook

costs should be driven by management's accounting determinations. The fact that Generally Accepted Accounting Principles (GAAP) caused the Cooperative's external auditors to suggest that the Cooperative write down its Seabrook investment in 1989 does not compel a like valuation of Seabrook by this Commission for the purpose of determining recoverable Seabrook costs under the sellback. In our last order setting PSNH's recoverable ECRM costs, we agreed with the following statement in PSNH's brief concerning the use of accounting principles for ratemaking decisions:

> Accounting determinations made by the Company obviously are not determinative of ratemaking, since, if they were, the Company could control the ratemaking process in derogation of this Commission's authority by the manner in which it kept its books.

Re Public Service Company of New Hampshire Energy Cost Recovery Mechanism, DR 90-186, Report and Order No. 20,022 at 26 (January 7, 1991). We note further that in cross-examination PSNH/NU's witness Andrew Herf agreed that the Commission is not limited by standard accounting principles in its determination of the Cooperative's full Seabrook costs for ratemaking purposes. (Trans. Vol. V at 137).

We also disagree with PSNH/NU that equity requires the Commission to equalize Seabrook costs under the sellback with the valuation of Seabrook under its retail rate plan.

The Commission's ultimate responsibility as a regulatory agency is to arbitrate between the interests of the public utility's shareholders and ratepayers. RSA 363:17-a. *Appeal of Conservation Law Foundation*, 127 N.H. 606, 633-635 (1986). In the context of determining the percentage of recoverable Seabrook investment, our statutory obligation compels us to determine the equitable amount of Seabrook investment that should be paid for by ratepayers. However, there is a clear distinction between the equities as applied to PSNH retail ratepayers and PSNH as a Cooperative wholesale customer. Unlike its own ratepayers, PSNH had the opportunity to control the costs involved in constructing Seabrook. In contrast, as a two percent owner of Seabrook, the Cooperative had little if any opportunity to control

those costs. Moreover, we cannot ignore the fact that the Cooperative agreed to purchase and did purchase its share of Seabrook from PSNH in reliance on *inter alia* the full cost term of the sellback agreement. To the extent, therefore, that the actual cost of Seabrook as a source of power is in excess of its fair value, we believe it appropriate that PSNH and not the Cooperative assume the risk of this excess.

As noted, our Order herein cannot be construed as approving any PSNH retail rate that reflects the cost of the sellback. Section 12 of the PSNH/NU approved Rate Agreement specifically provides that the Rate Plan will be reopened once the sellback issue is finally determined. *In Re Northeast Utilities/Public Service Company of New Hampshire Reorganization Proceedings*, Report and Order No. 19,889 at 98 (July 20, 1990). Thus, in accordance with the agreement, PSNH/NU are not necessarily entitled to recover all of their sellback costs from retail ratepayers; rather, the Rate Agreement contemplates a future proceeding for resolution of this issue.

While we do not find it in the public good to reduce the Cooperative's recoverable Seabrook

costs under the sellback to the amounts requested by PSNH/NU, we also will not permit the Cooperative to recover its entire Seabrook 1 investment. Under RSA 369:1 and:4 the Cooperative was required to seek prior Commission approval before obtaining financing for its Seabrook investment.9(59) In approving utility financing the Commission "has the duty to determine whether, under all the circumstances, the financing is in the public good — a determination which includes considerations beyond the terms of the proposed financing." *Appeal of Easton,* 125 N.H. 205, 213 (1984).

The undisputed evidence was that the Cooperative willfully ignored its RSA Chapter 369 obligations with respect to approximately $37 million of its Seabrook 1 investment. Mr. Anderson testified that the Cooperative's approved investment in Seabrook 1 inclusive of nuclear fuel equals approximately $126 million. He stated that the difference between the $126 and $163 million represents capitalized interest and REA protective advances. Tr. Vol. III at 9 - 12. Both Mr. Bellgowan and Mr. Anderson testified that they were aware of their statutory obligation to seek prior Commission approval before incurring the additional debt. Tr. Vol. IV at 113-114; Tr. Vol III at 12-16.

The public policy of requiring prior Commission approval compels us to disallow as a cost recoverable under the sellback Seabrook debt in excess of the $126 million authorized by this Commission. Indeed such willful violation of regulatory requirements subjects the Cooperative and its management to civil penalties under RSA 365:41 and RSA 365:42. However, because this proceeding was not noticed as one in which we would consider penalties, we will not address that issue in this proceeding. RSA 541-A:16. We accordingly reserve our right to address in a future appropriately noticed proceeding the penalties, if any, that should be imposed. We will also in this Order request the Attorney General to conduct an investigation to determine whether he should institute criminal proceedings under RSA 374:41, RSA 365:41 and RSA 365:42.

C. *The Cooperative may retroactively enforce its sellback option.*

[13] A remaining issue is the nature of the notice the Cooperative had to give to PSNH in order to sell back Seabrook power in any single power year. The March 30, 1981 letter (NHEC Exh. 3) contemplates that by May 1 of every year the Cooperative will furnish to PSNH the percentage of capacity and energy it intends to sell back during the following NEPOOL power year. The NHEC does not dispute the notice requirement, but contends that it satisfied the requirement by giving PSNH oral notice of its intent to sell back all of its Seabrook energy and capacity for the 1989-90 power year before May 1, 1989.

PSNH/NU contend that the notice the Cooperative gave to sell back Seabrook power for the 1989-90 power year was inadequate because the Cooperative did not supply written notice until approximately May 12, 1989. PSNH Exh. 35. The companies further contend that because they have no mechanism for retroactively recovering from ratepayers sellback

costs prior to the First Effective Date of PSNH's reorganization, *Opinion of the Justices,* 123 N.H. 349 (1983) precludes retroactive application of the sellback.

We disagree with PSNH/NU's argument that they had inadequate notice of the Cooperative's intent to sell back all of its Seabrook entitlement during the past power year. The written expressions of the parties' agreement do not provide for written notice and apparently the past practice of the parties' was for the Cooperative to provide oral notice. Tr. Vol. VIII at 65. More critically, PSNH/NU witness Johnson testified that through the parties' ongoing negotiations PSNH had actual notice before May 1, 1989 of the Cooperative's intent. Mr Johnson also testified that earlier written notice would not have affected PSNH's power planning. Tr. Vol. VIII at 73-74, 105-06.

There is also no merit to PSNH/NU's argument that retroactive application of the sellback is unconstitutional. In *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980), the Court ruled that it is not retroactive ratemaking for the Commission to allow new rates to be effective on the date a utility petitions for a rate change. Accordingly, in Report and Order No. 19,989 (November 26, 1990), we ruled that because the Cooperative filed its rate plan prior to Seabrook's commercial operation date of July 1, 1990, under *Pennichuck*, the Cooperative's sellback rate could be made effective as of July 1, 1990, so long as a July 1, 1990, date is reasonable under the facts adduced at the evidentiary hearing. Report and Order No. 19.989 at 2-3.

PSNH/NU also contend that the Cooperative's ability to obtain a July 1, 1990, effective date is contrary to the Court's holding in *Opinion of the Justices*, *supra*, in which the Court ruled that the legislature could not retroactively apply franchise taxes on utilities because those utilities would not have an opportunity to recover the cost through rates. The Court found that retroactive application of the tax would constitute "unconstitutional confiscation of private property for a public purpose without justification" in violation of the United States Constitution, Amendments V and XIV and the New Hampshire Constitution, Part I, Article 12 amends. The factual circumstances involved in the determination of the proper effective date of the Cooperative's sellback rate are clearly distinguishable from the facts involved in *Opinion of the Justices,* and we therefore find the Court's holding therein inapposite.

There is no question in this proceeding that PSNH/NU had actual notice of the Cooperative's intent to sell back its Seabrook entitlement for the 1989-90 Power Year well before the date of Seabrook's commercial operation. There is also no dispute that under the terms of the parties' agreement, the contract could go into effect when Seabrook began commercial operation. In addition, from the time the Cooperative filed its rate plan with this Commission on June 8, 1990, PSNH/NU knew that under *Pennichuck Water Works, supra*, the Commission could allow the Cooperative to place its sellback rate in effect once Seabrook began commercial operation. Contrary to the retroactive tax change involved in *Opinion of the Justices, supra*, PSNH had the opportunity to seek recovery of sellback costs by petitioning this Commission and the FERC for appropriate changes in its retail and wholesale rates. The fact that PSNH voluntarily chose to forego the opportunity to protect its interest does not justify depriving the Cooperative of its right to collect its sellback costs on the date contemplated by the parties' agreement. We accordingly find that on the facts of this proceeding that it is just and reasonable for the Cooperative to commence billing PSNH for Seabrook power and capacity supplied as of July 1, 1990.

D. *Tax Effect of Sellback*

The Cooperative's witness Anderson testified during the hearing that enforcement of the sellback and restructuring of the REA debt could create tax consequences for the Cooperative. Tr. Vol. II at 143-144. Mr. Anderson also stated, however, that he was not certain of the precise nature of the tax consequences and admitted that the Cooperative had not developed a proposal for reflecting the tax effects in either the sellback or retail rates. Tr. Vol. III at 61-62.

Based on the record in this proceeding the Commission clearly does not have sufficient information to resolve issues involving the Cooperative's potential status as a taxable entity. To the extent, however, that there is a change in the Cooperative's status and PSNH is a wholesale customer of the Cooperative, PSNH will share in the tax benefits and burdens caused by the change in the Cooperative's tax status in accordance with traditional ratemaking principles.

IV. CONCLUSION

Witness Merrill testified that when the Cooperative and PSNH entered into the sellback agreement in 1981 they believed that it would serve the interests of their customers. While intervening events may have caused the parties to rethink the sellback agreement, we believe that we have construed it in a manner that reflects their original intent and provides for rates that are just, reasonable and in the public interest.

In this phase of the proceedings, we have established the rates, terms and conditions under which the Cooperative may sell its share of Seabrook output to PSNH. Unfortunately this Order does not represent the final determination of the difficult issues confronting the Cooperative members and the effect of the sellback agreement on the retail and wholesale customers of PSNH. Further proceedings are warranted before this Commission, the FERC and appropriate Courts.

Our Order will issue accordingly.

ORDER

Based upon the foregoing report which is incorporated by reference herein; it is hereby

ORDERED, that the sellback agreement between Public Service Company of New Hampshire (PSNH) and the New Hampshire Electric Cooperative, Inc. (Cooperative) is approved effective July 1, 1990; and it is

FURTHER ORDERED, that the rates which the Cooperative may charge PSNH under the sellback agreement shall be based upon a Seabrook Unit 1 valuation of $126 million; and it is

FURTHER ORDERED, that for each of the ten years in which the sellback is in effect the Cooperative's right to sell back Seabrook related energy and capacity to PSNH is subject to the condition precedent that the Cooperative remain a customer of PSNH under the parties partial requirements wholesale power service agreement for the same power year; and it is

FURTHER ORDERED, that the Cooperative file tariffs in compliance with this report and order; and it is

FURTHER ORDERED, that once the tax implications of the sellback are known to the

Cooperative, the Cooperative shall report back to the Commission with respect to this issue; and it is

FURTHER ORDERED, that the Attorney General is requested to commence an investigation of the Cooperative's willful violation of statutory financing requirements to determine whether criminal or other judicial proceedings should be instituted pursuant to RSA 365:41, RSA 365:42 and RSA 374:41.

By order of the Public Utilities Commission of New Hampshire this third day of May, 1991.

FOOTNOTES

[1]In its brief, the Cooperative noted its continuing objection to the commission's assertion of jurisdiction over the sellback agreement. The commission acknowledges that the Cooperative's right to challenge the commission's jurisdiction is preserved for appeal.

[2]A NEPOOL year runs from November 1 through October 31.

[3]We recognize that the Cooperative takes service from PSNH under a "partial requirements" agreement. We understand this to mean that the Cooperative is free to continue to purchase power at certain discrete interconnection points where it has historically been impractical to purchase power from PSNH.

[4]The Cooperative recently entered into a wholesale purchase power agreement with New England Power Company. The Cooperative maintains that under the 1981 wholesale power agreement it has with PSNH, it retains the unilateral right to cease taking power from PSNH immediately upon becoming an independent participant of NEPOOL. PSNH contends that its agreements with the Cooperative require

the NHEC to give PSNH ten and alternatively a minimum of five years notice before it ceases to be a customer. As we discuss *infra* at 25-28, issues concerning the Cooperative's obligations as a PSNH customer are subject to the FERC's jurisdiction and are currently pending before the FERC in proceedings involving the three utilities as well as the State and this commission. Thus, our order cannot address the Cooperative's obligations as a PSNH customer; rather, we only set forth the circumstances under which the Cooperative may sell Seabrook power to PSNH.

[5]The Cooperative's share equaled about 25 megawatts of power from each unit. Now that Unit II is canceled, the Cooperative's entitlement is limited to the 25 megawatts from Unit I.

[6]Mr. Eicher is a Vice President of Power System Engineering, the firm which also assisted the Cooperative in its preparation of a February 22, 1991 "Message" and ballot to its members relative to the effect on retail rates of its agreement with New England Power Company (Exh. OCA 1). While the patent inaccuracy of Exh. OCA 1 relative to the rate increases Cooperative members can expect if the commission authorizes rate parity with PSNH is not an issue that is relevant to our consideration of the sellback, the commission shares the OCA's concern about the document. We find the Cooperative's management particularly remiss in failing to correct the

inaccuracy before publication. Because, however, none of Mr. Eicher's testimony was determinative of the issues in this proceeding, we do not need to determine the effect of his firm's poor showing with respect to its preparation of the ballot on the credibility of his pre-filed and oral testimony.

[7]Mr. Anderson has been the Cooperative's Director of Finance and Administration since January of 1988 — after the closure of DR 83-360. Prior to that time, Mr. Anderson was the Cooperative's Assistant Director of Budgets and Finance. NHEC Exh. 22 at 2.

[8]*AEP Generating Company*, 32 FERC para. 61,364 (1985), cited by the NHEC, is inapposite. Therein, the FERC observed that it has primary jurisdiction to interpret the terms and conditions of contracts subject to its exclusive authority. Because this Commission has jurisdiction over the sellback and the FERC lacks such authority, the legal principle in *AEP* does not apply.

[9]Because of the NHEC's structure as an electric cooperative, it has no equity invested in Seabrook. Thus, its investment is coincident with its Seabrook related debt.

EDITOR'S APPENDIX

Citations in Text

[D.C.Cir.] Salt River Agricultural Improv. & Power Dist. v. Federal Power Comm'n, 129 U.S.App.D.C. 117, 73 PUR3d 321, 391 F.2d 470, Feb. 15, 1968. [N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990. [N.H.] Re Public Service Co. of New Hampshire, DR 90-186, Order No. 20,022, 76 NH PUC 11, Jan. 7, 1991. [U.S.Sup.Ct.] Arkansas Electric Co-op. Corp. v. Arkansas Pub. Service Comm'n, 461 U.S. 375, 52 PUR4th 514, 76 L.Ed.2d 1, 103 S.Ct. 1905, May 16, 1983. [U.S.Sup.Ct.] Federal Power Comm'n v. Hope Nat. Gas Co., No. 34, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281, Jan. 3, 1944. [U.S.Sup.Ct.] Federal Power Comm'n v. Sierra Pacific Power Co., 350 U.S. 348, 12 PUR3d 122, 100 L.Ed. 388, 76 S.Ct. 368, Feb. 27, 1956. [U.S.Sup.Ct.] Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354, 101 L.Ed.2d 322, 93 PUR4th 293, 108 S.Ct. 2428, June 24, 1988. [U.S.Sup.Ct.] United Gas Pipe Line Co. v. Mobil Gas Service Corp., 350 U.S. 332, 12 PUR3d 112, 100 L.Ed. 373, 76 S.Ct. 373, Feb. 27, 1956.

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NH.PUC*05/06/91*[27130]*76 NH PUC 327*Manchester Water Works

[Go to End of 27130]

Re Manchester Water Works

DR 89-196
Order No. 20,123

76 NH PUC 327

New Hampshire Public Utilities Commission

May 6, 1991

ORDER denying a petition by a municipal water utility to expand the application of its Merrimack Source Development Charge (MSDC) to all franchise areas regardless of date of acquisition. The MSDC is a one-time charge assessed to new customers in franchise areas acquired since May 1, 1987, to fund the cost of constructing facilities necessary to develop the Merrimack River as a source of water supply. Commission finds no reason to disturb its prior decision to allocate the cost of developing a new source of water supply to customers in "new" franchise areas, notwithstanding the fact that the anticipated level of MSDC revenues did not materialize due to lower-than-expected growth in the new areas.

Commission holds that the MSDC does not result in unlawful rate discrimination nor violate RSA 378:30-a, the so-called anti-CWIP law.

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1. SERVICE, § 191

[N.H.] Burden of cost — Charges to additional customers — Development of new water supply — Merrimack Source Development Charge — Allocation — Municipal water utility. p. 329.

2. RATES, § 597

[N.H.] Water — Cost of new supply — Apportionment — Merrimack Source Development Charge — Municipal utility. p. 329.

3. EXPENSES, § 145

[N.H.] Water — Cost of new supply — Apportionment — Merrimack Source Development Charge — Municipal utility. p. 329.

4. DISCRIMINATION, § 188

[N.H.] Rates — Water — Extra costs — Development of new supply — Merrimack Source Development Charge — Municipal utility. p. 329.

5. VALUATION, § 224

[N.H.] Construction work in progress — Rate recovery — Development of new water supply — Merrimack Source Development Charge — Anti-CWIP law — Municipal utility. p. 329.

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A. by Mark Rouvalis, Esq. and Richard Samuels, Esq. for Manchester Water Works; J. Michael Love, Esq. for Southern New Hampshire Water Company; Eugene F. Sullivan, III, Esq. for New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On January 9, 1990, Manchester Water Works (Manchester) filed the fourth revised tariff,

page 31 to NHPUC No. 3 which would, if made effective, expand the area in which the Merrimack Source Development Charge (MSDC) may be applied. On January 22, 1990, by order no. 19,680 dated January 22, 1990, the commission suspended Manchester's filing and ordered a prehearing conference to address procedural matters and interventions. At the prehearing conference held on March 29, 1990, J. Michael Love, then President and General Counsel of Southern New Hampshire Water Company, Inc. (Southern) appeared on behalf of Southern and moved to intervene in the case. Said motion to intervene was granted. The

parties stipulated to a procedural schedule. By order no. 19,790 dated April 6, 1990, the commission adopted the proposed procedural schedule establishing a hearing on the merits on July 30, 1990. At said hearing, Manchester proffered the testimony of David Kittredge, Arthur Blair and Christopher P. N. Woodcock. Staff proffered the testimony of James Lenihan and Southern did not appear. Following the hearing, Manchester and the staff briefed the issues in this case for the commission.

II. *Background*

The MSDC is a one time charge assessed to new customers to fund the cost of construction of facilities necessary to develop the Merrimack River as a source of water supply for Manchester Water Works. The MSDC is a one-time fee that is allocated to the source of supply facilities and related costs necessary for the development of those facilities. Manchester currently charges new customers in its franchise areas acquired since May 1, 1987, the MSDC charge. *See, Re Manchester Water Works*, 72 N.H.P.U.C. 138 (1987).

The basis for the original source development charge was founded on: 1) the rapid growth of the Manchester area in the mid-1980's creating a need for an additional source of supply if the safe yield of Lake Massabesic (Manchester's source of supply), approximately 20.5 million gallons per day, was not to be exceeded; 2) the promotion by various New Hampshire state agencies, including the commission of the development of regional water supply systems in which Manchester is to play a significant role; and 3) the belief that the charge should be based on the policy that those causing the need for another source of water should fund its development.

In its petition Manchester seeks to expand the MSDC from its original application, *i.e.*, to expand the charge to all new customers regardless of the date Manchester's franchise was granted. Manchester proposes to broaden the source development charge from new franchise areas to new customers in all franchise areas because growth projections estimated by Manchester in new franchise areas did not come to fruition due to the slow-down in the economy and the resulting slow-down in new homes and new businesses in the new franchise area. Therefore, the revenues anticipated from the institution of the original MSDC did not materialize. Manchester contends that the slow-down in the growth rate of the new franchise areas will result in a significant delay in the completion of the project in a timely and cost effective manner.[1(60)]

III. *Position of the Parties*

At the hearing on the merits, it was undisputed that Manchester requires an additional source of supply in order to become a regional water distribution system. However, staff and Manchester disagreed on the legality of the MSDC.

Staff took the position that the MSDC is a violation of RSA 378:30-a, the so-called "anti-CWIP" law and further, that the commission's original basis for approving the MSDC in *Re Manchester Water Works*, 72 N.H.P.U.C. 138 (1987) no longer exists. That is, the commission in the above referenced report and order based its approval of the source development charge on Manchester's position as a municipal water company not solely concerned with a return on its investment. Staff contended that the legislature's actions in amending RSA 362:4, which allows municipal utilities to avoid commission regulation and the so-called "anti-CWIP" law by charging the same rates in-town as out-of-town negated the arguments used to approve the source development charge in *Re Manchester Works*, *id*.

Staff further argued that if the commission found that the MSDC is not a violation of the "anti-CWIP" law, it should allow Manchester to expand the charge to its pre-1987 franchise areas because the current scenario results in rate discrimination between new customers in new franchise areas and new customers in old franchise areas both of which result in greater usage of the source of supply at Lake Massabesic.

Manchester took the position that it would be unlawful, unreasonable, unfair and unconstitutional for the commission to revoke the MSDC charge as it has already been approved

by the commission after having heard all of the arguments raised herein in the case originally accepting the MSDC. *See*, *Re Manchester Water Works*, *id*. Furthermore, Manchester states that revocation of the MSDC would be impermissible under the state and federal constitution in light of Manchester's reliance and expenditures based on the commission's decision in *Re Manchester Water Works*, *id*. In support of this argument, Manchester stated that it has expended over $433,000 to proceed with the development of an additional source of water supply in reliance on said order.

III. *Commission Analysis*

[1-5] The commission does not accept staff's argument that the MSDC is a violation of RSA 378:30-a. While the amendment of RSA 362:4 does address a portion of the rationale of the commission's analysis in *Re Manchester Water Works*, *id*. at 143, the remaining analysis in combination with Manchester's reliance on that order convince us that our ruling therein should not be disturbed. The commission further concludes that the instant record does not support disturbing the *Re Manchester Water Works* order as it pertains to rate discrimination. However, these conclusions do not lead us to accept the extension of the MSDC as requested in Manchester's petition.

Our determination is based on the understanding that utilities must plan for growth and, accordingly, facilities must often be developed or sized to provide an additional level of service than is strictly required by present customers.

[2](61) Present customers cannot be completely insulated from the effects of proper planning for growth; under appropriate circumstances they may be required to support investment in facilities larger than required to meet current requirements, while at the same time realizing the benefits of lower per customer costs when the growth materializes.

While it may be appropriate under certain circumstances to establish rates for current customers which reflect the cost of proper planning in their service territory, the costs associated with a new obligation to serve an additional service territory presents a different issue. There costs may be incurred that are beyond those anticipated for reasonable growth. We do not mean here to establish a definitive rule that requires a uniform allocation of additional "new territory" costs between existing and new customers. Such an allocation must be fact specific so that the commission can properly weigh costs and benefits (and the causes thereof), and apply appropriate (and often conflicting) regulatory principles to the facts.

The facts in *Re Manchester Water Works*, including *inter alia* the fact that Manchester would not need a new source if it was not engaged in a effort to become a regional water utility, supported a particular allocation that resulted in the MSDC approved therein. The only additional facts presented in the instant matter pertain to the misjudgment of management about the level of growth that would materialize in the "new" service territories. These additional facts are not sufficient to disturb the allocation established based on *Re Manchester Water Works* record. Accordingly, the request to expand the MSDC will be denied.

Our order will issue accordingly.

ORDER

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

ORDERED, that Manchester Water Works' fourth revised tariff page 31 to NHPUC No. 3 be, and hereby is, rejected.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1991.

FOOTNOTES

[1]The project proposes to run a pipeline from the Merrimack River to Lake Massabesic and thereby supplement the supply of water by pumping water out of the Merrimack River and into Lake Massabesic for treatment and distribution to customers. The slow-down in growth, however, has not totally negated the need for additional supplies as growth in existing franchise areas may also result in the over-utilization of Lake Massabesic.

[2]A hypothetical example of the planning issue may be where a new water main is required in an area experiencing growth. The present demand supports

only a 4 inch main, which could be constructed for a cost of $100,000. Reasonably anticipated growth in the foreseeable future would require a 6 inch main which would cost $110,000. The cost of constructing a 4 inch main now and then reopening the trench and replacing the 4 inch main with 6 inch main in the foreseeable future would be $210,000. Under

this circumstance, prudent utility management would elect to spend the $110,000 to construct initially the 6 inch main. Indeed, any other decision may be imprudent, subjecting the utility to the risk of disallowances of investment in excess of $110,000.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Manchester Water Works, DR 89-196, Order No. 19,680, 75 NH PUC 47, Jan. 22, 1990.

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NH.PUC*05/06/91*[27131]*76 NH PUC 330*Northern Utilities, Inc. — Salem Division

[Go to End of 27131]

Re Northern Utilities, Inc. — Salem Division

DR 91-041
Order No. 20,124

76 NH PUC 330

New Hampshire Public Utilities Commission

May 6, 1991

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment — Rate revision — Gas distribution utility. p. 330.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 54

[N.H.] Over- and undercollection — Interest — Cost of gas adjustment — Gas distribution utility. p. 330.

APPEARANCES: LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.

BY THE COMMISSION:

REPORT

On April 1, 1991 Northern Utilities, Inc., Salem Division (Salem or the company), a public utility engaged in the business of supplying gas in the Towns of Salem and Pelham, New Hampshire, filed with this commission 5th Revised Page 28, Superseding 4th Revised Page 28, N.H.P.U.C., providing for the 1991 Summer Cost of Gas Adjustment (CGA) effective May 1, 1991. The revised filing requested a CGA rate of $0.2308 per therm excluding the state franchise

tax.

On April 5, 1991, this commission issued an Order of Notice setting the hearing date of April 19, 1991 at 2:00 p.m. at the commission office in Concord, New Hampshire.

Direct testimony and cross examination included an explanation of the 5th Revised Page 28.

We will approve the proposed CGA of $0.2308 per therm based on our finding that it is reasonable and in the public interest.

Our order will issue accordingly.

ORDER

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

[1, 2] ORDERED, that 5th Revised Page 28, Superseding 4th Revised Page 28, N.H.P.U.C. tariff of Northern Utilities, Inc. — Salem Division, providing for a cost of gas adjustment of $0.2308 per therm for the period of May 1, 1991 through October 30, 1991 is approved by this Order, said rates to become effective with all billings issued on or after May 1, 1991; and it is

FURTHER ORDERED, that the over/under collection 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 the quarter; 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 one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utility classification in the Franchise Docket DR 83-205, Order No. 15,264.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1991.

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NH.PUC*05/06/91*[27132]*76 NH PUC 331*Northern Utilities, Inc.

[Go to End of 27132]

Re Northern Utilities, Inc.

DR 91-045
Order No. 20,125

76 NH PUC 331

New Hampshire Public Utilities Commission

May 6, 1991

ORDER authorizing a natural gas local distribution company to implement a revised cost of gas adjustment rate, reflecting 50% recovery of its net take-or-pay liability of a two-year period.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Take-or-pay cost recovery — Natural gas local distribution company. p. 331.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 25

[N.H.] Cost elements — Purchased gas adjustment clause — Indirect costs — Take-or-pay costs — 50% recovery — Natural gas local distribution company. p. 331.

3. EXPENSES, § 126

[N.H.] Natural gas — Take-or-pay costs — 50% recovery — Local distribution company. p. 331.

BY THE COMMISSION:

ORDER

On April 1, 1991, Northern Utilities, Inc. (Northern or Company) filed with the commission Twentieth Revised Page 24 of Tariff N.H.P.U.C. No. 7-Gas providing for a cost of gas adjustment of $(0.2540) per therm; and

[1-3] WHEREAS, Northern was directed by commission order no. 20,120 to file revised tariff pages reflecting 50% recovery of its net take-or-pay liability over a twenty four month period; and

WHEREAS, on May 3, 1991, Northern filed proposed Twenty-First Revised Page 24 providing for a gas cost adjustment of $(0.2591) per therm; it is hereby

ORDERED, that proposed Twenty-First Revised Page 24 be approved and that public notice be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No 15,624.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1991.

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NH.PUC*05/06/91*[27133]*76 NH PUC 332*Public Service Company of New Hampshire

[Go to End of 27133]

Re Public Service Company of New Hampshire

Movant: Campaign for Ratepayer Rights

DR 91-001
Order No. 20,126

76 NH PUC 332

New Hampshire Public Utilities Commission

May 6, 1991

ORDER denying a motion to reserve, certify, and transfer questions of law to the New Hampshire Supreme Court. Commission finds no justiciable controversy for the court to review, inasmuch as evidentiary hearings on the issue in dispute had yet to be held. Moreover, it finds no critical public need for expeditious resolution of the issue in dispute — i.e., whether intraclass rate changes are subject to legislative approval.

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1. APPEAL AND REVIEW, § 9

[N.H.] Right to review — Transferred questions of law — Interlocutory review. p. 332.

2. RATES, § 70

[N.H.] Jurisdiction and powers — State commissions — Statutes — Rate design changes — Intraclass allocations — Need for legislative approval. p. 332.

BY THE COMMISSION:

REPORT

I. *Introduction*

By motion dated March 22, 1991, Mr. Robert Cushing, on behalf of the Campaign for Ratepayers Rights (CRR), requested the New Hampshire Public Utilities Commission (commission) to reserve, certify and transfer to the New Hampshire Supreme Court two questions. Specifically, CRR seeks an answer to the questions of whether RSA 362-C:8 and C:9 preclude rate design changes that only change intraclass allocations of base rate revenue responsibilities. CRR Motion at 4.

On April 1, 1991, Public Service Company of New Hampshire objected to CRR's Motion and responded that "its rate design proposals are designed to be revenue neutral and, since the revenue integrity of the four major customer classes remains intact and the overall level of rate increases is unaffected, its proposed rate design changes are consistent with RSA 362-C:8 and C:9." PSNH Objection at 1.

II. *Commission Analysis*

[1, 2] CRR's Motion presents two issues of concern: 1) whether the Commission should reserve, certify and transfer the questions of law; and 2) the actual merits of CRR's argument.

With respect to the first issue, the commission will deny the request of the Campaign for Ratepayers Rights. The evidentiary hearings on PSNH's proposed rate design changes are scheduled to be held at a future date. Accordingly, the commission does not have a record upon which it can make findings of fact as to whether the rate design changes are either inter-class or intra-class. Thus, at this time there is not a justiciable controversy for Supreme Court review. *Petition of Public Service Company of New Hampshire*, 125 N.H. 595 (1984) (authority of the Public Utilities Commission to transfer questions to the Supreme Court is limited to those occasions when justiciable rights are involved).

Additionally, this particular matter is not an appropriate question of law to be reserved, certified and transferred. The only potential issue is whether a commission order regarding intra-class rate design must be approved by the Legislature before changes can become effective. We have previously held that:

> [E]ven though the legal issue can be squarely presented to the Court without additional factual development, we would hesitate to transfer the question were it not for the critical public need for an expeditious resolution.

Re Public Service Company of New Hampshire, 69 N.H.P.U.C. 174, 177 (March 9, 1984).

Because, there is no critical public need for expeditious resolution, the commission will deny CRR's Motion. Indeed, the conduct of this proceeding before the commission will be unaffected by our denial.

With respect to the merits, the commission will be making findings of fact on whether PSNH's proposed rate design changes are either inter-class or intra-class. There is no dispute that inter-class changes cannot be implemented without legislative approval under 362-C:8. The dispute involved in this proceeding is whether intra-class rate changes are also subject to legislative approval. An interpretation of RSA 362-C:8 and C:9 is appropriately rendered in the first instance by the commission. *New Hampshire Retirement System v Sununu* 126 N.H. 104 (construction of a statute by those charged with its administration is entitled to substantial deference.)

The commission's final order in this proceeding will specify its views concerning the statutory language. The commission will invite argument during the proceedings concerning its authority to allow the rate design changes under 362-C:8.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Motion of Campaign for Ratepayers Rights to Reserve, Certify and Transfer Question of Law is denied.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1991.

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NH.PUC*05/08/91*[27134]*76 NH PUC 333*United Cable Company of New Hampshire

[Go to End of 27134]

Re United Cable Company of New Hampshire

DE 90-210
Order No. 20,127

76 NH PUC 333

New Hampshire Public Utilities Commission

May 8, 1991

ORDER authorizing a cable television company to place, operate, and maintain cable television aerial plant over and across the Piscataquog River.

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1. CERTIFICATES, § 101.1

[N.H.] Cable television — Aerial crossing — Public convenience and necessity. p. 333.

BY THE COMMISSION:

ORDER

[1] On November 28, 1990, United Cable Company of New Hampshire (United, or the Company) filed a petition seeking a license pursuant to RSA 371:17 to place and maintain cable television aerial plant over the Piscataquog River in Goffstown, New Hampshire; and

WHEREAS, this plant will consist of coaxial cable, for the provision of cable television service, lashed to a 1/4 inch steel support strand as depicted on page 1 of 4, on a drawing dated January 26, 1991, titled, "SAG CHARACTERISTICS", on file with this Commission; and

WHEREAS, the petition seeks to cross the Piscataquog River in Goffstown, from a proposed utility pole to be located in the northeast corner of Lot Nos. 19-16 and 17 to an existing NET pole #177/15 located on Riverview Park Road in the northwest corner of Lot No. 43-3 and the southwest corner of Lot No. 43-2 as

depicted on the "Utility Easement Plan for United Cable Company, Goffstown, New Hampshire M-2687, Survey and Plan by John T. Hills Engineering Inc.", filed with the Company's petition as Exhibit A; and

WHEREAS, United has sought and obtained easements from the land owners where the utility poles are located, and filed copies of the easements with its petition as Exhibits C, D and

E; and

WHEREAS, this crossing is necessary properly to meet the needs of United's customers in the Sarette Road area of Goffstown, New Hampshire; and

WHEREAS, the construction and maintenance of this cable will not require or entail any construction in or on the banks of the Piscataquog River; and

WHEREAS, the cable will be constructed with a minimum clearance of 25.5 feet above the water; and

WHEREAS, on the basis of the information currently available, the Commission finds that the proposed crossing is in the public good; and

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

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 June 3, 1991; and it is

FURTHER ORDERED that United effect such notification by publication of this order once in a newspaper having general circulation in the area to be served, no later than May 17, 1991. In addition, pursuant to RSA 541-A:22, United shall serve a copy of this order to the Goffstown town clerk, by first class US mail, postage prepaid, and postmarked before May 17, 1991. Compliance with these notification provisions shall be documented by affidavit(s) to be filed with the Commission on or before May 31, 1991; and it is

FURTHER ORDERED, *NISI* that United Cable Company of New Hampshire be, and hereby is, granted license pursuant to RSA 371:17 *et seq* to place, operate and maintain cable television aerial plant across the Piscataquog River as depicted on the plans submitted with the petition as Exhibits A and B, 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 such authority be effective thirty days from the date of this order, unless a hearing is requested as provided above or the Commission otherwise orders prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 1991.

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NH.PUC*05/13/91*[27135]*76 NH PUC 334*City of Laconia

[Go to End of 27135]

Re City of Laconia

DE 91-007
Order No. 20,128

76 NH PUC 334

New Hampshire Public Utilities Commission

May 13, 1991

ORDER authorizing a municipality to construct and maintain sewer mains across state-owned railroad property.

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1. CERTIFICATES, § 125

[N.H.] Sewer mains — Construction — License to cross state-owned railroad property — Public convenience and necessity. p. 334.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on January 17, 1991 the City of Laconia filed with this commission a petition seeking license under RSA 371:17 to construct and maintain sewer mains across

state-owned railroad property in the City of Laconia, New Hampshire; and

WHEREAS, revised plans were submitted to this commission on April 29, 1991; and

WHEREAS, the sewer mains are proposed to serve eight homes on Channel Lane adjacent to Paugus Bay near the area known as the Weirs; and

WHEREAS, the proposed sewer includes approximately 650 feet of 6-inch PVC gravity main and manholes along Channel Lane, passing in and out of state railroad property; and

WHEREAS, the proposed sewer also includes a pump station, a valve chamber and two 3-inch PVC force mains (one reserved for future use), the latter mains passing beneath the railroad tracks inside an 18-foot long, 12-inch diameter ductile iron sleeve to tie into the existing state-owned 48-inch interceptor sewer on the north side of the tracks; and

WHEREAS, the proposed crossing beneath the railroad tracks occurs at approximate Valuation Station 1740 + 08, Map V21/69 of the Concord-to-Lincoln Railroad; and

WHEREAS, the commission finds the above construction is necessary to meet the reasonable requirements of the petitioner without substantially affecting the public rights in said state property, thus it is in the public good; and

WHEREAS, the only private property affected is that of the eight homeowners to be served; 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 May 31, 1991; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an attested copy of this order to be published once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Laconia area, said publications to be no later than May 22, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Laconia city clerk, by first class U.S. mail, postage prepaid, and postmarked on or before May 22, 1991; and shall in the same manner and by the same date serve a copy of this order to each of the eight affected property owners on Channel Lane. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the commission on or before May 31, 1991; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq.* to the City of Laconia, City Hall, Beacon Street East, Laconia, New Hampshire 03246 (Attn: Public Works Dept.) for the construction and maintenance of the aforementioned crossing of sewer mains on public railroad property in Laconia, New Hampshire identified at approximate Valuation Station 1740 + 08, Map V21/69; and it is

FURTHER ORDERED, that said authorization is conditional upon resolution, by easement or other means, of issues related to construction on abutting private property, such resolution to be documented with this commission; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (DOT), the Department of Environmental Services and others as mandated by the City of Laconia; and it is

FURTHER ORDERED, that such authority shall by 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 thirteenth day of May, 1991.

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NH.PUC*05/13/91*[27136]*76 NH PUC 336*EnergyNorth Natural Gas, Inc.

[Go to End of 27136]

Re EnergyNorth Natural Gas, Inc.

Additional petitioner; Anheuser-Busch Companies, Inc.

DR 90-045
Order No. 20,129

76 NH PUC 336

New Hampshire Public Utilities Commission

May 13, 1991

ORDER denying a request by an interruptible customer of a natural gas local distribution company to continue to take service under a previously existing special contract notwithstanding the requirements of a 1990 stipulation governing the provision of interruptible gas service. Commission finds that waiver of the requirements of the stipulation would constitute an undue preference. An alternative request by the customer to take service under a new special contract is also rejected for failure to demonstrate special circumstances warranting a special contract different from those offered to other interruptible customers.

Commission holds that size alone is not a permissible basis for differential treatment of customers, particularly for an interruptible rate where there are no fixed charges.

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1. RATES, § 211

[N.H.] Special contract rates — Grounds for approval — Statutory standard — Interruptible service — Special circumstances. p. 337.

2. DISCRIMINATION, § 61

[N.H.] Rates — Concessions to particular customers — Large customers — Special rates — Interruptible service — Natural gas local distribution company. p. 337.

3. RATES, § 380

[N.H.] Natural gas rate design — Special factors — Size — Interruptible rate — Natural gas local distribution company. p. 337.

4. RATES, § 381

[N.H.] Natural gas rate design — Special factors — Dual fuel customer — Size — Interruptible rate — Special contracts — Natural gas local distribution company. p. 337.

5. RATES, § 384

[N.H.] Natural gas rate design — Interruptible service — Natural gas local distribution company. p. 337.

6. SERVICE, § 332

[N.H.] Natural gas — Interruptible service — Local distribution company. p. 337.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. for the Anheuser-Busch Company; Jacqueline Lake Kilgore, Esq., for EnergyNorth Natural Gas, Inc.; John Rohrbach for Office of Consumer Advocate; James T. Rodier, Esq., for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

The commission opened Docket DR 90-045 to investigate the Summer Cost of Gas Adjustment ("CGA") proposed by EnergyNorth Natural Gas, Inc. ("ENGI"). After a hearing on April 19, 1990, the commission issued its Report and Order No. 19,804, dated April 30, 1990, approving a Summer CGA. Additional hearings were held in this docket on May 21,

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1990, and June 4, 1990, to provide the commission staff an opportunity to investigate: 1) ENGI's pricing of gas to interruptible customers; and 2) whether ENGI was observing the procedures set forth in the 1988 Stipulation regarding ENGI's contracts for interruptible gas service adopted by the commission in Docket DR 88-083. Report and Order No. 19,181 (September 22, 1988). After those hearings, the staff, the Office of the Consumer Advocate ("OCA"), and ENGI entered into a Stipulation dated June 15, 1990 (hereafter the "1990 Stipulation"). Although some of ENGI's interruptible customers testified at the May 21, 1990 hearing, none of them were a party to the 1990 Stipulation. The commission approved the 1990 Stipulation in Report and Order No. 19,875 (July 3, 1990).

On July 8, 1990, ENGI submitted to the commission ten (10) contracts for interruptible gas service. The contracts were approved in commission Report and Order No. 19,920 (August 20, 1990). In letters dated July 20, 1990, and August 13, 1990 to commission staff, ENGI confirmed its understanding that the period for negotiation extended through the end of August 1990 for six (6) other interruptible customers including Anheuser-Busch Companies, Inc.

On August 16, 1990, ENGI filed its Motion For Extension of Time and Request for Hearing to resolve certain issues raised by Anheuser-Busch during negotiations. At its public meeting on August 20, 1990, the commission granted ENGI's Motion. On October 26, 1990, the commission held the requested hearing and heard the testimony of James Terrence Orr, Manager of Fuel and Chemical Purchases for Anheuser-Busch, [Band the testimony of Christopher P. Fleming of ENGI.

II. *Position of Anheuser-Busch*

Anheuser-Busch summarized its position in a posthearing memorandum submitted on December 20, 1990.

Anheuser-Busch is ENGI's largest interruptible customer. (Tr.24, 74). Anheuser-Busch represents 45% of the interruptible sales volume of ENGI (Tr. 24, 54, 97) and constitutes over one-half of the margin, an amount in excess of $500,000 returned to firm ratepayers in the 1990 Summer CGA. (Tr. 98). In addition to its brewery in Merrimack, New Hampshire, Anheuser-Busch has breweries in nine (9) other states. (Exhibit 14, p.2). Anheuser-Busch is a dual fuel plant with the capability of using an alternate fuel during periods of natural gas curtailment or interruptions and when the price of natural gas is not competitive with its alternate fuel. (Tr. 18). Anheuser-Busch is the only No. 6 fuel oil, 1% sulphur duel-fueled customer of ENGI. (Tr. 83). Anheuser-Busch is currently an interruptible customer of ENGI under Special Contract No. 46 dated August 6, 1986 (Exhibit No. 16).

Anheuser-Busch is not proposing that the commission change the 1990 Stipulation which

was approved by Order No. 19,875 on July 3, 1990. Rather, Anheuser-Busch seeks to retain the contractual arrangement under its existing interruptible gas service contract with ENGI. (Tr. 6-8, 26, 45-46).

Anheuser-Busch also favors the opening of a generic proceeding and the adoption by the commission of a cost-of-service based transportation tariff which will permit Anheuser-Busch to purchase gas directly from a supplier through the ENGI system at cost of service rates. (Tr. 27).

Anheuser-Busch urges the commission to issue an order granting it a waiver from the requirements of the 1990 Stipulation so that it may continue as an interruptible customer under the existing special contract. Alternatively, if the commission rejects continuation of the existing contract, Anheuser-Busch urges the commission to grant a waiver from the provisions of the 1990 Stipulation and adopt an interruptible contract substantially in the form of Exhibit No. 15. According to Anheuser-Busch, special circumstances exist which justify a departure from the generic interruptible gas sales contract, either to allow continuation of the existing special contract or, to permit a contract in the form of Exhibit No. 15.

III. *Commission Analysis*

[1-6] Anheuser-Busch is seeking

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commission authorization to take interruptible service from ENGI under arrangements which would be different for those offered to ENGI's other interruptible customers. The standards which we must apply in making this determination is whether granting such authorization would amount to an unreasonable preference or advantage proscribed by RSA 378:10 or whether, in the alternative, different treatment for Anheuser-Busch would be warranted pursuant to RSA 378:18 because special circumstances exist.

Before addressing the merits of Anheuser-Busch's arguments, we will note that Anheuser-Busch declined to participate in the discussion that led to the formulation of the 1990 Stipulation after receiving actual notice of that proceeding. Tr. 8, 9.

The concerns that Anheuser-Busch now raises about the 1990 Stipulation would have been more timely and appropriate had they been raised by Anheuser-Busch prior to the formulation of the 1990 Stipulation and its subsequent approval by the commission.

Where, as here, the commission has developed and adopted a policy, an affected person subsequently seeking to unsettle that policy faces a heavier burden than he would have faced had he raised his concerns during the process of policy development.

We initially find that Anheuser-Busch's request for a waiver from the requirements of the 1990 Stipulation so that it may continue to take service under its previously existing special contract would constitute an undue preference or advantage. Anheuser-Busch did not offer any justification for the granting of such a preference other than its size. Size alone is not a permissible basis for differential treatment of customers, particularly for an interruptible rate where there are no fixed charges.

With respect to Anheuser-Busch's alternative request to take service under a new special

contract we find that special circumstances simply do not exist which would warrant a new special contract.

Anheuser-Busch likewise failed to demonstrate the existence of special circumstances warranting a special contract that is different than the one offered to other interruptible customers.

Anheuser-Busch's major concern is that under the 1990 Stipulation it is required to nominate before Anheuser-Busch knows the price. (Tr. at 47.) Mr. Orr believes that he does not receive adequate information from ENGI on the price or how ENGI arrives at the price:

> I am not sure Anheuser-Busch knows what is going on here. We don't know the price. At the time that we are asked to nominate the quantity, that much we know and that is what we are concerned about. How EnergyNorth arrives at that price, we can't say. (Tr. 61, 62.)

Mr. Fleming could not explain the apparent breakdown in communication between ENGI and Anheuser-Busch:

> Q. Basically you are saying that a customer, we are going to match or slightly beat your price on Number 6 unless we can't buy it for that price. If it costs us more than that we are going to have to charge you for it. That is basically what you are saying to the customer, aren't you.
>
> A. That is correct.
>
> Q. It is basically what you should be saying to the customer, isn't it.
>
> A. That is right.
>
> ******
>
> MR. RODIER. Thank you. And I really am just trying to look for some insight as to why the customer says he has no price information. And he says, I don't understand the business arrangement. So, I am just looking to see if this Witness, Mr. Fleming, and I will pose the question to you.
>
> Q. (By Mr. Rodier): Do you have any insight into why as a matter of marketing why that customer might respond that way? And if you don't know, that is fine with me.
>
> A. I don't know.

(Tr. 88 to 90.)

Anheuser-Busch testified that unless its concerns were addressed it would consider burning No. 6 oil rather than purchasing

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interruptible gas from Energy North. This would substantially reduce the interruptible margin credited to the CGA. Mr. Orr admitted that he did not know how the new New Hampshire Acid Rain Law or the Federal Clean Air Act would affect the feasibility of burning No. 6 oil. (Tr. at 39).

Anheuser-Busch also recommended that the commission expedite the process for making available transportation of off-system gas in New Hampshire. (Tr. at 42.) Anheuser-Busch would like the option of purchasing transported off-system gas in order to lower its gas costs. (Tr. 65, 66.) Mr. Orr admitted that the margins credited to firm ratepayers through the CGA could be reduced if transportation of off-system gas was available to Anheuser-Busch. (Tr. at 44.)

On the basis of the foregoing record and the apparent breakdown in communication, we do not believe circumstances exist sufficient to grant Anheuser-Busch a waiver from the 1990 Stipulation so that Anheuser-Busch may continue to take interruptible service under its pre-existing arrangement. Similarly, we do not find any basis, on the present record, for approving Anheuser-Busch's alternate request for an interruptible contract in the form of Exhibit 15.

Our denial of Anheuser-Busch's requested relief is without prejudice to any filing of a special contract by ENGI for service to Anheuser-Busch in a subsequent proceeding.

Our order will issue accordingly.

ORDER

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

ORDERED, that Anheuser-Busch's request for a waiver from the 1990 Stipulation is denied; and it is

FURTHER ORDERED, that Anheuser Busch's alternate request for approval of a special contract is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth, Inc., DR 88-083, Order No. 19,181, 73 NH PUC 374, Sept. 22, 1988. [N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-045, Order No. 19,804, 75 NH PUC 248, Apr. 30, 1990. [N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-045, Order No. 19,875, 75 NH PUC 366, July 3, 1990. [N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-045, Order No. 19,920, 75 NH PUC 576, Aug. 20, 1990.

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NH.PUC*05/13/91*[27137]*76 NH PUC 339*Granite State Telephone, Inc.

[Go to End of 27137]

Re Granite State Telephone, Inc.

DF 91-013
Order No. 20,130

76 NH PUC 339

New Hampshire Public Utilities Commission

May 13, 1991

ORDER authorizing a telephone local exchange carrier to finance its construction program by issuing a $2.489 million mortgage note to the United States of America, acting through the Rural Electrification Administration, payable over 19 years with an annual interest rate of 5%.

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1. SECURITY ISSUES, § 48

[N.H.] Factors affecting authorization — Plans and purposes — Construction financing — Telephone local exchange carrier. p. 340.

2. SECURITY ISSUES, § 94

[N.H.] Kinds and proportions — Mortgage note — Rural Electrification administration — Telephone local exchange carrier. p. 340.

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3. SECURITY ISSUES, § 111

[N.H.] Construction financing — Methods and practices — Mortgage note — Rural Electrification administration — Telephone local exchange carrier. p. 340.

APPEARANCES: Granite State Telephone, Inc. by Frederick Coolbroth, Esq.; NHPUC Staff by Eugene F. Sullivan.

BY THE COMMISSION:

REPORT

On February 4, 1991, Granite State Telephone, Inc. (company) filed a petition for authority to issue a $2,489,000 mortgage note to the United States of America, acting through the Rural Electrification Administration (REA). Pursuant to an order of notice issued March 4, 1991, the company prefiled the testimony of William R. Stafford, Vice President — Administration, and Otto M. Nielsen, Controller, on April 2, 1991. A hearing was held on May 2, 1991.

[1-3] The company described the financing, labelled the "R loan", as a loan from the REA in the principal amount of $2,489,000. The loan would be covered by a 19-year note, the terms of which provide for the payment of interest only for the first two years of the note. Thereafter, until date nineteen years after the date of the note, level payments of interest and principal would be made monthly at a rate of $7.29 per $1,000 of principal advanced during that two year period. On amounts borrowed after two years, level payments of interest and principal would be made monthly starting in the month following the month of each advance of principal and ending on a date nineteen years after the date of the note. The note will bear interest at the rate of 5.0% per annum. The loan will be secured by substantially all of the property of the company, and the company proposes to execute a supplement to its Restated Mortgage and Security Agreement

with the REA.

The company's witnesses testified that the proceeds of the proposed loan will be used, together with internally generated funds, to finance the construction of facilities to keep pace with new technology, to meet existing and future customer demand, to expand service offerings and to provide quality service through a reliable and efficient network. The company's construction program includes the replacement of the existing ITT DSS 1210 Weare switch with a Northern Telecom DMS 10 switch, the installation of two remote line switches in Chester and two remote line concentrators in Weare, fiber optic interexchange and feeder plant facilities and outside plant facilities consisting primarily of wires and cables, poles and carrier facilities. Other plant additions were described in the testimony.

The company submitted actual and proforma balance sheets and income statement together with statements of sources and uses of construction funds and estimated expenses of the financing. Certified copies of authorizing votes of the company's Board of Directors were put in evidence as were copies of the proposed loan documents.

Based upon all evidence, the commission finds that the proceeds from the proposed financing will be expended to finance the company's construction program and further finds that the proposed financing will be consistent with the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that the applicant, Granite State Telephone, Inc. be, and hereby is, authorized to issue a $2,489,000 mortgage note to the United State of America, acting through the Rural Electrification Administration (REA) payable over nineteen years with an annual rate of interest of 5%; and it is

FURTHER ORDERED, that the proceeds of the issuance of the said note shall be used, together with internally generated funds, to fund the company's construction program, and it is

FURTHER ORDERED, that Granite State

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Telephone, Inc. be and hereby is, authorized to enter into a supplement to its Restated Mortgage and Security Agreement under which substantially all of its property is mortgaged as security for all outstanding notes to the REA and the Rural Telephone Bank; and it is

FURTHER ORDERED, that finalized copies of the mortgage note and the supplement to the Restated Mortgage and Security Agreement be filed with the commission; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Granite State Telephone, Inc. shall file with this commission, a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said note until the expenditure of the whole of said proceeds shall be fully account for.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May,

1991.

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NH.PUC*05/16/91*[27138]*76 NH PUC 342*Public Service Company of New Hampshire

[Go to End of 27138]

Re Public Service Company of New Hampshire

DR 89-219
Order No. 20,133

76 NH PUC 342

New Hampshire Public Utilities Commission

May 16, 1991

ORDER authorizing the disbursement of the proceeds of a temporary electric rate surcharge. The revenues from the surcharge had been held in escrow pending written notice by Northeast Utilities Service Company that the First Effective date of the rate agreement to resolve the Chapter 11 bankruptcy of Public Service Company of New Hampshire (PSNH) had passed. The disbursed funds shall be included in the income of PSNH and the interest earned on the escrowed funds shall be expensed and applied by PSNH to reduce charges to be recovered from ratepayers under the fuel recovery mechanism.

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1. RATES, § 630

[N.H.] Temporary rate surcharge — Escrowed revenues — Disbursement — Electric rate agreement. p. 342.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 28

[N.H.] Fuel recovery mechanism — Credits — Interest on escrowed revenues — Electric utility. p. 342.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, pursuant to Report and

Order No. 19,655, issued December 28, 1989, the Commission approved the Recommendations of the Parties for Escrow of PSNH Temporary Rates (Escrow Recommendations), which provided that commencing July 1, 1990, revenues from the temporary rate increase of Public Service Company of New Hampshire (PSNH) would be deposited into a

Supplemental Escrow Fund held in escrow by the Treasurer of the State of New Hampshire, as Escrow Agent, until Northeast Utilities Service Company (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 for use by PSNH; and

WHEREAS, in accordance with the Escrow Recommendations, the Commission has received written notice from NUSCO that (1) the First Effective Date has occurred on May 16, 1991, (2) the current principal portion of the Supplemental Escrow Fund is $20,833,674.85 and (3) the balance of such Fund (approximately $613,000.00 represents interest earnings; and

WHEREAS, the amounts in the Supplemental Escrow Fund include revenues from the temporary rate increase for the period from July 1, 1990, through March 31, 1991 but do not include revenues from the temporary rate increase for the period from April 1, 1991, through May 15, 1991; it is hereby

ORDERED, that (1) the Treasurer of the State of New Hampshire, acting as Escrow Agent, disburse the Supplemental Escrow Fund to PSNH for inclusion in income and use by PSNH; and it is

FURTHER ORDERED, that in accordance with the Escrow Recommendations, after disbursement of the Supplemental Escrow Fund to PSNH, the portion of such Fund representing interest earnings shall be expensed and 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); and it is

FURTHER ORDERED, that in its detailed accounting of the reorganization to be filed by PSNH pursuant to Report and Order No. 19,889 (July 20, 1990), PSNH shall expressly account for the revenues from the temporary rate increase for the period from April 1, 1991, through May 15, 1991, and document that such revenues have been included in the income of reorganized PSNH.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of May, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990. [N.H.] Re Public Service Co. of New Hampshire, DR 89-219, Order No. 19,655, 74 NH PUC 493, Dec. 28, 1989.

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NH.PUC*05/17/91*[27139]*76 NH PUC 341*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 27139]

Re Public Service Company of New Hampshire/Northeast Utilities

DR 91-011
Order No. 20,132

76 NH PUC 341

New Hampshire Public Utilities Commission

May 17, 1991

ORDER approving a temporary fuel and purchased power adjustment clause (FPPAC) rate of 0.0 cents per kilowatt-hour. The 0.0 cents rate was deemed just and reasonable because actual energy cost recovery mechanism costs were unavailable, the rate would be fully reconcilable, and no party had waived any claim that the temporary rate does not reflect estimated, actual, or allowable FPPAC costs for the period.

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1. RATES, § 630

[N.H.] Temporary rate surcharge — Escrowed revenues — Disbursement — Electric rate agreement. p. 341.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 28

[N.H.] Fuel recovery mechanism — Credits — Interest on escrowed revenues — Electric utility. p. 341.

BY THE COMMISSION:

ORDER

WHEREAS, by Order of Notice issued in this proceeding on April 29, 1991, the New Hampshire Public Utilities Commission (commission) scheduled a hearing for Tuesday, May 14, 1991, at 10:00 A.M. at the office of the New Hampshire Public Utilities Commission to address the issue of what the Fuel and Purchased Power Adjustment Clause (FPPAC) rate should be for effect on the First Effective Date pending ECRM final reconciliation and to establish a procedural schedule for the remainder of the proceeding; and

WHEREAS, at the hearing held on May 14, 1991, the staff of the New Hampshire Public Utilities Commission, Public Service Company of New Hampshire/Northeast Utilities Service Company (PSNH/NUSCO), and the Office of the Consumer Advocate provided the commission with a stipulation in which they recommended that the commission, *inter alia*, establish a temporary FPPAC rate of 0.0¢ per kwh for the period beginning on the First Effective Date and ending on July 31, 1991; and

[1, 2] WHEREAS, the commission finds that the FPPAC rate of 0.0¢ per kwh, as proposed, is just and reasonable because actual ECRM costs are unavailable and therefore, it will not be possible until after the First Effective Date to conduct a full investigation and hearing to reconcile actual ECRM costs and to identify and adjust as necessary all projected FPPAC costs;

and

WHEREAS, the commission finds that the

FPPAC rate of 0.0¢ per kwh is also just and reasonable because the FPPAC rate is fully reconcilable and no party has waived any claim that the temporary rate does not reflect estimated, actual or allowable FPPAC costs for this period; and

WHEREAS, the temporary increase of 5.5% in average annual base retail rates was "placed in effect as of January 1, 1990" pursuant to Section 5 of the Rate Agreement, on a service-rendered basis (Order No. 19,655, December 28, 1989); and

WHEREAS, customers have not been provided notice that the rate changes scheduled for the First Effective Date would be implemented on other than a service-rendered basis; and

WHEREAS, PSNH/NUSCO expressed an immediate need for commission approval of an FPPAC rate for effect on May 16, 1991, so that billing can commence as soon as possible after May 16, 1991; and

WHEREAS, the commission intends to issue a subsequent report and further order adjudicating all issues presented at the hearing on May 14, 1991; it is hereby

ORDERED, that a FPPAC rate of 0.0¢ per kwh, as proposed, is approved for effect as of the First Effective Date of May 16, 1991 and applicable to all service rendered by PSNH on or after May 16, 1991; and it is

FURTHER ORDERED, that PSNH/
NUSCO shall file a new tariff, NHPUC No. 32 — ELECTRICITY, that fully complies with this order and the commission's rules and regulations.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 89-219, Order No. 19,655, 74 NH PUC 493, Dec. 28, 1989.

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NH.PUC*05/17/91*[27140]*76 NH PUC 343*Springwood Hills Water Company, Inc.

[Go to End of 27140]

Re Springwood Hills Water Company, Inc.

DE 90-051
Order No. 20,134

76 NH PUC 343

New Hampshire Public Utilities Commission

May 17, 1991

ORDER granting a permanent franchise to provide water utility service and adopting a stipulated increase in permanent rates.

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1. CERTIFICATES, § 72

[N.H.] Grant or refusal — Permanent franchise — Water utility — Factors considered — Acquiescence of local government. p. 344.

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2. CERTIFICATES, § 125

[N.H.] Water public utility — Permanent franchise. p. 344.

3. RATES, § 595

[N.H.] Water — Stipulated increase — New franchise. p. 344.

APPEARANCES: Robert H. Fryer, Esq. for Springwood Hills Water Company, Inc.; Eugene F. Sullivan, III, Esq. for New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On April 20, 1990, Springwood Hills Water Company, Inc. (Springwood or Company) filed a petition to provide water service to a limited area in the Town of Derry, New Hampshire and implicitly to establish rates therefore pursuant to RSA Chapter 378. On April 13, 1990, the commission issued an order of notice scheduling a prehearing conference for July 27, 1990, to establish a procedural schedule and to address any motions to intervene. At the hearing the parties stipulated to a procedural schedule. No motions to intervene were filed nor did any intervenors appear. On August 10, 1990, the commission issued Order No. 19,913 accepting the stipulated procedural schedule.

On August 30, 1990, a hearing was held before the commission on the issue of temporary rates and a franchise; the Company prefiled testimony on both issues.

On November 9, 1990, the commission issued Report and Order No. 19,982 granting a contingent franchise to Springwood and setting temporary rates at $160 per year per customer, flat rate. During the course of the following months, staff and Springwood submitted testimony engaged in discovery and entered into a stipulation which was presented to the commission on April 30, 1991. The stipulation addressed the matter of permanent rates and a permanent

franchise.

II. *Stipulation of the Parties*

[1-3] The stipulation entered into between staff and Springwood at Paragraph 10.0 stated that due to the fact that the Londonderry Water Commission and the Town of Londonderry declined to respond to requests for an opinion on the issue of the issuance of a franchise to Springwood and to the commission's subsequent contingent grant of a franchise to Springwood, that the commission grant a permanent, unconditional franchise for the area of the Town of Londonderry described in Report and Order No. 19,982.

The stipulation provided further for the following components to rates:

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

Rate Base	$156,361
Rate of Return	11.90%
Return on Common Equity (Tax Affected)	$ 30,644
Operation and Maintenance Expenses	$ 15,615
Total Annual Revenue Requirement	$ 46,259
Number of Customers	52
Total Number of Customers that Build Out	74
Annual Customer Rate	$ 625
Actual Revenue Received	$ 32,500

III. *Conclusion*

The commission will construe the lack of response from the Town of Londonderry Board of Selectmen and the Town of Londonderry Water Commission to two letters from Springwood and the commission's Order No. 19,982 as acquiescence to the grant of a franchise to Springwood. The franchise contingently granted in Report and Order No. 19,982 therefore, is hereby made a permanent franchise.

The commission further finds that the rates adopted in the stipulation are just and

reasonable as they are "sufficient to yield not less than a reasonable return on the cost of the property the utility used and useful in the public service less accrued depreciation". *See* RSA 378:27; RSA 378:28, and are, therefore, 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 stipulation, appended hereto as Appendix A, be and hereby is adopted; and it is

FURTHER ORDERED, that the appended tariff filed by the Company at the permanent rate hearing is approved.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1991.

APPENDIX A

STIPULATION AGREEMENT

ESTABLISHMENT OF FRANCHISE,
TARIFF AND RATES

1.0 This Agreement is entered into this 30th day of April, 1991 between Spring Wood Hills Water Company, Inc. ("Water") and the Staff ("Staff") of the Public Utilities Commission ("Commission") for the purposes of and subject to the terms and conditions hereinafter stated.

2.0 Introduction. On March 20, 1990, Water filed with the Commission a Petition to Become a Public Water Company and a Tariff for an exclusive franchise in a limited portion of the Town of Londonderry, New Hampshire.

2.1 On April 13, 1990 the Commission issued an Order of Notice establishing a Pre-hearing Conference on July 27, 1990, which was held as ordered; appropriate Affidavits of public and private notices having been filed on June 29, 1990 and July 10, 1990.

2.2 On July 27, 1990 the Staff and Water established a procedural schedule which was accepted by the Commission August 10, 1990, Order No. 19913.

2.3 On August 29, 1990 Water filed Testimony and Exhibits establishing the need for the franchise.

2.4 On August 30, 1990 the Commission held a hearing on the Franchise Petition to establish temporary rates.

2.5 On November 9, 1990, the Commission issued Report and Order No. 19,982 granting a conditional Franchise and approving the proposed temporary rates and ordering an investigation prior to the issuance of a final rate. Report and Order No. 19,982 made the franchise conditional on the mailing of said Report and Order to the Londonderry Water Commission to provide notice to that Commission of the franchise issuance by this Commission. As of April 29, 1991, this Commission has received no communications from the Town of Londonderry Water Commission.

2.6 Following the procedural schedule, Staff and Water both requested and received additional documents and Testimony on final rates.

2.7 At a Settlement Conference on March 29, 1991, the Staff and Water resolved all differences between them.

2.8 This Stipulation is a result of said discovery and settlement discussions. There are attached hereto certain revisions of the Company's Exhibits and Schedules all marked "Stipulation", which reflect the agreement reached between Water and the Staff on the issues of rate base, rate of return, operating revenues, overall revenue requirement, and rate structure.

3.0 *Rate Base*. It is agreed that the Company shall be allowed an opportunity to earn at the conclusion of this proceeding a return on a rate base of $156,361.

4.0 *Rate of Return*. It is agreed that the Company shall be allowed an opportunity to earn an overall rate of return of 11.90% based on a rate of return on equity of 11.90%.

5.0 *Operating Revenues*. It is agreed that the Company has operating and maintenance expenses of $34,222.

6.0 *Revenue Requirement*. It is agreed that the Company shall be authorized to charge rates designed to collect annual revenues in the

Page 345

amount of $46,254.

7.0 *Rate Structure*. It is agreed that the Company's rate structure shall contain a single monthly rate until the installation of meters. The initial customer charge will not include any consumption allowance, and all consumption will be billed in accordance with a single monthly rate.

7.1 *Metering*. On or before April 1, 1992 (when it is anticipated that the entire franchise area will be built-out), Water shall submit to the Staff and the Commission a Plan for the installation of individual residential meters. Said Plan shall provide for the installation of meters over a four year period. After approval of the Plan and once installed and audited, Water shall submit an Amended Tariff, providing for a single block consumption rate.

8.0 *Temporary Rate Recoupment*. It is agreed that the Company shall be allowed to recover the difference between the revenue level stipulated to herein and the revenue level provided for in the Company's temporary rates as authorized by Report and Order No. 19,982 dated November 9, 1990 by a monthly surcharge of $13.00 over an eighteen month period in accordance with New Hampshire RSA 378:29. The methodology and supporting data for recoupment of the difference between temporary and permanent rates will be submitted with revised tariffs reflecting the permanent rate increase. It is further agreed that in the case of customers taking service after the effective date of the temporary rate order the surcharge will be prorated over the remainder of the recoupment period.

9.0 *Rate Case Expense*. It is agreed by the parties that no rate case expenses shall be surcharged over any period as all rate case expenses shall be treated as a cost of engaging in business and amortized over twenty (20) years.

10.0 It is further stipulated that because the Londonderry Water Commission has received notice of the request for a franchise and the grant of a conditional franchise to Water that the Commission provide for an unconditional franchise in its Report and Order on permanent rates.

11.0 *General Conditions*. This Agreement is subject to the following further conditions:

11.1 The making of this Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation in these proceedings other than those specifically agreed to herein is true and valid.

11.2 The making of this Agreement establishes no principles or precedents in any other proceeding or investigation.

11.3 Commission's approval of this Agreement shall not in any respect constitute a termination as to the merits of any allegations made in this rate proceeding.

11.4 This Agreement is expressly conditioned upon the Commission's acceptance of all of its provisions without change or conditions and if the Commission does not so approve, the Agreement may be withdrawn by either Staff or Water and shall not constitute any part of the record in this proceeding nor be used for any other purposes at the call of the parties.

11.5 This Agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

11.6 The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS WHEREOF, the parties' fully authorize agents have executed this Agreement.

SPRING WOOD HILLS
WATER COMPANY, INC.
By its attorney,
Robert H. Fryer, Esquire

STAFF OF PUBLIC UTILITIES
COMMISSION
By its attorney,
Eugene F. Sullivan, III, Esquire

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

SPRING WOOD HILLS WATER COMPANY
DE 90-015

REVENUE REQUIREMENT

	STIPULATION EXHIBIT 1
RATE BASE (EX 2)	156,361
RATE OF RETURN	11.90%
REVENUE INCREASE REQUIREMENT	18,607
OPERATING INCOME (EX 3)	(15,615)
DEFICIENCY	34,222
TAX EFFECT (EX 1, SCH 2)	12,037
REVENUE INCREASE REQUIREMENT	46,259

ACTUAL CUSTOMER BASE IS 59; TOTAL BUILD OUT WOULD BE 74.

EFFECTIVE TAX FACTOR

	STIPULATION EXHIBIT 1 SCHEDULE 1
TAXABLE INCOME	100.00%
LESS: BUSINESS PROFITS TAX	8.00%
FEDERAL TAXABLE INCOME	92.00%
F.I.T. RATE	34.00%
F.I.T.	31.28%
ADD: BUS. PROFITS TAX	8.00%
EFFECTIVE TAX RATE	39.28%
PERCENT OF INCOME AVAILABLE IF NO TAX	100.00%
EFFECTIVE TAX RATE	39.28%
PERCENT USED AS A DIVISOR IN DETERMINING THE REVENUE REQUIREMENT	60.72%

SPRING WOOD HILLS WATER COMPANY
DE 90-015

REVENUE REQUIREMENT
INCOME TAX COMPUTATION

	STIPULATION EXHIBIT 1 SCHEDULE 2
TOTAL RATE BASE (EX 2)	156,361
EQUITY COMPONENT OF CAPITAL COST	11.90%
NET INCOME REQUIRED	18,607
OVERALL TAX EFFECT (EX 1, SCH 1)	12,037
TAX EFFECT – BUS. PROFITS TAX (EX 1, SCH 1)	1,618
TAX EFFECT – FEDERAL INCOME TAX (EX1, SCH 1)	10,419

RATE BASE

	STIPULATION EXHIBIT 2 *TEST YEAR ACTUALS*
PLANT IN SERVICE (EX 2-1)	152,819
LESS: C.W.I.P.	0
TOTAL PLANT IN SERVICE	152,819
LESS: ACCUMULATED DEPRECIATION (EX 2-4)	12,216
LESS: CONTRIBUTIONS IN AID OF CONSTRUCTIONS	0
NET PLANT IN SERVICE	140,603
ADD WORKING CAPITAL:	
TOTAL O&M EXPENSES (EX 3)	10,449
TIMES 12.33% (45 DAYS/365)	12.33%
CASH WORKING CAPITAL	1,288
ADD: MATERIALS & SUPPLIES	0
ADD PREPAYMENTS	0

ADD UNAMORTIZED FRANCHISE EXPENSES	14,470
TOTAL WORKING CAPITAL	15,758
RATE BASE	156,361

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

SPRING WOOD HILLS WATER COMPANY
DE 90-015

FIXED CAPITAL
DEPRECIATION SCHEDULE

STIPULATION
EXHIBIT 2
SCHEDULE 1

ITEM	*BEGINNING BALANCE*	*DEPR RATE*	*DEPR 1987*	*DEPR 1988*	*DEPR 1989*	*DEPR 1990*	
LAND	13,773	—					
WELLS	56,323	2.00%	563	1,126	1,126	1,126	
PUMPS	17,830	5.00%	446	892	892	892	
STRUCTURES	34,892	2.50%	436	872	872	872	
TANKS	23,000	2.00%	230	460	460	460	
MAINS	7,001	2.00%	70	140	140	140	
SERVICES	0	2.00%	0	0	0	0	
METERS	0	5.00%	0	0	0	0	
TOTALS	152,819		1,745	3,490	3,490	3,490	
YEAR-END DEPR RES						12,216	

ITEM	*BEGINNING AMORT BALANCE*	*RATE*	*1987*	*1988*	*1989*	*1990 ADDS*	*1990*
FRANCHISE EXPENSE	3,357	5.00%	84	168	168	12,000	468
UNAMORTIZED FRANCHISE EXPENSES			3,273	3,105	2,937	14,937	14,470

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

SPRING WOOD HILLS WATER COMPANY
DE 90-015

OPERATING INCOME STATEMENT
YEAR ENDING MARCH 31, 1990

STIPULATION
EXHIBIT 3

	12 MTHS ENDED 03/90	REF	PROFORMA ADJUSTMENT	TEST YEAR PROFORMA	REF	PROPOSED INCOME	TEST YEAR PROFORMA
OPERATING REVENUES							

REVENUES	0		0	EX 1	46,259	46,259
OTHER OPERATING INCOME	0		0			0
TOTAL REVENUES	0		0	0		46,259
OPERATING EXPENSES						
PRODUCTION EXPENSES	2,774	EX 3-1	2,095	4,869		4,869
MAINTENANCE	400			400		400
CUSTOMER ACCOUNTING	800			800		800
ADM & GEN'L EXPENSES:						
INSURANCE	200			200		200
OFFICE EXPENSE	905			905		905
ACCOUNTING & PROFESSIONAL FEES	2,200	EX 3-1	(300)	1,900		1,900
PUC ASSESSMENT	40			40		40
FRANCHISE FEES	135			135		135
MANAGEMENT FEES	3,300	EX 3-1	(2,100)	1,200		
TOTAL O & M EXPENSES	10,754		(305)	10,449		9,249
TAXES:						
F.I.T.	0			0	EX 1-2	1,618
PROPERTY	1,208			1,208		1,208
STATE	0			0	EX 1-2	10,419
OTHER (FICA ON PAY INC)	0			0		0
AMORTIZATION-STUDY	0	EX 2-1	0	0		0
DEPRECIATION	3,490			3,490		3,490
AMORTIZATION-FRANCHISE EXP	468			468		468
TOTAL EXPENSE	15,920		(305)	15,615		26,452
NET OPERATING INCOME	(15,920)		(305)	(15,615)		19,807

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

SPRING WOOD HILLS WATER COMPANY
DE 90-015

PROFORMA ADJUSTMENTS

		STIPULATION EXHIBIT 3 SCHEDULE 1
PROFORMA ADJUSTMENTS:		
PROFORMA ADJUSTMENT-WATER TESTS		
Water Supply & Pollution Control		
Well test once every 3 years	475	
Company has two wells-Staff uses one.	1	
Total Cost of Tests	475	
divided by 3 years	3	
Proforma adjustment-wells		158
Monthly water quality test per system	8	
12 months	12	
Proforma adjustment-water tests		96
		254
DES Permit Fee		590
PROFORMA ADJUSTMENT-WATER TESTING		844
PROFORMA ADJUSTMENTS-PRODUCTION EXPENSES		
Electricity		
$2773.76 for 1989	2,774	
Average Customers	51	
Per customer cost	54	
Customers at 12/31/89	74	
	4,025	
PROFORMA ADJUSTMENT-PRODUCTION EXPENSES		1,251
		2,095
PROFORMA ADJUSTMENTS-ACCOUNTING & PROFESSIONAL FEES		
Bookkeeping, etc.	1,040	
Corporate Tax Returns, etc.	460	
PUC Annual Report	400	
Legal	300	
	2,200	
Staff does not include on-going legal expenses	1,900	
PROFORMA ADJUSTMENTS-ACCOUNTING & PROFESSIONAL FEES		300
PROFORMA ADJUSTMENTS-MONITORING SYSTEM		
Company: Lewis Companies		
Company: Management Agreement	3,300	
Staff: Agrees to original Lewis commitment of $100 per month	1,200	
		2,100

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

SPRING WOOD HILLS WATER COMPANY
DE 90-015
RATE CALCULATION
STIPULATION
EXHIBIT 4

REVENUE REQUIREMENT	46,259
CUSTOMER BASE AT TOTAL BUILD OUT	74
ANNUAL CUSTOMER RATE	625
MONTHLY BILLING	52

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Spring Wood Hills Water Co., Inc., DE 90-051, Order No. 19,913, 75 NH PUC 548, Aug. 10, 1990. [N.H.] Re Spring Wood Hills Water Co., Inc., DE 90-051, Order No. 19,982, 75 NH PUC 717, Nov. 9, 1990.

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NH.PUC*05/17/91*[27141]*76 NH PUC 352*Public Service Company of New Hampshire, Inc.

[Go to End of 27141]

Re Public Service Company of New Hampshire, Inc.

DR 91-001
Order No. 20,135

76 NH PUC 352

New Hampshire Public Utilities Commission

May 17, 1991

ORDER granting a motion by a retail electric utility for a protective order for confidential, commercial and financial information.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective order — Proprietary information — Customer-specific information — Exceptions — Balancing test — Retail electric utility. p. 352.

BY THE COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH) filed a Motion for Protective Order on May 3, 1991 seeking confidential treatment of certain customer-specific information requested by the New Hampshire Public Utilities Commission Staff (Staff) in Staff Data Request Set 4,

STAFF-9; and

WHEREAS, the customer-specific information sought by Staff with respect to Standby and Backup Rates (Rate B) may constitute the "confidential, commercial or financial information" of both PSNH and its customers; and

[1] WHEREAS, RSA 91-A:5 IV exempts from public disclosure, *inter alia*, "confidential, commercial or financial information;" and

WHEREAS, the Office of Consumer Advocate (OCA) opposes generally the issuance of protective orders but does not object to issuance in this case and chooses not to receive the customer-specific information requested by Staff; and

WHEREAS, the Campaign for Ratepayer Rights (CRR) objects specifically to PSNH's motion and wishes to obtain such customer-specific information; it is hereby

ORDERED, that PSNH shall provide the customer-specific information to any party requesting said information in accordance with the terms of this Protective Order. Until such further order of the commission, said information shall not be copied or reproduced nor, in any manner further disseminated in whole or in part; and it is

FURTHER ORDERED, that on motion by any party the commission will reconsider the extent to which the material in question shall be made a part of the public record pursuant to RSA Chapter 91-A, or for the development of

relevant testimony and cross-examination and to aid the commission in determining the public good; and it is

FURTHER ORDERED, that unless otherwise ordered, the protected information shall be returned to PSNH within 60 days of the conclusion of these proceedings; and it is

FURTHER ORDERED, in the event that any member of the public seeks disclosure, the commission will notify the parties of such request prior to disclosure and the commission will provide an opportunity for a hearing. Upon a finding by the commission that there is a valid exemption claimed by PSNH for the materials in question, the commission will apply a balancing test by weighing the benefits of disclosure to the public versus the benefits of nondisclosure to PSNH.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1991.

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NH.PUC*05/27/91*[27142]*76 NH PUC 353*Granite State Telephone, Inc.

[Go to End of 27142]

Re Granite State Telephone, Inc.

DR 90-219

Order No. 20,136

76 NH PUC 353

New Hampshire Public Utilities Commission

May 27, 1991

ORDER establishing temporary rates for telephone local exchange service, granting a motion for intervention, and establishing a schedule for a permanent rate proceeding.

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1. PARTIES, § 18

[N.H.] Intervention — Rate case — Statutory considerations. p. 354.

2. RATES, § 640

[N.H.] Procedural schedule — Permanent rate proceeding — Independent telephone company. p. 354.

3. RATES, § 630

[N.H.] Temporary rates — Established at current levels — Effective date — Independent telephone company. p. 355.

4. RATES, § 85

[N.H.] Jurisdiction and powers — State commissions — Temporary rates. p. 355.

5. RATES, § 532

[N.H.] Telecommunications — Temporary rates — Independent telephone company. p. 355.

APPEARANCES: Frederick Coolbroth, Esq., representing Granite State Telephone Company; John Reilly, Esq., representing New England Telephone Company; Michael Holmes, Esq., representing the Office of the Consumer Advocate; and Audrey Zibelman, Esq., representing staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

This proceeding was opened by the commission on December 10, 1990 on recommendation of its staff. The public utilities commission staff (staff) investigated the earnings of all of the independent telephone companies for the year ended December 31, 1989. Staff calculated Granite State Telephone Company's (GST) overall rate of return to be 10.95% using an average rate base for year ending September 30, 1990. The overall rate of return authorized by the commission in GST's most recent rate case was 6.50%. *Re: Granite State Telephone Company, Inc.*, DR 86-297, Order No. 19,057, 73 N.H. PUC 152, 156 (April 11, 1988).

The revenue requirement in that docket was calculated pursuant to a settlement agreement, to which GST was a signatory, using total intra-state and interstate costs and revenues. *Id.*

In opening up the docket now before us, the commission calculated GST's actual rate of return based on the reports and records on file with the commission which also combine intra-state and interstate costs and revenues.

At the hearing held on February 5, 1991, the parties proposed a procedural schedule for the permanent rate proceedings and presented their respective positions regarding temporary rates.
INTERVENTION

[1] New England Telephone Company
requested late intervention as a joint toll provider with GST. Its primary area of concern involved issues that may arise as a result of the discussions in the toll settlement pool. There were no objections to the proposed intervention and it will be granted under the discretionary provisions of RSA 541-A:17.

PROCEDURAL SCHEDULE

[2] The parties stipulated to the following procedural schedule:

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

April 01, 1991	GST to file 1990 Annual Report and audited Financial Report
June 03, 1991	GST direct testimony and exhibits to be filed
June 24, 1991	Staff and intervenor data requests to GST
July 15, 1991	GST responses to staff and intervenor data requests
August 05, 1991	Second set of staff and intervenor data requests to GST
September 03, 1991	GST responses to staff and intervenor second set of data requests
September 27, 1991	Staff and intervenor testimony and exhibits to be filed
October 11, 1991	GST data requests to staff and intervenors
November 01, 1991	Staff and intervenor responses to GST data requests
November 6, 1991	Second set of GST data requests to staff and intervenors
November 15, 1991	Staff and intervenor responses to GST's second set of data requests
December 06, 1991	Rebuttal testimony to be filed by GST
December 11, 1991	Settlement conference (off-the-record)
December 17-20, 1991	Hearings
January 07-11, 1992	

This procedural schedule spans nearly a year. The staff argued in support of the procedural schedule that the commission currently has a heavy telecommunications caseload and that the

proposed procedural schedule was designed to enable staff to devote adequate resources to each pending proceeding. We are concerned about the length of the proposed

schedule and expect all parties to be diligent in ensuring that they do not contribute to any delays in the schedule. Indeed, when presented with an extended schedule, such as the instant one, we must assume that the parties erred in the direction of allowing more than sufficient time for each interval and we will factor in this assumption should we be presented with a motion to enlarge time. With this caveat, we will accept the proposed procedural schedule as being reasonable and in the public interest.

TEMPORARY RATES

The commission opened this docket on the recommendation of staff which calculated a rate of return for GST on a combined interstate and intra-state basis of 10.94% compared to an updated cost of capital of 7.02%. GST's currently allowed rate of return is 6.50%.

Staff's calculations were based on the annual reports filed by GST with the commission on a total company basis. These reports break company revenues down by jurisdiction, but provide no detail of costs by jurisdiction. Staff also based the calculation on the required quarterly reports filed by GST with the commission.

Staff argued that temporary rates should be set at current rate levels so that permanent rates, once established, can be effective back to the date established for temporary rates. This would "prevent shareholders from obtaining a windfall in the event the permanent rate investigation shows that a rate reduction is appropriate. If staff is incorrect, and the current rates are the just and reasonable rate for GST, the company will not suffer any harm from the commission's ruling." Staff memorandum dated February 19, 1991 at 2. GST asserts that, since the commission initiated this docket, the burden of proof for this proceeding is not on GST. GST contests the accuracy of staff's calculation of rate of return and GST argues that its rates should be calculated on the basis of their intra-state revenues and costs, rather than on the total company basis established in DR 86-297. GST further argues that although GST was a party to the settlement agreement in DR 86-297, the agreement was the result of a settlement process and contained conditions that the agreement does not constitute precedent for any subsequent proceedings and does not constitute a determination by the commission as to the merits of any allegations or contentions made in DR 86-297. GST requests that no temporary rates be established herein pending determination in this docket as to the merits of establishing rates on a company wide basis. GST contends that if the commission ultimately agrees with it that its rates should be established on the intra-state basis, then its rates could increase above current levels. If this turns out to be the case, a temporary rate reduction now would later expose ratepayers to a substantial surcharge upon the establishment of permanent rates.

The Office of the Consumer Advocate (OCA) contends that the commission should either not establish temporary rates pending a determination of permanent rates, or in the alternative, it should reduce rates to the level indicated by staff's calculations of GST's reports and records on file with the commission. The latter recommendation of the OCA is based on its belief that the commission requires additional rules or a "full-blown" rate case to establish just and reasonable

rates, whether they be temporary or permanent.

COMMISSION ANALYSIS

[3-5] Temporary rates are established pursuant to RSA 378:27, which requires, *inter alia*, that temporary rates be "sufficient to yield not less than a reasonable return on the cost of the property used and useful in the public service less accrued depreciation, *as shown in the reports that the utility filed with the commission, unless there appears to be reasonable ground for a questioning of figures in such reports*." (emphasis added)

The commission uses a historic test year as the basis of its rate determinations. That being the case, the permanent rate levels ultimately to be determined by this commission would, if now known, be equally justifiable if made effective today as they would be at the end of these proceedings. Thus, at the commencement of lengthy proceedings, temporary rates are frequently established to protect the interests of the

affected parties by making the permanent rates effective the date of the establishment of temporary rates.

RSA 378:27 provides that the level at which temporary rates are established must be based on the "reports that the utility filed with the commission, unless there appears to be reasonable grounds for a questioning of figures in such reports." Here, staff indicates that its review of the reports filed by the utility with the commission would justify a temporary rate reduction to lower GST's rate of return from 10.94% to 7.02%. Tr. at 13.

In addressing the question of whether there appears to be reasonable grounds for questioning these figures, staff concurs with GST that the propriety of establishing rates on a total company basis as distinguished from an intra-state basis should be examined as part of the permanent rate case. If GST prevails on this issue and demonstrates that, on an intra-state basis, permanent rates should be established at current levels or higher, customers would have to repay the company for the difference between the permanent rate level and the temporary rate level back to the effective date of temporary rates. A temporary rate reduction could expose customers to a substantial recoupment at the end of these protracted proceedings. If we do not establish temporary rates at all, as the OCA requests in the alternative, then customers will not reap the benefits of any resultant rate reduction for the period between now and the end of these proceedings.

If, on the other hand, we establish temporary rates at current rate levels, any rate reduction which is ultimately established on a permanent basis can be applied retroactively to the date established for temporary rates. GST's interests would be similarly protected through the reconciliation of permanent or temporary rates.

We do not agree with the OCA's alternative contention that this commission cannot set temporary rates without promulgating additional rules or without a "full-blown rate case." There is nothing in the record now before us that indicates that the current statutory and regulatory authorization and guidelines are inadequate or preclude the establishment of temporary rates.

CONCLUSION

We conclude that, although the record would support a temporary rate reduction as propounded by the OCA, the establishment of temporary rates at current levels would better protect the interests of the parties. There appears to be reasonable grounds for questioning the figures in GST's reports filed with the commission given the jurisdictional issues to be addressed in the permanent rate proceedings. It would not be in the interest of rate continuity to establish temporary rates below current rates because to do so could expose ratepayers to unnecessary rate fluctuations and ultimately a possible surcharge in the event that current rates are found to be appropriate or too low.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is hereby incorporated; it is hereby

ORDERED, that the motion to intervene filed by New England Telephone Company is granted; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties as set forth in the foregoing report is hereby accepted; and it is

FURTHER ORDERED, that the staff request to establish temporary rates for Granite State Company at its current rate levels is in the public interest and is hereby approved effective this date.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1991.

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NH.PUC*05/28/91*[27143]*76 NH PUC 357*New England Telephone and Telegraph Company

[Go to End of 27143]

Re New England Telephone and Telegraph Company

DF 91-062
Order No. 20,139

76 NH PUC 357

New Hampshire Public Utilities Commission

May 28, 1991

ORDER authorizing a telephone local exchange carrier to issue and sell debt securities and to accept equity infusions from its holding company parent, provided that the interest rate on such debt shall not exceed 11%, the debt ratio shall not exceed 45%, and the equity ratio shall not exceed 60%.

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1. SECURITY ISSUES, § 44

[N.H.] Authorization — Debt securities — Equity infusions — Shelf registration arrangement — Purpose — Refinancing — Telephone local exchange carrier. p. 357.

2. SECURITY ISSUES, § 111

[N.H.] Financing methods and practices — Refinancing — Debt securities — Equity infusions — Shelf registration arrangement — Telephone local exchange carrier. p. 357.

3. SECURITY ISSUES, § 120

[N.H.] Refinancing — Debt securities — Equity infusions — Conditions and restrictions — Interest rate limit — Capital structure — Debt ratio — Equity ratio — Telephone local exchange carrier. p. 357.

4. INTERCORPORATE RELATIONS, § 18.1

[N.H.] Holding companies and affiliated interests — Intercorporate arrangements — Debt refinancing — Security transactions — Equity infusions — Telephone local exchange carrier. p. 357.

BY THE COMMISSION:

ORDER

[1-4] WHEREAS, New England Telephone & Telegraph Company (the Company) filed an application on May 6, 1991 with the Commission requesting the authority to issue and sell debt securities under a shelf registration arrangement and accept equity infusions from NYNEX during the next few years; and

WHEREAS, the total amount of debt securities to be issued under this application will not exceed $500,000,000; and

WHEREAS, it is not determinable at this time whether those debt securities will be long-term or intermediate term (i.e., maturing within 10 years) or a combination of both; and

WHEREAS, The Company has requested that the interest rate on such debt securities not exceed 12% and the Company's debt ratio immediately following does not exceed 45%; and

WHEREAS, from time to time equity infusions from NYNEX will be made as long as the equity ratio immediately following the infusion does not exceed 60%; and

WHEREAS, the proceeds from these debt securities will be applied towards repayment of short-term debt, to refund maturing long-term debt, to refinance higher coupon debt and/or to make improvements, extensions or additions to the Company's plant; and

WHEREAS, New England Telephone believes that over the next few years capital markets might provide financially advantageous opportunities to exercise possible refinancing of existing debenture issues, with newly issued debt securities to be offered at a lower rate of interest; and

WHEREAS, New England Telephone's embedded cost of debt and its overall cost of capital would thus be reduced; and

WHEREAS, this Commission finds that the issue and sale of the debt obligations upon the

proposed terms will be consistent with the *public good*; and

WHEREAS, the acceptance of equity infusions from NYNEX upon the terms proposed will be in the *public good*; and

Page 357

WHEREAS, the debt obligations, excluding those offered under a medium term note program, will be issued pursuant to the terms of an indenture November 28, 1984, between the Company and State Street Bank Trust Company.

ORDERED, that the Company, be and hereby is, authorized to issue and sell debt securities not to exceed $500,000,000 and to accept equity infusions from NYNEX provided that the interest rate on such debt not exceed 11% and after any such transactions the debt ratio not exceed 45% and the equity ratio not exceed 60%; and it is

FURTHER ORDERED, that the Company forward a report to the Commission on any debt issuances or equity infusions within thirty days of receipt of the proceeds, the notice will provide the type of securities, precise maturity date, purchase price, rate of interest and cost to the Company per annum.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1991.

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NH.PUC*06/03/91*[27144]*76 NH PUC 381*Southern New Hampshire Water Company, Inc.

[Go to End of 27144]

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 20,143

76 NH PUC 381

New Hampshire Public Utilities Commission

June 3, 1991

ORDER authorizing a water public utility to file revised tariff pages reflecting a revenue increase of $964,892. Commission prescribes rate structure for the collection of the revenue increase.

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1. RATES, § 595

[N.H.] Water — Revenue increase — Rate structure. p. 381.

BY THE COMMISSION:

ORDER

ORDERED, that the following N.H.P.U.C., No. 7 Tariff Pages are hereby rejected:

28 Revised Page 17-General Metered Service-Core
5th Revised Page 18-General Metered Service-Core
13th Revised Page 18a-General Metered Service-Litchfield
2nd Revised Page 18b-General Metered Service-Litchfield
5th Revised Page 18e-P.1-Cancelling Page CP
5th Revised Page 18e-P.2-Cancelling Page
7th Revised Page 18g-General Metered Service-Satellite
3rd Revised Page 18k-General Metered Service-Satellite
26th Revised Page 19-Municipal Fire Protection
5th Revised Page 20-Municipal Fire Protection
4th Revised Page 21a-Municipal Fire Protection-Litchfield
2nd Revised Page 21b-Municipal Fire Protection-Litchfield
6th Revised Page 21d-P.1-Private Fire Protection-Amherst
7th Revised Page 21d-P.2-Private Fire Protection-Amherst
28th Revised Page 21e-Private Fire Protection
3rd Revised Page 21f-Private Fire Protection
3rd Revised Page 21g-Municipal Fire Protection-Londonderry
2nd Revised Page 21h-Municipal Fire Protection-Londonderry
3rd Revised Page 21i-Municipal Fire Protection-Pelham
2nd Revised Page 21j-Municipal Fire Protection-Pelham
2nd Revised Page 21l-P.1-Municipal Fire Protection-Amherst
2nd Revised Page 21l-P.2-Municipal Fire Protection-Amherst
2nd Page 22-General Unmetered Service
1st Revised Page 25-General Unmetered

Service-Greenhill
1st Revised Page 26-Cancelling Page
1st Revised Page 27-Purchase Water Adjustment
Mechanism;

and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. (Southern) may file revised tariff pages reflecting a revenue increase of $964,892 (see supporting schedules attached hereto); and it is

[1] FURTHER ORDERED, that the company shall collect these revenues in accordance with the following rate structure:

1. Where the customer is currently paying rates below the average rate computed with the rate increase contained herein and would be paying lower than average rates on a stand-alone basis, the customer rates shall be raised to average rates.

2. Where the customer is currently paying rates higher than the average rates computed with the rate increase contained herein and would be paying less than average rates on a stand-alone basis, the customer rates shall be lowered to average rates.

3. Where the customer is currently paying rates below the average rate computed with the rate increase herein and would be paying higher than the average rate on a stand-alone basis, the customer shall pay average rates plus an amount equal to the overall pro rata percentage increase in rates of those customers currently paying the average rate.

4. Where the customer is currently paying
rates above the above the average rate computed with the rate increase herein and would be paying higher than the average rate on a stand-alone basis, the customer shall pay average rates plus an amount equal to the overall pro rata percentage increase in rates of those customers paying the average rate; and it is

FURTHER ORDERED, that the filing of compliance tariffs shall not be deemed to waive the rights of the company or of any party to file a motion for a rehearing pursuant to RSA Chapter 541 once a final report and order delineating the rationale for the revenue requirement and rate structure contained herein is issued; and it is

FURTHER ORDERED, that a further report and order, not inconsistent with this order, will be issued in this case.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1991.

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

DR 89-224
SOUTHERN NEW HAMPSHIRE WATER COMPANY, INC.

REVENUE REQUIREMENT
TEST YEAR JANUARY 1 - DECEMBER 31, 1989

	ALL DIVS
REVREQ.ALLD	TESTIMONY
REVISION 2	ATTACHMENT 1
A	B
	AMOUNT
RATE BASE (ATT 2)	19,909,228
RATE OF RETURN (ATT 1, SCH1)	11.20%
REVENUE REQUIREMENT	2,229,834
OPERATING INCOME (LOSS) (ATT 3)	1,643,951
DEFICIENCY, (EXCESS)	585,882
TAX EFFECT (DEFICIENCY X .64690382)	379,009
REVENUE DEFICIENCY (TOTAL AMOUNT OF INCOME REQUIRED PRIOR TO INCOME TAX DEDUCTION)	964,892

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

DR 89-224
SOUTHERN NEW HAMPSHIRE WATER COMPANY, INC.

INCOME TAX COMPUTATION
TEST YEAR JANUARY 1 - DECEMBER 31, 1989

		ALL DIVS
INCTXC.ALLD		TESTIMONY
REVISION 2		ATT 1 SCH 3
A1		B
		AMOUNT
NET INCOME FROM EXHIBIT 3		1,643,951
ADD: OTHER INCOME FROM PUC REPORT		99,528
DEDUCT: AMORT. OF DEBT ISSUANCE COSTS FROM PUC REPORT		21,110
DEDUCT: INTEREST SYNCHRONIZATION - SHORT TERM		6,805
DEDUCT: INTEREST SYNCHRONIZATION - LONG TERM		10,684
DEDUCT: INTEREST SYNCHRONIZATION, RATE BASE		1,500,484
NET INCOME AFTER OTHER INCOME & EXPENSES & AFTER INITIAL DEDUCTIONS FOR INCOME TAXES		204,396
ADD BACK: N.H.B.P.T.		26,930
NET INCOME SUBJECT TO F.I.T.		231,326
ADD BACK: FEDERAL INCOME TAX		105,295
TOTAL TAXABLE INCOME BEFORE REVENUE DEFICIENCY		336,621
ADD: REVENUE DEFICIENCY FROM ATTACHMENT 1		964,892
TOTAL TAXABLE INCOME REQUIRED BEFORE INCOME TAX COMPUTATION		1,301,513
LESS: STATE OF N.H. BUS. PROFITS TAX @ 8% (AGREES TO TOTAL STATE NHBPT, ATT 3)		104,121
NET INCOME SUBJECT TO FEDERAL INCOME TAX		1,197,392
LESS: FEDERAL INCOME TAX @ 34% (AGREES TO TOTAL FEDERAL INCOME TAX, ATT 3)		407,113
NET INCOME AFTER INCOME TAX EXPENSE		790,279
NET RETURN ON GROSS REVENUES-	15.79%	

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

DR 89-224
SOUTHERN NEW HAMPSHIRE WATER COMPANY, INC.

RATE BASE COMPUTATION
TEST YEAR JANUARY 1 - DECEMBER 31, 1989

	ALL DIVS TESTIMONY ATTACHMENT 2 PG 1 OF 1 TEST YEAR ACTUALS
RBCOMP.ALLD REVISION 2	
PLANT IN SERVICE (ATT 2, SCH 1)	28,604,220
LESS: CONTRIBUTION IN AID OF CONSTRUCTION	
LESS: (CIAC) (ATT 2, SCH 3)	(6,816,306)
TOTAL PLANT IN SERVICE	21,787,914
LESS: LAND & ASSETS HELD FOR FUTURE USE (ATT 2 SCH 5)	(188,889)
LESS: UTILITY ACQUISITION ADJUSTMENT (ATT 2, SCH 5)	(412,762)
LESS: ACCUMULATED DEPRECIATION (ATT 2, SCH 2)	(1,027,507)
ADD: AMORTIZATION OF CIAC RESERVE (ATT 2 SCH 4)	267,411
NET PLANT IN SERVICE BEFORE ADJUSTMENTS	20,426,167
ADJUSTMENTS TO PLANT IN SERVICE (ATT 2 SCH 6):	
DISALLOWANCES PER R. LESSELS TESTIMONY(LAND, F/USE)	(19,623)
ADJUSTMENTS FROM AUDIT FINDS	(67,733)
ADJUSTMENTS FROM DATA REQUESTS	17,734
NET PLANT IN SERVICE	20,356,545
ADD, (DEDUCT) WORKING CAPITAL	
OPERATION & MAINTENANCE EXPENSE (ATT 3)	1,290,602
TIMES 45/365 OR 12.33% (45 DAYS)	12.33%
CASH WORKING CAPITAL	159,115
OTHER COMPONENTS OF WORKING CAPITAL (ATT 2, SCH 5)	
ADD: MATERIALS & SUPPLIES	260,528
ADD: PREPAYMENTS	295,907
ADD: UNAMORTIZED RATE CASE EXPENSE	78,377
LESS: CUSTOMER ADVANCES	(454,976)
LESS: CUSTOMER DEPOSITS	(12,799)
LESS: DEFERRED INCOME TAXES	(773,469)
TOTAL WORKING CAPITAL	(447,317)
TOTAL RATE BASE	19,909,228

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

DR 89-224
SOUTHERN NEW HAMPSHIRE WATER COMPANY, INC.

OPERATING INCOME STATEMENT
TEST YEAR JANUARY 1 - DECEMBER 31, 1989

ABSOLUTE

PG. NO.

ALL DIVS
INCST.ALLD
TESTIMONY
REVISION 2
ATTCHMNT 3

A	B	C	D	E	F	G	H	I
	12 MONTHS		*PROFORMA*	*TEST YEAR*	*PROPOSED*	*TEST YEAR*		
OPERATING	*REVENUES*	*ENDED 12/89*	*REFERENCE*	*ADJUSTMENT*	*PROFORMA*	*REFERENCE*	*INCREASE*	*PROFORMA*
REVENUES	3,724,377	ATT 3, SCH 2	317,092	4,041,469	ATT 1	964,892		5,006,361
TOTAL REVENUES	3,724,377			317,092	4,041,469		964,892	5,006,361
OPERATING EXPENSES								
O & M EXPENSES:								
PRODUCTION	400,660	ATT 3, SCH 3		37,460	438,120		0	438,120
TRANS. & DISTR.	103,931	ATT 3, SCH 4		2,085	106,016		0	106,016
CUST. ACCT, COLL.	157,165	ATT 3, SCH 5		(7,498)	149,667		0	149,667
SALES & NEW BUS.	12,236	ATT 3, SCH 6		0	12,236		0	12,236
ADMIN. & GENERAL	798,689	ATT 3, SCH 7		(214,126)	584,563		0	584,563
TOTAL O & M EXPENSES	1,472,681			(182,079)	1,290,602		0	1,290,602
PROPERTY TAXES	671,594	ATT 3, SCH 8		(26,540)	645,054		0	645,054
PLBK. EXC. DEFD. TAX	0	ATT 3, SCH 8		(2,592)	(2,592)		0	(2,592)
DEPRECIATION	243,643	ATT 3, SCH 9		100,373	344,016		0	344,016
AMORTIZATION OF CIAC	0	ATT 3, SCH 10		(72,322)	(72,322)		0	(72,322)
AMORT. RT. CS. EXP.	40,699	ATT 3, SCH 11		19,836	60,535		0	60,535
TOTAL OPERATING EXP.	2,428,617			(163,324)	2,265,293		0	2,265,293
NET OPERATING INCOME BEFORE INCOME TAXES	1,295,760			480,416	1,776,176		964,892	2,741,068
STATE NHBPT @ 8%	(31,267)	ATT 3, SCH 8		58,197	26,930	ATT 1, SCH 1	77,191	104,121

F.I.T. @ 34%	(1,447)	ATT 3, SCH 8			106,742
105,295 ATT 1, SCH 1	301,818	407,113			
TOTAL INCOME TAXES	(32,714)				164,939
132,225	379,009	511,234			
NET OPERATING INCOME	1,328,474				315,477
1,643,951	585,882	2,229,834			
MEMO: OTHER INCOME				99,528	TOTAL INTEREST
SYNCHRONIZATION IS:			17,489		
AMORT DEBT EXP.				21,110	
INT. SYN. EXP. - S. TERM				6,805	
INT. SYN. EXP. - L. TERM				10,684	
INT. SYN. RT. BS.				1,500,484	

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NH.PUC*06/03/91*[27980]*76 NH PUC 358*EnergyNorth Natural Gas, Inc.

[Go to End of 27980]

Re EnergyNorth Natural Gas, Inc.

DR 91-042
Order No. 20,141

Re Northern Utilities, Inc.

DR 91-045
Order No. 20,141

122 PUR4th 449

76 NH PUC 358

New Hampshire Public Utilities Commission

June 3, 1991

ORDER requiring two natural gas local distribution companies (LDCs) each to absorb a 40% share of take-or-pay costs billed to them by an interstate pipeline supplier under rates approved by the Federal Energy Regulatory Commission.
Commission rejects claims that the federal filed-rate doctrine required a 100% passthrough in retail rates.

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1. APPORTIONMENT, § 30

[N.H.] Natural gas — Take-or-pay costs — Allocation method — Annual quantity limitations method — Discussion. p. 361.

2. RATES, § 380

[N.H.] Natural gas rate design — Take-or-pay costs — Wholesale passthrough — Retail allocation. p. 363.

3. RATES, § 380

[N.H.] Natural gas rate design — Take-or-pay costs — Equitable sharing — Wholesale passthrough — Retail allocation. p. 363.

4. RATES, § 47

[N.H.] Jurisdiction and powers — State commissions — Federal preemption — FERC determinations — Filed-rate doctrine — Natural gas take-or-pay costs. p. 363.

5. RATES, § 380

[N.H.] Natural gas rate design — Take-or-pay costs — Equitable sharing — Wholesale passthrough — Retail allocation — Local distribution company — Discussion. p. 363.

6. RATES, § 149

[N.H.] Reasonableness — Market conditions — Equitable sharing — Natural gas take-or-pay costs — Retail rates. p. 366.

7. EXPENSES, § 126

[N.H.] Gas — Take-or-pay costs — Equitable sharing — Local distribution companies. p. 366.

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8. EXPENSES, § 126

[N.H.] Gas — Take-or-pay costs — Equitable sharing — Prudence — Local distribution companies. p. 366.

9. EXPENSES, § 126

[N.H.] Gas — Take-or-pay costs — Allocation — Equitable sharing — Local distribution companies. p. 366.

10. AUTOMATIC ADJUSTMENT CLAUSES, § 25

[N.H.] Natural gas costs — Take-or-pay charges — Local distribution companies. p. 368.

11. RATES, § 47

[N.H.] Jurisdiction and powers — State commissions — Federal preemption — FERC determinations — Filed-rate doctrine — Natural gas take-or-pay costs — Separate opinion — Partial dissent. p. 368.

12. RATES, § 380

[N.H.] Natural gas rate design — Take-or-pay costs — Wholesale passthrough — Retail allocation — Separate opinion — Partial dissent. p. 368.

APPEARANCES: Jacqueline Lake Killgore, Esquire for EnergyNorth Natural Gas, Inc.; LeBoeuf, Lamb, Leiby & MacRae by Elias G. Farrah, Esquire and Scott J. Mueller, Esquire for Northern Utilities, Inc.; Audrey A. Zibelman, Esquire for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. INTRODUCTION

On April 1, 1991 EnergyNorth Natural Gas, Inc. (ENGI) and Northern Utilities, Inc. (Northern) (jointly referred to as the "Companies") filed tariff pages and supporting documents for their May 1, 1991 through October 31, 1991 summer cost of gas adjustment (COGA). Orders of notice were issued on April 5, 1991, *inter alia*, assigning Docket Nos. DR 91-042 and DR 91-045 to ENGI and Northern respectively, and scheduling hearings for April 19, 1991. The Companies' filings included in their COGA calculations certain take-or-pay costs, which costs are an element in the rates of Tennessee Gas Pipeline Company (Tennessee)[1(62)] , a wholesale supplier to ENGI and Granite State Gas Transmission Company (GSGT).[2(63)]

At the April 19, 1991 hearings, the only disputed issue was a Staff argument that a portion of the take-or-pay costs should be allocated to investors. Because the disputed material legal and factual issues for ENGI and Northern are identical, we will consolidate our analysis into this one report and order applicable to both companies.

II. BACKGROUND[3(64)]

The take-or-pay issue arose out of the market and regulatory structure of the natural gas industry as it existed in the late 1970s. At that time, interstate pipelines, regulated by the Federal Energy Regulatory Commission (FERC), purchased natural gas from producers at wellhead prices also regulated by the FERC[4(65)] and bundled the gas and the transportation thereof for sale to Local Distribution Companies (LDCs) and other pipelines. The rates of the LDCs in turn have been and continue to be regulated by state utility commissions. The FERC regulation of wellhead prices kept natural gas rates below those that would have prevailed in the market and thus producers were understandably reluctant to develop the resource fully and devote it to the interstate market. Shortages and curtailments were common.

In 1978, Congress enacted the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. § § 3301 *et seq*., one of five measures adopted as the National Energy Act. The NGPA deregulated

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the wellhead price of "new" gas. Partially as a result of the passage of the NGPA, the

wellhead price of natural gas rose from 91¢ in 1978 to $2.43 in 1982, with "new" gas prices rising even higher. *See e.g*, III FERC Statutes and Regulations at 31,509. Not surprisingly, the higher prices caused an increase in the development of the natural gas resource, in turn resulting in increased supplies. Producers continued to require take-or-pay provisions in their arrangements with pipelines, partially as a response to the requirements of their own sources of financing, who expected a steady revenue stream to finance the risky business of natural gas exploration and development. The pipelines entered into the take-or-pay arrangements based on their expectation that product demand would continue at existing high levels and even increase.

The market response to the law of supply and demand was not instantaneous, but it was inevitable. Higher prices produced the unstartling result of significantly reduced demand. The pipelines which had entered into long term take-or-pay arrangements found themselves with substantial liabilities for gas they could not take or sell at contract prices. The problem was compounded for all segments of the industry by the increased supply of natural gas stimulated by the higher prices.

The take-or-pay liability of the pipelines was not insubstantial. Year end take-or-pay liability in 1983 was $5.15 billion, rising to $6.04 billion in 1984 and $9.34 billion in 1985. III FERC Statutes and Regulations at 31,510. In spite of this liability, prices continued to rise, further compounding the problem. *Id*. The FERC perceived one of the primary causes of the then existing market distortion to be the monopoly power of the pipelines and, accordingly, took certain actions culminating in a requirement that all pipelines offering transportation do so on a nondiscriminatory basis, thereby becoming open access transporters of natural gas rather than monopoly providers of a bundled gas product. *See e.g., Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, 33 FERC para. 61,007, 18 C.F.R. Parts 2, 157, 250, 284, 375 and 381; FERC Statutes and Regulations, Regulations Preambles 1982-1985, para. 30,665 (October 9, 1985) (Order 436). In essence, this requirement converted the pipelines to common carrier providers of gas transportation service, leaving the pipelines' customers free to secure gas directly from producers at a competitive price.[5(66)]

While the FERC was addressing the structure of the natural gas industry, it was also mindful of the burden of the pipelines' existing take-or-pay liability. In Order 436, the FERC reiterated a previous policy of encouraging settlement of take-or-pay claims. *See e.g.* III FERC Statutes and Regulations at 31,512, *citing* FERC Order No. 436-A, FERC Statutes and Regulations, Regulations Preambles 1982-1985, para. 30,675 at 31,661 (1985). Indeed, the pipelines and the producers were able to settle a substantial portion of existing take-or-pay claims. Those settlements resulted in the assumption of a significant portion of the take-or-pay burden by the producers.[6(67)] This process was reinforced by the FERC's interim rule in Order 500 which *inter alia* responded to a remand of Order 436 by requiring producers to offer credits against take-or-pay liability in order to be eligible for the pipelines' open access transportation service. *See, Re Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, 40 FERC para. 61,172, 89 PUR4th 312 (1987) (Order 500), *on remand from Associated Gas Distributors v. FERC*, 824 F.2d 981, 83 PUR4th 459 (D.C. Cir. 1987).

Once the FERC determined the pipelines' net take-or-pay liability, the remaining issues before the FERC involved: 1) how much, if any, of that net take-or-pay liability could be included in the various wholesale rates of the pipelines; and 2) how take-or-pay liability included

in wholesale rates should be allocated to the pipelines' customers.

In Order 500, the FERC stated its belief that standard prudency analysis is not the appropriate mechanism to resolve the take-or-pay issue:

> The Commission recognizes that it is difficult to assign blame for the pipeline industry's take-or-pay problems. In brief, no one segment of the natural gas industry or particular circumstance appears wholly responsible for

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> the pipelines' excess inventories of gas. As a result, all segments should shoulder some of the burden of resolving the problem.

Order 500, 89 PUR4th at 318-319. The foregoing rationale was translated into a rule which allowed the pipelines to choose between either standard prudency or equitable sharing alternatives. Under the standard prudency alternative, pipelines could undergo a prudency investigation. If the pipeline's conduct was found to be prudent, 100% of net take-or-pay costs could be included in rates; conversely, if the conduct was not prudent, no take-or-pay costs would be recovered through rates. Under the equitable sharing alternative, pipelines offering to absorb 25% to 50% of the take-or-pay costs could recover a like percentage of those costs through fixed charges in rates. The FERC, recognizing that its jurisdiction is limited to the establishment of wholesale rates, indicated that state regulatory authorities should determine whether to apply the equitable sharing rationale when they allocate the take-or-pay costs between the LDCs and their ratepayers. *Id*. at 331.

Order 500 also addressed the issue of how the take-or-pay costs not absorbed by the pipelines should be allocated among their various customers. The FERC determined that take-or-pay costs should be allocated in accordance with a purchase deficiency methodology. *See e.g.*, Order 500, 89 PUR4th at 342-343, 18 C.F.R § 2.104. The purchase deficiency methodology allocated take-or-pay costs on the basis of the pipeline customer's cumulative deficiency in purchasing natural gas from the pipelines during the applicable years. It was this cumulative deficiency which caused the pipelines to incur the take-or-pay costs; thus, the purchase deficiency method allocated costs to those customers who caused the costs to be incurred.

The Order 500 rules were appealed and, in *Associated Gas Distributors v. FERC*, 893 F.2d 349 (D.C.Cir. 1989), the Court *inter alia* held that the purchase deficiency allocation method violated the filed rate doctrine.[7(68)] After the United States Supreme Court denied the FERC's petition for a writ of *certiorari*, *FERC v. Associated Gas Distributors*, 59 U.S.L.W. 3271 (October 9, 1990), the FERC on remand stated that it would consider any alternative methodology that: 1) spreads the costs as broadly as possible throughout the industry; 2) provides for pipeline absorption of a significant portion of the costs; 3) minimizes burdens on the pipelines' captive sales customers; and 4) leaves undisturbed existing settlements between pipeline and producers. *See Mechanisms for Passthrough of Pipeline Take-or-pay Buyout and Buydown Costs*, 53 FERC para. 61,163 at 61,596-61,597 (1990) (Order 528).

The rates of Tennessee were initially the subject of separate FERC litigation. As described

by ENGI Witness Fleming (DR 91-042, Exh. 4 at 5-6), the wholesale recovery of Tennessee's take-or-pay costs broke down into several major issues, including *inter alia*: 1) the prudence of the pipeline in incurring the costs; and 2) the allocation or sharing of prudently incurred take-or-pay costs between the pipeline and its customers. The issues were the subject of extensive hearings before a FERC Administrative Law Judge (ALJ) resulting in an initial decision ruling *inter alia*: 1) that Tennessee's take-or-pay costs were prudently incurred; and 2) that the take-or-pay costs should be allocated or shared with customers on a 50/50 basis. *Tennessee Gas Pipeline Company*, 40 FERC para. 63,008 (1987). The FERC never adopted the ALJ's initial decision, nor did it rule on the myriad exceptions thereto. Instead, the FERC accepted a unilateral offer of settlement from Tennessee. *Tennessee Gas Pipeline Company*, 42 FERC para. 61,175 (1988), *modified on rehearing*, 43 FERC para. 61,329 (1988). Tennessee's unilateral offer of settlement was based on the FERC's interim rule promulgated by Order 500; it offered to absorb 50% of its net take-or-pay costs under the equitable sharing rationale. Under the Order 500 purchase deficiency method, little if any take-or-pay costs were allocated to ENGI and Northern because both had substantially met their purchase commitments during the applicable time periods.

[1] As discussed above, the FERC was required to abandon the purchase deficiency method. In response to the Order 528 solicitation of alternatives, Tennessee proposed to use

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the Annual Quantity Limitations (AQL) method to allocate among Tennessee's customers the portion of take-or-pay costs included in rates. The method develops a ratio which compares a particular customer's AQL on July 1, 1988 to the sum of all customers' AQL on that date. The resulting ratio is used to determine the portion of take-or-pay costs included in rates to be allocated to that customer. The FERC approved the AQL method in *Tennessee Gas Pipeline Company*, 53 FERC para. 61,379 (1990).

As previously noted, ENGI and Northern had no significant liability under the purchase deficiency method due to sufficient customer demand to allow the Companies to meet their purchase commitments. Under the AQL method, however, the Companies take-or-pay liability increased substantially: ENGI's liability is approximately $4.4 million (DR 91-042, Exh. 4 at 5) and Northern's net New Hampshire liability is $723,696 (DR 91-045, Exh. 2, JAF-11 at 7 of 11).

III. POSITIONS OF THE PARTIES

A. *The Companies*

The Companies propose to reflect their entire take-or-pay liability in COGA rates to be passed through to ratepayers. The Companies claim that the Commission may not as a matter of law deny them the opportunity to recover their full take-or-pay liability. This claim is based on the so-called filed rate doctrine which prevents state regulatory authorities from establishing rates which do not allow full recovery of wholesale rates approved by the FERC. *See e.g.*, *Narragansett Electric Co. v. Burke*, 119 R.I. 59, 381 A.2d 1359 (1977), *cert. denied* 435 U.S. 972 (1979). Because the take-or-pay costs are a component of Tennessee's FERC approved wholesale gas rates, this Commission is preempted from doing anything other than allowing those costs to be passed through to ratepayers.

While maintaining that the Commission is required to allow the passthrough of take-or-pay costs, the Companies also argue that such passthrough would be the proper regulatory action even if the Commission had the discretion to allocate take-or-pay costs between the Companies' investors and ratepayers. The Companies base this argument on the undisputed fact that ENGI and Northern management acted prudently with respect to the gas purchases that caused the take-or-pay liability. Because the Companies earn no margin on purchased gas, it is fair to require customers to bear the entire prudent cost of the take-or-pay liability and unfair to allocate any of that burden to investors. The Companies further argue that customers benefitted from management's ability to purchase spot gas as allowed by Order 436; benefits that far exceed the take-or-pay liability.[8(69)] These customer benefits further weight the equities towards allocation of total take-or-pay costs to ratepayers.

B. *The Staff*

The Staff disagrees with the assertion that the Commission lacks the ability as a matter of law to allocate any take-or-pay costs included in FERC approved rates to investors. While acknowledging that the filed rate doctrine generally forbids such an allocation, the Staff asserts that FERC language in Order 500 and Order 528 specifically reserve to the states the ability to apply the equitable sharing rationale to the allocation of take-or-pay costs between LDC investors and LDC ratepayers. Thus, the FERC orders themselves provide an exception to the filed rate doctrine.

The Staff also disagrees with the Companies' view of the equities. The Staff argues that under an equitable sharing rationale it is unfair for take-or-pay costs to be borne by producers, pipelines and LDC ratepayers, while LDC investors bear no burden whatsoever. Because these are costs for which responsibility cannot be assigned, there can be no distinction between the unfairness of costs borne by ratepayers and costs borne by investors. Finally, the Staff takes issue with the assertion that ratepayers should bear the take-or-pay costs because of the lower cost of gas purchased as a result of the FERC's Order 436 open access policy. The Staff argues that these lower costs also benefitted investors and, in any event, the benefits are independent of the take-or-pay liability.

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IV. COMMISSION ANALYSIS

The positions of the parties as set forth above accurately frame the issues. We must initially determine whether we have the ability as a matter of law to allocate any of the take-or-pay costs included in FERC approved wholesale rates to investors. If we do have this ability, our next task is to determine the appropriate allocation of take-or-pay costs between the Companies' ratepayers and investors. Our analysis of the record and the arguments of counsel leads us to conclude that: 1) we have the legal ability to allocate take-or-pay costs to the Companies' investors; and 2) under the FERC's equitable sharing rationale, it is appropriate to require investors to bear 40% of those costs.

A. *The Commission's Legal Ability To Allocate*

[2-5] The Companies argue that the Commission is foreclosed from doing anything other

than allowing rates to reflect fully the take-or-pay costs included in the pipeline's FERC approved wholesale rate. The Companies base this argument on the so-called "filed rate doctrine" (sometimes referred to as the *Narragansett* doctrine) which provides that FERC approved wholesale rates must be given binding effect by state regulators when they determine intrastate rates. *See e.g. Mississippi Power and Light Co. v. State of Mississippi ex. rel. Moore*, __U.S.__, 108 S.Ct. 2428, 93 PUR4th 293 (1988); *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 74 PUR4th 464 (1986); *Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822 (1985); *Narragansett Electric Co. v. Burke*, 119 R.I. 559, 381 A.2d 1358 (1977), *cert. denied* 435 U.S. 972 (1979).[9(70)] The rationale for the filed rate doctrine is that a FERC order approving a wholesale rate as just and reasonable is a decision by a federal agency which preempts inconsistent state determinations under the Supremacy Clause of the United States Constitution. Relitigation of that rate at the state level therefore amounts to an inappropriate collateral attack on the FERC order. *E.g., Mississippi Power and Light*, 93 PUR4th at 302. The proper avenue to seek redress from an adverse FERC ruling is to direct an appropriate request to the FERC or to appeal directly to the United States Court of Appeals. Additionally, a state refusal to include FERC approved wholesale rates in a retail passthrough would result in an impermissible "trapping" of costs. *Nantahala*, 74 PUR4th at 477. Translated to the instant situation, this means that certain costs which the FERC requires LDCs to pay for pipeline service are trapped when states do not allow the LDCs to recover them from ratepayers.

The filed rate doctrine is not absolute. One exception acknowledges the responsibility of the states to investigate the prudence of the LDC's decision to purchase from a particular wholesale supplier. Under this exception, the states recognize that FERC approved wholesale rates must be included in retail rates if purchases are appropriately made from a particular wholesaler, but the states reserve the right to inquire into whether the LDC selected the proper wholesale supplier. *See e.g.*, *Nantahala*, 74 PUR4th at 477-478; *Appeal of Sinclair Machine Products, Inc.*, *supra*[10(71)] ; *Pike County Light & Power Co. v. Pennsylvania Public Utility Commission*, 77 Pa.Cmwlth. 268, 465 A.2d 735 (1983).

No other exceptions to the filed rate doctrine have heretofore been explicitly accepted. Thus, the issue here is whether such an additional exception should be recognized where the FERC itself has so provided.

As a threshold question, we must determine whether the FERC has in fact provided for such an additional exception. We have previously noted that the FERC rationale of equitable sharing rests on the observation that blame for the take-or-pay cost situation cannot be appropriately assigned to any segment of the industry. In addressing comments that inclusion of any take-or-pay costs in wholesale rates would inappropriately allocate too much of the burden to captive retail customers, the FERC stated:

> As previously noted, the proposed policy statement does not attempt to prescribe the methods by which approved pipeline take-or-pay costs are to be allocated at the state level. However, it is the Commission's

view that there should be an equitable sharing of take-or-pay costs among all

> segments of the industry. The issue therefore is whether there exists any basis to expect that state agencies will be able to effect a sharing of pipeline take-or-pay costs as between LDCs and their customers
>
> The Commission does not believe that *Nantahala* precludes state regulators from designing LDC rates, or, in appropriate circumstances, from reviewing the prudence of LDCs' purchasing decisions insofar as they affect take-or-pay costs. It must be recognized that a fixed rate charge for take-or-pay costs is based on the need for assured recovery in light of the pipeline's agreement to absorb a comparable share of its take-or-pay costs. It is not based on the fact that the costs included in the charge are fixed costs. As the Commission has noted, take-or-pay settlement costs are actually related to the acquisition of gas supply and are considered as production related. Therefore the Commission believes that state regulators could consider reclassifying take-or-pay costs billed as a fixed charge as commodity costs and incorporating such costs into LDC sales or transportation rates, or both, thereby spreading such costs to the maximum possible extent as well as subjecting them to market forces. Alternatively, state agencies may wish to consider the option of not reclassifying fixed take-or-pay charges and instead allocating such charges to the LDC's customers based on their cumulative purchase deficiencies.
>
> The Commission can exercise its jurisdiction only within its legitimate sphere, which in this instance involves establishing cost allocation procedures and rates for recovery by pipelines of take-or-pay costs from their jurisdictional customers. The development of cost allocation procedures and rates for the LDCs are matters to be determined by state regulatory authorities.

Order 500, 89 PUR4th at 331.

The above language articulates the FERC's equitable sharing rationale and expresses the FERC's recognition that, if the rationale is to be carried to its logical conclusion, the states must be left free to perform their allocation function. However, the above Order 500 language is not sufficient in and of itself to convince us that the FERC intended to allow the states to allocate directly a portion of the FERC approved take-or-pay costs to LDC investors. That is because the FERC speaks in terms of the design of rates and the evaluation of the prudency of entering into transactions with the pipeline; both matters where there is existing state jurisdiction harmonious with the filed rate doctrine. Given the strength of the filed rate doctrine, this Commission is reluctant to read the above language as a FERC created exception.[11](72)

Although the Order 500 language cannot be read in isolation as manifesting the FERC's clear intent to create a filed rate doctrine exception, subsequent FERC orders leave no room to doubt that such an exception is exactly what the FERC intended. For example, in Order 528 the FERC stated:

> The Commission reaffirms the principle that all segments of the industry — pipelines, producers, LDCs, industrial end-users, and other consumers — should contribute to funding the pipelines' take-or-pay costs. No single segment of the industry is to blame for the take-or-pay problems and all segments should share in the costs of making the

transition to a more competitive market, since all segments are benefiting from the transition.

To this end, the Commission urges state commissions to use the full extent of their authority to equitably allocate between LDCs and retail customers take-or-pay costs that flow through an interstate pipeline's rates. As the Commission stated in Order No. 500-H, to ensure that all segments of the industry share in contributing towards the resolution of the take-or-pay problem,

> state regulators may consider reclassifying as commodity costs, take-or-pay costs billed to an LDC as a fixed charge and incorporating such costs into LDC sales or transportation rates, or both, thereby spreading such costs to the maximum extent possible and subjecting them to

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> market forces. Furthermore, state regulatory agencies may implement, as some have, an equitable sharing mechanism similar to that established by the Commission which requires LDCs to absorb a portion of the costs if they desire to assess a fixed charge.

In the Commission's view nothing precludes a state commission from requiring an LDC to absorb a share of the costs as the Commission is requiring of interstate pipelines here.

The Commission intends by separate letter to request information from each state regulatory commission on how it has addressed recovery of take-or-pay costs at the state level; what guidelines the state commission used in developing its allocation plans; and whether, as a general matter, the state commission expects any changes to its schemes as a result of the invalidation of the purchase deficiency allocation method. The Commission will request to receive this information within 30 days so it has time to analyze fully the wellhead to burner tip impact of any pipeline proposals filed in response to this order.

53 FERC para. 61,163 at 61,516-61,597 (footnote omitted). *See also, Mechanisms for Passthrough of Pipeline Take-or-pay Buyout and Buydown Costs*, 54 FERC para. 61,095 (1991) (Order 528-A) at 61,308 where the FERC in denying requests for rehearing of Order 528 responded to arguments *inter alia* that state commissions must as a matter of law "... allow LDCs to pass through the entire amount of costs incurred by paying ... [FERC] -approved rates ..." by stating:

> The Commission recognizes the limits of its jurisdiction; however, the Commission can express its views on LDC absorption in full recognition and respect for the rights of the state commissions to determine to what extent they exercise their authority. The Commission's point is that its action in authorizing interstate pipelines to charge LDCs for take-or-pay costs should not be viewed as preventing action by the state commissions to require partial absorption of those costs by LDCs in accordance with federal and state law.

(Footnote omitted).[12](73)

The FERC could not have more clearly stated its expectation that state regulatory commissions will apply the FERC's equitable sharing rationale to their determination of how take-or-pay costs included in pipeline rates should be allocated between LDC ratepayers and investors. The broader Order 528 language is also appropriate given the Court's reversal of Order 500's purchase deficiency allocation method. When allocation of take-or-pay costs to pipeline customers was made independent of those customers' cost causing conduct, it made less sense to discuss state review of the prudence of LDC purchase decisions.

The Order 528 equitable sharing rationale must also be viewed in the context of the system of regulation governing the various segments of the gas industry. As articulated by the FERC, the equitable sharing rationale recognizes that no one segment of the industry bears the blame in the take-or-pay issue and, thus, all segments of the industry should share in the cost. The FERC also recognized its own jurisdictional limitations: it could require partial absorption of costs by pipelines (and possibly producers, *see e.g.*, Exh. 4, Supplemental Testimony of Christopher P. Fleming at 6, lines 6-10), but it has no authority over the retail rates of the LDCs and therefore cannot engage in the function of allocating costs between LDC investors and ratepayers. The allocation of take-or-pay costs between LDC investors and ratepayers, if it is to be done at all, must be done by the state regulatory commissions. The classic application of the filed rate doctrine would frustrate the intent of the FERC that all segments of the gas industry share take-or-pay costs; LDC investors would be the only industry segment to be left whole. Thus, the FERC did not make a conventional finding that the take-or-pay costs included in pipeline rates are just and reasonable. In effect, the FERC found that the pipelines' wholesale rates are just and reasonable only if the states can continue the

equitable sharing process by allocating the take-or-pay component LDC investors and ratepayer industry segments.

We acknowledge that the issues of whether the FERC may make such a conditional finding of just and reasonable rates or, indeed, whether the FERC may create an exception to the filed rate doctrine as it has done here have not been definitively resolved by the appropriate courts. We must also state that we might have resolved the take-or-pay issue differently if we were performing the functions of the FERC. Those issues are not before us, however. One central theme of the filed rate doctrine that has not been vitiated is that this Commission cannot collaterally attack a FERC order. The FERC order before us is based on a conditional finding that provides for the application of the equitable sharing rationale by this Commission. If the Companies, who were parties to the FERC proceeding, were dissatisfied with the FERC's findings and conclusions, they had appropriate redress through the mechanism of appealing the FERC Order. They cannot collaterally attack that Order through the instant state proceeding.

Accordingly, we conclude that the FERC has provided for an exception to the filed rate doctrine and that we have the authority and the responsibility to allocate equitably the take-or-pay costs between the Companies' investors and ratepayers.

B. *Allocation Of Take-Or-Pay Costs*

[6-9] Having resolved the issue of our authority to allocate take-or-pay costs between the Companies' investors and ratepayers, the remaining task is to determine the appropriate allocation.

Initially, we must address the Companies' argument that the take-or-pay costs should be allocated in their entirety to ratepayers. The Companies' claim is that they receive no margin on pipeline gas; thus, they should be entitled to recover fully all prudent costs of obtaining gas. Because the prudence of the Companies' gas purchasing decisions is not at issue, it follows that 100% of the cost should be allocated to ratepayers. The Companies contend that this argument is reinforced by the benefits received by ratepayers in the form of lower cost gas resulting from the FERC's open access transmission policy. These benefits are far in excess of the take-or-pay costs which the Companies seek to flow through to their customers.

The Companies' argument assumes that they receive no benefit whatsoever from increased gas sales; an assumption that Witness Fleming agreed is inaccurate. DR 91-042, Tr. at 32-34. The Companies' argument is also identical to the pipelines' position which was rejected by the FERC. The FERC stated:

> In challenging the Commission's continued application of the equitable sharing policy to pipelines, the pipeline rehearing applicants rely primarily on the principle that pipelines are entitled to a reasonable opportunity to recover all prudently incurred costs, contending that the take-or-pay settlement costs involved here are such prudently incurred costs. However, the pipelines ignore two other equally well-established principles: (1) that the Commission need not provide pipelines a mechanism for guaranteed recovery of costs which market conditions would not otherwise permit them to recover and (2) that current ratepayers should only bear the legitimate costs of providing service to them. The Commission believes that these two principles support the equitable sharing policy.

Order 528-A, 54 FERC at 61,303.[13](74) The FERC rationale for the absorption of a portion of the take-or-pay costs by the pipelines applies with equal force to the issue of the allocation of take-or-pay costs between the LDCs and their customers.

The Companies are not riskless enterprises and thus have not been granted a riskless rate of return. The Companies benefit from increased gas sales and are exposed to the contingencies of adverse market conditions. It is well established that adverse market conditions (such as the conditions in the natural gas market which caused the take-or-pay liability) can result in a utility failure to recover a return even on prudent investment. *Market Street R. Co. v. Comm'n.*, 324 U.S. 548 (1945); *Petition of Public Service Company of New Hampshire*, 130

N.H. 265, 277 (1988). In the context of equitable sharing, it is not appropriate to ask ratepayers to assume all market risk; some of the burden must rest on the shoulders of investors.

The FERC's principles also address the Companies' contention that ratepayers have benefitted by open access to an extent that far exceeds the take-or-pay costs. There can be no

question that there is a mismatch in time between the ratepayers who experienced the open access benefits quantified by the Companies and those who will be asked to pay the cost.[14](75) More importantly, the Companies failed to meet their burden of demonstrating that the take-or-pay costs were a direct cost of obtaining the open access benefits. For example, Mr. Fleming testified that the take-or-pay liability was incurred by Tennessee in the years 1981 through 1986, while open access benefits did not come to New England until March 23, 1987. DR 91-042, Tr. at 76. Mr. Fleming also testified that the open access benefits are not directly related to the take-or-pay costs incurred by Tennessee. *Id*. at 77-78. This is verified by the fact that the ratepayer benefits quantified by the Companies did not change by so much as a penny while the Companies' take-or-pay liabilities varied significantly as the FERC grappled with how much of those costs should be included in Tennessee's rates and how those costs should be allocated.

For the foregoing reasons, we reject the Companies argument that zero margins and ratepayer open access benefits compel an equitable allocation of all costs to ratepayers. What remains is a determination of how the take-or-pay costs should be allocated between the Companies' investors and ratepayers.

We must initially state that the record does not contain a thorough development of facts that would lead us in one direction or another. The exercise of our discretion on this equitable sharing issue must necessarily contain some regulatory judgment about what is appropriate regulatory policy under the instant circumstances. We share the view of the dissent that it is unfair to allocate these costs to investors. The Companies' investors did nothing wrong. However, we are unable to distinguish between the unfairness to investors and the unfairness to ratepayers of imposing market related costs where all are blameless. Thus, our starting place for allocating costs that are equally unfair to blameless constituencies must be a fifty-fifty split.

We have next reviewed factors that may cause us to depart from a mechanical splitting of the liability. One such factor does exist and it causes us to exercise our discretion to allocate an additional 10% of the take-or-pay costs to ratepayers.

[15](76) That factor is the Companies' participation in and support of the NECG.

The record reflects that the NECG was a participant at FERC. While the LDC members of the group were undoubtedly protecting their own interests, it cannot be disputed that in this instance their interests were coincident with those of their ratepayers. We are unaware of any other representation of New Hampshire ratepayer interests before the FERC. The Companies' representation of ratepayer interests was vigorous and, to some extent, extraordinary given the possible exposure of the Companies in state proceedings from positions taken at the FERC. *See e.g.*, Testimony of Charles J. Cicchetti cited herein at n. 13. It is equitable to ask ratepayers to pay for such exclusive high quality representation of their interests. Thus, an additional 10% of the costs will be allocated to ratepayers to reflect such payment and as an incentive to encourage continued vigorous representation of ratepayer interests at the FERC by the Companies. *Cf*., *Generic Investigation of Financial Incentives for Conservation and Load Management*, Docket No. DE 89-187, Report and Order No. 19,905 at 29 (August 7, 1990) ("Incentives should not be given as a matter of course for what is prudent utility operation. However, in many planning decisions there are ranges of reasonableness. Within that range there are alternatives that benefit

both ratepayers and stockholders although perhaps to differing degrees. It is utility management's responsibility to choose among the options in that range. When utility managers choose options that offer extraordinary benefits for ratepayers, something over and above what prudent utility management requires, financial incentives may be warranted. To the extent that

the commission wishes to influence utility decisions within that range of reasonableness, to secure benefits for ratepayers that would not occur in ordinary circumstances, it is appropriate to offer utility managers financial incentives.").

V. CONCLUSION

[10] Although the FERC has labeled its policy "equitable sharing", the AQL imposition of any portion of the take-or-pay costs on either the Companies' investors or ratepayers is not fair and equitable. No choice presented to us within the confines of our jurisdiction is palatable. After weighing all the equities (or inequities) in the alternatives open to us, we find that the 60% - 40% split best balances all interests in a difficult and unique situation and we conclude that such an allocation, under the instant circumstances, will produce just and reasonable rates.

Our order will issue accordingly.

ORDER

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

ORDERED, that the reconciliation of the 1991 summer Cost of Gas Adjustments of EnergyNorth Natural Gas, Inc. and Northern Utilities, Inc. shall be calculated to reflect the allocation of 60% to ratepayers and 40% to investors of the net take-or-pay costs included in the rates of the Tennessee Gas Pipeline Company.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1991.

Separate Opinion of
Commissioner Ellsworth

I agree with the majority to the extent that their decision reflects their frustration over the FERC's abdication of its responsibility to reach a fair and just resolution of the "Take or Pay" (TOP) issues which have plagued the gas industry for the last decade. Like the majority I believe the FERC's usage of the nomenclature "equitable sharing" to describe the mechanism it adopted in Orders 528 and 528-A to pass take-or-pay liabilities onto LDC's to be a misnomer. However, notwithstanding this shared frustration over FERC's failure to adequately resolve the take-or-pay problem, I disagree with the majority's solution of allocating 40% of TOP costs to ENGI and Northern shareholders, and accordingly dissent.

[11, 12] Initially, I disagree with the majority's conclusion that the FERC Orders 528 and 528-A are intended to supersede the well established division of federal and state authority in the natural gas industry. Rather, I believe that the FERC intended the state commissions to abide by the preemption principles set forth *inter alia* in *Nantahala Power & Light Co. v Thornburg*, 476 U. S. 964, 74 PUR4th 464 (1986), and allow LDC's to recover their TOP costs in retail rates so long as there is no imprudence in their gas purchasing practices. Moreover, even if the majority

is correct that Orders 528 and 528-A allow this Commission to disallow a portion of the Companies' take-or-pay costs to achieve an equitable apportionment of these costs, I disagree with the majority's determination that allocating 40% of these costs to shareholders achieves a fair and just result. It is my opinion that the absence of any imprudence on the part of Northern or ENGI with respect to the incurrence of TOP liability in combination with the substantial benefits ratepayers received as a consequence of the FERC's policy decision encouraging interstate pipelines to become open access transporters of natural gas, gives us no reasonable choice other than to allocate 100% of the Companies' take-or-pay costs to ratepayers through their Cost of Gas Adjustments (COGA).

As noted, my initial disagreement with the majority's analysis is predicated on my belief that the FERC intended for states to remain within the confines of the "filed rate" doctrine when they authorized a 50% pass-through of pipeline take-or-pay liabilities to retail gas companies. As the majority observes, the "filed rate" doctrine provides that state commissions must allow retail electric and gas companies to recover in their rates wholesale costs established by FERC. *See e.g. Mississippi Power and Light Co. v State of Mississippi ex. rel.*

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Moore,__U.S.__,108 S.Ct. 2428, 93 PUR4th 293 (1988); *Nantahala Power and Light Co. v Thornburg*, 476 U.S. 953, 74 PUR4th 464 (1986). The filed rate doctrine protects LDC shareholders from unfair "cost trapping" that occurs when state regulators subsequently disallow recovery of costs which the FERC compels them to pay as reasonable wholesale rates.

As the majority further notes, one recognized exception to this doctrine is when the state regulator disallows total pass through of the FERC approved rate on the ground that the retail company was imprudent in its decision to purchase gas or electricity from a particular supplier. In such a circumstance the state regulatory agency is not impermissibly collaterally attacking the reasonableness of the FERC's decision. Rather, the agency's inquiry is limited to the company's purchasing practices, an issue over which FERC does not exercise regulatory authority. *See e.g., Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822 (1985), *Pike County Light & Power Co. v Pennsylvania Public Utility Commission,* 77 Pa. Cmwlth. 268, 465 A.2d 735 (1983).

In contrast with the majority, I interpret Orders 528 and 528-A to reflect the FERC's expectations that the state commissions would follow through with the "equitable sharing" approach for resolving take-or-pay issues at the retail level subject to the constraints of the "filed rate" doctrine. FERC originally announced its preference for an equitable sharing of take-or-pay costs among all segments of the gas industry in Order 500. *Re Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, 40 FERC Para. 61,251, 89 PUR4th 310 (1987). Therein, the FERC responded to a concern expressed by state regulators that under *Nantahala Power & Light Co. v Thornburg, supra*, they were preempted from allocating a portion of take-or-pay costs to the retail companies' shareholders by observing that the state commissions could reduce ratepayer responsibility through traditional prudency evaluations or rate design. Order 500, 89 PUR4th at 331 (1987). Thus, as the majority holds, in Order 500 the FERC expressed its intent for the state commissions to effectuate "equitable sharing" in a manner that is consistent with standard preemption doctrine.

In Order 528, the FERC quoted Order 500 and reiterated its expectation that the state commissions would use equitable sharing principles to establish retail gas customers' responsibility for take or pay costs. Order 528, 53 FERC para. 61,163 at 61,516 (1990). Subsequently, in Order 528-A, the FERC responded to arguments for rehearing on the issue of FERC's authority to mandate that state commissions adopt the equitable sharing approach as follows:

> The Commission recognizes the limits of its jurisdiction; however, the Commission can express its views on LDC absorption in full recognition and respect for the rights of the state commissions to determine to what extent they exercise their authority. The Commission's point is that its action in authorizing interstate pipelines to charge LDC's for take-or-pay costs should not be viewed as preventing action by the state commissions to require partial absorption of those costs by LDC's in accordance with federal and state law.

Order 528-A, 54 FERC para 61,095 (1991).

Unlike the majority, I interpret FERC's reference to federal law to indicate its recognition that unless there is a finding of imprudent purchasing practices, the filed rate doctrine precludes state commissions from allocating take-or-pay costs to retail gas company stockholders. In other words, in the absence of an express statement to the contrary, I do not believe it reasonable to presume that FERC intended for state commissions to depart from well-established legal and regulatory precedent requiring recovery of prudently incurred wholesale costs. In short, I am not persuaded that the FERC intended to use the concept of "equitable sharing" to reach the inequitable result of imposing costs on retail gas companies without a reasonable expectation of full recovery from ratepayers.[1(77)]

Even if I were to agree with the majority on the preemption issue, I would also dissent on the basis that its ruling "traps" the Companies take-or-pay costs. The majority finds, as do I,

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that there is absolutely no evidence in this case that either ENGI or Northern acted imprudently with respect to their incurrence of take-or-pay liabilities. Indeed, as the majority finds, the Company's gas purchasing practices were prudent and, along with other LDCs, the Companies acted vigorously in protecting the interests of their ratepayers and shareholders in FERC litigation over the take-or-pay issue. Thus, the majority's decision causes a classic "cost trapping" situation. The shareholders of ENGI and Northern are being asked to assume certain costs that were incurred to provide service to ratepayers. Although company management was not responsible for the contracts between its supplier, Tennessee Gas Pipeline, and the wellhead producers and did not through their own purchasing practices cause Tennessee to incur take-or-pay liabilities, ENGI and Northern shareholders are being held responsible for these costs. In contrast to other circumstances in which this Commission will allocate costs to shareholders on the basis of management imprudency, nothing which management did or failed to do in this case forms the basis of the majority's decision. The impact of the majority's ruling is to impose for the first time a risk on utility shareholders that they may not be allowed to recover

costs that were prudently incurred in order to fulfill their obligation to ratepayers. Although not necessary to my dissent, I question whether in the absence of any imprudence this Commission can legally disallow such costs. *Appeal of Richards*,__N.H.__, Slip Opinion (N.H. 1991).

I also recognize that the absence of causal connection between the take-or-pay costs and the conduct of the Companies' management applies with equal force to the retail ratepayers. The record demonstrates that ENGI ratepayers did not cause Tennessee to incur any take-or-pay liability and Northern ratepayers were at most only minimally responsible. Rather, it appears that the primary entity responsible for Tennessee's purchasing deficiencies in the mid-eighties was Columbia Gas Transmission Company. Thus, under FERC's allocation methodology, ENGI and Northern ratepayers unfairly are being asked to pay for costs caused by companies from which they received no service.

As a result of the FERC's decision, this Commission is now confronted with the dilemma of authorizing the recovery of take-or-pay costs from two equally blameless groups. However, while I believe it is fundamentally unfair to compel either ratepayers or shareholders to pay take-or-pay costs, the Commission is required to provide some means of recovery. The question before us is whether the rights and interests of ratepayers and stockholders are undistinguishable or whether in fact there is rational basis for differentiating between them. In contrast to the majority, after consideration of all the relevant facts, I do not believe that the equities are the same.

The FERC's decision to allocate take-or-pay costs to LDCs was only one aspect of its resolution of difficulties confronting the gas industry in the mid-eighties. In Order 436 the FERC sought to mitigate the economic decline of the industry by encouraging pipelines to become open access providers. *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, 33 FERC para. 61,007, *supra*, (October 9, 1985). As a result, beginning in 1987 customers of ENGI and Northern were able to benefit from lower priced gas.

The record demonstrates that the benefits which the retail ratepayers received from the FERC's open access policy far exceed the take-or-pay costs they are now being asked to assume. Further, because the retail companies do not earn a profit on gas sales, there was no corresponding direct benefit to shareholders from the FERC's policy. Thus, although there is no direct temporal correlation between the benefits ratepayers received and the FERC's open access transportation policy, it is clear that for ratepayers these benefits exist. For shareholders, any such benefit is questionable.

2(78) In short, when the totality of the circumstances are considered and the equities, including the benefits received by ratepayers and the lack of management imprudence are balanced, I believe an equitable sharing of take-or-pay costs requires 100% of the costs allocated to ratepayers.

Accordingly, I dissent.

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Bruce B. Ellsworth

Commissioner

June 3, 1991

FOOTNOTES

Report

[1]Tennessee's rates were approved by the Federal Energy Regulatory Commission. *See, Tennessee Gas Pipeline Company*, 53 FERC para. 61,379 (1990).

[2]GSGT is an affiliate of Northern and is its direct pipeline supplier.

[3]This section will present a summary of the factual development of the take-or-pay issue. It is derived *inter alia* from the thorough discussion contained in the FERC's Order No. 500-H, reported at III FERC Statutes and Regulations para. 30,867 at 31,509-31,524 (1989).

[4]*Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954).

[5]As correctly asserted by the Companies, this open access requirement allowed the LDCs, including the Companies, to secure lower cost, competitively priced natural gas. The benefit of this lower cost gas has been directly passed through to ratepayers.

[6]ENGI Witness Fleming disputed the assertion that the producers assumed any portion of the take-or-pay burden. Mr. Fleming claimed that real economic burdens would not be shouldered by producers because the take-or-pay liability was for gas retained by the producers. Mr. Fleming believed that the producers' opportunity to sell the gas that was not taken eliminates any harm caused by a settlement of take-or-pay liability. *See e.g.*, DR 91-042, Tr. at 50-56. We cannot accept Mr. Fleming's view because it ignores the fact that the settlement process reduced and compromised the pipelines' *liability* to the producers; liability that represented a property interest. That property interest was substantial. The FERC noted: "... [B]y mid-1987, pipelines had resolved nearly $14 billion of take-or-pay exposure through settlements which in no year averaged more than 17 cents on the dollar. ... The take-or-pay exposure so resolved was about 56 percent of the over $24 billion take-or-pay liability incurred by pipelines through the middle of 1987. Pipelines received additional take-or-pay relief through release credits. By mid-1987 pipelines had released 1,831 TBtu of gas in return for such credits." (Citation omitted) III FERC Statutes and Regulations para. 30,867 at 31,513. We also reject Mr. Fleming's assertion that the compromises did not cause economic hardship to the producers. The FERC stated: "The loss of revenue to producers during the mid- and late 1980's as a result of falling gas prices, falling sales, and few take-or-pay payments, combined with a simultaneous decrease in oil prices, has had serious adverse effects not only on producers, but on the entire economies of the producing regions of the nation. Many producers, particularly small producers, went bankrupt, defaulting on loans from banks secured in part on the basis of minimum revenue levels provided by the take-or-pay clauses in their sales contracts. This in turn caused numerous banks in the producing regions to fail, with the result that the Federal Deposit Insurance Corporation (FDIC), through foreclosures of producer properties, is now a substantial oil and gas lease owner. As the effects of producers' loss of revenue spread through the economies of the producing regions of the nation, the unemployment levels in those regions rose significantly above the national average." *Id*. at 31,514-31,515 (footnotes omitted); *see also*, DR 91-042, Tr. at 52-54, *quoting Mechanisms*

for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs, 54 FERC para. 61,095 (1991) (Order 528-A) at 61,298.

[7]The filed rate doctrine provides *inter alia* that a utility may charge only the rate on file with the FERC for service during the period in question and rates can only be changed on 30 days notice to the FERC. *See e.g., Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981). The *Associated Gas Distributors* appellants argued successfully that the purchase deficiency take-or-pay charges were in effect charges for past purchases.

[8]ENGI claims approximately $12 million in customer benefits (DR 91-042, Exh. 4 at 5), while Northern claims New Hampshire division customer benefits of approximately $4.7 million (DR 91-045, Exh. 3 at 2-3).

[9]Although the "filed rate doctrine" line of cases almost exclusively pertains to Federal Power Act interstate electricity transactions, for the purposes of this Report we accept that the doctrine is equally applicable to FERC approved rates on interstate sales of natural gas. *See e.g., Arkansas Louisiana Gas Co. v. Hall*, *supra* at n. 7.

[10]The *Sinclair* exception to the filed rate doctrine has been partially codified in statute. RSA 374:57.

[11]In this context, we disagree with the analysis of the Court in *General Motors v. Illinois Commerce Commission*, 547 N.E.2d 1299 (Ill.App.4 Dist. 1989) which held that the Order 500 language creates a filed rate doctrine exception. *But see, General Motors Corporation v Maryland Public Service Commission*, 117 PUR4th 173 (Md.Cir.Ct. Harford Cty. 1990) (holding that the Order 500 language does not create an

exception to the filed rate doctrine). Both cases were decided before the FERC issued Order 528.

[12]Northern argues that the Order 528-A phrase "... in accordance with federal and state law ..." refers to the filed rate doctrine limitations on state power, thus preempting state disallowances of take-or-pay costs included in the pipeline's wholesale rates. We reject this argument because it would render meaningless the FERC's explicit reservation of the states' right to "... require partial absorption of those [take-or-pay] costs by LDCs ..." Inasmuch as the "partial absorption" language was a response to the filed rate doctrine argument and represented the major thrust of the FERC's statement, it is not rational to view a requirement that such absorption be in accordance with federal and state law — which must always be the case — as nullifying the FERC's primary intent

[13]The FERC order essentially adopted in part the position of the New England Customer Group (NECG) which was an intervenor. The Companies were members of the NECG. The NECG presented the testimony of Charles J. Cicchetti who addressed pipeline testimony that the lack of a margin on gas justifies a full allocation of take-or-pay costs to customers. Mr. Cicchetti articulated and refuted the pipelines' position as follows: "... [Tennessee Witness] Clark seems to feel that Tennessee's zero profit position with respect to gas sales is consistent with zero risk in the operation of Tennessee's gas business. He suggests that because Tennessee should face zero

risk in the gas business. Tennessee should, of course, accept none of the responsibility for the accumulated take-or-pay liabilities. This logic is flawed ... . All one has to do to demonstrate this flaw is to compare pipeline capital costs with riskless capital costs to see that neither investors, nor regulators, nor the pipelines themselves, believe that they operate a riskless enterprise ... . Pipelines face business risks, defined as the basic risk inherent in a firm's operations, just like everyone else in the gas business. Just because they are limited to a fair, risk-adjusted return on their capital base, and not permitted a markup on their purchased gas costs, does not mean that they are, or should be, insulated from any business risks whatsoever." DR 91-042, Tr. at 82-83.

[14]Thus, the FERC's principle of allocating to current ratepayers only the costs of providing service to them would appear to be inconsistent with its determination to accept an AQL methodology for allocating take-or-pay costs among Tennessee's customers. This apparent inconsistency cannot be collaterally attacked by this Commission. *E.g., Nantahala Power and Light Co. v. Thornburg*, *supra*.

[15]We recognize that the 60%-40% allocation is inconsistent with our deliberations at the Commission's April 29, 1991 public meeting. *See*, April 29, 1991 Commission Meeting Minutes at 2-5 (Item 7). However, such deliberations are always subject to the more rigorous analysis that is necessary when the Commission's rationale must be articulated in a written order. The task of committing an analysis to writing often reveals flaws that are not apparent in oral discussion. Thus, the Commission may always issue an order that is not consistent with oral deliberations and such oral deliberations are always subordinate to the Commission's written reports and orders.

Separate Statement of
Commissioner Ellsworth

[1]Northern asserts that under the Natural Gas Act, 15 U.S.C. sect. 717 *et seq.,* FERC can only set rates which are just and reasonable. Ferc may not use the "equitable sharing" methodology if it does not believe the resulting rate is a just and reasonable cost incurred by the LDC on the behalf of retail ratepayers. The majority notes that this is an issue which has not been addressed by the courts. In the absence of legal precedent on this critical issue, I believe that it is inappropriate to presume that FERC established take-or-pay costs which do not meet the just and reasonable standard required by the Natural Gas Act.

[2]While I am not prepared to state definitively that ENGI and Northern shareholders did not benefit from the open access policies, I note that during redirect examination ENGI witness Fleming testified there were no benefits. (Trans. 96-98)

EDITOR'S APPENDIX

Citations in Text

[F.E.R.C.] Re Mechanism for Passthrough of Pipeline Take-or-pay Buyout and Buydown Costs, RM91-2-000, Order No. 528, 53 FERC ¶ 61,163, 117 PUR4th 327, Nov. 1, 1990. [F.E.R.C.] Re Mechanism for Passthrough of Pipeline Take-or-pay Buyout and Buydown Costs, RM91-2-001, Order No. 528-A, 54 FERC ¶ 61,095, 123 PUR4th 508, Jan. 31, 1991. [N.H.] Re Incentives for Conservation and Load Management, DE 89-187, Order No. 19,905, 75 NH PUC 527, Aug. 7,

1990. [N.H.Sup.Ct.] Re Public Service Co. of New Hampshire, 130 N.H. 265, 92 PUR4th 546, 539 A.2d 263, Jan. 26, 1988. [U.S.Sup.Ct.] Market Street R. Co. v. California R. Comm'n, 324 U.S. 548, 58 PUR NS 18, 89 L.Ed. 1171, 65 S.Ct. 770, Mar. 26, 1945.

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[U.S.Sup.Ct.] Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 3 PUR3d 129, 98 L.Ed. 1035, 74 S.Ct. 794, June 7, 1954.

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[Go to End of 27981]

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 20,142

124 PUR4th 152

76 NH PUC 373

New Hampshire Public Utilities Commission

June 3, 1991

ORDER upholding a prior order that established rates, terms and conditions under which the cooperative may sell its share of Seabrook nuclear generating station power to Public Service Company of New Hampshire (PSNH). For prior order see, *Re New Hampshire Electric Co-op., Inc.,* 76 NH PUC 311, supra.

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1. CONTRACTS, § 14

[N.H.] Construction — Extrinsic evidence — Capacity sellback agreement. p. 374.

2. RATES, § 367

[N.H.] Electricity — Wholesales — Capacity sellback agreement — Electric cooperative — Seabrook nuclear plant. p. 375.

APPEARANCES: As previously noted.

BY THE COMMISSION:

REPORT

On May 3, 1991, the Commission issued Report and Order No. 20,122 (Order 20,122) in this docket which determined the rights and responsibilities of the New Hampshire Electric

Cooperative, Inc. (NHEC or Cooperative) and Public Service Company of New Hampshire (PSNH) under their so-called sellback agreement. Timely Motions for Rehearing were filed pursuant to RSA 541:3 by the NHEC, PSNH jointly with Northeast Utilities Service Company (NUSCO), and the Office of the Consumer Advocate (OCA). On May 28, 1991, the NHEC filed an Objection to the PSNH/NUSCO Motion for Rehearing and PSNH/NUSCO filed an Objection to the NHEC's Motion for Rehearing. We have thoroughly reviewed all the pleadings. While several issues raised therein have caused us to reexamine our analysis, no new evidence or argument was proffered that is material to our overall findings and conclusions. For that reason and for the reasons set forth below, the motions will be denied.

We shall address each motion in turn. We have not comprehensively addressed each and every argument raised because we believe that many issues have been adequately addressed in Order 20,122 or other Commission Orders in this docket. To the extent that a ground for rehearing has not been addressed herein, it is to be deemed denied.

The NHEC Motion

The NHEC claims that Order 20,122 is unlawful and unreasonable because: 1) it reflects an inappropriate assertion of Commission jurisdiction over the sellback agreement; 2) it violates constitutional prohibitions against the impairment of contracts and retrospective laws; 3) it erroneously construed language in March 6, 1985 letter (Exh. NHEC 4); 4) it erroneously concluded that the NHEC's ability to compel PSNH to purchase Seabrook output under the sellback agreement is conditioned on the Cooperative's continued status as a requirements customer of PSNH; 5) it erroneously disregarded a dispositive decision of the Federal Energy Regulatory Commission (FERC); and 6) it erroneously reduced the NHEC's full cost based price for Seabrook output.

The NHEC's jurisdictional and constitutional arguments have already been addressed by the Commission in Report and Order No.

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19,946 (October 1, 1990) (Jurisdictional Order). Moreover, those arguments were rejected a second time in our Report and Order No. 19,969 (October 30, 1990) where the NHEC's Motion for Rehearing of the Jurisdictional Order was denied. The Cooperative asserts in its instant Motion that Order 20,122 constitutes additional and independent violations of the NHEC's constitutional rights. However, we have been presented with no argument or cited evidence in the Cooperative's Motion that has not already been carefully considered and rejected in the Jurisdictional Order and the Order denying rehearing therefrom. Accordingly, the NHEC's Motion for Rehearing will be denied on those grounds.

The NHEC's next set of arguments all involve the Commission's finding that the Cooperative's ability to compel PSNH to purchase Seabrook output under the sellback agreement is conditioned on the NHEC's continued status as a requirements customer of PSNH. Specifically, the Cooperative asserts that the Commission erroneously ignored a dispositive FERC ruling; that the Commission erroneously construed certain contract language against the NHEC; and that the Commission's finding was against the weight of the evidence.

The NHEC's FERC argument is that an existing FERC order construing the March 8, 1985

letter (Exh. 4) is dispositive of the issue before this Commission. The NHEC argument involves both preemption and preclusion principles. These issues were considered in Order 20,122 and the Motion for Rehearing presents us with no cause to disturb that analysis. It is sufficient to state that the FERC cannot preempt this Commission in matters over which this Commission has jurisdiction and the FERC does not. The establishment of a wholesale rate for an electrical cooperative is such a matter. *See e.g.*, Report and Order No. 19,946 (October 1, 1990). This analysis is also dispositive on the issue of preclusion. The preclusion doctrines of res judicata and collateral estoppel only operate where matters were actually litigated to final judgment in a forum of competent jurisdiction. *See e.g.*, *Scheele v. Village District*, 122 N.H. 1015, 1019 (1982). As discussed in Order 20,122, the ruling of the FERC was not 1) a final judgment; 2) of a matter actually litigated; 3) in a forum of competent jurisdiction. The first two elements of preclusion fail because FERC hearings on the issue of the meaning of the March 8, 1985 letter (Exh. NHEC 4) as it pertains to the partial requirements contract between PSNH and the NHEC have yet to commence. *See e.g.*, Order 20,122 at 28. The remaining element fails because the FERC is not a forum of competent jurisdiction to regulate the wholesale rates of the Cooperative; the matter that is the primary subject of the March 8, 1985 letter.[1](79)

[1] The Cooperative's next argument is that we erred in our reading of New Hampshire law as requiring that certain ambiguous language in the March 5, 1985 letter (Exh. 4) be construed against the NHEC because the NHEC drafted that language. Order 20,122 at 22 relied upon *Trombley v. Blue Cross/Blue Shield of New Hampshire/Vermont*, 120 N.H. 764 (1980). The NHEC argued that the *Trombley* case rule applies only to the interpretation of insurance policies. *See, Centronics Data Computer Corp. v. Salzman*, 129 N.H. 692, 696 (1987). The NHEC is correct. As a result of this error, we have reexamined the evidence to determine whether our finding would be different if we had not believed ourselves required to construe the applicable language against the Cooperative. We find that the record continues to support our original conclusion that the Cooperative's ability to compel PSNH to purchase Seabrook output is conditioned on its continuing status as a PSNH wholesale customer.

Our original finding was based on more than the erroneous interpretation of the rules of contract interpretation. We looked at the totality of the circumstances, including the conduct of the parties at the time the sellback was being developed. Contrary to the assertion in the Cooperative's Motion for Rehearing, the record supports the finding that the March 8, 1985 language in Exh. 4 ("The Cooperative intends to remain ... a total requirements wholesale customer of Public Service for the 10 year life of the [sellback] contract ...") originated with the NHEC. The other evidence supporting our finding as set forth in Order 20,122, including

inter alia the contemporaneous sworn testimony of Mr. Pillsbury and Mr. Anderson, the correspondence with the United States Rural Electrification Administration (REA), and other terms in the March 8, 1985 letter (such as the right of first refusal) all assist us in determining what the Cooperative intended when it drafted the language in question. On the basis of that evidence, it is clear that at the time Exh. 4 was drafted, signed and countersigned the NHEC did not intend to parse the words with the type of precision that today in hindsight it contends should be applied. Thus, even absent a rule of contract interpretation establishing a presumption against

the Cooperative as drafter, we would on the basis of the instant record construe the Exh. 4 language in the same manner as set forth in Order 20,122.

The foregoing discussion is also dispositive of the Cooperative's assertion that the Commission's finding is against the weight of the evidence because it took certain statements out of context and ignored other statements.[2(80)] We have reviewed the entire record and on that basis we cannot accept the NHEC's claim. To the contrary, when we examine the evidence in the context of an inquiry of how objective conduct manifested intent at the time the pertinent term of the sellback agreement was established, we arrive directly at the findings in Order 20,122. The Cooperative's Motion for Rehearing will accordingly be denied on this ground.

[2] The Cooperative's remaining contentions are directed at the establishment of the valuation of approximately $126 million as the "full cost" of the NHEC's share of Seabrook Unit I for sellback agreement purposes. The $126 million was calculated as the difference between the Cooperative's total investment in Seabrook Unit I less the portion of that investment which was not approved by the Commission because of the NHEC's willful violation of statutes requiring such approval. The Cooperative now claims that it was not required to obtain Commission approval for approximately $32.3 million of the disallowed investment because it was accrued post-default interest. The remaining disallowed investment was approximately $4.7 million in "protective advances" by the REA. The Cooperative acknowledges the requirement to seek advance Commission approval before accepting such "protective advances", but claims that its failure to comply with those statutory requirements was not willful. For the reasons that follow, we cannot accept the NHEC argument.

The NHEC claims that it was not required to obtain Commission approval before capitalizing the approximately $32.3 million in post-default interest because such interest indebtedness is not specified in RSA 369:1. RSA 369:1, which is the source of the Commission's long-term financing authority, provides *inter alia*:

> Authority To Issue Securities. A public utility lawfully engaged in business in this state may, with the approval of the commission but not otherwise, issue and sell its stock, bonds, notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes.

As PSNH/NUSCO argued in their objection, it is well established that the term "other evidences of indebtedness" manifests the intent of the legislature to impose a broad requirement of Commission pre-approval of utility financings to further an important public protection purpose. The Court long ago stated:

> The immediate subject with which the legislature was dealing in P.L., c. 241 [the predecessor to RSA 369:1], was the limitation of the capital investment of the utility represented by its capital stock and debts of a permanent character as distinct from temporary financing incident to current operations. Whatever subsidiary purpose may have been in view it is apparent that the main object of the legislature was to establish and preserve a proper base for the regulation of rates and service.
>
> ...
>
> It is clear that the immediate design of the legislature, by these provisions, was to

limit not only the capital of the utility as represented by its stock, but also its other obligations so far as they are designed to

supplement capital by borrowings of a permanent character; the ultimate purpose being, as we have seen, to preserve a proper base for the determination of the "just and reasonable" rates which the commission is required to fix by order ... . It follows that the words "other evidences of indebtedness" must be understood and construed with reference to the capital and permanent character of the securities rather than with regard to any peculiarity of their form or negotiable quality ... . The basis of the *ejusdem generis* rule is that the mention of one thing followed by a general descriptive term gives color and meaning to the class covered by the latter and limits that class to the things having a likeness to the specified thing. The likeness required by the rule, however, is as to characteristics material to the purpose of the classification. It was as to the utility of bonds and notes in making up the capital structure in a more or less permanent way that these particular terms were used ... . Moreover the rule is always subject to the qualification that general words are to be construed more broadly than the specific words where such construction is clearly needed to give effect to the meaning of the legislature ... . The very evident purpose of the legislature in requiring commission approval for capital items, namely, to preserve a proper rate base, would be frustrated if a method of financing outside the purview of the statute could be devised by the open account method which would enable the whole credit structure of a utility to escape commission control.

State v. New Hampshire Gas & Electric Co., 86 N.H. 16, 24-25 (1932) (citations omitted); *see also, Petition of the N.H. Gas & Electric Co.*, 88 N.H. 50, 55 (1936) ("[t]here is no question that the object of the statute is to avoid over capitalization contrary to the public interest ..."); *Appeal of Easton*, 125 N.H. 205, 215 (1984) ("... the Co-op does not have the right to borrow unlimited sums, and whatever sums it seeks to borrow are subject to the provisions of RSA chapter 369 ...").

The foregoing establishes that the applicable elements of a regulated utility financing is that the indebtedness will be capitalized in a permanent way (defined by the statute as more than 12 months). The underlying purpose of Commission pre-approval of such financing is to preserve the Commission's ability to regulate effectively the utility's rates and service. By these measures, the capitalized post-default interest is clearly a utility financing subject to the provisions of RSA chapter 369. The post-default interest is a debt owed by the NHEC which has been capitalized as a part of the Cooperative's permanent investment in Seabrook Unit I. Indeed, the very fact that we have Seabrook debt investment that was subject to a rate base valuation disallowance (and was disallowed) is determinative of the applicability of the requirement for Commission pre-approval under RSA chapter 369.

The existence of well established law is also dispositive of the Cooperative's claim that it could not have violated statutory requirements willfully. There can be no reasonable dispute that the NHEC knew that it had to finance its periodic interest obligations to its lenders and that, for Seabrook, such financing costs were to be capitalized. *See e.g., Appeal of Conservation Law Foundation*, 127 N.H. 606, 620 (1986) and *Appeal of PSNH*, 125 N.H. 46, 50 (1984) (both

defining and discussing Allowance For Funds Used During Construction — AFUDC), *cited in Appeal of McCool,* 128 N.H. 124, 129 (1986). Indeed, one of the key purposes of the previously approved Cooperative financing was to provide sufficient proceeds to service the NHEC's Seabrook related debt to the REA, which debt service would become part of the capitalization of the facility subject to rate base treatment. *Re NHEC*, 70 N.H.P.U.C. 422 (1985), *aff'd. sub nom., Appeal of McCool, supra*. In that proceeding, the Commission based its financing approval in part on the testimony of Professor Williamson (who was also a witness in the instant proceeding) relating *inter alia* to the consequences of a default by the Cooperative in meeting its obligations (including debt service) to the REA. *Id*. at 441; 479. Given the clear statutory, administrative and judicial language (including pertinent language in New Hampshire Supreme

Court and Commission cases relating to Seabrook and the NHEC), the Cooperative's evidence and argument on the absence of willfulness in its failure to adhere to applicable regulatory financing requirements is not persuasive. That evidence and argument is accordingly rejected.

The remaining ground for rehearing on the issue of Seabrook valuation asserted by the Cooperative involves the approximate $4.7 million in "protective advances" which were made by the REA and capitalized as a part of the NHEC's total investment in Seabrook. In its Motion the Cooperative acknowledges that it was subject to a requirement of Commission pre-approval, but claims that the Commission erred in its finding that the violation was willful. In support of this, the Cooperative claims that it somehow immunized itself from financing approval requirements by informing individual Commissioners about what it was doing at informal meetings. The evidence, however, does not support the Cooperative's contention. For example, Mr. Bellgowen testified directly that he was informed that the Commission could make no commitments and that he understood his obligation to seek Commission pre-approval for financing remained intact. *See e.g.*, Tr. IV at 107, 113-114. Informal information supplied to the Commission or Commissioners cannot relieve a utility from its responsibility to adhere to statutory and regulatory requirements. The record reflects that the Cooperative knew that it continued to be subject to those requirements and, even if the record was silent, utility management must be held to a standard where that type of knowledge is imputed. Accordingly, we see no reason to disturb our finding that the Cooperative's failure to adhere to the requirement of Commission pre-approval of the identified financing was willful.

As discussed above, the requirement of financing pre-approval goes to the heart of the ability of the Commission to perform its regulatory functions effectively. The Cooperative's failure to adhere to this requirement was willful and serious.[3(81)] The minimal appropriate sanction is the exclusion of the unauthorized capitalization from the valuation of Seabrook for ratemaking purposes.[4(82)] Accordingly, the Cooperative's Motion for Rehearing will be denied on this ground.

The PSNH/NUSCO Motion

PSNH/NUSCO claim that Order 20,122 needs clarification or that it is unlawful or unreasonable because: 1) it does not specify that the NHEC's right to sell its share of Seabrook

output to PSNH is coterminous with the NHEC's undertaking to remain a requirements customer of PSNH; 2) it erroneously provided for the initiation of sellback agreement charges as of Seabrook's commercial operation date; and 3) it did not contain an explicit determination that a $126 million valuation of the Cooperative's share of Seabrook for sellback ratemaking purposes will result in rates that are just and reasonable.

PSNH/NUSCO's first claim is more in the nature of a request for clarification, rather than a request for rehearing. Upon review of Order 20,122, we agree that some clarification is necessary.

5(83) Order 20,122 found at 26 that sellback agreement provides that the Cooperative's opportunity to sell its share of Seabrook output to PSNH is conditioned on its continued status as a requirements customer of PSNH "... in each power year that it elects to exercise its sellback rights." PSNH/NUSCO argue that the Commission erred in that the evidence supports a finding that the NHEC must commit to remaining a requirements customer of PSNH for the full ten year life of the agreement in order to exercise its sellback rights in any particular year. PSNH/NUSCO also raise a concern that under the Commission's interpretation the Cooperative will be able to terminate its requirements purchase obligations in one year and trigger its sellback rights in the next year simply by offering to take requirements service from PSNH. We disagree with both points.

With respect to the first point, we believe that the evidence supports our finding that the NHEC must only commit to remain a requirements customer for a particular power year in which it exercises its sellback rights. In particular, we note that the agreement specifies that the Cooperative's ability to sell its share of Seabrook output to PSNH is defined on a year-

by-year basis and is conditioned on notice to PSNH prior to the commencement of the particular power year. Given the existence of this specific term and the underlying rationale for the reciprocal obligations contained in the sellback agreement, we do not believe the parties intended a result where the Cooperative elects to sell back in an initial year and, even though it has no interest in selling back in the remaining years, is bound as a requirements customer for the full 10 year life of the arrangement. *See also*, NHEC Objection at 2-3. Thus, our Order 20,122 language will continue to govern.

With respect to PSNH/NUSCO's second point (that once the Cooperative ceases to be a customer it can trigger a PSNH purchase obligation simply by offering to take requirements service), we note that the agreement specifies that the Cooperative must continue to be a PSNH customer under its existing partial requirements agreement. We cannot conjure a situation where the NHEC ceases to be a customer where that partial requirements agreement is not also terminated. Thus, the NHEC will not be able to trigger a PSNH purchase obligation simply by offering to become once again a requirements customer of PSNH. In order for the purchase obligation to be triggered under that circumstance, PSNH must accept the NHEC's offer and a new agreement must be executed that is mutually satisfactory to the parties and the appropriate regulatory authorities. Because we believe that the evidence supports our construction of the

sellback agreement and that PSNH/NUSCO's concern lacks validity, their Motion will be denied on this ground.

A sub-argument of the above PSNH/NUSCO claim is that the Cooperative has already terminated its requirements agreement with PSNH by seeking to become a customer of another supplier. We believe that it is sufficient to note that PSNH is continuing to deliver power to the Cooperative under its partial requirements arrangement and that the record reflects that any Cooperative attempt to terminate that arrangement will be vigorously litigated. We cannot base our findings on litigation positions taken by various parties as the Cooperative attempts to resolve its difficulties. Unless and until the termination of the existing partial requirements arrangement between PSNH and the NHEC is actually accomplished, we must find that the Cooperative is satisfying the condition of remaining a PSNH customer under the sellback agreement.

PSNH/NUSCO's second ground for rehearing is that the Commission erred in establishing Seabrook's commercial operation date as the effective date of the Cooperative's right to sell back under the facts of record. The PSNH/NUSCO Motion offers no evidence or argument that was not fully considered and addressed in Order 20,122. We see no reason to change the analysis contained therein and, accordingly, PSNH/NUSCO's Motion will be denied on this ground.

PSNH/NUSCO's remaining request is that we make explicit our finding that the Cooperative's Seabrook rates for the purposes of the sellback are just and reasonable. In our view, Order 20,122 already contains an explicit finding that the Cooperative's Seabrook rates as approved by the Commission for purposes of the sellback agreement are just and reasonable. *See e.g.*, Order 20,122 at 39-40. We also note that Order 20,122 sets forth fully the reasoning underlying our finding. Without limiting the more thorough discussion in Order 20,122, we note that we found that the policies supporting contract stability were compelling under the particular equities of the instant situation. *Cf.*, *Appeal of McCool*, 128 N.H. 124, 152 (1986), in which the Court stated:

> We must face the fact again that the commission emphatically encouraged the Coop's acquisition of a fractional interest in an increasingly expensive project, without any substantial ability to manage the project or otherwise to control expenses. It would simply be unrealistic to expect the same commission to place blame on the Coop for failing to control construction expenditures during this period. For practical purposes, the Coop stands in a different position from that of PSNH, both in its relationship to the project and in its relationship to the commission.

Under the circumstances, we determined in

effect that the Cooperative was prudent in entering into an arrangement where it could sell its share of Seabrook output at full cost and that the full cost as established by the Commission (*i.e.*, total investment less unauthorized financings) produces rates that are just and reasonable for purposes of the sellback agreement.

A subsidiary part of the PSNH/NUSCO request for a more explicit finding that the NHEC's sellback rates are just and reasonable is the contention that the Commission erred in its

reservation of retail ratemaking issues to subsequent proceedings. In particular, PSNH/NUSCO claim that Order 20,122 at 33-34 incorrectly construed the applicable terms of the rate agreement addressed in *Re Northeast Utilities/Public Service Company of New Hampshire Reorganization Proceedings*, Report and Order No. 19,889 (July 20, 1990) as allowing a negotiation reopener on the issue of whether the Commission should allow passthrough to ratepayers of purchase power costs incurred under the sellback agreement. We disagree with PSNH/NUSCO's reading of the rate agreement. As noted in the PSNH/NUSCO Motion at 21, the rate agreement provides for a negotiation reopener if *inter alia* PSNH/NUSCO reach an agreement that has a rate impact different than that assumed in the rate agreement or if PSNH/NUSCO are unable to reach an agreement with the Cooperative. Thus, the only situation under which the negotiation reopener does not apply (*i.e.*, an agreement between PSNH/NUSCO consistent with rate agreement assumptions that have been approved by this Commission) has not yet occurred. We need not address here the PSNH/NUSCO contention that a renegotiation would be a modification subject to the approval of the New Hampshire General Court; that cannot be determined until the renegotiation has been accomplished and we can ascertain that the terms are such that General Court approval is required.

It is important to make two additional points. First, we cannot address PSNH retail rates without first issuing appropriate notice under our rules and under RSA 541-A:16. Such notice has not thus far been issued in this proceeding. Second, even if we were to accept *arguendo* the narrow PSNH/NUSCO view of the negotiation reopener term of the rate agreement, we would still be required under the FFPAC provisions of that agreement to find that power purchased under the sellback agreement was prudent. A PSNH claim that prudency has already been determined by Order 20,122 could not be accepted. *See e.g.*, PSNH/NUSCO Motion at 24-25, n. 3. Although PSNH bound itself to the sellback agreement during the early part of the 1980s, we have not to date been requested to review the prudency of PSNH's decision to purchase under such an arrangement. *Cf., Appeal of Sinclair Machine Products*, 126 N.H. 822 (1985) (the Commission has the authority to review a utility's decision to purchase power from a particular supplier and, if it finds that the decision was not prudent, the Commission may disallow the imprudent portion of the cost of purchased power even where the supplier's rates have been found to be just and reasonable). Additionally, we do not believe that a finding that a seller was prudent in entering into an arrangement binds us to make that same finding with respect to the buyer. Without commenting on the instant sellback issue, we note that it is possible for certain valid arrangements to be extremely advantageous to a seller and extremely disadvantageous to a buyer. In such an instance, a record could be developed that supports a prudency finding for the seller, but not for the buyer. Given this possibility, we believe that under the current notice and on the instant record, it is inappropriate to comment or make findings on PSNH's prudence in entering into the sellback agreement.

The OCA's Motion

The OCA asserts a number of grounds for rehearing; however, they all relate in material part to the Commission's establishment of sellback rates without first engaging in a prudency review of the cost of Seabrook. As discussed above, we have in effect determined that the NHEC was prudent in entering into the sellback agreement with PSNH. We have also addressed in Order 20,122 and above our determination

that, given the prudence of the Cooperative's entry into the arrangement and the equities of the situation, it is appropriate to value Seabrook as we did. Our reasoning does not require a prudence review of the cost of Seabrook for sellback agreement purposes. However, as noted in Order 20,122 and above, this reasoning is limited to the sellback agreement; it does not apply to our subsequent determinations of retail rates either for the Cooperative or PSNH. Because the OCA presented us with no evidence or argument that causes us to disturb the above analysis, its Motion for Rehearing will be denied.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Motion for Rehearing of the New Hampshire Electric Cooperative, Inc. is granted to the extent that it asserted that the Commission incorrectly relied upon *Trombly v. Blue Cross/Blue Shield of New Hampshire Vermont*, 120 N.H. 764 (1980); and it is

FURTHER ORDERED, that the Motion for Rehearing of the New Hampshire Electric Cooperative, Inc. be denied in all other respects; and it is

FURTHER ORDERED, that the Joint Motion of Public Service Company of New Hampshire and Northeast Utilities Service Company for Rehearing and Clarification be denied; and it is

FURTHER ORDERED, that the Motion for Rehearing of the Office of the Consumer Advocate be denied.

By order of the Public Utilities Commission of New Hampshire this third day of June, 1991.

FOOTNOTES

[1]We have also reviewed the argument of the NHEC in its Motion at 4, n. 1 bringing to our attention a possible inconsistent argument of PSNH at the FERC. *See also*, PSNH/NUSCO Objection, Attachment A. Our ruling in Order 20,122 and herein is based on our own independent analysis of preemption and preclusion principles and does not depend on the fact that any party may or may not have taken a particular position. We note, however, that we have reciprocated the respect that the FERC must have for our jurisdictional prerogatives with similar respect for the FERC's ability to act within its own sphere of jurisdiction. Our orders should not be read as endorsing the contrary argument of any party at the FERC.

[2]For example, the NHEC claims that the Commission ignored Mr. Pillsbury's testimony on the Cooperative's intent to retain the flexibility to join the New England Power Pool (NEPOOL). NHEC Motion at 7. *But see*, Tr. II at 42-46 where Mr. Pillsbury was asked directly whether the NHEC's reservation of its right to get into NEPOOL is inconsistent with a Cooperative agreement to remain a requirements wholesale customer of PSNH. Mr. Pillsbury replied, *inter alia*, "They're not inconsistent at all."

[3]The amount of unauthorized capitalization is not trivial. Subsequent to the issuance of Order 20,122 the NHEC filed a Petition with the United States Bankruptcy Court under Chapter 11 of the Bankruptcy Code. On this record we cannot comment on the contribution, if any, of the NHEC's willful failure to adhere to the requirement of seeking Commission pre-approval of approximately $37 million in debt to this most tragic and costly chapter in the Cooperative's existence. We do not believe that it can reasonably be disputed, however, that the existence of the unauthorized capitalization of $37 million will make the bankruptcy that much more difficult to resolve.

[4]The issue of whether additional sanctions are appropriate must await a properly noticed Commission proceeding as it relates to civil penalties and the completion of an investigation by the Attorney General and the subsequent judicial process, if any, as it relates to criminal penalties.

[5]We understand that PSNH/NUSCO may also be claiming that the clarified provision is unlawful and unreasonable — the grounds of a motion for rehearing. To the extent that PSNH/NUSCO's claim is in the nature of a motion for rehearing, it will be denied.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-078, Order No. 19,946, 75 NH PUC 649, Oct. 1, 1990. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-078, Order No. 19,969, 75 NH PUC 684, Oct. 30, 1990.

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[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-078, Order No. 20,122, 76 NH PUC 311, 124 PUR4th 135, May 3, 1991. [N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990. [N.H.Sup.Ct.] New Hampshire v. New Hampshire Gas & E. Co., 86 N.H. 16, PUR1923E 369, 163 Atl. 724, Sept. 30, 1932.

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NH.PUC*06/05/91*[27145]*76 NH PUC 387*Lakes Region Water Company, Inc.

[Go to End of 27145]

Re Lakes Region Water Company, Inc.

Additional petitioner: Robert A. Demers dba Echo Lake Woods, Woodland Grove and Rolling Ridge

DF 90-152
Order No. 20,144

76 NH PUC 387

New Hampshire Public Utilities Commission

June 5, 1991

ORDER authorizing the transfer of a water system and franchise. Commission adopts stipulation setting forth the terms of the transfer.

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1. CERTIFICATES, § 137

[N.H.] Transfer — Water system and franchise — Grounds for approval — Public good. p. 387.

2. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Water system and franchise — Grounds for approval — Public good. p. 387.

3. CONSOLIDATION, MERGER, AND SALE, § 52

[N.H.] Water system and franchise — Terms and conditions — Purchase price. p. 387.

4. CONSOLIDATION, MERGER, AND SALE, § 42

[N.H.] Water system and franchise — Terms and conditions — Stipulation. p. 387.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On September 14, 1990, Robert A. Demers d/b/a Echo lake Woods, Woodland Grove and Rolling Ridge, ("Demers"), filed with the Public Utilities Commission ("Commission") a petition to transfer his franchise and assets to Lakes Region Water Company, Inc. ("LRWC"). In the petition, Demers requested Commission approval of the transfer of its water systems and franchise to LRWC and LRWC requested permission to acquire the water systems and franchise.

On February 5, 1991, the Commission issued an Order of Notice pursuant to RSA 541-A:16 and N.H. Admin. Rules, Puc 203.05 scheduling a Pre-hearing Conference on February 28, 1991, which was held as ordered. Appropriate Affidavits of public and private notices were provided by Demers at the Pre-hearing Conference.

On February 28, 1991, at the Pre-hearing Conference, the Staff and the parties established a procedural schedule which was accepted by the Commission on March 25, 1991 in Order No. 20,092.

Following the procedural schedule, Staff requested and received responses to data requests from both parties.

At a Settlement Conference on April 29, 1991, the Staff and the parties resolved all differences between them.

II. *Overview of Stipulation*

[1-4] The parties agreed that LRWC has better financial, managerial, and technical expertise

than Demers to operate a public utility. The Stipulation provides that LRWC will be bound by all orders relative to the granting of a franchise and permanent rates to Demers in Docket DE 89-002. The rate design and charges will remain the same.

It is agreed that LRWC will pay to Demers the net book value of the three systems, plus unamortized rate case and franchise costs which, at March 31, 1991, equals $41,710. LRWC will carry the plant assets on its books at the same values as reflected on the books of Demers. LRWC will keep separate accounts for

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each of the three systems and will so report in its annual reporting to the Commission.

III. *Commission Analysis*

After reviewing the Stipulation, and the Commission's prior Order Nos. 19,520 and 19,904 granting Demers the franchise to operate the water systems mentioned above, the Commission finds that LRWC has better financial, managerial and technical expertise than Demers to operate a public utility. We also find that the remaining terms of the Stipulation are reasonable and consistent with sound regulatory policy. Accordingly, we conclude that said Stipulation is just and reasonable and in the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that Demers transfer its water systems and franchise to LRWC and LRWC acquire said systems as agreed in the Stipulation; and it is

FURTHER ORDERED, that all terms and conditions of the proposed Stipulation (attached hereto as Appendix A) are given full effect as of the issuance of this order.

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1991.

APPENDIX A

STIPULATION AGREEMENT

TRANSFER OF FRANCHISE AND ASSETS
OF A PUBLIC WATER UTILITY

1.0 This Agreement is entered into this 15th day of May, 1991 between Lakes Region Water Company, Inc. ("LRWC"), Robert A. DeMers d/b/a Echo Lake Woods, Woodland Grove and Rolling Ridge ("DeMers") and the Staff ("Staff") of the Public Utilities Commission ("Commission") for the purposes of and subject to the terms and conditions hereinafter stated.

2.0 *Introduction.* On September 14, 1990, DeMers filed with the Commission a Petition to transfer his franchise and assets to LRWC. On December 19, 1990 a joint petition was filed by DeMers and LRWC. In the petition, DeMers requested Commission approval of the transfer of its water systems and franchise to LRWC and LRWC requested permission to acquire the water

systems and franchise.

2.1 On February 5, 1991 the Commission issued an Order of Notice pursuant to RSA 541-A:16 and N.H. Admin. Rules, Puc 203.05 scheduling a Prehearing Conference on February 28, 1991, which was held as ordered. Appropriate Affidavits of public and private notices were provided by DeMers at the Prehearing Conference.

2.2 On February 28, 1991 at the Prehearing Conference the Staff and the parties established a procedural schedule which was accepted by the Commission March 25, 1991, Order No. 20,092.

2.3 Following the procedural schedule, Staff requested and received responses to data requests from both parties.

2.4 At a Settlement Conference on April 29, 1991, the Staff and the parties resolved all differences between them.

2.5 This Stipulation is a result of said discovery and settlement discussions. There is attached hereto a certain revision of the parties Exhibit marked "Stipulation", which reflects the agreement reached between the parties on the issue of sales prices for the three systems.

3.0 *Sales Prices.* It is agreed that LRWC shall pay $41,710 for the three systems, which is net book value plus unamortized rate case and franchise costs at March 31, 1991.

4.0 *Utility Plant.* It is agreed that LRWC shall carry the plant assets on its books at the same values as reflected on the books of DeMers.

5.0 *PUC Reports.* It is agreed that LRWC will maintain separate books of account for each of the three systems and will so report in its Annual Reporting to the Commission.

6.0 *Rate Structure.* It is agreed that LRWC's rate structure shall remain the same as that currently being charged by DeMers, such rates being authorized in DE 89-002, Order No.

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19,520 and DR 90-124, Order No. 19,904. Furthermore, LRWC shall be bound by all orders relative to the granting of a franchise and permanent rates in docket DE 89-002 until otherwise ordered.

7.0 Staff and the parties agree that it is in the public interest for DeMers to transfer its assets and franchise rights to LRWC. Staff and the parties further agree that LRWC has better financial, managerial, and technical expertise to operate a public water utility than DeMers. Staff notes, however, that it still remains concerned over the bookkeeping expertise of LRWC which concern is ameliorated by the attempts by LRWC to upgrade its accounting practices through the part time employment of an accountant.

8.0 *General Conditions.* This Agreement is subject to the following further conditions:

8.1 The making of this Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation in these proceedings other than those specifically agreed to herein is true and valid.

8.2 This Agreement is expressly conditioned upon the Commission's acceptance of all of its provisions without change or conditions and if the Commission does not so approve, the

Agreement may be withdrawn by either Staff or the Parties and shall not constitute any part of the record in this proceeding nor be used for any other purposes at the call of the Parties.

8.3 This Agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

8.4 The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS WHEREOF, the parties' fully authorize agents have executed this Agreement.

LAKES REGION WATER CO., INC.
By its President,
Thomas A. Mason,

DEMERS WATER SYSTEMS
By its Owner,
Robert A. DeMers

STAFF OF PUBLIC UTILITIES COMMISSION
By its attorney,
Eugene F. Sullivan, III, Esquire

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[Graphic Not Displayed Here]

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EDITOR'S APPENDIX

Citations in Text

[N.H.] 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, 74 NH PUC 291, Sept. 1, 1989. [N.H.] Re Robert A. Demers dba Echo Lake Woods Water System/Woodland Grove Water System/Rolling Ridge Water System, DR 90-124, Order No. 19,904, 75 NH PUC 526, Aug. 2, 1990.

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Re David A. Bickford Water System

DE 91-069
Order No. 20,148

76 NH PUC 392

New Hampshire Public Utilities Commission

June 7, 1991

ORDER exempting a water distribution company from regulation as a public utility. The company must notify the commission if it expands its system to service 10 or more customers and must maintain adequate records to fulfill the accounting obligations of a public utility.

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1. PUBLIC UTILITIES, § 121

[N.H.] Water — Service to less than ten customers — Exemption from regulation. p. 392.

BY THE COMMISSION:

ORDER

On May 22, 1991, the commission received a petition from David A. Bickford Water System seeking exemption from the provisions of RSA 362:4 for service provided to eight customers in the Town of New Durham, N.H.; and

[1] WHEREAS, RSA 362:4 provides, *inter alia*. that if a water system shall supply a less number of consumers than ten, the commission may exempt such water system from any and all provisions of public utility statutes; and

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

WHEREAS, the public should be offered an opportunity to file comments and/or request an opportunity to be heard on this petition; it is hereby

ORDERED, *NISI* that exemption from public utility statues be, and hereby is, granted to David A. Bickford Water System for water service provided at Marsh Pond in New Durham, N.H.; and it is

FURTHER ORDERED, that all persons interested in responding to this petition must submit their comments or a written request for a hearing, to the commission no later than twenty days from the required publication date of this order; and it is

FURTHER ORDERED, that David A. Bickford Water System effect public notice by publication of an attested copy of this order once in a newspaper having general circulation in that portion of the state in which operations are conducted, such publication to be no later than June 17, 1991, and documented by an affidavit to be filed with this office on or before July 10, 1991. In addition, individual notice shall be given to the New Durham town clerk pursuant to

RSA 541-A:22 and 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 June 17, 1991; and it is

FURTHER ORDERED, that David A. Bickford shall notify this commission if and when it expands the water system to service ten or more customers; and it is

FURTHER ORDERED, that David A. Bickford shall maintain adequate records to fulfill the accounting obligations of a public utility.

By order of Public Utilities Commission of New Hampshire this seventh day of June, 1991.

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NH.PUC*06/07/91*[27307]*76 NH PUC 391*Link-Up New Hampshire

[Go to End of 27307]

Re Link-Up New Hampshire

DE 88-012
Order No. 20,147

76 NH PUC 391

New Hampshire Public Utilities Commission

June 7, 1991

ORDER changing the reporting requirement for the Link-Up New Hampshire program from a quarterly to an annual basis for each telephone local exchange carrier.

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1. SERVICE, § 457

[N.H.] Telecommunications — Physical connection — Link-Up New Hampshire — Telephone local exchange carriers — Reporting requirements. p. 391.

BY THE COMMISSION:

ORDER

[1] On October 3, 1988 by order no. 19,192 the commission approved the Link-Up New Hampshire Program and ordered all local exchange companies under the commission's jurisdiction to provide Link-Up New Hampshire on terms contained in the Implementation Plan and to submit necessary information to the commission; and

WHEREAS, the telephone companies have been filing with the commission quarterly monitoring reports containing pertinent data on Link-Up activity in the state as required by the Implementation Plan; and

WHEREAS, these reports show that since December 1988, on a statewide basis, there have been 877 applications received; 813 connected to the network; 44 denied and 308 subsequently disconnected; and

WHEREAS, although the Federal Communications Commission has discontinued its monitoring requirement, it is appropriate for the commission to be informed of Link-Up activity in the state; it is hereby

ORDERED, that the reporting requirement for the Link-Up New Hampshire program be changed from a quarterly to an annual basis for each local exchange company; and it is

FURTHER ORDERED, that this report include:

Number of Link-Up applications filed;
Number of Link-Up applications approved;
Number of Link-Up applications actually connected to the system; and,
Number of Link-Up customers who were subsequently disconnected; and it is

FURTHER ORDERED, that the first annual monitoring reports for calendar year 1991 be filed with the commission no later than March 1, 1992.

By order of the New Hampshire Public Utilities Commission this seventh day of June, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Link-Up New Hampshire, DE 88-012, Order No. 19,192, 73 NH PUC 395, Oct. 3, 1988.

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NH.PUC*06/10/91*[28004]*76 NH PUC 393*New England Telephone and Telegraph Company

[Go to End of 28004]

Re New England Telephone and Telegraph Company

DR 89-010
Order No. 20,149

123 PUR4th 289

76 NH PUC 393

New Hampshire Public Utilities Commission

June 10, 1991

OPINION and order initiating a collaborative process to consider flexible regulation of local exchange telephone services, and proposing to devise regulation appropriate for service categories defined on the basis of whether a local exchange carrier was acting as a monopoly

provider or in competition with other vendors. The commission concludes that standard rate-of-return regulation should be maintained to set rates for monopoly telephone services, but price regulation might be sufficient for "emergingly competitive" services and any form of rate regulation might be unnecessary for truly competitive services.

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1. RATES, § 32

[N.H.] Commission powers — Alternative regulation — Price caps — Local exchange telephone carrier. p. 405.

2. PUBLIC UTILITIES, § 117

[N.H.] Telecommunications — Regulatory status — Telephone — Alternative regulation — Specific authority — Local exchange carrier. p. 406.

3. RATES, § 81

[N.H.] Jurisdiction, powers, and duties of state commissions — As to schedules and rate structures — Statutory and constitutional authority — Concurrent rights. p. 406.

4. RATES, § 81

[N.H.] Jurisdiction, powers, and duties of state commissions — As to schedules and rate structures — Alternative rate-making method — Local exchange telephone carrier. p. 406.

5. SERVICE, § 107

[N.H.] Jurisdiction and powers of state commissions — Telephone — Public policy goals. p. 407.

6. PUBLIC UTILITIES, § 117

[N.H.] Telecommunications — Regulatory status — Alternative regulation — Discussion. p. 407.

7. RATES, § 532

[N.H.] Telephone — Alternative regulation — Price-cap plan — Grounds for rejection. p. 409.

8. RATES, § 532

[N.H.] Telephone — Traditional rate-of-return regulation — Emerging competition — Local exchange carrier. p. 409.

9. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Alternative regulation — Local exchange carrier. p. 409.

10. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Local exchange carrier — Alternative regulation — Monopoly services — Competitive services. p. 409.

11. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Local exchange carrier — Regulatory changes — Method of implementation. p. 409.

12. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Local exchange carrier — Categories of service. p. 410.

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13. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Local exchange carrier — Flexible regulation — Categories of service. p. 410.

14. MONOPOLY AND COMPETITION, § 30

[N.H.] What constitutes competition — Basis for flexible regulation — Generally. p. 410.

15. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Local exchange carrier — Flexible regulation — Consumer protection. p. 411.

16. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Local exchange carrier — Flexible regulation — Entry into competitive markets. p. 411.

17. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Local exchange carrier — Flexible regulation — Categories of service — Evidence. p. 411.

APPEARANCES: As previously noted.

BY THE COMMISSION

REPORT

This report and order addresses the remaining outstanding issue in the instant docket: the change, if any, in the form of regulation for New England Telephone and Telegraph Company (NET or Company).

I. PROCEDURAL HISTORY

The procedural history of this docket is outlined in our prior Report and Order No. 20,082 (March 11, 1991), which addressed the issues of cost of service and specific rate design features. That discussion notes that Report and Order No. 19,747 (March 8, 1990) had approved a settlement agreement on the Company's revenue requirement.

II. POSITIONS OF THE PARTIES

As this report and order addresses only the issue of the form of regulation to be applied to NET, the following will summarize the positions of the parties only on that issue. The positions

of the parties on the issues of the revenue requirements and the cost studies and rate design were summarized in the orders cited above.

A. *NET*

NET asserts that traditional rate of return regulation of the telephone industry, although meeting the needs of shareholders and ratepayers in the past, is not likely to continue to meet the telecommunications needs of the future. Rate of return regulation has become inappropriate because it fails to motivate NET and other local exchange carriers (LECs) to respond adequately to changing customer needs and market conditions, tending to reward stability and discourage efficient responses to economic and market changes. Thus, rate of return regulation should be replaced with a regulatory mechanism that creates a reward and penalty system which will drive NET to create broad mass markets, while fully protecting ratepayers. NET argues that price regulation in general, and its InfoAge NH 2000 proposal in particular, will provide it with a viable opportunity to increase earnings and improve the social and economic welfare of New Hampshire's telecommunications users through the rapid and efficient introduction of new services and real price reductions. NET advances a new public policy goal of developing an intelligent network and providing the ubiquitous and fully supported delivery of numerous types of information and knowledge services as part of the public switched network. It terms this public policy goal a redefinition of universal service.

NET argues that the telecommunications industry is changing in fundamental ways and

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at an ever increasing pace. It is no longer dominated by a one-product voice communications market in which economic efficiencies largely occur by the replacement of labor with capital. Most of the attainable savings for voice services have already been achieved by current technologies. Future technological advances are more likely to enable a myriad of new and useful services to be introduced broadly to a mass market than to improve quality and efficiency. Thus, future changes will be more a function of demand than of cost reduction. If fully deployed and properly marketed, this new technology, and in particular the network-based information and knowledge products, will have a significant impact on New Hampshire's business and residential customers and on the New Hampshire economy. NET contends that it will be especially important to embed the new services in the public common carrier network if they are to be utilized by smaller customers. These smaller customers will require: 1) extensive education and support; 2) the risk minimization and cost efficiency offered by a flexible and constantly improved public network; and 3) the price reductions available only through mass market economies of scale. The effectiveness of the smaller third party vendors will also depend on common carrier support. The company argues that its participation is crucial to the development of a mass market in New Hampshire. Without its proactive involvement, the mass markets will develop very slowly if at all, and an effectively two tiered network will develop and persist, with residential and smaller business customers and large areas of the state denied the essential prerequisites for developing new information-based activities.

NET asserts that the New Hampshire Public Utilities Commission (NHPUC or Commission) should provide NET with the necessary incentives to expand the market for new and innovative

services. The Commission should encourage NET to shift its focus from its past reactive operations orientation, suitable for providing a small number of well understood services to a relatively homogenous market, to a proactive market development orientation, appropriate for the predominant task of matching its increasingly diverse new product offerings to an increasingly heterogeneous set of customer market segments. NET will require external incentives that reward effective market development and external pressures that discourage prudent but ineffective market development. NET argues that rate of return regulation cannot provide these incentives and pressures because it creates a risk/return asymmetry in which market development expenditures that do not bear fruit will be disallowed, while extraordinary returns from successful expenditures do not persist. Price regulation, on the other hand, provides appropriate external signals necessary for effective mass market development, *i.e.*, improved earnings for superior performance and the threat of diminished earnings for prudent but substandard performance.

NET contends that the primary problem with rate of return regulation is its cost-plus nature. In the short run, the firm has no meaningful incentive to produce at the minimum cost given its technology; in the long run, rate of return regulation provides little incentive for productivity growth so that the firm does not aggressively invest in research and development, lower its costs or expand its markets. Similarly, activities designed to stimulate demand for existing services or to expand demand by implementing new services result in no additional earnings for the firm unless they also expand the rate base. Thus, the choice of input for a particular service is distorted towards assets that can be rate-based, and the choice of service to be offered is distorted towards those that require new physical investments rather than more intensive use of existing facilities. NET also argues that the link between rate base and profits, coupled with the existence of a protective monopoly market and the difficulty of assigning common costs to services provides an incentive to subsidize the firm's entry into competitive markets in which it may not be the low cost provider. These characteristics can lead to predatory pricing and cross-subsidization.

The Company responds to the argument that regulatory lag can restore some incentives to efficiency by claiming that such an argument implies that rate of return regulation succeeds when it works least and, logically, continued

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and expanded incentives are best provided when such regulation is eliminated altogether. NET faults rate of return regulation with regulatory lag on several specific grounds: 1) the lack of penalty for prudent but substandard performance will not produce the large scale changes or widespread customer support expenditures necessary for extensive market development; 2) the risk/return asymmetry; 3) the Commission focus on the Company's returns rather than on a more appropriate balanced set of evaluative factors; 4) the constraint on innovation imposed by the existence of rate of return evaluation at the end of any lag period; 5) the lack of incentives to minimize costs or expand demand; 6) the mismatch between cost and price; and 7) the cost to firms, customers and regulators of the regulatory process. NET also argues that rate of return with labor capitalization does not address these deficiencies.

NET contends that direct regulation of prices is a superior form of regulation because it

provides a better incentive to a regulated firm to make the proper economic choices in minimizing costs and introducing new products and services. Price caps place no direct control on the rate of return that a firm can earn by lowering costs and developing and effectively marketing valuable new products. It breaks the incentive link between costs actually incurred and prices, rewarding firm efficiency gains with higher profits. Since price regulation constrains only the level of prices and not the level of revenue, the regulated firm can increase earnings by expanding the range of its services to existing customers and competing aggressively for new customers in new telecommunications markets. By breaking the link between investment and prices, price caps force the firm to justify investment according to the profits it can earn on that investment as the firm bears the risk of prudent but uneconomic choices. Finally, by severing the link between rate base and earnings, price regulation eliminates any incentive to choose an inefficiently high ratio of capital to labor and removes any ability to subsidize entry into competitive markets in which it is not the low cost provider.

A price regulated firm faces the same realities as a fully competitive firm, where predatory pricing and cross-subsidization are profitable only if the firm is able to raise rates after its competitors are driven from the market without attracting re-entry. In the absence of barriers to re-entry NET would have no valid economic incentive to price its services below incremental cost.

NET avers that price regulation is more effective than cost-plus regulation regardless of whether competition exists because it will force NET to expand constantly the set of affordable and well-supported products and services. It is also likely to reduce greatly the overall administrative costs of regulation, as prices are easier to measure and track than profits and the allocation of inherently unallocable costs can be avoided. Finally, it provides an incentive for firms to discover the most efficient pricing structure consistent with an overall price cap.

NET asserts that the elements of its price regulation plan are just and reasonable. Its plan indexes prices at current levels and permits the company to change individual service prices so long as the index of new prices does not exceed the price cap index or other pricing rules that limit increases for specific groups of services. The price regulation index (PRI) is adjusted annually according to the following formula:

PRI (new) = PRI (current) times 1 + (GNP Price Index - 2.75% productivity factor + exogenous cost adjustments) /100

The purpose of the price regulation formula is to ensure that a firm's average output price changes in response to cost changes in the same manner as in a competitive industry, *i.e.*, adjusts to reflect the change in industry long run average cost, including changes in wage rates, materials and supplies, cost of capital, and accounting and regulatory requirements. Adoption of a price regulation formula is also predicated on the expectation of higher productivity growth given the correct economic incentives.

NET argues that its proposed productivity factor of the 2% telecommunications-industry average productivity differential plus a consumer dividend of .75% (originally .5%) is appropriate and even ambitious, given that the New

Hampshire experience alone would suggest a productivity factor of only 1.5%. It further argues that the GNP Price Index (GNP-PI) is the proper measure of inflation as substantial evidence indicates that input cost inflation for firms in the telecommunications industry is virtually identical to that of average firms in the economy. Finally, it states that the formula properly accounts for exogenous changes. Such changes would alter the long run average cost curve of a competitive industry and directly affect average prices and, provided the costs are not under the control of the firm, the automatic flow through to customers does not affect the incentives to operate efficiently.

NET believes that it is appropriate to use the rate design established in this docket as the point of departure for commencing price caps. The rate design is reasonably related to the Company's most recently determined overall costs and customers will be at least as well off on the starting date of price regulation as they were before. Customers will benefit further as Company marketing efforts, competitive forces and the price regulation productivity offset drive prices below the levels that would have existed under rate of return regulation. The Company will require pricing flexibility: first, as it faces competition where the flexibility would mimic that exercised by competitive firms and ensures that only low cost firms are able to survive; second, as it seeks to establish efficient prices that reflect incremental costs so that customers are not encouraged by inefficient pricing to over or under consume, thus resulting in inefficient resource allocation, distorted investment patterns and unsatisfied customer needs; and third, as it increases market development and demand stimulation, which over time will lead to decreases in unit costs and the development of mass markets. NET believes that the pricing rules it originally proposed represented sound policy. However, it is willing to limit its pricing flexibility with respect to residence and business exchange to PRI + 2% and PRI + 5% respectively, and fund all increases for both for the first two years of the plan. Meanwhile, those ratepayers will enjoy the benefits of the aggregate cost constraint imposed by the index and will share in the gains (or shortfalls) in earnings in the form of a credit (or surcharge) on a sliding scale.

NET claims that its plan will produce just and reasonable rates, satisfying not only the regulatory goal of economic efficiency, but the other traditional goals as well. These goals include stable and reasonable rates; assurance of a viable industry with incentives to invest in new technologies and expand mass marketing efforts; universal service and affordable rates, fostered both by the proposed initial rate levels, limitations on changes, and a lifeline plan; limits on cross-subsidization, predation and undue price discrimination; assurance of quality of services; administrative efficiency through the minimization of direct and indirect costs of regulation; provision of the opportunity to shareholders to earn a reasonable return on their investment; and fairness in balancing all the regulatory goals. NET argues that its proposal represents a valuable opportunity to make both the Company and ratepayers better off and no one worse off. It will maximize economic incentives and social welfare and provide an opportunity to discover how much better a quality firm can perform if its incentives to be more innovative and cost-conscious are heightened.

Under the plan, the introduction of a new service, defined as any service or product that did not replace an existing tariffed service, requires a tariff that would be effective thirty days after filing and incorporated into the plan no later than the second annual filing after its introduction.

Each new service must be priced above its incremental cost.

NET argues that the Commission retains its authority to balance and protect the interests of the ratepayers and the Company under price regulation, through its expanded quality of service reporting requirements, the ceiling prices that inhibit the Company from passing onto ratepayers the costs of uneconomic product and market development expenditures, its comprehensive review at the end of the four year period, and its ongoing monitoring during the period.

If a plan acceptable to NET is approved by the Commission, the Company is committed to undertake several steps. It will deploy Signalling System 7 and accelerate the deployment of

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13 central office conversions to provide digital services statewide by mid-1992. It will fund the network deployment necessary to implement statewide Enhanced 911 service, and will expand the availability of and fund the surcharge for Lifeline during the plan. It will also phase-in TouchTone with basic exchange service.

The Company reserves its rights to petition the Commission for reconsideration of the degree of pricing flexibility should an uneconomic access structure result from the pending competition docket. It also believes that NET must have the option to elect (or not) to undertake a price regulation plan adopted by the Commission if the plan materially departs from the NET proposals. If in the Company's view the possibility of additional earnings does not outweigh the perceived added risks, the carrier must have the opportunity to decide not to assume those risks.

B. *Granite State Telephone, Inc. and Merrimack County Telephone Company (Granite and Merrimack)*

Granite and Merrimack support the concept of implementing a price regulation program on an experimental basis provided that it is not used as a vehicle to allow unjustified reductions in the prices of potentially competitive usage services and a resulting shift in cost burdens to monopoly customers. Since the plan requires that NET will not reduce any price below its incremental costs, the Commission must establish a sound incremental cost methodology prior to its institution. Granite and Merrimack believe that incremental costs are the relevant costs for setting prices for services; however, they urge the Commission to ensure that the costs of non-traffic sensitive facilities are assigned to the various services that utilize those facilities and, further, to ensure that in the case of incremental cost studies a closing factor is not applied which would have the effect of allocating sunk traffic sensitive costs to non-traffic sensitive cost categories.

Granite and Merrimack contend that the program must be voluntary on the part of the telephone utility involved. They urge that the Commission make clear that the productivity offset factor being determined for the NET price regulation formula applies to NET alone and not to other telephone companies.

C. *Union Telephone Company (Union)*

Union summarizes its understanding of Commission Report and Order No. 19,430 as stating that the NHPUC would consider competition as a factor, like financial risk or technological change, and may make subsidiary factual findings regarding the existence or non-existence of

competitive markets only as those findings may be necessary to the Commission's ultimate conclusion. Thus, if the Commission's decision on NET's price cap proposal rests on the presence or absence of competition, the Commission would make implicit or explicit factual findings on competition to support that decision.

Union recommends that the Commission examine the theories supporting rate of return regulation and price regulation, and compare the strengths and deficiencies of each to determine whether to alter the regulatory *status quo*. Having itself performed that scrutiny, Union concludes that NET has not shown sufficient need or justification to warrant the proposed radical departure from rate of return regulation. Union argues that price regulation is appropriate only if the Commission decides to move to deregulation or to competition in order to allow NET to compete effectively. Union contends that if the Commission decides not to move towards competition now, then it should recognize that price regulation absent competition is likely to result in unjust, unreasonable and unduly discriminatory rates, and that NET has not carried its burden of proof that its plan is consistent with RSA 378:28.

D. *MCI Telecommunications Corporation (MCI)*

MCI opposes NET's InfoAge NH 2000 price regulation proposal. It argues that if the Commission were to grant pricing flexibility to NET when it does not face effective competition, NET will have the ability and the incentive

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to limit the emergence of competition and to reaffirm its dominant position as the bottleneck monopoly provider. MCI contends that even if the NHPUC authorizes intrastate competition, NET will still not face effective competition for its services if the Commission does not also adopt and enforce pro-competitive policies. Without a truly competitive market, NET will not behave like a firm that operates in a competitive market.

MCI argues that NET's price regulation proposal will enable it to limit effective competition through price squeezes, bundling, and cross-subsidization. Price squeezes are created when a monopoly provider prices the retail service that uses a bottleneck input below the price at which it sells the input to another firm. MCI is particularly concerned with the pricing of intrastate carrier access service as it will be a "new" service under NET's price regulation plan and subject to wide pricing flexibility. Bundling of competitive and monopoly services allows a provider to establish a lower price for a monopoly service for customers who also buy a potentially competitive service from NET rather than from a competitor. NET's grouping of services and discretion to price individual services allows it to cross-subsidize potentially competitive services with revenues from the monopoly services within the same group of services. MCI also argues that NET's failure to define "new" services will allow it unwarranted flexibility to repackage and reprice existing services as it desires, and contends that the Commission must continue to regulate the price of any "new" NET services.

MCI asserts that the Commission should create a pro-competitive regulatory policy before granting pricing flexibility to NET. Under such a policy, the Commission would first authorize intrastate competition. It would require that NET implement intraLATA presubscription on a 1 + and 0 + basis for intrastate toll calls to provide dialing parity to enable the interexchange carriers

to compete effectively. The policy would also require cost based access charges which would be imputed to NET's own toll rates. Finally, the policy would reduce NET's ability to leverage its control of bottleneck services by requiring NET to break down the functions to their basic elements, examine each element to determine if it is monopoly or competitive, cost each element, and translate those costs into non-discriminatory tariffed rates. MCI contends that requiring NET to provide the essential bottleneck services to all customers at the same rates, terms, and conditions will minimize its ability to engage in price discrimination based on the identity of the purchaser.

E. *AT&T Communications (AT&T)*

AT&T does not oppose NET's effort to obtain a modified system of regulation, although it has serious concerns with the flexibility which InfoAge NH 2000 will give NET in the pricing of intrastate access, and related questions regarding how NET may price competing services against carriers to whom it sells access. However, it agrees with NET that the issues of access are more appropriately addressed in the Commission's investigation into the introduction of intrastate competition.

F. *U.S. Sprint (Sprint)*

Sprint argues that the PRI plus 5% or 10% pricing formula is quite generous and that more commonly price regulation plans either adjust rates based on a PRI formula or use banded rates. It asserts that the Commission should narrow the degree of upward flexibility given to NET in pricing its services.

Sprint does not, in general, oppose alternative forms of regulation for LECs, but believes that there must be safeguards to protect against the abuse of monopoly power. It argues that since the LECs remain bottleneck providers of local exchange and carrier access services and also provide services that may be subject to some degree of competition, they can decrease the prices of competitive services to price their competitors out of the market and recover any losses from predatory pricing from monopoly services. Sprint does not believe that NET's InfoAge NH 2000 plan contains sufficient protection against such abuses as cross-subsidization and predatory pricing. Under the plan, the price of one service might be

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increased dramatically while another could be decreased as long as the overall group average falls within the prescribed price range. Sprint proposes that consumers would be better protected against abuses by either a requirement that the prices of each service fall within a specified range, or a grouping of services into categories according to their monopoly or competitive characteristics.

Sprint argues that new services, and intrastate access services in particular, should be introduced only upon a showing that they cover incremental costs plus a reasonable return to NET. Sprint also notes that NET's plan contains no provision for sharing of earnings over a targeted return with ratepayers, and recommends that the plan be revised to provide such an incentive to reduce rates and become more efficient.

G. *Office of the Consumer Advocate (OCA)*

The OCA argues that NET is requesting immense discretion in the way it prices various services to captive customers. It believes that residential exchange and intrastate toll rates will increase much more quickly than they would under rate of return regulation, without any corresponding benefits. Since residential (and business) basic exchange services are and will continue to be monopolistic in nature, these customers have no other options and NET could utilize excess revenues to set predatorily the prices of its competitive and potentially competitive services.

The OCA's initial concern is that the proposal gives away too much of the Commission's rate setting authority to NET without commensurate protection for ratepayers receiving monopolistic services. It contends that the plan calls for price caps for a period of years, without any evidence that ratepayers can afford a four year experiment, or that meaningful records will be available after the experiment on which to base a return to traditional regulation. Additionally, it is unclear how the Commission will address unanticipated issues, enforce NET's quality of service obligations or treat imprudent or improper costs during the experiment. The OCA recommends that imprudent expenditures should be treated as exogenous costs which could be disallowed, but notes that such treatment is so close to rate of return regulation that it obviates the price cap approach altogether.

The OCA does not believe that price cap regulation will save regulatory time and costs. It asserts that the issue of risk and cost of capital was insufficiently addressed in regard both to how records should be maintained in order to re-establish rate of return regulation and to determine whether ratepayers or stockholders should bear the increased cost of debt issued during the experiment, caused by the assumption of greater risk under price caps. The OCA argues that shareholders should be responsible for any incremental cost as it is the company that advocates the proposal. If, to the contrary, price flexibility is a less risky form of regulation, the Commission should reduce the existing revenue requirement.

The OCA notes the experience in other jurisdictions. While the Federal Communications Commission (FCC) has adopted price regulation, the services it regulates are more competitive than most of NET-NH's offerings. Citing particularly Vermont, California and New York, the OCA states that it is not aware of any state that has allowed the extensive price control over captive ratepayers sought by NET, whose plan would allow the Company great flexibility in increasing rates to captive customers while reducing rates in potentially competitive areas by cross-subsidization.

The OCA also argues that the proposed productivity factor is too low, observing that California adopted a factor of 4.5% to make the companies "stretch somewhat"; New York used approximately the same; Vermont's rate freeze effectively sets the productivity factor at the inflation rate; and the FCC has recently increased its productivity factor. While the OCA maintains that the NET price cap proposal should be rejected, should the Commission select a factor, the OCA recommends 4.5% as appropriately reflecting a forward looking approach rather than depending on stale data.

The OCA argues that the exogenous cost element is a problem in that it is not clear what

costs should be included and to what extent the parties should be able to participate in proceedings approving specific costs to be recouped from ratepayers.

The OCA asserts that the plan is inappropriate, extreme, and one-sided; far beyond that granted elsewhere; and allows NET the opportunity to earn excessive profits at the expense of its captive inelastic basic exchange customers. It argues that the Company has not proved that investments beneficial to ratepayers will be more likely under price caps than under rate of return regulation. The Company would still have the incentive to install new technology and develop new services under rate of return. It is unlikely that adoption of price regulation in New Hampshire will change corporate philosophy when New Hampshire is only 10-11% of the total NET business and pricing flexibility is not allowed in Massachusetts, its major jurisdiction. Finally, the OCA believes that formula increases will give NET a windfall profit on many fixed and historic costs, as these costs do not grow proportionately with inflation.

The OCA concludes that the proposal should be denied, and that if the Company wishes to propose a plan in the future, it should submit a more even-handed proposal that provides protection to captive ratepayers.

H. *VOICE*

VOICE argues that InfoAge NH 2000 should be rejected because it effectively eliminates the Commission's statutory duty to regulate NET, to assure just and reasonable rates and to prevent undue discrimination. The plan would replace Commission regulation with control by NET as the Commission would monitor only prices, rather than regulate earnings or rate of return. Residential exchange customers would be subject to automatic rate increases based on a pre-determined formula that incorporates inflation, productivity and exogenous costs plus additional discretionary rate increases as long as the formula limit was not exceeded. The plan replaces Commission regulatory oversight with monitoring and reporting during the four year experiment and a formal review of justness and reasonableness only after the fourth annual filing. This formal review would only assure that NET's performance was not radically different than expected. The Commission would not review new services or disallow imprudent investments and management decisions. VOICE asserts that in return for bringing on new services NET is demanding the opportunity to earn "attractive motivating returns," but neither places a limit on its earnings nor expresses any intention to share any excess profits with ratepayers.

VOICE contends that the purpose behind the NET price cap plan is inappropriate. NET seeks funds to invest in competitive information age business and enhanced residential products and services. The economic justification for the investments is contingent on new services being deployed. Accordingly, NET seeks to capture significant market opportunities to prevent lost revenue opportunities and to position itself satisfactorily if the Commission authorizes intraLATA competition. It seeks to acquire funding for these services and market development from captive basic exchange customers.

VOICE also believes that the proposed plan lacks necessary protection for basic exchange residential customers. Rates will not be based on costs (which are declining), and will rather increase based on the formula generally as much as 42%. Increases could be higher for specific services. VOICE argues that the proposed formula is flawed by the choice of the GNP-PI, which

is unrelated to the cost of providing telephone service; a productivity factor that of 2.5%, which is too low; and the automatic pass-through of the still undefined exogenous costs. VOICE contends that the plan could result in cross-subsidization of competitive services by monopoly basic exchange ratepayers. It argues that NET has failed to meet its burden of proof that residential exchange rates would be lower under its plan, compared to rate of return regulation. Without such a showing, the price cap plan offers no advantages to those customers.

VOICE also faults the plan for the proposed retention of excess profits by NET, for the failure of revenues from new services to offset rate increases, and for its elimination of public participation in the rate setting process as

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long as prices are within the limit of the pre-determined formula. It notes that if the plan is approved but earnings are low, NET is not precluded from seeking a resumption of rate of return regulation and would be entitled to seek rate increases to recoup its losses and restore its financial viability. VOICE argues that the plan removes the customer protection built into traditional regulation, and especially the assurance of non-discriminatory pricing.

Additionally, VOICE contends that the price cap plan is unnecessary and inappropriate for basic exchange residence customers. It argues that NET does not need further incentives to provide new services as it intends to introduce new products and services, like Signaling System 7 and Enhanced 911, even if the plan is rejected. Besides, the plan itself does not guarantee new products and services. VOICE argues that it is the presence of competition, not the price cap plan, that will provide the driving force for innovation. Further, if NET has the admitted ability to provide the services under rate of return regulation, it should do so because it is in the public interest and NET is a public utility. Rate of return regulation has not caused NET any disincentive to provide new services and products in the past. The Commission has authorized a very reasonable rate of return which has provided sufficient incentive for greater investments and higher returns, has allowed accelerated depreciation and pricing flexibility, and not disallowed any imprudent investment from NET's rate base during the past ten years.

VOICE claims that NET has presented no evidence that basic exchange residence customers want or need information age products and enhanced services for local exchange calling purposes, and believes that those customers who desire the services should be the ones to pay for them. VOICE concludes that price cap plans, if they are appropriate at all, are intended for a fully competitive environment and have no place in the regulation of monopoly customers and services.

VOICE asserts that rate of return regulation is superior to price cap regulation and will result in rates that are just, reasonable and not unduly discriminatory. It believes that the criticisms of rate of return regulation are unwarranted and that traditional regulation offers the benefits of Commission scrutiny of the Company's costs, earnings, rate base, rate of return, expenses, prudent management decisions, investments, and quality of service. Earnings are limited, discriminatory pricing is prevented and high quality of service is promoted.

Finally, VOICE argues that the Commission lacks the legal authority to approve NET's proposed InfoAge NH 2000 plan. It cites Commission Report and Order No. 19,479 that the

Commission "will allow the investigation of InfoAge NH 2000 to proceed and ... decide, on the basis of the evidence, whether it will produce rates within the zone of reasonableness." Report at 8. VOICE contends that the record is clear that NET's plan will not produce rates which are just, reasonable, and otherwise lawful; rather, the plan offers few potential benefits to basic residence exchange customers, and at the same time exacts from them enormous and entirely unjustified rate increases.

VOICE concludes that NET has failed to meet its burden of proof that its price cap plan is in the best interests of its customers and recommends that the NHPUC reject it and retain the current form of rate of return regulation, which provides reasonable protection for basic exchange residence customers.

I. *Staff*

Staff asserts that NET has not met its burden of demonstrating that its proposed InfoAge NH 2000 plan will result in just and reasonable rates and is otherwise in the public interest. It argues that the record reflects that the plan will enable the Company to exploit basic exchange ratepayers monopolistically and that therefore the Commission should reject the proposal and continue to regulate NET under rate of return regulation.

Staff argues that NET's evidence concerning the future impact of price regulation lacks specificity. NET did not even attempt to identify any new technology or new and innovative services that will result from price regulation, instead offering only vague promises to look at ways to speed up the introduction of already

existing technologies that have not yet been deployed in New Hampshire. NET failed to present detailed or concrete evidence about any future reorganization or other fundamental change the Company will undergo as a result of price regulation. It did not attempt to forecast future productivity gains, despite the fact that future productivity is a central element of its plan.

Staff contends that NET's claim that residential basic exchange service is subsidized by intraLATA toll misstates the cost/revenue relationships of local and toll service. The claim is based on the mistaken notion that all non-traffic sensitive (NTS) costs should be allocated exclusively to local services. When the NTS costs are properly allocated among local, intrastate toll and interstate toll services, it is clear that local residential service is currently priced at or above incremental cost. Accordingly, price regulation is neither necessary nor appropriate to provide NET with the opportunity to raise residential rates over time to cover its incremental cost of providing service and lower intraLATA toll rates to meet competition.

Staff argues that NET's price regulation plan, rather than providing ironclad or fair ratepayer protection as asserted by NET, will enable the Company to exercise monopoly power to victimize New Hampshire residential and business basic exchange customers. Assuming inflation, productivity and exogenous cost factors remain relatively constant, over the four year life of the plan NET could increase rates to the Residence Exchange Service Group by 42% and could raise rates to the Business Exchange Service Group by over 70%. Given that rates for basic exchange services are currently at or above incremental cost, increases of that magnitude constitute an abuse of monopoly power by NET against its captive customers. The proposal

would enable the Company to charge all its inflationary and exogenous cost increases to basic exchange customers while assuring that those service groups receive none of the productivity factor benefits. The potential for monopoly abuse is of particular concern if New Hampshire allows intraLATA competition, as NET intends to fund its response to toll competition by raising basic exchange rates. NET will similarly fund its investment in the development and mass marketing of new and innovative services and any revenue shortfalls caused by uneconomic investments. Further, many of those services, while funded by basic exchange ratepayers, are of little interest to those customers.

Staff claims that NET failed to demonstrate that there will be incentive benefits as a result of price regulation. It argues that NET's criticisms of the incentives under rate of return regulation are purely theoretical with little empirical support in the real world. The charge of an asymmetry between risk and return fails to account for New Hampshire's significant institutionalized regulatory lag coupled with its prohibition on retroactive ratemaking. As a result, NET retains all earnings above its authorized rate of return between rate cases and thus has real and continuing incentives to improve earnings by either cutting costs or by increasing revenues through the introduction of new services. Further, where a regulated firm's actual historic and projected future earnings are well below the authorized level, which has been the case for NET over the past five years, the regulated firm will have incentives to improve its profits by becoming more cost efficient or by increasing revenues through the introduction and mass marketing of new and innovative services. Indeed, the empirical evidence indicates that NET has invested substantially in the deployment of state-of-the-art technology in New Hampshire, aggressively pursued new markets and introduced creative services and customized solutions to telecommunications needs.

Staff argues that the classic economic criticism of rate of return regulation — that it provides an incentive to use excessive amounts of capital in relation to other inputs to produce a given level of output — assumes a regulatory process that has erred by setting the allowed rate of return too high in relation to the cost of capital. There is no empirical evidence to validate this criticism in the real world, nor any evidence to suggest that NET has acted in the past on such perverse incentives. Therefore, the theoretical criticism does not provide a real world foundation to support the proposal to move from rate of return regulation to price

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regulation.

Staff faults NET for failing to provide projections of revenues and earnings under the alternative scenarios of "continue as is" and "achievement of regulatory reform" from its business plan. It argues that such evidence would have directly addressed the issue of the future of the Company and its ratepayers under the different forms of regulation. It contends that NET's expert witnesses were either not qualified experts with respect to much of their testimony (particularly concerning the comparative economic incentives of rate of return regulation and price cap regulation) or were purely theoretical and not totally familiar with fundamental facets of NET's proposal.

Staff argues that each element of NET's price regulation formula is fundamentally flawed. Even assuming that the Commission were to determine that all inflation increases should be

passed through to ratepayers, the GNP-PI may or may not reflect NET's actual incurred inflationary increases in input costs. The only evidence on the reliability of the GNP-PI is a ten year old study showing that input cost inflation for the pre-divestiture Bell System and the United States private domestic economy was approximately the same between 1948 and 1979. Further, application of the formula will not result in the claimed competitive outcome by establishing prices at a level which would keep average industry economic profits equal to zero because the index includes the excess profits from oligopoly, monopoly, collusion and fraud present in the national economy.

Staff believes that NET's 2.5% productivity factor is unreasonably low. Under rate of return regulation, consumers either receive all the benefits of actually realized productivity growth in the form of lower prices or share them with stockholders because of regulatory lag. Staff argues that the Commission should recognize that the Company has the profit-maximizing incentive to propose a productivity factor that is lower than what it expects will be its real future productivity growth. It suggests that the use of long term historical Bell System productivity studies may not reflect the realities of post-divestiture Bell Operating Company (BOC) productivity. Further, while the numerous studies of past productivity increases in telecommunications display distressingly high variability of results, the NET study represents the extreme low end of those findings. In addition, the deployment of new technology and increased efficiencies of all types that NET insists will result from price regulation should increase NET's productivity differential in the future at a greater rate than has been the case historically.

Staff contends that NET's definition of exogenous costs creates serious potentials for abuse particularly compared to rate of return regulation where shareholders bear, or at least share, many exogenous costs. A serious double-counting problem is created because NET's definition of exogenous costs is not limited to factors uniquely affecting only the telecommunications industry and thus includes factors that are fully reflected in changes in the GNP-PI. NET's testimony on the treatment of judicially mandated cost changes as exogenous costs is contradictory, especially regarding equal access cost changes. Provision of equal access relates to interstate costs and any recovery of those costs should come from the interstate jurisdiction. They are also the result of the consent decree between the former unified Bell System and the United States and therefore do not qualify as an exogenous cost because, as a volitional act, are not outside the control of the Company. Staff also notes that jurisdictional separations qualify as exogenous costs only if jurisdictional cost recovery has been factored into the rate design and starting point for prices under price regulation. The exogenous costs create administrative burdens in their identification, quantification, exclusion of those double-counted in the GNP-PI; appropriate accounting and allocation to New Hampshire; revenue and cost saving offsets; the extent to which NET actually sought the administrative, legislative or regulatory mandate affecting the cost allocation; and the extent to which NET would have made a particular investment regardless of regulatory mandates. Given the controversial nature of all these disputes, the administrative costs of price regulation may not be less than those of rate of return regulation.

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III. COMMISSION ANALYSIS

A. *The Commission's Legal Authority*

[1] The InfoAge NH 2000 filing presupposes that the Commission has the legal authority to abandon traditional rate of return regulation as a means of setting NET's rates. Because this assumption was fundamental to our ability to proceed with our investigation of NET's petition, in our Order of Notice we invited the parties to file legal memoranda addressing the scope of the Commission's regulatory authority. Subsequently, on July 19, 1989, the Commission issued Order No. 19,479, finding that its authority to set "just and reasonable rates" under RSA 378:7 does not prescribe a particular rate making formula. *Re New England Telephone and Telegraph Company*, 74 N.H.P.U.C. 254 (1989) (Order 19,479), *citing, New England Telephone and Telegraph Co. v State*, 104 N.H. 229, 183 A.2d 237 (1962). We found that the "zone of reasonableness" encompasses the broad range of rates that are neither so low that they are confiscatory nor so high that they become excessive or extortionate. Accordingly, we concluded that the Commission has the legal authority to regulate NET through the use of price caps so long as it found that the alternative regulatory formula results in just and reasonable rates. *Id*.

The scope of the Commission's ratemaking authority was recently addressed by the Court in *Appeal of Richards*, __N.H.__ (April 24, 1991). Language in the Court's decision could be interpreted to state that in the absence of special legislation, the Commission is statutorily required to use traditional rate of return regulation for setting NET's rates. Slip Opinion at 11-12. Upon thorough consideration of the *Richards* decision, we conclude that it is not correct to infer this limiting restriction on our statutory ratemaking authority. We continue to hold that we may adopt an alternative form of regulation for NET so long as the resulting rates are just and reasonable. However, because the question of our legal authority is fundamental to our decision on NET's application, we believe it appropriate to expand on our discussion of this issue in light of *Richards*.

In *Appeal of Richards*, the Court affirmed the Commission's approval of a rate plan related to the reorganization of Public Service Company of New Hampshire (PSNH) following its bankruptcy. The substantive issue addressed by the Court was whether the Commission's Order was contrary to state and constitutional ratemaking requirements because the plan values PSNH's Seabrook investment without the benefit of a traditional rate proceeding to determine the level of "prudent" and "used and useful" investment. *Id*., slip opinion at 10.[1(84)] The Court found that neither the special legislation authorizing the Commission to investigate and, if appropriate, approve the rate plan, RSA Chapter 362-C, nor the constitutional requirements of just and reasonable rates, *e.g.*, *Federal Power Commission v Hope Natural Gas Co.*, 320 U.S. 591 (1944), mandated a prudency review. *Richards*, *supra*, slip opinion at 12-14. At the same time, the Court observed that in the absence of the special legislation the Commission would have been required to apply traditional ratemaking principles to determine the amount of Seabrook investment PSNH could include in ratebase for the purpose of calculating its revenue requirement. According to *Richards*, the phrase "just and reasonable rates" as used in New Hampshire ratemaking statutes has a narrower meaning than when used by the United States Supreme Court to describe the constitutional limits of ratemaking. Slip opinion at 11.

If read broadly, the Court's discussion of the Commission's statutory ratemaking authority suggests that the Commission does not have the authority to adopt alternative regulatory mechanisms to set rates. Under this interpretation, the Commission would be required to apply

the rate of return formula to calculate NET's rates, even if it concluded that the use of the traditional ratemaking alternative was contrary to the public good. For the following reasons, we conclude that the Supreme Court did not intend such a result.

Initially, we note that the "traditional" ratemaking statutes, RSA 378:7 and :28, do not contain a particular formula for the Commission to apply in setting rates. As previously noted, in prior decisions the New Hampshire Supreme

Court has consistently ruled that the Commission's obligation to establish just and reasonable rates does not limit the Commission to a single ratemaking methodology. *See e.g., Petition of Public Service Co. v N.H.*, 130 N.H. 265, 539 A.2d 263 (1988); *Appeal of Conservation Law Foundation*, 127 N.H. 606, 507 A.2d 652 (1986); *LUCC v Public Service Company of N.H.*, 119 N.H. 332, 402 A.2d 626 (1979); *New England Telephone and Telegraph Co. v. State*, 104 N.H. 229 (1962). Subject to the utility's right to earn a "reasonable return on the cost of the property of the utility used and useful in the public service," RSA 378:27-:28, the Commission's ratemaking authority has been treated as plenary. *LUCC v PSNH*, 119 N.H. at 341. Accordingly, for purposes of both statutory and constitutional review, the New Hampshire Supreme Court has adhered to the "end result" test wherein the Court will review the evidence to determine whether "the Commission was warranted in concluding that the rates were `just and reasonable'. "*LUCC v PSNH, supra*, *citing*, *Granite State Alarm, Inc. v New England Tel. & Tel. Co.*, 111 N.H. 235, 239, 279 A.2d 595, 598-99 (1971), and *New England Tel. & Tel. Co. v State*, 104 N.H. 229, 232, 183 A.2d 237, 240 (1962).

[2-4] While none of the above cited decisions involved circumstances where the Commission used an alternative to the standard rate of return formula for setting rates, we do not consider this fatal to our analysis. As we more fully explain in Part C., the primary function of the standard rate of return calculus is to substitute the regulatory mechanism for the competitive market. When, however, the market begins to possess certain competitive attributes, rate of return regulation may prove insufficient or unnecessary to satisfy such well established public policy goals as quality of service and just and reasonable rates. Issues relative to the Commission's responsibility to authorize regulatory reform to respond to changes in the market are matters of first impression in this proceeding. Hence, the lack of New Hampshire Supreme Court authority specifically authorizing the Commission to adopt regulatory reform is not determinative to our analysis.[2(85)]

We also recognize that although our statutory and constitutional authority to set rates is broad, it is not unlimited. Concurrent with the utility's right to earn a fair return on its investment is the right of ratepayers to be protected from excessive rates. Moreover, while not constitutionally prohibited, *LUCC v PSNH*, *supra*, RSA 378:30-a prohibits the Commission from including construction work in progress (CWIP) in a utility's rate base for ratemaking purposes; thus, there is no question that the constitutional limits of our discretion have been limited by statute.[3(86)]

The issue squarely presented by NET's petition is whether within the confines of these constitutional and statutory restrictions, the Commission should employ an alternative

ratemaking methodology to establish rates that are just, reasonable and in the public good. This is essentially a question of fact that requires us to strike the appropriate balance between the competing interests of NET and its ratepayers in recognition of the changes occurring in the telecommunication industry. RSA 363:17-a. We do not interpret the *Richards* decision as imposing a restriction on the Commission's ability to engage in this factual inquiry and respond appropriately. We therefore conclude that the language in *Richards* suggesting certain limitations on the Commission's regulatory discretion was not intended by the Court to apply outside of the particular circumstances of that case.

B. *NET Failed To Demonstrate That InfoAge NH 2000 Results In Just And Reasonable Rates*

There is no dispute that the telecommunications industry is undergoing rapid development and change. As NET testified, the deployment of new technology and the introduction of competition in toll and other segments of the industry affords customers a plethora of opportunities both in terms of services and service providers. Digital technology, for example, allows customers to use the network for efficient high speed data transmission and the opportunity to utilize service offerings such as integrated voice and data communications, advanced call handling, and security monitoring. In particular, when Enhanced 911 is

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instituted, data bases can be used to provide emergency dispatchers with critical information concerning the caller on the dispatcher's screen. Likewise, the replacement of copper cable with fiber optic cable permits virtually unlimited capacity on the network and allows customers to obtain additional new services, such as video signals for high definition television and video conferencing. As a result of these developments, we can expect customers to depend increasingly on the public network to serve their communication and information needs both at work and at home.

The issue raised by the InfoAge NH 2000 filing is whether the evolution of the telecommunications industry requires corresponding modifications in the regulatory treatment of NET. As noted, NET contends the regulatory process should be modified to encourage the Company to become a proactive market developer of diverse product offerings to a heterogenous group of users. NET argues that because traditional rate of return regulation links profits to rate base, it fails to give the Company necessary incentives to increase productivity, develop and disseminate new services, and stimulate usage of the network by lowering costs through greater efficiencies. According to NET, price regulation breaks the incentive link between rate base expansion and profits by rewarding efficiency and the development of valuable new services and products, rather than mere capital investment.

[5] NET is correct when it asserts that regulation should not act as a barrier to the ability of New Hampshire citizens to benefit from the economically efficient provision of telecommunication services. The Commission has the obligation to ensure that New Hampshire citizens are provided state-of-the-art, high quality telecommunication services without sacrificing the achievement of the traditional public policy goals of regulation. As articulated by Staff witness Thomas Frantz, these goals include universal and quality service, stable and non-discriminatory pricing, and the continued development of a viable and innovative industry.

[6] As Mr. Frantz further testified, state public utility commissions throughout the country and the FCC are experimenting with various forms of regulation in an effort to meet these regulatory goals in light of the changes occurring in the industry. Vermont, for example, has enacted legislation which authorizes the Vermont Department of Public Service to enter into a contract with telephone companies that provide basic telephone service. Vt. Stat. Annot., Title 30, 202c and d. This form of "social contract" regulation allows the regulated utility to obtain reduced regulation of its competitive services in exchange for a "price freeze" of basic exchange rates during the term of the contract and a commitment to make specified capital improvements. The concerns regulators have with this form of regulation are the potential for degradation to the quality of service during the time the contract is in place and the Company's ability to use monopoly ratepayers to subsidize the provision of its competitive services.

A specific application of social contract ratemaking is price-cap regulation. The FCC and California, for example, have adopted forms of price-cap regulation in which prices for services may change in accordance with a preset formula which in turn is based on the category within which each service falls. *E.g.*, *Re Alternative Regulatory Frameworks for Local Exchange Carriers*, 107 PUR4th 1 (Cal. Pub. Util. Comm. 1989). California separates PacBell and GTE-C services into three service categories or "baskets."

The first basket is comprised of monopoly services, including basic exchange and intraLATA toll. Rates for these services are set by adjusting existing rates by an index reflecting the GNP-PI. The rates may be changed annually subject to commission approval and must be income neutral. Services in the second basket are considered emergingly competitive. Rates for these services must lie between a floor which is based upon their costs, and a ceiling which is the price-cap. The floor is adjusted annually using the GNP-PI. The third basket consists of essentially competitive services. The rates for these services are detariffed and the services "unbundled" from other services to avoid cross-subsidization.

In addition to price-caps, the California plan contains a sharing mechanism for revenues over and under a "benchmark" rate of return for

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services in the first two baskets. The Commission found that the sharing mechanism provides added protection to ratepayers and shareholders from risks inherent in the indexing mechanism.

Although it permits pricing flexibility, price-cap regulation has been criticized for its deleterious effect on service quality and the opportunity it presents for companies to subsidize more competitive services through the rates charged from monopoly services. This was precisely the experience of British Telecom which was subject to price-cap regulation for five years beginning in 1984. *The Control of British Telecom Prices*, Bryan Carsberg, July 7, 1988. When the effects of the plan were reviewed, it was discovered that the Company's profits increased but service quality had not. As a result of these and other discoveries, the plan was modified to ensure greater protection for residential customers.

Like California, Michigan has adopted a form of incentive regulation which allows the utility and ratepayers to share in returns above a benchmark rate-of-return. The purpose of incentive regulation is to give the utility an incentive to become a more efficient provider of services.

Under the Michigan plan, the proportion of sharing is dependent upon the excess of earnings over the benchmark. In addition, a portion of the excess earnings are dedicated to upgrading the network with the proportions changing to favor ratepayers if the company fails to meet its construction budget.

A variation of the price-cap method is the use of price bands. Under this methodology prices are set at a predetermined level on the basis of incremental cost or other economic standard. A band is then established within which the price may vary. The size of the band is generally dependent on factors such as how the initial price was established, the amount of competition for the service or other regulatory goals. Concerns that regulators have had with this approach are the difficulties involved in establishing the appropriate initial price and band width, and the exposure to risk by the utility.

While the approaches to alternative regulation are somewhat disparate, there is a constant theme: the drive to modernize and improve the efficiency of the local exchange company should not be made at the expense of monopoly customers. There is a persistent concern that rather than causing companies to become more efficient, regulatory reform only provides them with the opportunity to compete uneconomically with lower cost providers through cross-subsidization of the costs of emergingly or effectively competitive services. An additional and related concern is that during the period the alternative regulation is in place the company will have little, if any, incentive to improve service quality for monopoly customers. The fear is that the efforts of the Company will likely be focused on more elastic customers, because it is the gain and loss of these ratepayers which most directly affects profits.

The danger of cross-subsidization and poor service quality are among the criticisms Staff and other intervenors levied on the NET price-cap proposal. We agree that it would be a travesty of the regulatory process for the Commission to adopt a form of alternative regulation which allows the Company to use monopoly ratepayers to subsidize its competitive activities. Because of the varying degree of competitiveness existing in the telecommunications market, it is clear that if left unchecked NET will have the ability and incentive to reduce the prices for its more competitive services, while loading common costs and overhead onto monopoly ratepayers. Moreover, although segments of both the residential and business classes may choose to take advantage of the innovative services available through the new technology, others may not. It is the responsibility of this Commission to make certain that customers who only want what is known in the industry as "plain old telephone service" (POTS) are not compelled to pay inappropriately for services they neither need nor desire through their basic exchange rates.

In contrast to the price-cap plan in place in California, the NET proposal does not offer sufficient protection to monopoly ratepayers. Because the proposal affords no greater protection to monopoly ratepayers than it provides to customers of more competitive services, NET will have the opportunity to reduce the prices of

its competitive services by loading common costs and overhead onto basic exchange service. Thus, the dominant incentive under NET's proposal is not increased efficiency, rather it is one of shifting costs. Additionally, NET's proposal fails to give the company any incentive to make

capital improvements to benefit basic exchange customers unless there is a corresponding ability to increase usage of the network. Thus, in addition to the exposure to higher basic exchange rates, NET's InfoAge NH 2000 may well result in reduced service quality.

[7] It is against the backdrop of these concerns that we must balance NET's criticism of rate of return regulation and the attributes it espouses for price-cap regulation. Upon thorough consideration of the testimony and arguments of the parties, we find that NET has failed to demonstrate that its price-cap proposal is consistent with the public good. As discussed below, we find that substantial evidence in the record demonstrates that the potential for harm to residential and small business basic exchange customers far outweighs the benefits price-caps can achieve for customers. Consequently, we will deny NET's petition.

Specifically, we agree with Staff and other intervenors that the record does not support NET's contention that there are incentive benefits to be achieved under price regulation that do not exist under rate of return regulation. To the contrary, the evidence shows that due to institutional regulatory lag the Company has a great deal of incentive to increase its earnings between rate cases and, in fact, over the last five years has steadily increased earnings. As Staff asserts, the record fails to contain any empirical proof of NET's allegation that rate of return regulation has limited its ability to deploy new technology, market its services, or become more efficient.

NET also failed to answer satisfactorily the criticisms of Staff and intervenors that price regulation is simply a mechanism by which the Company will be able to increase revenues without any corresponding increase in service quality and variety. In this regard, we find valid Staff's assertions that NET's proposed price regulation index is an additional measure by which the Company will be able to charge monopoly ratepayers rates which are higher than those the Company would obtain under traditional rate of return regulation. The Commission further finds inexplicable NET's failure voluntarily to produce its Business Plan subject, of course, to measures necessary to protect its confidentiality.

In summary, on the record before us we are unable to conclude that NET's InfoAge NH 2000 proposal results in rates that are just, reasonable and otherwise in the public good. The plan affords NET an opportunity to exploit monopoly ratepayers and there is no assurance that these ratepayers will receive the benefits of a more efficient and technologically advanced public network.

[8-11] The foregoing analysis was directed at the specific NET price-cap proposal that is before us. While we find that NET failed to sustain its burden of demonstrating the reasonableness of its proposal for regulatory reform, the evidence does establish that traditional rate of return regulation may no longer be the best means of setting rates for all of NET's services. The evidence establishes that telephone companies are increasingly becoming the providers of numerous diverse service and product offerings. While some these services, such as basic-exchange service, continue to be most efficiently provided on a monopoly basis, others are subject to emerging competition or may be fully competitive.

The varying degree of competitiveness and opportunity for service expansion present in the telecommunication industry suggests that a uniform approach to regulation for all of NET's services is no longer appropriate. In order to respond effectively to competitive pressures, the

Company should be given the opportunity to market more aggressively its services by becoming a more efficient and lower cost service provider. In order to protect the interests of monopoly ratepayers, however, regulation must continue to ensure that the rates for monopoly services are based upon cost. As we explain more fully *infra*, although we find that traditional rate of return regulation continues to be the appropriate method for establishing the rates for monopoly services, price regulation may be

all that is necessary to protect and further the relative interests of the Company and its customers with respect to emergingly competitive services. Further, for those services that are truly competitive, any form of rate regulation may be unnecessary. Thus, we find that a degree of regulatory change is necessary. In accordance with this finding, we intend to commence a collaborative process to develop and refine the method of implementing the regulatory changes which we believe necessary to meet the demands of the current market.

C. *Framework For Flexible Regulation*

[12] Based on the foregoing analysis of the telecommunications environment and our legal authority, we find that it is in the public interest to distinguish among the different services offered by NET on the basis of whether the particular service is offered by NET acting as a monopoly provider or in competition with other vendors. However, on the record before us, we can neither establish criteria for the definition of the categories of monopoly/competitive services nor specify the services that fall within each category. Additionally, there is not a sufficient record to adopt a detailed mode of regulation for each category of services. We will, therefore, establish a consultative or collaborative process for the parties to develop and recommend the details needed to implement the framework delineated below. Parties will note that we have identified below specific issues that need to be resolved. This specification is not intended to limit the scope of the consultative deliberations of the participants, as additional issues will undoubtedly surface during their discussions.

[13] As discussed in the sections above, services in the telecommunications industry are offered by various vendors under circumstances that encompass the entire gamut of monopolistic to competitive market characteristics. We make no prejudgments concerning the characteristics of the services provided by NET. Rather, we will establish categories that cover the full range of market types, even if at the present time NET does not offer services whose markets are characterized by the description of all categories. In this context, it is appropriate to 1) establish three market categories — competitive, monopolistic and emergingly competitive; and 2) outline the type of regulation that we believe is appropriate for each.

[14] In an economic sense, a competitive market possesses the following characteristics: no economic agent is large enough relative to the market to exert a perceptible influence on price; the product of any one seller is identical to the product of any other so that buyers are indifferent among the firms from whom they purchase; resources are mobile and firms can freely and easily enter and exit in response to price and profit signals; and all economic agents (producers, resource owners and consumers) possess complete and perfect knowledge. While the abstract model is never completely satisfied in the real world (although basic agricultural markets often

satisfy all but the last criterion), the conclusions derived from the model generally permit an accurate explanation and prediction of the real world phenomena labeled "competitive markets".

In a perfectly competitive market, price is set by the market forces of supply and demand. The firm is merely a quantity adjuster, producing at a rate of output that maximizes profit or minimizes loss for its established plant in the short run and adjusting plant size in the long run. The long run equilibrium of the industry is attained as the number of firms adjusts in response to profit motivation, with entrepreneurs liquidating established firms to transfer resources to more profitable ventures, or conversely, new firms entering the industry when the profit potential is greater than that obtainable elsewhere. At long run market equilibrium, price equals the minimum average total cost. Each unit of output is produced at the lowest possible cost, the product sells for its average long run cost of production, and the firm earns exactly the competitive rate of return.

In his *Principles of Public Utility Rates* (New York: Columbia University Press, 1961), James C. Bonbright observes at 10 that:

> ... [T]he primary, even though not the sole, distinguishing feature of a public utility enterprise is to be found in a technology of

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> production and transmission which almost inevitably leads to a complete or partial monopoly of the market for the service. Public utility regulation ... is therefore said to be a substitute for competition.

Given the characteristics of a competitive market, and assuming that a commission has adopted a goal of cost based rates rather than the achievement of other social goals, it should be clear that the obverse is also true: a market that is truly competitive will achieve the regulatory goals set by public policy, and therefore those goods and services, even if "affected with the public interest", do not need to be regulated. The market will assure that rates are just, reasonable, and not unduly discriminatory, and that the firm will earn a reasonable return on the cost of the property that is used and useful in the public service.

Issues that cannot be resolved at this time are whether competitive services offered by the utility should be deregulated or merely de-tariffed, and whether provision of competitive services by the utility should be structurally separated or whether separation of the accounting will be sufficient to prevent subsidization between the monopoly and competitive services. We will await the recommendations of the parties before deciding these issues.

The polar opposite of pure competition is pure monopoly, which exists when there is only one producer in a market and no direct competitors. Like perfect competition, the abstract model is seldom obtained in the real economy as all commodities indirectly compete for the consumer's dollar and some goods are reasonably adequate substitutes for the monopoly product. Nevertheless, the results of the model of monopolist market behavior explain and predict the behavioral tendencies of an unrestrained near-monopolist.

The monopolist, like the competitive firm, maximizes its profit or minimizes its loss by producing and marketing that output for which marginal cost equals marginal revenue. However,

where a competitive firm's marginal revenue equals price and the level of the firm's output does not affect the price of the product, a monopolist can choose a level of output and thus, in interaction with consumer demand, a market clearing price that will maximize its profit. Where in a competitive market the ultimate equality of marginal cost, marginal revenue and price all ensure a long-run equilibrium for the industry at the minimum long run average cost, the monopolist output will not be associated with minimum unit cost and price will substantially exceed marginal cost. The excess of price over cost produces excessive rates of return that are not eliminated by the entry of new firms. If the aggregate market can be divided into submarkets with different price elasticities, the monopolist can further increase its profit by practicing price discrimination, charging lower prices in markets where demand is more elastic and higher rates in markets where demand is less responsive to price.

The optimal blending of the legal and economic rationales for regulation is to prevent companies that provide goods and services that are "affected with the public interest", *Munn v. Illinois*, 94 U.S. 113 (1877), from exercising their monopoly power to maximize profit at the expense of the customer. It attempts to mimic the competitive market by assuring that even absent the entry of other firms into the market, the monopoly company earns a reasonable rate of return on its investment. Such a return is one that is sufficient to assure its ability to attract capital yet not in excess of that which can be earned on other business undertakings of comparable risk. Regulatory bodies set prices (rates) equal to average cost, and if the utility system is near optimality, they can set rates equal to marginal cost as well. They design rate structures to prevent undue price discrimination among segmented markets (customer classes). Traditionally, regulatory agencies have upheld these standards through implementing rate base/rate of return regulation.

[15-17] Nothing in the record before us convinces us that a departure from traditional regulation will protect the consumer of non-competitive services from monopoly abuse to the same extent that has been afforded in the past. To the contrary, the arguments of staff and most of the intervenors and our analysis of the plan proposed by NET persuade us that problems of unreasonable rates of return, higher

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than efficient pricing and undue price discrimination could easily surface should the Commission radically depart from traditional regulation. NET's own witness, consulting economist Dr. William E. Taylor, agreed that the issue of the exercise of monopoly power by the public utility was critical. When he was queried from the bench:

> It seems to me that what we are intending the firm to do under economic theory ... is to use its price flexibility to drive the prices in the monopoly services toward the point where marginal cost equal[s] the marginal revenues, and for those services where there is competition we are driving the prices toward the floor of incremental cost. That is the profit maximizing incentive.
>
> If that is the case I sit here saying to myself, what do they need me for? What is regulation for but to prevent monopolies from maximizing profit at the expense of the consumer?

Dr. Taylor responded that it was "an excellent question ... . In a sense that's the essence of the case, the economic case in my view." Tr. Vol. XII at 109.

We will therefore continue to regulate monopoly services through our customary rate base/rate of return methodology. We cannot, on the record before us determine how (or whether) the monopoly rate base can be established, tracked and multiplied by a rate of return as the financial data in the telephone chart of accounts is not organized by products and services. We expect recommendations from the parties on how rate of return regulation on only a portion of the Company's services can be implemented. A critical issue that must be resolved is the mechanism for allocating the correct proportion of the system's joint and common costs to the monopoly services so that in both the present and the future they bear no more or less than their fair share. Whatever the parties recommend to isolate the monopoly services from the more competitive areas of the Company's business, the goal should be that suggested by NET itself: to sever the link between the monopoly rate base and overall earnings including earnings from competitive and near-competitive services and thus remove any ability by NET to subsidize its entry into competitive markets in which it is not the low cost provider.

We note that in our rate design order we found that it was "premature to implement a lifeline service at this time." Report and Order No. 20,082 at 50. One effect of maintaining rate of return regulation for monopoly services is that, absent rate increases for basic service pursuant to a filed rate case, a lifeline service will continue to be unnecessary under the alternative regulatory framework established by this order. However, the lifeline issue may be raised in the collaborative process and we will look for comments from any party that disagrees with this finding, especially on the grounds that basic residential service should not be categorized as a monopoly service, or that a lifeline service is required even under rate of return regulation when that regulation applies to only a portion of the Company's services.

[18] The monopoly/competitive extremes of the telecommunications industry can be analyzed according to well established economic and regulatory models. It is clear, however, that there are a number of services offered by NET that are, or could be, neither purely competitive nor wholly monopolistic.

4(87) The Commission finds that some form of relaxed regulation would be appropriate and in the public good for those services for which there is emerging competition. We cannot, on the record before us, draw "bright lines" between the categories of services that would identify when, for purposes of regulatory treatment, a service is no longer monopolistic but has become subject to some level of competition, or when emerging competition has matured into a fully competitive market. Presumably, in the former circumstance the filing of applications to provide service by vendors other than NET, and in the latter case the antitrust guidelines established by the United States Department of Justice would be relevant factors in drawing those lines. One specific issue to be resolved is whether competition should be assessed in terms of NET's entire franchise or particular geographic areas.

Similarly, we cannot at this time specify

the exact form of regulation for the services that are emergingly competitive. We are not persuaded that a price cap formula is a necessary feature of regulation of this middle group of services. The formula, as proffered by NET and other advocates, is a mechanism to allow a utility to raise rates with minimal, if any, regulatory oversight. Assuming that the category of services has been properly designed and that all services within it are subject to emerging competition from other vendors, in order to compete NET will tend to lower the prices of these services, not raise them. It may be more appropriate to establish a system of flexible pricing for each service offering, in which rates can vary within a band bounded at the low end by the incremental cost of the service and at the upper end by some price set in reference to existing rates (*e.g.*, 10% above existing rates). We will await the recommendations of the parties regarding the form of regulation for the category of emergingly competitive services. We note that if the parties recommend a price cap formula, all of the issues involved in the appropriate choices of a productivity factor and an inflation index and the definition of exogenous costs will also have to be resolved.

Several parties have proposed that any schema of flexible pricing should be joined to a profit sharing arrangement for returns above the authorized rate of return. We are not convinced that profit sharing is a necessary feature of relaxed regulation. If the category has been properly defined, NET will face some degree of competition for all of the services in the category. It will therefore have the incentive to lower rates or enhance the features of these services in order to compete with alternative vendors. As a result, there should be few excess profits arising from sales of these services, and a requirement to share those excess profits becomes moot. It is conceivable that NET could become so efficient that it is capable of matching the prices of its competitors and still earn profits from this category of services in excess of the return allowed on the monopoly service category. On this record we do not find such a result disturbing, but we will examine it further should the parties wish to comment.

The parties will also need to address the issue of filing requirements for this middle group of services. NET has suggested one set of requirements that features 30 days notification to the Commission for structural changes and the implementation of price changes without notification. The parties should consider whether the NET proposal or some other level of filing requirements and Commission evaluation is appropriate for this category of services. We also expect recommendations on whether distinctions need to be made between new and old services and, if so, whether new services should be defined in such a fashion to prevent re-packaging and re-pricing of existing services. We note the possibility of cross-subsidization among the services and between the markets for individual services in the emergingly competitive category, based on their different levels of competition and price elasticities of demand. For example, as we noted in our rate design order in this docket (Report and Order No. 20,082 at 43), NET has proposed segmenting the market for a single service (intra-state toll) between business and residential customers in order to offer generally lower rates to business customers and discounts to large volume users in response to the competitive activity for the custom of the business toll user. We expect comments on whether such non-cost based market segmentation and possible subsidization should be of concern to the Commission, and therefore whether we should adopt additional restrictions to prevent it or relax existing restrictions where a matter falls outside regulatory concern.

Finally, as noted above, one of the purposes of changing the form of regulation is to provide the incentives to a regulated company to become efficient and innovative, to deploy modern technology and to offer new services to a broad customer base. The Commission will adopt criteria and a specified time frame so that it can evaluate the results of the new regulatory structure and its effects on the Company, its customers and competing vendors. NET has suggested that a new form of regulation would provide it with the incentive to accelerate deployment of Signalling System 7 and statewide conversion of digital switches, and to fund

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the network deployment of Enhanced 911 service. We will look to the parties to develop criteria by which the Commission can evaluate whether NET has deployed new technology more rapidly under flexible regulation than it would (or has) under rate of return regulation, either in New Hampshire or in neighboring New England states. NET has proposed a four year experimental period; we will expect the parties to comment on whether this time period is appropriate and to recommend evaluative criteria.

We will direct our staff to initiate the collaborative process in consultation with the parties. In addition, we will schedule periodic status conferences before the Commission to assure that the process proceeds expeditiously and that the direction of the recommendations of the parties remains consistent with the Commission's own analyses and policy determinations.

D. *Quality of Service Reporting*

The remaining issue in this case is quality of service. The record indicates Staff and the Company reached agreement on the data NET will report to the Commission Staff on a monthly basis. The agreement was entered as Exhibit 3-A. The Commission finds this agreement reasonable and notes that changes in quality of service in the future will be used as a yardstick to measure the Company's performance.

Item 7a in the agreement suggests Staff and the Company will meet on or about July 1, 1991 to implement a method of reporting additional information on business service centers. The Commission encourages this meeting and expects the monthly reports to include business office answer times as suggested in the Transcript, Vol. XIV at 120. Additionally, the Commission believes that a three month lag time between the month being reported on and the submission of the report is too lengthy. Consequently, we shall require the reports on each month's data to be submitted no later than the last day of the following month.

IV. CONCLUSION

With this Order, we close one chapter in our consideration of whether alternative forms of regulation are appropriate for the telecommunications industry and, at the same time, we open a new chapter. We have determined that NET failed to develop a record to support its specific price-cap proposal; however, we also found that public policy goals may be more easily accomplished by the adoption of an alternative system of regulation consistent with the broad guidelines set forth herein. Additionally, in recognition of the absence of sufficient record support to prescribe non-Company proposed specifics, we have commenced a collaborative process to develop those specifics. We believe that the selection of a collaborative process, as

distinguished from an adjudicatory process, is appropriate because it is better designed to solve problems in the uncharted public policy waters on which we are about to embark. We also believe that it is necessary to emphasize the high degree of Commission involvement in this process through the periodic status hearings. In such a critical public policy area, alternative problem solving mechanisms involving the Commission must be explored as the most efficient means of reconciling disparate interests to achieve optimal policy objectives. In this manner, the need for an adjudicative process can be narrowed and focused to the minimal number of disputed issues.

Our order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company's InfoAge NH 2000 petition is hereby denied; and it is

FURTHER ORDERED, that staff in consultation with the parties to this proceeding is directed to commence a collaborative process for the purpose of implementing the regulatory reform described in the report.

By order of the New Hampshire Public Utilities Commission this tenth day of June, 1991.

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FOOTNOTES

[1]Although the Commission did not subject the inclusion of Seabrook in rate base to a traditional prudency evaluation, the Court recognized that the Commission did engage in an analysis of the value of PSNH's Seabrook investment in support of its conclusion that the rates contemplated by the rate plan are likely to be lower than what PSNH would receive under traditional ratemaking. Slip Opinion at 10. However, for the purpose of deciding the appeal, the Court accepted the appellants' argument that, in the absence of special legislation, the Commission was statutorily required to undertake a "full blown" rate proceeding in order to approve the plan.

[2]In *Appeal of Omni*, 122 N.H. 860, 451 A.2d 1289 (1982), the Court ruled that the Commission does not have the authority to regulate companies operating radio-paging systems because they operate in a competitive market. In prior decisions we have interpreted *Omni* narrowly and have concluded that the Court did not intend to preclude the Commission from regulating public utilities when necessary to foster competition. *Re AT&T Communications of New Hampshire*, Report and Order No. 19,956 (October 15, 1990); *Re Atlantic Connections, LTD.*, Report and Order No. 20,063 (February 22, 1991). If the Court's decisions in *Richards* and *Omni* are carried to their extreme, the Commission's regulatory options would be limited to full rate of return regulation or total deregulation of NET, even if neither approach was an appropriate regulatory response to the market conditions confronting the Company. We are certain that the Court did not intend to place the Commission in such an untenable position.

[3]When the special legislation authorizing Commission approval of the PSNH rate plan was adopted on December 14, 1989, Seabrook was not in commercial operation. Thus, absent the special legislation, RSA 378:30-a alone would have precluded Commission approval of the rate plan.

[4]There may also be additional services which could be competitive, but nevertheless are subject to public policy constraints. A possible example of such a service may be coin phones.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 19,956, 75 NH PUC 670, Oct. 15, 1990. [N.H.] Re Atlantic Connections Ltd., DE 90-042, Order No. 20,063, 76 NH PUC xxx, Feb 22, 1991. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 85-182, DR 89-010, Order No. 19,747, 75 NH PUC 147, Mar. 8, 1990. [N.H.] Re New England Teleph. & Teleg. Co., DR 85-182, DR 89-010, Order No. 20,082, 76 NH PUC 150, Mar. 11, 1991. [N.H.Sup.Ct.] Granite State Alarm, Inc. v. New England Teleph. & Teleg. Co., 111 N.H. 235, 90 PUR3d 210, 279 A.2d 595, June 30, 1971. [N.H.Sup.Ct.] New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 229, 44 PUR3d 498, 183 A.2d 237, July 16, 1962. [N.H.Sup.Ct.] Re Public Service Co. of New Hampshire, 130 N.H. 265, 92 PUR4th 546, 539 A.2d 263, Jan. 26, 1988. [U.S.Sup.Ct.] Federal Power Comm'n v. Hope Nat. Gas Co., No. 34, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281, Jan. 3, 1944.

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NH.PUC*06/11/91*[27147]*76 NH PUC 415*Mountain High Water and Gas Sales, Inc.

[Go to End of 27147]

Re Mountain High Water and Gas Sales, Inc.

DE 89-071
Order No. 20,150

76 NH PUC 415

New Hampshire Public Utilities Commission

June 11, 1991

ORDER setting permanent rates for water distribution service. Commission directs the utility to refund all revenues collected prior to its receipt of a contingent franchise and to refund the difference between its permanent rates and temporary rates set by prior order.

The utility is allowed to charge the permanent rates retroactive to the date of establishment of temporary rates, even though it did not meet the conditions of a prior order that made its franchise contingent upon the conveyance of the water utility assets from the developer of the system. Investment in the water distribution system is excluded from rate base. Commission finds that the costs of the water system had been expensed against the proceeds of condominium sales and thus, the commission finds, had been

recovered through contributions in aid of construction. Commission rules that the sale of the water system by the developer to an associated utility does not result in the creation of rate base, notwithstanding the fact the fact that the developer will recognize a gain on the sale, thereby negating the original tax effect of expensing the distribution system against the condominium sales proceeds.

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1. VALUATION, § 250

[N.H.] Property excluded — Property paid for by customers — Water distribution system — Assets expensed against condominium sales — Land development water utility. p. 417.

2. VALUATION, § 286

[N.H.] Property of particular utilities — Land development water system — Assets expensed against condominium sales — Rate base exclusion. p. 417.

3. VALUATION, § 67

[N.H.] Ascertainment of costs — Transferred assets — Sale by land developer to associated utility — Assets previously expensed against condominium sales — Rate base exclusion. p. 417.

4. RATES, § 595

[N.H.] Water — Permanent rate proceeding. p. 418.

5. RATES, § 630

[N.H.] Temporary rates — Water utility — Refund of excess over permanently established rates. p. 418.

6. REPARATION, § 17

[N.H.] Grounds for allowing — Collections under temporary rates — Water utility. p. 418.

7. RATES, § 249

[N.H.] Effective date — Operation prior to receipt of franchise — Operation under contingent franchise — Water utility. p. 418.

8. RATES, § 250

[N.H.] Retroactive effect — Operation under contingent franchise — Water utility. p. 418.

9. EXPENSES, § 89

[N.H.] Rate case expense — Surcharge — Water utility. p. 418.

APPEARANCES: Dill and Briggs, P.C., William P. Briggs, Esq. on behalf of Mountain High Water & Gas Sales, Inc.; Cooper, Fauver and Deans, P.A., Kenneth R. Cargill, Esq. on behalf of the Seasons at Attitash Unit Owners' Association; and Eugene F. Sullivan, III, Esq. for the New

Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On December 29, 1986, Mountain High Water & Gas Sales, Inc. (Mountain High Water) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to operate as a public water utility in a limited area of the Town of Bartlett, New Hampshire. By *NISI* order dated February 20, 1987 and effective March 19, 1987, the Commission authorized Mountain High Water to charge temporary annual rates of $213.77 pursuant to RSA 378:27. The Commission further ordered that such authority would be effective only until July 31, 1987, at which time Mountain High Water would have to file a petition for a

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franchise and permanent rates in the requested service area. *Re Mountain High Water and Gas Sales, Inc.*, 72 NHPUC 68 (1987).

In response to a complaint filed by the Homeowners' Association, on March 18, 1987, the Commission issued a supplemental order revoking Mountain High Water's right to charge temporary rates and ordered a public hearing to be held on May 21, 1987, at the offices of the Commission on the issue of temporary rates. *Re Mountain High Water and Gas Sales, Inc.*, 72 NHPUC 92 (1987). No further activity is noted in the Commission records on this petition.

On February 3, 1989, the Commission received a letter from the Seasons at Attitash Unit Owners' Association (Owners' Association) questioning the water rates being charged by Mountain High Water. Upon review of its files, the Commission determined that Mountain High Water was illegally charging rates as an unfranchised public utility in violation or RSA 374:22 and :26. On March 3, 1989, the Commission's Executive Director and Secretary informed Mountain High Water that it was a public utility pursuant to RSA 362:2 and required a franchise and just and reasonable rates approved by the Commission. On April 24, 1989, Mountain High Water petitioned for a franchise and commission determined rates.

On August 17, 1989, the Commission held a hearing on the issue of temporary rates. As a result of that hearing the Commission issued Report and Order No. 19,577 setting temporary rates at $233.52 per year pursuant to RSA 378:27. The Commission further ordered that the Company's receipt of a franchise was contingent upon Mountain High Water's purchase of the assets comprising the water distribution system from Mountain High Development Corporation (Mountain High Development).

During the course of the next months Staff, Mountain High Water and the Owners' Association engaged in discovery, settlement conferences and submitted prefiled testimony. The Commission held duly noticed hearings on the issue of permanent rates on August 7, 1990, and August 8, 1990.

II. *Position of the Parties*

Mountain High Water is seeking permanent flat rates of $272.65 per year for each of its 176

customers or a revenue requirement of $47,986 per year. The Company rates are, in part, based upon a rate base that includes $140,000 in assets for a water distribution system to provide water service to a condominium development located in the Town of Bartlett, New Hampshire.

The Owners' Association of the development argues that the cost of the water system was paid for by the purchasers of the condominium units.

Staff likewise contends that Mountain High Water is not entitled to include the $140,000 in assets used to provide water to the condominium units in ratebase. Staff argues that the assets were paid for from the proceeds of the sale of condominium units by Mountain High Development and, therefore, already were paid for by the condominium customers as contributions in aid of construction.

III. *Commission Analysis*

A. *Recovery of investment in water distribution system*

[1-3] The primary issue in dispute is whether Mountain High Water is entitled to include in ratebase the $140,000 Mountain High Development claims it spent to install a water distribution system to serve the water customers.[1(88)] Staff and the Owners' Association contend that since Mountain High Development expensed the cost of installing the water distribution system against the proceeds it received from the sale of the condominium units served by the water distribution system, the purchasers of the units paid for the system, and therefore, the sum may not be included in rate base. For the reasons that follow we agree.

Substantial evidence in the record supports Staff's assertions that the joint owners of the Development Company and Water Company have already recovered their investment in the distribution system as a contribution in aid of construction by the purchasers of the units. The testimony reveals that in 1985 and 1987 four principals, created two corporations, Mountain

High Development and Mountain High Water, respectively. The original purpose of Mountain High Development was to own and construct condominium units for their ultimate sale. The original purpose of Mountain High Water was to own and operate gas and water distribution systems to service said condominium units.[2(89)]

The expenditures made by Mountain High Development in constructing a water distribution system for its condominium development were originally kept in separate books by Mountain High Development's accountant and were not expensed against the proceeds of the sales of condominiums for purposes of calculating the Development Company's federal tax liability. According to the Company's witnesses Mountain High Development did not expense these items because it was the principals' intent to convey the assets at their full value to Mountain High Water for ratemaking purposes.

However, in late 1987 the principals were advised by Robert Carleton, the individual whose company had constructed the water distribution system, that Mountain High Water could avoid commission regulation by merely placing the word "maintenance" on the bills sent to customers. The principals relied on this advice. Thereafter they ceased their activities before this commission to become a franchised public utility, placed the word "maintenance" on all bills

rendered to customers and expensed all of the costs of constructing the water distribution system against the proceeds received from the sale of condominium units for tax purposes.

The Companies' accountant testified that these actions were taken because it was no longer necessary to retain any ratebase for ratemaking purposes. The Companies also were aware that placing the word "maintenance" on bills was a subterfuge. In actuality, the "maintenance" charge which appeared on customers' bills was designed to recover not only the operating and maintenance expenses of the water distribution system, but also the capital investment made by the principals in the water distribution system.

On the basis of this evidence, the Commission will not allow the Company to include its investment in the distribution system in rate base. We agree with Staff that by expensing the cost of the water system against the proceeds of the sales of the condominium units the Companies have already recovered their capital investments through contributions in aid of construction. As a matter of public policy, we will not permit utilities' to profit unjustly from inconsistent statements concerning their assets made to the IRS and us.

3(90)

We find no merit to the Companies' contention that Mountain High Development will recognize a gain on the sale of the assets from Mountain High Development to Mountain High Water, thereby negating the original tax effect of expensing the water distribution system against the proceeds of the sale of condominium units and re-establishing a $140,000 ratebase. The intent of the principals was clear: they were not concerned about ratebase. The Companies' accountant testified that when they took the advice of Mr. Carleton and engaged in a billing subterfuge, they were no longer concerned about ratebase for Commission ratemaking purposes. Selling assets on the books of a company that are valueless from a ratemaking perspective for the construction price does not result in the creation of ratebase. If this were true, any utility could sell its fully depreciated assets to an associated utility and the associated utility could earn a return on this investment and depreciate the assets again. Quite clearly, utility rates that in effect permit double recovery of capital investment are neither just and reasonable as contemplated by RSA 378:7.

Furthermore, as was stated above, the treatment of the assets by Mountain High Development for IRS purposes is indicative of its intent. The mere fact that the consequence of a sale of assets at this time would result in a tax gain does not negate that intent.

Disallowance of the claimed $140,000 investment results in recoverable rate base of $2,000.00. The Company also failed to justify its claimed operating and maintenance expenses and the Commission accepts as reasonable Staff's recommendations on these costs as well.

B. *Refund of Temporary Rates*

[4-9] Two remaining issues concern the

Company's obligation to refund rates collected prior and subsequent to Order No. 19,577, (August 17, 1989) in which we granted Mountain High Water a franchise contingent upon its

purchase of the water system from Mountain High Development. We will address these issues in sequence.

Pursuant to RSA 374:22 and 374:26 utilities must obtain franchises and approved rates before commencing business as public utility. In *Re Southern New Hampshire Water Company*, 74 N.H.P.U.C. 304 (1989) and *Re Quin-Let Trust*, 74 N.H.P.U.C. 415 (1989) we held that utilities must obtain franchises and authority to charge rates from this Commission as a condition precedent to commencing business. To hold otherwise would result in unconstitutional retroactive ratemaking. *See Appeal of Pennichuck Water Works*, 103 N.H. 49 (1960).

The evidence demonstrates that Mountain High Water was fully aware of the Commission's regulatory authority prior to the initiation of this proceeding in March of 1989. As noted, Mountain High Water first petitioned the New Hampshire Public Utilities Commission for authority to operate as a public water utility in a limited area in the Town of Bartlett, New Hampshire in late December, 1986. The Commission granted temporary rates and, thereafter, revoked temporary rates due to a complaint from the Owners' Association. The Commission then scheduled a hearing on the issue of temporary rates and, according to Commission records, no hearing took place nor was any subsequent action taken by Mountain High Water until it was contacted by the Commission in 1989.

Even if the Commission could allow the Companies to retain the revenues they received prior to the temporary rate Order, their willful misconduct provides a compelling basis to order a refund. Accordingly, we will require the Companies to refund all rates collected from unit owners prior to March 3, 1989, the effective date of Order 19,577. The refund should be made to customers over the course of the year following the date of this Report and Order.

In regard to the temporary rates charged by Mountain High Water since Report and Order No. 19,577 we will require Mountain High Water to refund the difference between temporary rates set in Report and Order No. 19,577 and the permanent rates set herein pursuant to RSA 378:30 over the course of one year from the date of this order. Thus, we will allow Mountain High Water to charge the permanent rates retroactive to the date of the establishment of temporary rates, even though Mountain High Water did not meet the conditions of Report and Order No. 19,577 which conditioned the grant of a franchise on the conveyance of the water utility assets from Mountain High Development to Mountain High Water. *See*, Report and Order No. 19,577 at p. 2. In light of the good faith effort of Mountain High Water to obtain a franchise in 1989 and the special circumstance surrounding the value of the assets we find this result to be just, reasonable and in the public good.

IV. *Conclusion*

In conclusion, based on staff testimony, Mountain High Water or Mountain High Development, whichever company retains the assets of the water distribution system and operates the system, may charge rates in accordance with the following calculations:

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

Rate Base	$ 2,000.00
Rate of Return	11.9%
Return on Common Equity (Working Capital)	$298.00
Operation & Maintenance Expenses	$11,916.00

Total Annual Revenue Requirement	$12,214.00
Number of Customers	176
Rate per customer per year (excluding refunds and rate case expense surcharge)	$69.40

In addition, the Company(s) shall supply the commission with its total rate case expenses for our review. After our review the company(s) shall surcharge rate case expenses over the course of one year.

III. *Findings of Fact and Rulings of Law*

A. Mountain High Water and Gas Sales, Inc. (Mountain High Development Corp.)

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The following requests for findings of fact are granted: 2; 4; 5; 7; 8; 9; 10; and 11. Request 14 is granted; however, the Commission does not accept the motivation stated therein because it is inconsistent with the record. Request 15 is granted; however, the Commission notes that the principals filed for a franchise and rates after being contacted by the Commission and notified of the penalties for not making the aforementioned filings. Furthermore, the Commission is unaware of any definition of the word "maintenance" that includes a return on an investment and depreciation expenses.

Request 16 is granted; however, the Commission does not believe the intervenors sought to "block" the rate application, but merely intended to present their position on the rates, including the assertion that the assets of the water distribution system were owned, rather than contributed, by the unit owners.

Request 6 is denied because the record discloses that upon the advice of Robert Carleton the books of the two corporations were commingled and there was no testimony as to when construction was actually completed. Request 12 is denied in that the temporary rates were conditional, and the rates were "temporary", a term of art, meaning a full investigation had not been conducted by the commission. Request 13 is denied as the evidence was not that it was "inappropriate" but rather, that there was a means of skirting regulation through a subterfuge which the principals chose to do. Request 17 is denied.

Request for Ruling of Law A is granted and B is denied.

B. Unit Owners' Association

The following requests for findings of fact are granted: 1; 2; 3; 4; 5; 6; 7; 9; 10; 12; 14; 15; 19; 20; 21; 22; 23; 24; 26. Request 11 is granted; however, there is no record as to the date when all the units were sold. Request 16 is granted; however, temporary rather than interim rates were approved (see response to Mountain High Water request for finding of fact 12). Request 17 is granted; however, there is no record in the Commission files of a "withdrawal" of an application, as the petitioner merely ceased activities before the Commission. Request 18 is granted; however, the Commission does not agree with the petitioners definition of the word "maintenance". Request 25 is granted; however, it is not clear from the record that Mountain High Development valued the assets of the water system: apparently the town valued the "assets" based on the belief that the Owners' Association owned most of the assets comprising the water distribution system.

Request for finding of fact 8 is denied; 13 is denied as it is beyond the scope of this proceeding and the record created herein; and 27 is denied as the late filed exhibit (minutes of meeting) indicates that the principals offered to sell the water distribution system to the Unit Owners' Association for ($1)

Requests for Rulings of Law A and B are granted to the extent they are consistent with this report.

Our order will issue accordingly.

ORDER

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

ORDERED, that all expenditures by Mountain High Development Corporation are excluded from rate base and they shall be treated in accordance with staff's recommendations on the books of whichever utility owns the assets; and it is

FURTHER ORDERED, that Mountain High Water and Gas Sales, Inc. or Mountain High Development Corporation be allowed to charge annual rates in the amount of $69.40 constituting operation and maintenance expenses and a return on the two thousand dollars ($2,000) of working capital; and it is

FURTHER ORDERED, that Mountain High Water and Gas Sales, Inc. or Mountain High Development Corporation shall be allowed to surcharge its rate case expenses after a review of said expenses by the Commission over a one year billing cycle from the date of an order approving the expenses; and it is

FURTHER ORDERED, that Mountain High Water and Gas Sales, Inc. or Mountain High Development Corp. refund all rates collected from unit owners to those particular unit

owners from which revenues were collected from 1987 until the issuance of Order No. 19, 577 over a one year billing cycle; and it is

FURTHER ORDERED, that the difference between temporary rates and permanent rates be refunded to customers pursuant to RSA 378:30 over a one year billing cycle; and it is

FURTHER ORDERED, that Mountain High Water and Gas Sales, Inc. or Mountain High Development Corp. file compliance tariffs with this order and a general tariff for all aspects of the utility business.

By order of the Public Utilities Commission of New Hampshire this eleventh day of June, 1991.

FOOTNOTES

[1]Because the commission is disallowing all of the original investment in the water distribution system from ratebase the actual amount expended is irrelevant for our purposes. However, the commission notes that the company did not meet its burden of proof in establishing the exact amount expended in constructing the distribution system because of a lack

of invoices.

[2]For the purposes of this order, the Commission will treat the two corporations as alter-egos. The companies are owned and operated by the same individuals and their accounts are commingled. The oral testimony of the companies' witnesses made it apparent that they are separate entities in name only.

[3]Our finding that the Companies already have recovered their original investment in the system is further supported by the offer of the principals to sell the water distribution assets to the Unit Owners' Association for one dollar ($1). If the principals considered the value of these assets to be $140,000 they would not have offered to sell the assets for one dollar ($1).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Mountain High Water & Gas Sales, Inc., DE 89-071, Order No. 19,577, 74 NH PUC 413, Oct. 18, 1989.

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NH.PUC*06/12/91*[27148]*76 NH PUC 421*New Hampshire Administrative Rules, Part PUC 410

[Go to End of 27148]

Re New Hampshire Administrative Rules, Part PUC 410

DRM 90-172
Order No. 20,151

76 NH PUC 421

New Hampshire Public Utilities Commission

June 12, 1991

ORDER adopting rules for the provision of pay-per-call services — telephone recorded messages, interactive programs, or other information services that are sold, for a charge, to a caller through an exclusive telephone number prefix. The rules provide for selective blocking of pay-per-call services upon customer request.

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1. SERVICE, § 449

[N.H.] Telecommunications — Information and special services — Pay-per-call services — Rules — Selective blocking. p. 423.

2. SERVICE, § 449

[N.H.] Telecommunications — Information and special services — Pay-per-call services — Rules — "Adult" programming. p. 423.

3. SERVICE, § 449

[N.H.] Telecommunications — Information and special services — Pay-per-call services — Rules — Disclosure of charges — "Kill messages". p. 423.

4. SERVICE, § 449

[N.H.] Telecommunications — Information and special services — Pay-per-call services — Rules — Correction of violations. p. 423.

APPEARANCES: John E. Reilly, Esq., for New England Telephone Company; Amy L. Ignatius, Esq., for Granite State Telephone Inc., Merrimack County Telephone and Dunbarton Telephone; Steve Davis for Contel NH; Bob Howard for Wilton Telephone; and Eugene F. Sullivan, III, Esq., for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On October 4, 1990, the staff of the New Hampshire Public Utilities Commission (staff) proposed N.H. Admin. Rules, PUC 410.01 through 410.19 and requested a Fiscal Impact Statement from Legislative Services. After proper notice, a hearing was held on December 6, 1990, at which time the parties became aware of significant technological and logistical problems with the rules, as proposed. The parties met on several occasions to draft collaboratively rules that could be implemented by all the Local Exchange Carriers (LECs) and attain the goals staff had identified. On February 8, 1991, the staff withdrew the originally proposed rules and resubmitted a new proposal that incorporated changes designed to meet the concerns of all parties. On March 19, 1991, New England Telephone Company (NET) filed comments on the newly proposed rules. On March 19, 1991, the New Hampshire Public Utilities Commission held a hearing on the merits of the rules proposed on February 8, 1991.

II. BACKGROUND

The purpose of the rule-making is to establish rules that will apply to the provision of Pay-Per-Call Services. Pay-Per-Call Services are telephone recorded messages, interactive programs, or other information services that are sold, for a charge, to a caller through an exclusive telephone number prefix. The rules provide for selective blocking of these services upon customer request, how blocking is to be accomplished, consumer protection and the provision of consumer awareness before purchasing Pay-Per-Call services.

III. POSITIONS OF THE PARTIES

At the commencement of the hearing, staff alleged that there were only one or two areas of disagreement in the proposed rules because the parties had met on numerous occasions to draft a set of rules to which all parties could agree. The primary rule in dispute was 410.16. Staff argued that a tone to note passage of time at increments consistent with the charge schedule would make consumers aware each time they purchased an additional increment of the service. For example,

if the service was billed at $1.00 a minute, a tone would indicate the passage of each minute and the purchase of each additional dollar's worth of services. If the charge was a flat fee for the entire message, the tone would only be required if the message were replayed.

Additionally, staff argued in favor of introductory or "kill messages" designed to give a caller the opportunity to disconnect before incurring any charges. Kill messages insure consumers are aware of the charge before they purchase the service and afford additional protection to minors.

Rule 410.14 was the remaining area of dispute before the hearing began. Staff argued that subsequent changes in a customer's selection of blocking should be paid for by the customer based on the cost of implementing the change.

During the hearing staff, recommended "carrier" be defined.

NET filed extensive written comments just before the hearing and summarized them during the hearing. NET argued the definition of "adult" was too limited. NET suggested expanding the definition to include explicit or implicit representations of adult subjects.

Staff indicated the definition proposed in the rules was derived from the Federal Communication Commission definition of "indecent".

NET also suggested that the Commission should not make the final determination of what falls in the adult category when the information provider and the telephone companies disagree on the appropriate category for a particular

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service as proposed in 410.04. NET argued that determination should be left to the utility that contracts with the information provider (IP) and ultimately with the civil courts. In addition, NET recommended that if the utility discovers the IP has not appropriately complied with the service categories, the utility may disconnect the IP's service 10 days after notification of discrepancy if the IP does not comply.

1(91)

NET argued the carrier who provides the IP service should provide blocking. Thus, the cost of blocking would be borne by the carrier who provided the ability to offer the service.

NET suggested 410.06 be modified to clarify that it is not the LEC's or Carrier's responsibility to obtain consent from all parties on a party line who wish to unblock selectively adult services or block all other services.

NET proposed adding the word "carrier" to rules 410.04, 410.05, 410.07, 410.08 and 410.12 to require that customer education and notification be the responsibility of the utility who introduces the service, rather than the LEC. NET used the example of group bridging. It hypothesized that perhaps AT&T would offer group bridging before NET. In that case, AT&T would be responsible for notifying local exchange customers that group bridging would be available in New Hampshire and would have to explain what group bridging was, types of services available and blocking options.

NET proposed to change 410.10 to state that subsequent changes (*i.e.*, after the initial period

of time when customers may initially select a blocking option without charge) would be made at a charge to the customer.

NET argued that charges for blocking should not be cost based because the option to select blocking should not be cost prohibitive. NET suggested that 410.14 simply omit reference to the cost of blocking.

Finally NET argued that 410.16, as proposed, was more restrictive than the interstate rules and would shift potential IPs across the state border to operate interstate services thereby foreclosing New Hampshire LECs from entering the market and relinquishing Commission jurisdiction.

Granite State, Merrimack and Dunbarton Telephone expressed concern about cost recovery. They represented that cost recovery was a complex issue and could be different for average schedule companies than cost settlement companies and that cost recovery applied to every new requirement. In a letter filed March 26, 1991 pursuant to the hearing examiner's direction, Granite State, Merrimack and Dunbarton stressed the necessity for cost recovery of expenses and capital expenditures incurred in order to comply with the rules.

IV. COMMISSION ANALYSIS

[1-4] The first issue raised by NET is whether the definition of "Adult" should be changed to include implied or other nonverbal sexual activity. Rule 410.01A as it currently reads already covers implicit sexual activity; nonverbal sexual activity would have little impact over the telephone.

The next issue raised by NET is the provision in Puc 410.04 that the Commission be the final arbiter of disputes between the IP and the utility over the service category in which the service will be offered.

The proposed rule currently provides that upon dispute the Commission shall determine the category of a particular service. We believe that we are required to retain jurisdiction over this matter. RSA 365:1, :2 and :3. The question of whether a service falls within a particular category involves application of the utility's tariff. In order to ensure uniform application of the categories, the Commission must retain regulatory oversight.

The next issue raised by NET was a revision to Puc 410.02 to clarify that three service categories need not be tariffed until those particular categories are offered. We do not believe clarification is necessary.

With respect to proposed rules Puc 410.04, 410.05, 410.07, 410.08 and 410.12, NET has added the word "Carrier" along with "utility" to cover interexchange carriers that may offer intrastate pay-per-call services. The addition of "Carrier" to Puc 410.04, 410.07 and 410.08 is unnecessary as any interexchange carrier that offers intrastate pay-per-call services in New Hampshire would be considered a utility pursuant to RSA 362:2. Furthermore, the use of the

word "carrier" in requiring blocking by the offering utility would be inappropriate. If the carrier is responsible, customers will be required to be able to identify all the "carriers" of the

services in order to have complete blocking. The LECs have control of the local access lines and should remain responsible for blocking. This position also is consistent with NET's position concerning cost-based charges in Puc 410.14.

The next issue raised by NET is the addition of the word "subsequent" prior to the word change in Puc 410.10. Use of the word subsequent would clarify PUC 410.10 and should be incorporated into the rule.

The next issues raised by NET relate to the requirements for "kill messages" prior to the commencement of charges, and tones to indicate the cost increments being incurred by the users. NET has suggested that such consumer protection devices are more appropriately addressed through advertising rules. We disagree. Ensuring that the information providers comply with advertising rules would require considerable investment of Commission resources. Furthermore, 410.16 follows the corporate guidelines of MCI in offering interstate pay-per-call services. Also, Rule 410.16 follows the rules recently proposed, although not yet promulgated, by the FCC.

Finally, we are changing Puc 410.04 in which the information provider is given thirty (30) days to correct a continued violation. This is too long a time period. The rule should be changed so that it reads: "Upon discovery by the contracting utility that the information provider has not complied with certification as to the type of service being provided, the utility shall give the information provider a verbal and written warning of the violation and a reasonable time frame not to exceed ten (10) days to correct the violation".

Our order will issue accordingly.

ORDER

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

ORDERED, that PUC Rules 410.01 to 410.16 shall be adopted subject to the amendments described in the attached report.

By order of the Public Utilities Commission of New Hampshire this twelfth day of June, 1991.

Puc 410 Pay-Per-Call Services

Puc 410.01 Definitions. As used in this section, the following words and phrases shall have the following meanings:

(a) "Adult" means pay-per-call services which contain language that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs.

(b) "Blocking" means a service that enables customers to prevent access from their telephones to specified service categories or service access codes.

(c) "General information" means Pay-per-Call services which are not defined as adult or group bridging.

(d) "Group bridging" means Group Access Bridging (GAB) or live-conferencing, which allows a caller to join in an ongoing conversation with others who have dialed the same number.

(e) "Information Provider" means the person or entity that provides information, prerecorded message, or interactive program for the pay-per-call service.

(f) "Pay-per-Call Services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix, or service access code, on an intrastate basis.

(g) "Service category" means the category of pay-per-call services that identify the subject matter of service. These categories are "adult," "general information," and "group bridging."

Puc 410.02 For the provision of Pay-per-Call Services, utilities that contract with an information provider shall tariff the services in either the adult, general information, or group bridging category consistent with the definitions

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contained in 410.01.

Puc 410.03 In instances where a Pay-per-Call Service has characteristics of more than one of the specified service categories, one of which is adult, the service shall be included in the adult service category.

Puc 410.04 The utility that contracts with an information provider for the provision of Pay-per-Call services shall require the information provider to certify whether each program or service to be offered is in the adult, general information or group bridging service category. No utility will be held responsible for misrepresentations of these services by the information provider. Upon discovery by the contracting utility that the information provider has not complied with certification as to the type of service being provided, the utility shall give the information provider a verbal and written warning of the violation and a reasonable time frame, not to exceed 30 days, to correct the violation. If the information provider is not in compliance at the end of the specified time period, the utility shall disconnect the service. Upon dispute, the Public Utilities Commission shall be the arbiter of the service category designation for each service.

Puc 410.05 Utilities shall offer their customers who are served by stored program control offices the ability to selectively block the general information and group bridging service categories and shall preemptively block the adult service category. Stored program control offices that are unable to block Pay-per-Call services on an individual line basis shall block all Pay-per-Call services. Utilities are not required to provide blocking to multiline business customers.

Puc 410.06 Utilities shall not be required to offer selective blocking to party line customers. Reversal of blocking from the adult service category shall require the written request of all parties on the party line. It shall be the obligation of the party line customer who requests reversal of this presumptive blocking to obtain consent of the other customers on the party line.

Puc 410.07 Prior to the introduction of each Pay-per-Call service category, the utility that tariffs the new service category shall undertake a customer notification program to inform

customers and other utilities of the service category to be offered. The notification program shall include, but not be limited to, publication of size at least one quarter page in newspapers with circulation throughout the state describing the types of service categories and how charges will be incurred. The text shall be approved by the Public Utilities Commission.

Puc 410.08 Upon the introduction of each service category all utilities shall inform their local exchange customers of the availability of blocking. This notification shall include a mailing, the text of which shall be approved by the Public Utilities Commission, containing:

a) an explanation of the types of services, service categories and blocking options; and,

b) background information on why blocking and separate service categories are being offered.

Puc 410.09 In conjunction with the notification program detailed in Puc 410.07, an introductory period of 90 days shall be identified during which one selection of blocking options may be chosen by customers at no charge.

Puc 410.10 Any change in blocking status shall be made at a charge to the customer.

Puc 410.11 New customers shall have an open enrollment period of 60 days during which the first selection of their blocking options shall be at no charge.

Puc 410.12 Utilities shall inform new local exchange customers of Pay-per-Call services and the availability of blocking in the same manner that they inform new customers of other optional services.

Puc 410.13 The blocking options shall be as follows:

a) the adult service category shall be preemptively blocked, with access provided upon written request; and,

b) the group bridging and the general information service categories shall be blocked upon request.

Puc 410.14 Charges for blocking or

unblocking shall be nonrecurring charges based on the cost of instituting the blocking or unblocking for the customer.

Puc 410.15 Utilities shall not disconnect any customer's intrastate telephone service for nonpayment of Pay-per-Call services. However, utilities may implement blocking of Pay-per-Call services when a customer continues to use Pay-per-Call services and does not pay undisputed charges. Unpaid bills relating to Pay-per-Call services shall not be considered for security deposits as specified in Puc 403.04.

Puc 410.16 Utilities shall not contract with information providers for the provision of Pay-per-Call services unless the following conditions are included in the contract:

a) advertisements of services include a statement of charges; description of the nature of the services and; for programs marketed to children, the advertisement shall contain a

warning to children to obtain parental permission before calling the program;

b) group bridging services shall have monitors who maintain the integrity of the service by protecting the privacy of minors and ensuring that the content of the conversations remain within the definition of the relevant Pay-per-Call service;

c) a tone to note passage of time at increments consistent with charge schedule; and,

d) introductory messages on calls which include:

1. a statement of charges per increment;
2. a warning on adult Pay-per-Call services stating subject matter;
3. a warning to children to obtain parental permission;
4. a reminder not to reveal personal information for interactive calls;
5. a statement informing caller of presence of a monitor on group bridging calls; and,
6. a statement informing caller of the policy that there will be no charge if the caller disconnects immediately after the introductory message.

FOOTNOTES

[1]This assumes that the utility is willing to exercise and enforce its existing rights. *See e.g. Re Atlantic Connections, Ltd*, Report and Order No. 20,063 (February 22, 1991).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Atlantic Connections Ltd., DE 90-042, Order No. 20,063, 76 NH PUC xxx, Feb 22, 1991.

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NH.PUC*06/18/91*[27149]*76 NH PUC 426*Northern Utilities, Inc.

[Go to End of 27149]

Re Northern Utilities, Inc.

DF 91-073
Order No. 20,152

76 NH PUC 426

New Hampshire Public Utilities Commission

June 18, 1991

ORDER granting a natural gas local distribution utility an interim increase in its short-term debt limit.

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1. SECURITY ISSUES, § 44

[N.H.] Increase in short-term debt limit — Factors considered — Public good — Natural gas local distribution company. p. 427.

2. SECURITY ISSUES, § 98

[N.H.] Kinds and proportions — Short-term debt — Natural gas local distribution company. p. 427.

BY THE COMMISSION:

ORDER

WHEREAS, on May 31, 1991, Northern

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Utilities, Inc. ("Northern" or "Company") filed a petition for authority to issue short-term notes not to exceed $10 Million; and

WHEREAS, Northern is a New Hampshire Corporation having its principal place of business in Portsmouth, Rockingham County; and

[1, 2] WHEREAS, that by Order No. 19,313, issued February 1, 1989, by the New Hampshire Public Utilities Commission ("Commission"), the Company was authorized to issue short-term notes in an aggregate principal amount not to exceed $5 Million, such authority having expired on October 31, 1989, at which time the Company reverted to the requirements under Order No. 7446; and

WHEREAS, the net fixed capital of the Company as of April 30, 1991, as computed from its balance sheet, was $49,939,241 against which the Company would be entitled to have outstanding $4,993,924 of short-term notes under Order No. 7446; and

WHEREAS, the Company's capital expenditures for the six months ended March 31, 1991 totaled $5,824,000 and the Company estimates capital expenditures totalling $11,796,000 for its current fiscal year which ends September 30, 1991; and

WHEREAS, on April 30, 1991, the Company in fact had outstanding total short-term notes payable of $4,700,000; and

WHEREAS, the Company plans to file a petition shortly with the Commission which will detail its plan for permanent financing; and

WHEREAS, the Company states that it is of the belief that an interim increase in the authorized amount of short-term debt to September 30, 1991 of up to $10 Million is warranted and prudent; and

WHEREAS, in light of the aforementioned conditions, the Commission believes that it would be in the public good to grant said request; it is hereby

ORDERED, that Northern is hereby authorized to issue, sell and renew its short-term notes not to exceed $10 Million pursuant to RSA 369, Section 7, to be effective June 30, 1991, and to

terminate September 30, 1991.

By order of the New Hampshire Public Utilities Commission of New Hampshire this eighteenth day of June, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DF 88-180, Order No. 19,313, 74 NH PUC 59, Feb. 1, 1989.

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NH.PUC*06/18/91*[27150]*76 NH PUC 427*Claremont Gas Corporation

[Go to End of 27150]

Re Claremont Gas Corporation

Additional party: Synergy Gas Corporation

DE 90-161, DE 89-236, DE-87-256
Order No. 20,155

76 NH PUC 427

New Hampshire Public Utilities Commission

June 18, 1991

ORDER denying motions for rehearing and clarification of a prior order that imposed a fine of $25,000 on a gas distribution utility for failure to provide adequate service to its customers. Commission rejects claim that the consolidation of three dockets concerning safety and service deficiencies violated constitutional due process rights or implicated the equitable doctrines of claims preclusion.

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1. FINES AND PENALTIES, § 5

[N.H.] Grounds for imposition — Inadequate service — Failure to correct deficiencies — Inadequate training — Gas distribution utility — Denial of rehearing. p. 428.

2. PROCEDURE, § 33

[N.H.] Rehearing — Grounds for denial — Finality of findings. p. 428.

3. PROCEDURE, § 8

[N.H.] Consolidation of dockets — Constitutional due process — Equitable doctrines of claims preclusion. p. 428.

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BY THE COMMISSION:

REPORT

I. *Procedural History*

On April 8, 1991, the commission issued Report and Order No. 20,105 resolving the three above-referenced dockets. Pursuant to RSA 365:41 the commission fined Claremont Gas Corporation ("Claremont") $25,000 for mismanagement leading to safety violations and safety concerns at the Company's plant and facilities providing forced air propane gas to limited areas of the City of Claremont since the purchase of Claremont by Synergy Gas Corporation ("Synergy").

1(92)

On April 29, 1991, Claremont filed a Motion for Clarification and a Motion for Rehearing of Report and Order No. 20,105 pursuant to RSA 541:3. In its Motion for Clarification, Claremont refers to a number of findings of fact made by the commission in Report and Order No. 20,105 and claims that the findings are misleading or erroneous.

In its Motion for Rehearing, which incorporates the Motion for Clarification by reference, Claremont claims that Report and Order No. 20,105 makes findings of fact that are "either inaccurate or erroneous or misleading or contrary to the weight of the evidence". Motion for Rehearing at 1. Claremont further argues that the commission's consolidation of the three dockets is statutorily and equitably barred and violates the State and Federal Constitutions. Finally, Claremont claims that the fine imposed by the commission is barred by the State Constitution. For the following reasons, Claremont's motions are denied.

III. *Commission Analysis*

[1-3] In its Motion for Clarification, Claremont refers to specific findings of fact it alleges were erroneous, misleading, inaccurate, or contrary to the weight of the evidence. Therefore, the issue before the commission is whether its findings of fact were in error.

All of the findings made by the commission are supported in the record evidence; the mere fact that there was contradictory evidence on certain points does not restrict the commission from accepting one point of view over another. It is the commission's role to assess the credibility of the evidence in the context of the entire record for the purpose of resolving issues of fact. *See Appeal of McKenney*, 120 N.H. 77,81 (1980); *LUCC v. Public Service Company of New Hampshire*, 119 N.H. 332, 340 (1979).

Moreover, even if we were to accept all of the "clarifications" in Claremont's motion, our decision would not change. The record shows a pattern of mismanagement at the Claremont facilities leading to numerous safety violations, safety concerns, and potentially life threatening incidents each of which in and of themselves would have justified a substantial fine. Claremont's proposed "clarifications" are immaterial to our findings and no clarification is necessary.

B. Motion for Rehearing

The primary issues raised in Claremont's Motion for Rehearing are whether the commission's

consolidation of the three dockets listed above was a violation of due process under the State and Federal Constitutions, a violation of, *inter alia*, the equitable doctrines of res judicata and collateral estoppel and the double jeopardy ban of the State Constitution.

Docket DE 90-161 was opened by Order of Notice dated September 20, 1990, in which the commission ordered Claremont to show cause why it should not lose its franchise to operate a gas utility in Claremont for repeated safety violations as evidenced by the commission's findings in Dockets DE 87-256 and DE 89-236 and certain disturbing incidents currently occurring at Claremont's plant and facilities.

In *Appeal of Concord Steam Corporation*, 130 N.H. 422 (1988) the New Hampshire Supreme Court held that the due process clause of the New Hampshire Constitution "guarantees to the holder of the interest the right to be heard at a meaningful time and in a meaningful manner". The Court further held that a "fundamental requirement of the right to be heard is notice of

the impending action that affords the party the opportunity to protect the interest through the presentation of objections and evidence". *Id*. at 427-428. (citations omitted).

In this case the commission issued an order of notice listing the incidents resulting in the two previous dockets and the incidents resulting in the opening of Docket DE 90-161 and ordered Claremont to show cause why it should not lose its franchise or be subject to fines. Accordingly, Claremont was given actual notice of the nature of the proceedings. Specifically, the commission advised Claremont that the previous, unclosed dockets and current concerns would be the subject of the proceeding. Claremont had the opportunity to present objections and evidence on all of these matters at the procedural and evidentiary hearings, thereby preserving its due process rights under both the State and Federal Constitutions.

The commission ultimately decided not to revoke Claremont's franchise based on the fact that management at the regional and local level had been replaced and new management's representations of future corrective action. Instead, the commission chose to fine Claremont for its safety violations as determined from the evidence in Docket DE 90-161. The evidence in this case more than justifies the level of fine levied by the commission given the life threatening nature of the incidents involved. In exercising its discretion to determine the amount of the fine, it is appropriate for the commission to review the nature of the safety violations and whether they are isolated incidents, or reflective of deeper deficiencies. Dockets DE 87-256 and DE 89-236 evidenced a course of conduct or *modus operandi* of Claremont and Synergy. This evidence shows that a substantial fine was required in order to ensure that the repeated safety violations at Claremont's facilities do not continue, and that management's representations concerning corrective actions are followed.

The commission's consideration of this evidence does not violate Claremont's constitutional rights or implicate the equitable doctrines of claim preclusion. We, therefore, deny the Company's motion.

Our order will issue accordingly.

ORDER

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

ORDERED, that Claremont Gas Corporation's Motions to Clarify and for Rehearing are denied for the reasons set forth in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1991.

FOOTNOTES

[1]The procedural histories of all three dockets is set forth in Report and Order No. 20,105, and repetition is unnecessary. However, we will re-emphasize that Dockets DE 87-256 and DE 89-236 remained unresolved as the matters had not been totally addressed before another incident took place at Claremont's plant and facilities.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Light Co., a Subsidiary of Synergy Corp., DE 87-256, DE 89-236, DE 90-16, Order No. 20,105, 76 NH PUC 283, Apr. 8, 1991. [N.H.Sup.Ct.] Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire, 119 N.H. 332, 31 PUR4th 333, 402 A.2d 626, May 17, 1979.

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NH.PUC*06/19/91*[27151]*76 NH PUC 430*Southern New Hampshire Water Company

[Go to End of 27151]

Re Southern New Hampshire Water Company

Additional party: Kendallwood Condominium Association

DR 90-211
Order No. 20,156

76 NH PUC 430

New Hampshire Public Utilities Commission

June 19, 1991

ORDER approving a proposed water main extension and service agreement between a water public utility and a condominium association, conditioned upon the condominium association bearing all risk and costs if its existing distribution system were to need upgrades to meet utility standards. Any capital provided by the condominium association to the utility as reimbursement for upgrades would be treated as a contribution in aid of construction.

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1. SERVICE, § 210

[N.H.] Water main extension and service agreement — Conditions on approval — Burden of cost. p. 432.

2. SERVICE, § 188

[N.H.] Burden of cost — Contributions in aid of construction — Water main extension and service agreement — Conditions on approval. p. 432.

3. SERVICE, § 310

[N.H.] Master-metering — Main extension and service agreement — Water utility. p. 432.

APPEARANCES: Larry S. Eckhaus, Esq. for Southern New Hampshire Water Company; Susan Chamberlin, Esq. for the staff of the New Hampshire Public Utilities.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

This proceeding was opened by petition of Southern New Hampshire Water Company (Southern) dated November 27, 1990 and filed with the commission on November 28, 1990. Southern is seeking commission approval for a proposed service agreement between it and the Kendallwood Condominium Association (Kendallwood). On November 28th, an Order of Notice issued setting a hearing on the merits for December 18, 1990. A prehearing conference was held on December 18, 1990 and the hearing on the merits was rescheduled to January 21, 1991.

II. *Positions of the Parties*

A. *Southern New Hampshire Water Company*

Mr. Robert W. Phelps, President, of Southern New Hampshire Water Company, summarized the position of Southern. The Kendallwood Condominium Association (Kendallwood) of Londonderry has experienced water problems and has an acknowledged need to develop a new source of water. They presently do not have on, or easily adjacent, to their property a location for providing an additional private water source. Southern's service mains are adjacent to Kendallwood and discussions have transpired over the last several years about connecting in some form or another to the condominium project.

After long negotiations, the fundamental arrangement that has been worked out and is embodied in the proposed water main extension and service agreement is that Southern will provide utility service to the Kendallwood as a whole.

Southern will meter Kendallwood in

several locations. For purposes of billing the 132 residents, Southern will take the total of the meter readings and divide them by the number of residences and send individual bills out to each

resident, i.e., for 1/132 of the total of the meter readings.

The reason for doing the metering in this fashion is Southern has lines that are directly adjacent to five of Kendallwood's buildings and it is more efficient for them to put in a meter at those locations. As far as metering the remainder of the project, Southern would serve the remaining ten buildings by hooking in at their present pump station and master metering those remaining ten buildings. Southern would, therefore, have five meters associated with serving the five separate buildings and the one meter associated with serving the other ten buildings aggregated and then divided by 132 to get the individual resident billings.

In order for Southern to meter and provide service on this basis, it has agreed to take possession of Kendallwood's existing facilities used for distributing water to the ten buildings where they propose to render service on a single master-metered basis. The contract provides for Kendallwood to transfer the ownership of the water distribution facilities for one dollar ($1.00). Southern's upfront cost of connecting Kendallwood under the proposed contract would be about $69,000.

These condominiums were built as apartments 20 years ago. There was no water service available at that time and the plumbing and the distribution of the water system was meant to serve the developers in the initial construction phase, not to provide water service at a later date from another source.

Mr. Gingrow, Southern's Vice President of Operations, testified that the cost of providing individually metered service to each of the 132 condominiums units would be approximately $2,000 per unit. The estimated cost for the actual plumbing inside each unit, without restoration is $500. The remaining cost of $1,500 is the estimated cost for the individual service line from the edge of the public way to the entrance to each condominium unit.

Mr. Gingrow also testified that a substantial amount of the existing Kendallwood distribution system does not run on public rights of way.

B. *Kendallwood Condominium Association*

Mr. Ducharme, Vice President of Evergreen Management and Manager of Kendallwood Condominium Association, was personally involved in negotiating the proposed contract with Southern. According to Mr. Ducharme, Kendallwood was built as an apartment complex back in 1970-71. It was converted to condominiums in 1972 and it fell under RSA 479:A, for homeowner associations.

Mr. Ducharme also explained why Kendallwood, as part of the negotiations, wanted the billing to be sent directly to the unit owners. The reason that the homeowners voted to go this route is one of perception. If the water bill is paid by Kendallwood, it will have to be included in the condominium fees that go out to the homeowners with their monthly statements. The homeowners feel that this action will result, for whatever reason, in more difficulty of selling their units because of the much higher condominium fee.

The Kendallwood board of directors believe that including the water fee in the monthly condominium fee would result in a loss as homeowners who are upset with the condominium association on other matters and have, in the past, been prone not to pay their condominium fees.

Two open meetings of the condominium association were held and the homeowners felt that

it would be best that the water bill be sent directly to the homeowners because they are more apt to pay that bill in the same manner as they pay their phone and electricity bills versus their fees to the condominium association.

C. *Staff*

Mr. Lessels, Staff Water Engineer, testified that the proposed contract contains terms and conditions which are at material variance with Southern's tariff, and commission rates in a number of respects: (1) The tariff provides that utility property terminates at the edge of the

public way; the contract provides that the utility will own and maintain the entire distribution system on Kendallwood's property; (2) The tariff provides that meter pits are installed at the customer's expense; the contract provides that meter pits would be installed at utility expense; and (3) commission rules provide that a residential customer is subject to disconnection for non-payment after 30 days; the proposed contract potentially allows for a 60 day period before disconnection can occur.

Moreover, Mr. Lessels' primary concern is that if Kendallwood is to be served by Southern, it should be served as a single master-metered customer in accordance with Southern tariff provisions; that is, the Kendallwood should be rendered one bill on behalf of the 132 units and Southern should take no responsibility for the mains or equipment that Kendallwood now owns beyond the edge of the public way.

Mr. Lessels also asserts that the total capital expense by Southern to bring water to Kendallwood would be $292,739 or an investment of $2,218 per customer. This includes $198,000 previously expended to extend the 12 inch and eight inch mains along the public way and $44,000 for an existing hook-up (building fee).

Mr. Lessels testified that the existing Kendallwood distribution system is of inferior quality and will need to be upgraded. Should the commission decide to allow Southern to take over the distribution system, Mr. Lessels recommended that the commission require that the distribution system first be brought up to utility grade standards.

III. *Commission Analysis*

[1-3] Based upon a review of the record, it appears that the following options have been presented for resolving this proceeding:

1. Approve the proposed contract and allow Southern to hook up Kendallwood and take over the existing distribution system in accordance with the proposed interconnection and service agreement;

2. Deny the proposed contract and require Southern to interconnect with and serve Kendallwood under the tariff at the edge of the public way, as preferred by staff; or

3. Approve the proposed contract and allow Southern to hook up Kendallwood in accordance with the proposed interconnection and service agreement with the exception and condition that Kendallwood first bring the distribution system up to utility grade standards, as recommended as the alternative by staff.

Before evaluating these options, it should be noted that the fallback position of Kendallwood, if utility water service is not available on an acceptable basis, is that it would conceivably drill a new well, install purification equipment and otherwise improve its private water system so that it complied with all applicable environmental laws and regulations. The record contains conflicting statements on whether this is desirable or feasible. It also appears that state policy favors regionalized water systems, rather than small private systems with their own wells. It clearly is not feasible for Kendallwood to take service from Southern on an individually metered basis because of the costs involved in replumbing and metering the individual units.

Thus, it appears that it would be in the public interest for Southern to provide utility water service on some type of master-metered basis to Kendallwood if it could be done in an acceptable manner.

The record does not support a finding that the proposed interconnection and service agreement is in the public interest. Putting aside staff's concerns about the proposed departure from the prescribed service conditions under the tariff, staffs' concern that there is a potentially huge financial exposure associated with the takeover by Southern of Kendallwood's existing distribution system is reasonable. It is doubtful that Southern would be willing to expose its investors to the financial risk associated with an expensive upgrade to that system. Consequently, ratepayers should not be exposed to that risk.

Since staff's preferred recommendation is consistent with Southern's tariff, the only issue that needs to be addressed is whether rigid adherence to the tariff in this circumstance

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would be inconsistent with the public good. If Kendallwood does not want to extend its facilities out to the edge of the public way, as recommended by staff, and as required by Southern's tariff, Kendallwood could drill a new well, install a purification system, and undertake whatever other enhancements are necessary to be in compliance with applicable water quality standards. This would probably be against the broader public interest of encouraging regionalized water companies. Perhaps more importantly, it would deprive Southern of the opportunity of adding 132 new customers at a point on its system where the existing mains have surplus capacity to provide water service. Southern's customers will benefit regardless of whether Southern's original decision to extend the main was prudent.

Similarly, with regard to staff's alternative recommendation, if the commission were to require Kendallwood to upgrade its present system as a pre-condition to receiving mastered-metered water service, Kendallwood might deem it cost effective to stay off Southern's system.

Consequently, the benefits and risks of Southern hooking up Kendallwood would be fairly allocated if the commission were to approve the interconnection and service agreement as proposed, with the exception that Kendallwood bear the risk and costs of all future, if any, upgrades to any portion of the existing distribution system that does not meet Southern's standards. Any capital provided by Kendallwood to Southern as reimbursement for upgrades shall be treated as a contribution in aid of construction in the same manner as capital provided by a developer for new construction. Under these circumstances, the proposed agreement would be

just and consistent with the public interest. RSA 378:18.

Should Kendallwood and Southern find these principles acceptable, Southern should attach as an appendix to a revised service contract, a compilation of any and all such facilities that presently do not meet utility standards. Once those facilities are brought up to utility grade, Kendallwood would not bear any further liability or exposure for maintenance or additions.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition of Southern New Hampshire Water Company Approval of the proposed agreement with Kendallwood Condominium Association is approved subject to the conditions contained in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of June, 1991.

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NH.PUC*06/24/91*[27152]*76 NH PUC 433*Southern New Hampshire Water Company, Inc.

[Go to End of 27152]

Re Southern New Hampshire Water Company, Inc.

DF 91-082
Order No. 20,158

76 NH PUC 433

New Hampshire Public Utilities Commission

June 24, 1991

ORDER granting a water public utility an increase in its short-term debt limit. Commission finds that unusual circumstances warrant departure from the general rule limiting short term-debt to 10% of net assets less depreciation.

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1. SECURITY ISSUES, § 44

[N.H.] Increase in short-term debt limit — Factors considered — Public good — Unusual circumstances — Water public utility. p. 434.

2. SECURITY ISSUES, § 98

[N.H.] Kinds and proportions — Short-term debt — Water public utility. p. 434.

BY THE COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. is authorized to operate as a public utility with a principal place of business in Londonderry, Rockingham County, New Hampshire; and

[1, 2] WHEREAS, Southern New Hampshire Water Company, Inc. pursuant to RSA 369:7 filed with this Commission on June 10, 1991 a Petition for Authority to Increase and Extend its Short-Term Debt Limit; and

WHEREAS, Southern New Hampshire Water Company, Inc. is currently authorized a short-term debt limit of $6,200,000 by Commission Order No. 20,001 in Docket DF 90-212; and

WHEREAS, Southern New Hampshire Water Company, Inc. is currently authorized this short-term debt limit until June 31, 1991 at which time the authority expires; and

WHEREAS, Southern New Hampshire Water Company, Inc. requests that this short-term debt limit be increased to $6,550,000 until December 31, 1991 in order to have sufficient time to complete its pending rate case proceeding Docket DR 89-224 and receive permanent rates so that additional long-term debt financing may be pursued; and

WHEREAS, Southern New Hampshire Water Company, Inc. is attempting to arrange with its parent company, Consumers Water Company, to issue to Consumers Water Company its short term debt in an amount up to $500,000 at an interest rate below prime rates; and

WHEREAS, Southern New Hampshire Water Company Inc. has experienced significant property tax increases from the Town of Litchfield, a cash deficiency due to non-payment of the Commission's authorized Temporary Rate Surcharge by the Town of Hudson, and the need for additional short-term debt to complete its 1991 construction and improvement programs; it is hereby

ORDERED, that the New Hampshire Public Utilities Commission, pursuant to RSA 369:7, finds that the increase of the short-term debt limit as proposed in the petition is consistent with the public good; and it is

FURTHER ORDERED, that the waiver of Puc 609.18 pursuant to Puc 201.05, authorizing a short-term debt limit in excess of ten percent of net assets less depreciation, is in the public interest and that unusual circumstances, as described in the Petition, warrant departure from the rule just and reasonable; and it is

FURTHER ORDERED, that the petition of Southern New Hampshire Water Company, Inc. for authority to increase and extend its short-term debt limit be, and hereby is, approved; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. may issue to its parent company, Consumers Water Company, up to $500,000 in short-term debt at an interest rate no greater than prime; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. 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; and it is

FURTHER ORDERED, that this Order shall be effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of June, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., Inc., DF 90-212, Order No. 20,001, 75 NH PUC 752, Dec. 10, 1990.

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NH.PUC*06/24/91*[27154]*76 NH PUC 439*Edward Perrin

[Go to End of 27154]

Re Edward Perrin

DE 91-063
Order No. 20,161

76 NH PUC 439

New Hampshire Public Utilities Commission

June 24, 1991

ORDER granting a license for the construction, use, repair and reconstruction of a sewer main across state-owned railroad property.

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1. CERTIFICATES, § 125

[N.H.] Sewer construction — License to cross state-owned property — Necessity — Public good. p. 439.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on May 14, 1991 Edward Perrin filed with this commission a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct a sewer main across state-owned railroad property in the Town of Tilton, New Hampshire; and

WHEREAS, the sewer main is proposed to serve a small commercial storage building on Route 3 in Tilton; and

WHEREAS, the proposed sewer consists of a 4-inch building service, 254 feet of 8-inch

PVC main and 55 feet of 8-inch ductile iron main, the latter crossing state railroad property and passing beneath the railroad tracks inside a 12-inch diameter ductile iron sleeve to tie into the existing state-owned 60-inch interceptor sewer on the southeast side of the tracks, all as shown on plans on file with the Commission; and

WHEREAS, provision has been made for the possibility of future hookup of adjacent lots; and

WHEREAS, the proposed crossing beneath the railroad tracks occurs at approximate Valuation Station 1103 + 25, map V21/56 of the Concord-to-Lincoln Railroad; and

WHEREAS, the commission finds the above construction is necessary to meet the reasonable requirements of the petitioner without substantially affecting the public rights in said state property, thus it is in the public good; and

WHEREAS, the only private property affected is that of the petitioner; and

WHEREAS, the petitioner avers that the Bureau of Railroads (DOT) is in agreement with this petition; 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 July 19, 1991; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an attested copy of this order to be published once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Tilton area, said publications to be no later than July 5, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Tilton town clerk, by first class U.S. mail, postage prepaid, and postmarked on or before July 5, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the commission on or before July 19, 1991; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq*. to Edward Perrin, 59 E. Main Street, P.O. Box 336, Tilton, New Hampshire 03276 to construct, use, maintain, repair and reconstruct the aforementioned crossing of a sewer main on public railroad property in Tilton, New Hampshire identified at approximate Valuation Station 1103 + 25, Map V21/56; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (DOT), the Department of Environmental Services and others as mandated by the Town of Tilton; and it is

FURTHER ORDERED, that such authority shall by 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; and it is

FURTHER ORDERED, that prior to hookup of any other users to the proposed sewer, the

petitioner shall submit to this commission for required review and approval details including drawings and a description of any proposed charges or hookup fees.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of June, 1991.

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NH.PUC*06/25/91*[27153]*76 NH PUC 435*Zeabrook Associates v. Exeter and Hampton Electric Company

[Go to End of 27153]

Zeabrook Associates
v.
Exeter and Hampton Electric Company

DC 90-151
Order No. 20,159

76 NH PUC 435

New Hampshire Public Utilities Commission

June 25, 1991

ORDER directing an electric utility to accept twelve-month leases in lieu of deposits from potential customers at an apartment complex, unless there is an appropriate reason for requiring a deposit. Commission rules that discrimination on the basis of residential location is barred by New Hampshire Administrative Rules, PUC 303.04 (e).

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1. PARTIES, § 7

[N.H.] Complainants — Standing — Actual injury — Utility deposit requirements. p. 436.

2. PAYMENT, § 59

[N.H.] Security for payment — Deposits — Right to require — Short-term service — Evidence of intent to remain as customer — Leases — Electric utility. p. 436.

3. PAYMENT, § 59

[N.H.] Security for payment — Deposits — Right to require — Discrimination based on residential location — Electric utility. p. 436.

4. DISCRIMINATION, § 194

[N.H.] Payment — Deposit requirements — Electric service. p. 436.

APPEARANCES: Scot Greenbaum for Zeabrook Associates; Ransmeier & Spellman by Carol Holahan, Esq. on behalf of Exeter & Hampton Electric Company and Susan Chamberlin, Esq.

for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On September 10, 1990, Zeabrook Associates (Zeabrook) filed a complaint relative to Exeter & Hampton Electric Company's (Exeter or the Company) imposition of a cash deposit requirement for new residential customers in Zeabrook's apartment complex known as Parke Place Village pursuant to N.H. Admin. Rules, Puc 303.04(a) (1)d.

On September 11, 1990, Exeter was advised of the complaint by the commission. A hearing was scheduled by letter from the commission dated October 2, 1990. On October 25, 1990, the commission received a motion to dismiss and a supporting memorandum of law from Exeter. A hearing on the merits was held on October 29, 1990. At that hearing the hearings examiner determined that discovery was necessary and continued the hearing until March 7, 1991, at 10:00 o'clock in the forenoon.

At the March 7, 1991, hearing Exeter renewed its motion to dismiss.

II. *Position of the Parties*

Zeabrook takes the position that Exeter's demand of a security deposit from tenants with a year's lease who intend to reside at Parke Place Village is discrimination based on Puc 303.04(e). Zeabrook further contends that it is suffering direct monetary damages as a result of this practice.

Exeter takes the position its practice is not discriminatory based on its evaluation of the past practices of tenants at Parke Place Village. Exeter initially contended that Zeabrook's complaint should be dismissed because it lacked

standing to raise the issue. This position was "withdrawn" at the commencement of the March 7, 1990, hearing and renewed at the conclusion of Zeabrook's direct case.

Staff took no position but sought to create a complete record.

III. *Commission Analysis*

A. Facts

[1-4] Zeabrook, a limited partnership, is the owner of an apartment complex known as Parke Place Village located in Seabrook, New Hampshire. On September 12, 1989, Exeter contacted Zeabrook and informed Scot Greenbaum, Manager of Parke Place Village, that Exeter would no longer accept twelve (12) month leases in lieu of a security deposit for new tenants at Parke Place Village requesting electric service. Exeter based this position on the fact that the lease at Parke Place Village incorporated an agreement that could be interpreted to allow tenants to break the lease on sixty (60) days notice. In response to this conversation Zeabrook drafted new leases without the offending clause and Exeter accepted these leases in lieu of deposits pursuant to N.H. Admin. Rules, Puc 303.04(a) (1)d.

On June 15, 1990, Exeter informed Zeabrook by letter that it would no longer accept the

leases of their tenants in lieu of a deposit when requesting electric service. Exeter states in this June 15, 1990 letter that its actions are based upon the occupancy patterns of Parke Place Village which reveal that "a number of tenants have not honored the one year lease." Exhibit 8.

Exhibits #11 and #12 submitted by Exeter support this conclusion. There is a history of tenants signing twelve (12) month leases at Parke Place Village and, thereafter, breaking the leases. Furthermore, when these individuals break the lease the pattern is not to pay their outstanding bills leaving the Company with uncollectible accounts.

The testimony further revealed that customer service representatives of the Company had advised prospective tenants that leases from competing apartment complexes would be accepted in lieu of a deposit from the same individuals from which Exeter would require a security deposit because of their prospective residence at Parke Place Village.

Finally, the record shows that Exeter's practice of refusing twelve month leases from tenants at Parke Place Village in lieu of deposits is having a negative financial impact on Zeabrook.

B. Analysis

Because Zeabrook has demonstrated that Exeter's practice of refusing to accept twelve month leases in lieu of deposits from tenants at Parke Place Village is having a negative financial impact on Zeabrook, Exeter's motion to dismiss is denied. The complainant has shown actual injury to a property interest and thereby has standing to bring this complaint. R. Wiebusch, *New Hampshire Practice, Civil Practice and Procedure*, Vol. 4, § 154.

Puc 303.04(a) (1) provides, in pertinent part, that a

> utility may require a cash deposit [for new residential service] ... only when ... [the customer is] ... requesting short term service, i.e., service for a time period of less than 12 consecutive months or more, or customers who are unable to provide satisfactory evidence the customer intends to remain at the location ... for a period of 12 consecutive months.

Puc 303.04(a) (1) is intended to protect the utility against uncollectible accounts payable and thereby the ratepayers, who ultimately bear this cost. A twelve-month lease is evidence of an intent to remain at a location for 12 consecutive months. It is an indicia of creditworthiness intended to protect both the ratepayers and the utilities.

However, the rules also provide protection for potential customers or applicants for service. Specifically, Puc 303.04(e) provides that a utility "shall not require ... a cash deposit ... as a condition of new ... service based upon ... residential location ...". In this case Exeter admits that it is discriminating on the basis of

residential location. Parke Place Village has been singled out as a residential location where leases will not be accepted as evidence of a long-term service request.

It is true that Exeter has statistical evidence to show that leases are not being honored at Parke Place Village resulting in uncollectible accounts payable. However, Exeter could also do an analysis that might show that individuals under the age of 18 tend to break leases, or that low

income individuals tend to break leases, both groups resulting in uncollectible accounts payable. This is exactly the type of analysis and behavior that Puc 303.04(e) is designed to prevent.

If Exeter believes the rule preventing discrimination on the basis of residential location is inappropriate, it should petition the Commission for a rulemaking to amend the rule pursuant to RSA 541-A. However, the rule as it currently reads prevents Exeter from engaging in the practice of requiring deposits from an individual merely because she chooses to reside at Parke Place Village.

Our order will issue accordingly.

ORDER

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

ORDERED, that Exeter and Hampton Electric Company accept twelve-month leases in lieu of deposits, from potential customers at Parke Place Village unless there is another appropriate reason for requiring a deposit; and it is

FURTHER ORDERED, that all deposits collected from existing customer/tenants at Parke Place Village based solely on the tenant/customers inability to provide evidence of a request for long-term service as evidenced by a one-year lease be returned unless there is another basis for retaining the deposits.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of June, 1991.

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NH.PUC*06/25/91*[27155]*76 NH PUC 437*Manchester Water Works

[Go to End of 27155]

Re Manchester Water Works

DE 89-173
Order No. 20,160

76 NH PUC 437

New Hampshire Public Utilities Commission

June 25, 1991

ORDER authorizing a water public utility to replace its existing tariff with a new tariff containing a number of significant changes to terms and conditions of service.

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1. SERVICE, § 151

[N.H.] Terms and conditions of service — Tariff revisions — Water utility. p. 438.

2. SERVICE, § 210

[N.H.] Extensions — Water utility — Tariff revisions. p. 438.

3. SERVICE, § 310

[N.H.] Connections, instruments, and equipment — Meters and metering — Water utility — Tariff revisions. p. 438.

4. SERVICE, § 472

[N.H.] Water — Terms and conditions of service — Tariff revisions. p. 438.

5. PAYMENT, § 2

[N.H.] Rules and regulations — Water utility — Tariff revisions. p. 438.

BY THE COMMISSION:

ORDER

Page 437

WHEREAS, Manchester Water Works, a public water utility operating under the jurisdiction of the Commission, filed a draft proposed NHPUC tariff #4 Water, on September 26, 1989 which included a number of revisions to replace the existing effective NHPUC tariff #3; and

WHEREAS, after review and comment by the Public Utilities Commission Staff, Manchester Water Works agreed to make certain additional revisions and amendments to the proposed NHPUC #4 tariff; and

[1-5] WHEREAS, the following is a list summarizing significant changes contained in the proposed tariff:

1. Authorizes service application to be made by customer's architect or engineer.

2. Authorizes a Utility to examine service capacity before determining whether to grant service.

3. Provides that improvements made by utility to expand service capacity shall be at the customer's expense.

4. Allows utility to inspect maintenance of customer's plumbing.

5. Recommends installation of thermal expansion device to prevent damage to hot water tanks or appliances caused by excess pressure. The same item requires such devise and automatic vacuum, temperature and pressure relief valves to be installed in accordance with the local plumbing code.

6. Prohibits placement of meter beneath floor and authorizes Utility to require replacement of meter if improperly placed.

7. Requires placement of outside meter reader to be near or adjacent to driveway or walkway.

8. Clarifies that maintenance of the meter box is responsibility of customer.

9. Requires customer to relocate meter at customer's expense within a reasonable time after Utility request.

10. Limits consequential damages.

11. Adds, as grounds for disconnection, failure to maintain plumbing, unauthorized use of fire protection.

12. Conforms to Commission Rules provision providing disconnection for nonpayment if notice date has passed and physician has not provided documentation of a medical emergency.

13. Outlines customer's right to request conference to discuss payment.

14. Provides for conditions for restoration of service.

15. Conforms to Commission Rules that provide the right to retain service if the customer pays reasonable portion of bill and agrees in writing to pay outstanding balance in installments.

16. Changes interest on customer's deposit to prime rate and provides that no interest shall be paid on deposits for jobbing. Allows deposit to be held only for thirty-six (36) months on commercial accounts. Allows, in lieu of deposits, written guarantee. Allows, with Commission approval, deposit for extended terms.

17. Clarifies where meter box or vault is necessary it shall be maintained by customer.

18. Requires all hydrant types to be approved by Utility.

19. Bases charges for water for hydrants on usage or, at Utility discretion, on perdiem basis.

20. Allows customer, with Utility approval, to install fire service pipe. Also explains fire service pipe from limits of right-of-way or Utility easement to be owned and maintained by customer.

21. Clarifies backflow device required for certain private fire systems.

22. Grants Utility discretion whether to install extension during inclement weather.

23. Provides, unless capacity is needed, that customer only pay for actual costs associated with installation of 8" main as estimated by Utility.

24. Establishes new method to determine cost to each petitioner for main extension.

25. Allows Utility to take such action as deemed necessary to avoid harm from disconnection of service.

and;

WHEREAS, on June 21, 1991 Manchester submitted revised language to its draft tariff in accordance with the language changes

represented to the commission by Manchester at the Commission Meeting on June 10, 1991; and

WHEREAS, copies of both the existing and proposed tariff may be obtained by contacting Ms. Patty Puchacz, Manchester Water Works, 151 Lincoln Street, Manchester, NH 603-624-6452 or can be reviewed at the Commission offices at 8 Old Suncook Rd, Concord, NH; and

WHEREAS, after investigation and consideration, the Commission is satisfied that approving the changes in the proposed NHPUC #4 water tariff will be in the public good; and

WHEREAS, the public should be afforded an opportunity to file comments and be heard on the petition; it is hereby

ORDERED, *NISI* Manchester Water Works' revisions are hereby approved; and it is

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

FURTHER ORDERED, that Manchester Water Works notify the public by publication of an attested copy of this order, once in a newspaper having general circulation in that portion of the state in which services are provided, such publication to be no later than ten days after the date of this order and designated by affidavit to be made with a copy of this order and filed with the office; and it is

FURTHER ORDERED, unless a request for a hearing is filed, that Manchester Water Works file an original and (7) seven copies of a final tariff annotated with this order number for effect no later than (30) thirty days from the date of receipt by the Commission.

By order of the Public Utilities Commission this twenty-fifth day of June, 1991.

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NH.PUC*07/01/91*[27156]*76 NH PUC 446*Lakeland Management Company, Inc. v. The Orchard at Plummer Hill Condominium Association/Waverly Management

[Go to End of 27156]

Lakeland Management Company, Inc.
v.
The Orchard at Plummer Hill Condominium Association/Waverly Management

DR 91-006
Order No. 20,163

76 NH PUC 446

New Hampshire Public Utilities Commission

July 1, 1991

ORDER authorizing a water and sewer disposal utility to continue to bill a condominium association for service rendered to individual units at the condominium project. Commission finds that requiring the utility to bill individual unit owners would be impractical inasmuch as no equipment existed that would allow the utility to terminate service to individual units.

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1. PAYMENT, § 11

[N.H.] Liability for payment — Condominium association or individual unit owner — Water and sewage disposal service. p. 447.

APPEARANCES: Carol J. Holahan, Esq. of Ransmeier and Spellman for Lakeland Management Company; James J. Perrine for The Orchard at Plummer Hill Condominium Association/Waverly Management; Robert B. Lessels for the commission staff.

BY THE COMMISSION:

REPORT

I. *Procedural History*

Lakeland Management Company, Inc. (Lakeland), a water and sewage disposal utility in the town of Belmont, New Hampshire, is seeking commission approval for authority to continue to bill The Orchard at Plummer Hill Condominium Association/Waverly Management (Association) for water and sewage disposal services rendered to the individual units at the condominium project. This proceeding arises because the Association has requested Lakeland to bill the individual condominium owners for separate water and sewage disposal service.

A hearing on the merits was held on March 13, 1991. At the hearing on March 13, 1991, James J. Perrine, appearing on behalf of the Association, was granted intervenor status.

II. *Positions of the Parties*

A. *Condominium Association*

Since its inception, Lakeland has collected its water and sewer charges from the Association, rather than directly from the unit owners at The Orchard at Plummer Hill Condominiums (OPH). The Association believes that Lakeland should collect these charges directly from the unit owners, not the Association.

According to Mr. Perrine, the Association has limited ability to collect the funds it requires to pay the charges. It has no legal authority to shut off water to delinquent owners, which would be one means of ensuring payment. While the Association has the legal authority to foreclose on delinquent units, it does not have the funds to carry this out, nor would the Association be likely to recover anything from a foreclosure sale, given the decline in real estate prices. Unpaid taxes and first mortgages would have to be paid before the Association would receive any money from such a sale. The Association has increased its fees twice, but each time the delinquency rate increased. Consequently, Mr. Perrine contends that the Association has no way of obtaining the funds required to pay the water and sewer charges. This is unlikely to change in the near future

because of the soft real estate market. Therefore, Lakeland should collect the water/sewer payments

directly from the ultimate end-users, the unit owners. This action, according to Mr. Perrine, would eliminate the on-going risk of losing water service to the entire complex as a result of the failure of a few owners to pay condo fees.

Mr. Perrine, while under cross-examination, conceded that the Association has experienced great difficulty in collecting water and sewer charges from tenants at that complex and admitted that forcing Lakeland to collect from individual unit owners would effectively shift the burden of collection and ultimately the burden of non-payment from the Association onto Lakeland.

Mr. Perrine also conceded that the Association's remedies for non-payment include foreclosure, liens and actions for damages. Since Lakeland has no foreclosure or lien rights, Lakeland actually has fewer remedies with respect to collection than the Association.

Although Mr. Perrine contends that long-handled or remote controlled devices can be used to allow individual shutoffs, he testified that he was unsure such equipment existed.

B. *Lakeland Management Company*

Mr. James Mooney, President of Lakeland Management Company, asserted that the Association's desire to require Lakeland to install individual shut-offs, and to force Lakeland to bear the burden of billing and the risk of non-collection is structurally impossible, economically unsound, and fundamentally unfair to the remainder of Lakeland's water and sewer customers.

Mr. Mooney's direct testimony asserted that Lakeland serves six customers in its service territory: three businesses and three apartment/condominium complexes which ultimately provide services to 102 residents.

Mr. Mooney explained that The Orchard at Plummer Hill (OPH) was originally built as an apartment complex, not a condominium complex, and therefore no individual shut-off valves exist for terminating water service to the individual units. The buildings at OPH were constructed approximately 20 years ago on concrete slabs on grade and installation of individual shut-offs, as the Association has requested, would require Lakeland to jackhammer floors and tear down walls. According to Mr.
Mooney, the cost to install the individual shut-offs would involve a great capital expenditure which would likely cause a dramatic increase in Lakeland's rates.

C. *Staff*

According to staff, the primary issue in this proceeding is Lakeland's inability to collect its approved tariff rates from individual unit owners. The original plumbing was established for apartment dwellings which did not include individual water shut-off capability. Thus, there is no mechanism to discontinue service to delinquent customers.

It is staff's opinion that, if Lakeland must bill individual unit owners, the allowed revenues will not be collected.

III. *Commission Analysis*

[1] The issue we must adjudicate is whether to allow Lakeland to continue to bill the Association or whether, in the alternative, we should order Lakeland to bill the individual unit owners directly. The standard which we will apply in making this determination is governed by RSA 374:1.[1](93)

On the basis of the record before us, we find that it would be just and reasonable not to require Lakeland to provide service directly to the individual owners because there would be no practical way for Lakeland to terminate service for non-payment as it is entitled to do under RSA 363-B:1. We are persuaded by Mr. Mooney who appears to be well qualified both technically and through practical experience. He testified that no equipment exists that would feasibly allow Lakeland to terminate individual unit owners for non-payment.

The risk of non-payment by the individual customers at OPH who would not be able to be terminated, should reside within the Association and not be spread out over Lakeland's entire customer base. The record indicates that the Association's remedies to collect the cost of water service are actually more extensive than Lakeland's.

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Were we to order Lakeland to render service directly to the individual unit owners without the ability to terminate for non-payment, we would be compelling Lakeland to undertake a business arrangement that would not be in the best interests of all of its customers, especially here where there are no offsetting benefits.

Our order will issue accordingly.

ORDER

Based upon the foregoing Report, which is made a part hereof, it is hereby

ORDERED, that the request of Lakeland Management Company, Inc., for authority to continue to bill The Orchard at Plummer Hill Condominium Associated/Waverly Management be granted.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1991.

FOOTNOTES

[1]Service. Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.

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NH.PUC*07/01/91*[28005]*76 NH PUC 440*EnergyNorth Natural Gas, Inc.

[Go to End of 28005]

Re EnergyNorth Natural Gas, Inc.

DR 91-042

Order No. 20,162

Re Northern Utilities, Inc.

DR-91-045

Order No. 20,162

124 PUR4th 160

76 NH PUC 440

New Hampshire Public Utilities Commission

July 1, 1991

ORDER on rehearing affirming a ruling requiring natural gas distributor to absorb a portion of pipeline take-or-pay charges billed under rates approved by the Federal Energy Regulatory Commission. For prior decision, see, *Re Energy/North Natural Gas, Inc.*, 76 NH PUC 358 (N.H.P.U.C.1991).

Page 440

1. RATES, § 47

[N.H.] Jurisdiction and powers — State commissions — Federal preemption — FERC determinations — Filed rate doctrine — Natural gas take-or-pay costs. p. 441.

2. RATES, § 380

[N.H.] Natural gas rate design — Take-or-pay costs — Equitable sharing — Wholesale passthrough — Retail allocation. p. 443.

3. RATES, § 380

[N.H.] Natural gas rate design — Take-or-pay costs — Equitable sharing — Wholesale passthrough — Retail allocation — Due process. p. 443.

4. APPORTIONMENT, § 30

[N.H.] Natural gas — Take-or-pay costs — Retail allocation method — Effect of wholesale rate design. p. 443.

APPEARANCES: As previously noted.

BY THE COMMISSION:

REPORT

On June 3, 1991 the Commission issued Report and Order No. 20,141 (Order 20,141) in these dockets which provided, *inter alia*, that certain take-or-pay costs included within the summer 1991 cost of gas adjustment (COGA) of EnergyNorth Natural Gas, Inc. (ENGI) and Northern Utilities, Inc. (Northern) (jointly referred to as the "Companies") may not be fully

recovered from ratepayers. Order 20,141 allocated 60% of those take-or-pay costs to ratepayers, leaving investors to absorb the remaining 40%. Timely Motions for Rehearing were filed by the Companies and by the Office of the Consumer Advocate (OCA)[1(94)] . Most of the grounds asserted for rehearing were carefully considered in the Order 20,141 analysis. We have found nothing that causes us to disturb our analysis of previously considered evidence and argument and, accordingly, the Motions for Rehearing will be denied on those grounds. The Motions did, however, raise several issues that had not been presented in the original proceeding. To that extent, we will consider those arguments in this Order. Any asserted ground for rehearing not addressed herein is to be deemed denied.

As in Order 20,141 there are two broad issues: 1) whether we have the authority to engage in an allocation of take-or-pay costs between the customers and investors of state regulated local distribution companies (LDC's); and 2) if so, how such take-or-pay costs should be allocated. We shall address each issue in turn.

The Commission's Authority To Allocate

[1] The Companies continue to assert that this Commission does not have the authority to allocate to investors any take-or-pay costs included in rates approved by the Federal Energy Regulatory Commission (FERC). In support of this assertion, the Companies cite *General Motors Corp. v. Illinois Commerce Commission*, __Ill.2d__ (Ill.Sup.Ct., June 4, 1991), a case handed down the day after Order 20,141 was signed.[2(95)] There, the Court held that the FERC lacks the authority to override the filed rate doctrine[3(96)] . The Appellate Court was accordingly reversed because its requirement that the state commission engage in an inquiry of whether ratepayers should pay 100% of wholesale take-or-pay costs was based on a FERC holding that is in essence *ultra vires*. We have examined *General Motors Corp.* and we conclude that we must respectfully disagree with the Illinois Supreme Court in two areas.

Our first area of disagreement is with the Illinois Court's holding that the FERC acted contrary to the will of Congress when it declined to preempt the states' ability to allocate wholesale take-or-pay costs between LDC investors and ratepayers. We understand that Congress has the authority to preempt the states in this area and that it has delegated this authority to the FERC. Thus, a conventional FERC

finding that wholesale rates — including the take-or-pay component — are just and reasonable would have preemptive effect. The Illinois Court went further, however, and decided that Congress has directed the FERC to preempt in all instances, even where the FERC finds that the public interest will be adversely affected by such preemption. The only authority cited in support of this holding provides that the FERC, like all administrative agencies, must act within the confines of the power legislatively delegated. This begs the question of whether Congress did or did not delegate discretion in the area of preemption. Neither the Court nor the Companies have cited any authority which provides that Congress in fact limited the FERC's discretion to determine the preemptive effects of particular orders where it finds that less than full preemption will serve the public interest.[4(97)] Indeed, in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 596 (1944), the Court noted that Congress delegated to the Federal Power

Commission (FPC)[5](98) ratemaking authority coincident with the Constitutional limitations that apply to the Congress. *See also Jersey Central Power and Light Company v. FERC*, 810 F.2d 1168, 1175 (D.C.Cir. 1987). Thus, contrary to the *General Motors* Court's assumption of Congressional limitation, an inference can be drawn that Congress has delegated to the FERC the full extent of Congress' discretion with respect to ratemaking matters; discretion that includes, in appropriate instances, a determination of the preemptive effect of particular orders.

For the purposes of our second area of disagreement with the Illinois Court we assume *arguendo* that it is correct in its holding that the FERC acted *ultra vires*. It does not follow, however, that a state court has the authority effectively to reverse the FERC's determination and direct the state regulatory authority to ignore it. Such a holding does more violence to the filed rate doctrine than FERC's initial determination to provide that a particular order does not have preemptive effect. A hypothetical is illustrative. Suppose the FERC establishes a 50% return on equity (ROE) for a low risk pipeline, despite a finding that a return of 12% is minimally sufficient to attract an adequate level of equity capital. Suppose further that the pipeline's customers properly appeal the FERC ruling and they are told by the Circuit that the matter can be redressed through state processes. The United States Supreme Court denies *certiorari*. Under the *General Motors* rationale the state commission would be required to ignore the erroneous 50% ROE finding of the FERC and itself rewrite the rate calculation to reflect a lower return on equity. This is exactly the type of collateral attack that is foreclosed by the filed rate doctrine. *Mississippi Power and Light Co. v. State of Mississippi ex. rel. Moore*, __U.S.__, 108 S.Ct. 2428, 93 PUR4th 293 (1988); *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 74 PUR4th 464 (1986). This hypothetical is directly analogous to the instant fact situation. Here the FERC has provided for an unusual equitable sharing exception to the preemptive effect of the filed rate doctrine — a provision that is arguably erroneous. An appeal was properly taken and the Circuit stated that parties must challenge the FERC action in relevant state proceedings. *American Gas Association v. FERC*, 912 F.2d 1496, 1520 (D.C.Cir. 1990), *cert. denied*, 111 S.Ct. 957 (1990). What the Companies are asking us to do as a state commission is rule that the FERC erred and issue our order based on that ruling. Our dilemma (and the dilemma not directly confronted by the *General Motors* Court) is that redress for erroneous FERC orders may only be pursued through the federal circuit courts. Natural Gas Act § 19(b). It is no answer that the reviewing federal court likewise erred. This does not mean that jurisdiction to review FERC orders reverts to the states. Thus, unless we ourselves effectively reverse the FERC, we must under the filed rate doctrine give effect to the terms of the its orders, including those that provide for equitable sharing.[6](99)

We construed the terms of the applicable FERC orders in Order 20,141. We stated *inter alia* that "[i]n effect, the FERC found that the pipelines' wholesale rates are just and reasonable only if the states can continue the equitable sharing process by allocating the take-or-pay component among LDC investor and ratepayer industry segments." Order 20,141 at 21-22. The Courts have based holdings on the preemptive

effect of federal actions on various rationales, including explicit statutory language or implicit Congressional intent reflected *inter alia* in a regulatory system that occupies a field.

With respect to FERC preemption, the preemptive rationale is based on the implicit Congressional intent that state regulation not impose requirements that conflict with those of the FERC. *Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822, 833 (1985). Order 20,141 does not conflict with the FERC's explicit intent to provide for a continuation of the equitable sharing process at the state level. A holding that the FERC acted *ultra vires* would present such a conflict.

Because the *General Motors* holding presents us with insufficient reason to disturb our Order 20,141 analysis, the Companies' Motions for Rehearing will be denied on this ground.

The Order 20,141 Allocation

[2] All Movants claim that the Commission's determination to allocate 60% of the take-or-pay costs to ratepayers is erroneous. In Order 20,141, we recognized that the record did not contain the thorough development of facts on this issue that we may have preferred. The burden of proof is on the Companies, however, RSA 378:8, and the failure of the Companies to develop a complete record cannot be fatal to a Commission determination so long as that determination is based on the existing record and not arbitrary. We believe that Order 20,141 contains an accurate and complete statement of the rationale for our allocation and that our reasoning was rational, based on the record, and not arbitrary or capricious.

All Movants are dissatisfied with the allocation. The OCA contends that we improperly weighted the Companies' participation in the New England Customer Group. Northern contends that we did not give due weight to: 1) the disproportionate impact of the allocation to investors; and 2) the adverse effect of the allocation on Northern's earnings[7(100)] . While it is possible that evidence on the above issues might have lead to a different allocation, neither Movant has offered an explanation of why such evidence could not have been presented in the original proceeding. The Commission is entitled to find lack of good cause in motions for rehearing where there is no satisfactory explanation of why proffered evidence could not have been provided during the original proceeding. *Appeal of Gas Service, Inc.*, 121 N.H. 797 (1981); *O'Loughlin v. N.H. Personnel Comm'n.*, 117 N.H. 999 (1977). Accordingly, the Motions for Rehearing will be denied on this ground.

Two issues raised in the Companies' Motions do merit further discussion. They are: 1) the Companies' claim that the Commission is required to undertake a rulemaking; and 2) ENGI's claim that the difference in the ENGI and Northern allocations violates Constitutional equal protection requirements. We shall address each issue in turn.

[3] The Companies' initial claim is that our allocation violated due process notice requirements because we should have undertook a rulemaking to determine how we are going to apply FERC's equitable sharing principle. We disagree. The instant allocation involved a discrete component of costs — the take-or-pay element of wholesale rates. It also involved an unusual situation — a FERC equitable sharing rationale with concomitant FERC direction that its orders on this issue are not preemptive. To our knowledge, this is the first time such a situation is before us and we have no reason to believe that it will reoccur. Under these circumstances, the appropriate procedural mechanism was to engage in an allocation based on a record developed as a part of a duly noticed adjudicatory proceeding.[8(101)] We are not required to undertake a rulemaking. *Appeal of Marmac*, 130 N.H. 53 (1987).

[4] ENGI also claims that Order 20,141 violates Constitutional equal protection principles because it was treated differently than Northern. Specifically, Order 20,141 applied the 60-40 allocation to ENGI's entire take-or-pay liability while that allocation was applied only to the net take-or-pay liability of Northern. In evaluating an equal protection claim the initial question is whether similarly situated persons were treated differently. *Appeal of Marmac, supra*. Here, the allocation was applied to Northern's net liability because Northern had already paid a portion of its take-or-pay costs

under the FERC's purchase deficiency method of allocation. *See e.g.*, Order 20,141 at 8 (defining and discussing the purchase deficiency method). This method *inter alia* allocated take-or-pay costs to LDC systems whose customers were the cause of the take-or-pay liability. If ENGI had take-or-pay liability under the purchase deficiency method it too would have been entitled to an allocation based on net take-or-pay liability. Thus, there has been no disparate treatment. However, even if it is assumed that similarly situated persons are being treated differently, we do not believe the distinction violates equal protection principles. No suspect class, fundamental interest or interest entitled to heightened scrutiny is involved; thus, we examine whether there is a rational relationship between the regulatory interest and the different treatment. *See e.g., Carson v. Maurer*, 120 N.H. 925 (1980). Here, Northern paid that portion of the take-or-pay costs for which it was liable under the purchase deficiency method. The purchase deficiency method allocates costs to the cost causers. It is rational to allocate to Northern's customers 100% of the portion of the take-or-pay costs that they caused Northern to incur. In contrast, ENGI's customers did nothing to cause ENGI to incur take-or-pay costs. Thus, it is rational to subject ENGI's entire take-or-pay liability to the equitable sharing allocation. Given the rational relationship between the treatment accorded each company and the underlying rationale for the allocation, there is no equal protection violation.

9(102)

For the foregoing reasons, the Motions for Rehearing will be denied on these grounds.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Motion for Rehearing of EnergyNorth Natural Gas, Inc. be denied; and it is

FURTHER ORDERED, that the Motion for Rehearing of Northern Utilities, Inc. be denied; and it is

FURTHER ORDERED, that the Motion for Rehearing of the Office of Consumer Advocate be denied.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1991.

Separate Opinion of

Commissioner Ellsworth

For the reasons set forth in my separate opinion to report and order no. 20,141, I disagree with the majority to the extent that they are interpreting FERC orders 528 and 520-a as authorizing state commissions to depart from well-established principles relative to the division of federal and state authority in the natural gas industry. It is my belief that FERC intended for the state commissions to abide by preemption principles set forth, *inter alia*, in *Nanthala Power and Light Company v. Thornberg*, 476 U.S. 964, 74 PUR4th 464 (1986), and limit their review of take-or-pay liabilities to determining whether there was imprudency by the retail company in their gas purchasing practices.

I also disagree with the majority that even if the FERC intended for the states to engage in an equitable apportionment of take-or-pay costs among ratepayers and shareholders of local distribution companies, the allocation of 40% of those costs to the shareholders of ENGI and Northern Utilities is appropriate. Rather, it is my opinion that the lack of imprudence on the part of Northern or ENGI with respect to the incurrence of take-or-pay liability considered in combination with the substantial benefits ratepayers received as a consequence of the FERC's policy encouraging interstate pipelines to become open access transporters of natural gas, makes it reasonable for the commission to allocate 100% of the companies' take-or-pay costs to ratepayers through the Cost of Gas Adjustments (COGA).

I do agree, however, with the majority with respect to the remaining issues raised in the motions for rehearing. Specifically, I agree with the majority that the failure of Northern to put into evidence information concerning the impact and the allocation would have on their earnings does not warrant a new evidentiary hearing. I also agree with the majority that a rulemaking was not necessary in this

proceeding, and I agree with their conclusion that the differing treatment of ENGI and Northern is not an unconstitutional deprivation of equal protection.

Concurring Separately:

July 1, 1991
Bruce B. Ellsworth
Commissioner

FOOTNOTES

[1]The OCA did not enter an appearance or otherwise participate as a party in the proceedings that resulted in Order 20,141. We will nevertheless entertain and rule on the OCA's Motion because we deem the OCA to be "... a person directly affected ..." by Order 20,141. RSA 541:3. We note that while the OCA is entitled to a ruling on its Motion for Rehearing, the analysis of that Motion is affected by the OCA's absence from the earlier part of the proceeding. *See e.g., Appeal of Gas Service, Inc.*, 121 N.H. 797 (1981) (the Commission is entitled to find no good cause presented by a motion for rehearing where the movant failed to explain why new proffered evidence could not be presented at the original hearing).

[2]*General Motors Corp.* reversed the lower court decision in *General Motors v. Illinois Commerce Commission*, 547 N.E.2d 1299 (Ill.App.4 Dist. 1989) which held that the Illinois Commerce Commission does have the authority to allocate take-or-pay costs in FERC established wholesale rates between LDC ratepayers and investors. We cited the Illinois Appellate Court case in Order 20,141 at 18, n.11 and stated our disagreement with the holding because of its overly broad reading of language in *Re Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, 40 FERC para. 61,172, 89 PUR4th 312 (1987) (Order 500). The Illinois Supreme Court took issue with the Illinois Appellate Court's analysis on different grounds.

[3]The filed rate doctrine is defined and discussed in Order 20,141 at 14-15.

[4]Northern cites *Maislin Industries U.S., Inc. v. Primary Steel, Inc.*, 497 U.S.__, 110 S.Ct. 2759 (1990) for the principle that federal agencies are precluded from departing from the filed rate doctrine. There, the Court held that the Interstate Commerce Commission could not authorize a carrier to charge a rate different than that contained in a filed tariff where the statute explicitly provides that carriers may only charge such filed rates. In the instant case, the issue is not a FERC authorization to pipelines to charge a rate that varies from the tariff; rather it is whether the FERC may leave open to the states the question of whether costs approved by it must be fully recovered from LDC ratepayers.

[5]The FPC is the predecessor agency to the FERC.

[6]Our analysis should not be viewed as a broad holding that the Commission must give effect to the final orders of all federal agencies. The instant situation involves orders of the FERC; the preemptive effect of FERC orders on state regulatory commissions is well-established. We cannot speak to a situation where a different federal agency without well-established preemptive authority attempts to impose requirements which conflict with those of this Commission.

[7]It is noteworthy that the remedy for inadequate earnings is not an accommodation in a COGA; rather, it is a request for rate relief. Indeed, on June 10, 1991 Northern filed a Notice of Intent to File Rate Schedules, the first step in initiating a rate proceeding. *See Re Northern Utilities, Inc.*, Docket No. DR 91-081.

[8]The Companies have not and cannot claim inadequate notice of the issues to be addressed as a part of the adjudicatory COGA proceedings.

[9]We understand that the purchase deficiency method was rejected as being inconsistent with the filed rate doctrine by the Court in *Associated Gas Distributors v. FERC*, 893 F.2d 349 (D.C.Cir. 1989). We do not read this opinion as foreclosing us from considering the fact that Northern's customers were cost causers of a portion of the take-or-pay liability for the purposes of an equitable sharing allocation. We note, however, that if we were foreclosed from considering purchase deficiency factors, the remedy would be to apply the 60-40 allocation to Northern's gross liability, rather than to reduce ENGI's allocation of costs to investors.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 91-042, Order No. 20,141, 76 NH PUC 358, 122

PUR4th 449, June 3, 1991. [U.S.C.A.(D.C.)] Jersey Central Power & Light Co. v. Federal Energy Regulatory Comm'n, 98 PUR4th 536, 810 F.2d 1168, Feb. 3, 1987. [U.S.Sup.Ct.] Federal Power Comm'n v. Hope Nat. Gas Co., No. 34, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281, Jan. 3, 1944.

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NH.PUC*07/02/91*[27157]*76 NH PUC 448*New Hampshire Electric Cooperative

[Go to End of 27157]

Re New Hampshire Electric Cooperative

Movants: Public Service Company of New Hampshire and Northeast Utilities Services Company

DR 90-078
Order No. 20,164

76 NH PUC 448

New Hampshire Public Utilities Commission

July 2, 1991

ORDER clarifying prior orders that established rates, terms, and conditions under which an electric cooperative may sell its share of Seabrook nuclear generating station power to Public Service Company of New Hampshire (PSNH). Commission states that the cooperative must continue to abide by its past wholesale purchasing practices as a condition precedent to enforcement of its capacity sellback agreement with PSNH.

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1. RATES, § 367

[N.H.] Electric — Wholesale — Capacity sellback agreement — Electric cooperative — Seabrook nuclear generating station. p. 449.

APPEARANCES: As previously noted.

BY THE COMMISSION:

REPORT

I. INTRODUCTION

On June 13, 1991, Public Service Company of New Hampshire (PSNH) and Northeast Utilities Service Company (NU) filed a joint motion for modification of Report and Order No. 20,142, pursuant to RSA 365:28. In Order No 20,142 the Commission denied motions for rehearing of its decision in Report and Order No. 20,122, in which we established the parties relative rights and obligations under the so-called Seabrook sellback agreement between PSNH and the New Hampshire Electric Cooperative (NHEC or Cooperative). On June 21, 1991, the

NHEC filed an objection to the PSNH/NU motion.

Upon consideration of the pleadings and review of our prior Orders, we find no cause to modify our findings. PSNH/NU's motion is predicated on an apparent misunderstanding of the Commission's finding of fact relative to the NHEC's obligations as a wholesale customer of PSNH under the sellback. To the extent the PSNH/NU motion reflects a need for additional clarification of our Orders, we will clarify the previous decisions. In all other respects, our Orders will stand and the motion for modification will be denied.

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II. COMMISSION ANALYSIS

[1] The Cooperative's obligation as a PSNH wholesale customer has been a primary issue of dispute in this proceeding. In oral testimony and post-hearing briefs, PSNH/NU argued that the March 8, 1985, letter between the parties (Exh. NHEC-4) binds the Cooperative to remain an essentially all requirements customer of PSNH for the ten years of the sellback agreement as a condition precedent of the Cooperative's right to sell back Seabrook power to PSNH. In Report and Order 20,122 the Commission in large part agreed with PSNH/NU. Specifically, we found that the objective manifestation of the parties' intent contained in the written documentation and contemporary oral testimony of John Pillsbury in DF 83-360 evidenced an agreement by the Cooperative to remain an essentially all requirements wholesale customer of PSNH during each year the sellback is in effect. Order No. 20,122 at 26.

We disagreed, however, with PSNH/NU to the extent that they were arguing that NHEC has an affirmative obligation to commit to remaining a PSNH wholesale for the full ten years of the sellback as a condition precedent to its right to enforce the agreement. Questions relative to the NHEC's rights and responsibilities as a PSNH wholesale customer are matters that are subject to the FERC's jurisdiction. For our purposes in determining the Cooperative's right to enforce the sellback it is sufficient that the Cooperative remain in essence a total requirements customer of PSNH in each year that it seeks to sell back Seabrook power. *Id.*

In their joint motion for clarification and/or rehearing of Order No. 20,122, PSNH/NU asserted that the Commission's Order created some confusion over the NHEC's obligations as a PSNH wholesale customer. PSNH/NU contended that the Commission's Order could be interpreted as allowing the Cooperative to select which of the ten years of the sellback agreement it will seek to purchase power from PSNH, while at the same time compelling PSNH to remain ready to supply total requirements service to the Cooperative in any power year the Cooperative seeks to exercise its sellback rights. The Companies asserted that under this interpretation the Cooperative could cease accepting requirements power from PSNH in year two of the sellback and successfully insist on selling power in the third year of the agreement by representing that it stands ready to buy a small quantity of power.

In Order 20,142, the Commission sought to clarify its finding on the Cooperative's obligation to purchase power from PSNH. We observed that because the sellback agreement presupposes that the NHEC is a partial requirements wholesale customer of PSNH, PSNH's concerns over the effect of our ruling were unfounded. As we explained, if the Cooperative ceases to be a partial requirements wholesale customer of PSNH, its right to sell back Seabrook power also would

terminate. If in a future year the Cooperative desires to resume selling back power to PSNH, a new contract would have to be negotiated between the companies. Order 20,142 at 15.

The gravamen of the June 13, 1991, motion for modification of Order 20,142 is PSNH/NU's concern that the Order reduces the Cooperative's obligation to remain a total requirements customer of PSNH as a condition precedent to enforcing the sellback. PSNH/NU take issue with a statement in the Report in which we state the sellback agreement contemplates that the Cooperative will continue to be a customer under the existing Partial Requirements Agreement. PSNH/NU are concerned that the existing Partial Requirements Agreement may be interpreted by FERC to allow the Cooperative to reduce its purchases from PSNH during the period the sellback is in effect. According to PSNH/NU, this interpretation would provide the Cooperative with an opportunity to enforce the sellback agreement even though it is relying on another company as its primary source of power.

The reference to the existing Partial Requirements Agreement in Order No. 20,142 must be read in conjunction with our earlier interpretation of the Cooperative's obligations as a PSNH wholesale customer set forth in Order No. 20,122. As we found therein, when the sellback was negotiated the Cooperative purchased virtually all of its power requirements from PSNH. However, because it

historically was impractical for the NHEC to purchase power from PSNH at certain discrete delivery points, the wholesale contract was for partial requirements. Order No 20,122 at 16. As testified by Mr. Pillsbury in DF 83-360, the parties' intent in formulating the sellback agreement was for NHEC to continue to take the vast majority of its power from PSNH during the sellback term. Our reference to the existing Partial Requirements Contract in Order 20,142 refers to the purchase power relationship of the parties at the time the sellback was negotiated. Accordingly, pursuant to our Orders, the NHEC must continue to abide by its past wholesale purchasing practices as a condition precedent to enforcing the sellback.

This further clarification should alleviate PSNH/NU's remaining concerns relative to the NHEC's sellback obligations. In all other respects, our orders stand and the motion for modification is denied.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Joint Motion of Public Service Company of New Hampshire and Northeast Utilities Service Company for Modification of Report and Order No. 20,142 be denied.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-078, Order No. 20,122, 76 NH PUC 311, 124 PUR4th 135, May 3, 1991. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-078, Order No. 20,142, 76 NH PUC 373, 124 PUR4th 152, June 3, 1991.
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NH.PUC*07/02/91*[27158]*76 NH PUC 450*Concord Electric Company

[Go to End of 27158]

Re Concord Electric Company

Additional party: Exeter and Hampton Electric Company

DR 91-059, DR 91-060
Order No. 20,166

76 NH PUC 450

New Hampshire Public Utilities Commission

July 2, 1991; revised July 3, 1991

ORDER authorizing two electric utilities to revise their fuel adjustment clause (FAC) rates, purchased power adjustment clause (PPAC) rates, and tariffs for short-term power purchase rates for qualifying facilities. Commission rejects proposed accounting change that would have permitted adjustments to the FAC and PPAC to reflect uncollectible bills.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Fuel adjustment clause — Wholesale fuel charge — Passthrough of refund — Rate revision — Electric utility. p. 452.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchased power adjustment clause — Rate revision — Electric utility. p. 452.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect costs — Uncollectible accounts — Purchased power adjustment clause — Fuel adjustment clause. p. 452.

4. EXPENSES, § 118

[N.H.] Uncollectible accounts — Adjustment clause recovery — Rejection — Electric utility. p. 452.

5. COGENERATION, § 25

[N.H.] Rates — Avoided costs — Short-term avoided capacity and energy — Rate revision

— Electric utility. p. 452.

APPEARANCES: Scott Mueller, Esquire and Connoly for Concord Electric Company and Exeter & Hampton Electric Company; Kenneth Traum, for the Consumer Advocate; Audrey Zibelman, for the Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On May 31, 1991, Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") filed revised Fuel Adjustment Clause (FAC) rates and Purchased Power Adjustment Clause (PPAC) rates for the period July through December 1991. The FAC rate request was $(0.02111) for Concord and $(0.01989) for Exeter & Hampton (including the franchise tax effect). The PPAC rate request for Concord was $0.03956 per KWH and $0.04076/KWH for Exeter & Hampton (including the franchise tax). The Companies filed testimony and exhibits which supported the proposed revisions to their respective FAC and PPAC.

The Companies also filed revised tariffs for Short-term Power Purchase (short term avoided capacity and energy) rates for Qualifying Facilities (QF) as follows:

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

Energy Rates	On Peak	2.99 cents per KWH
	Off Peak	2.42 cents per KWH
	All-Hours	2.67 cents per KWH
Capacity Rate		$0.00 per KW-Year

The calculation of the companies' short term avoided energy rates was based on the use of an average of a 5 megawatt increment and a 5 megawatt decrement to load. This is in accordance with the methodology specified in the settlement agreement in DR 86-41, *et. al.*, Phase I, as revised in DR 89-225 and DR 89-227.

The short term avoided capacity rate, of $0.00/kW-year reflects the current surplus of capacity in the New England market and the companies' expectation that they will not be making any short-term purchases or sales in the next six-month period.

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 20, 1991 to review the Fuel Adjustment Clause and Purchased Power Adjustment Clause and short-term Power Purchase rates filings of the Companies. Concord Electric and Exeter & Hampton Electric presented three witnesses, Karen M. Asbury, R. John Dingle, and George R. Gantz. Staff presented one witness, Eugene F. Sullivan, Finance Director.

The instant filing covers the six month period from July through December 1991. In testimony witness Asbury explained the calculations of the fuel adjustment clauses and the purchased power adjustment clauses for Concord Electric and Exeter & Hampton Electric. She explained that the FAC rate was being decreased from the prior period by $0.01613 per KWH for Concord and by $0.01457/KWH for Exeter & Hampton. The PPAC would be increased over

the prior period by $0.01505 per KWH for Concord and $0.01629 per KWH for Exeter & Hampton. Mr. Dingle explained the derivation of the UNITIL Power wholesale rates. He further explained the increase in the demand and energy charges and the decrease in the fuel charge. The increase in the demand charge rate is due to the forecasted increase in demand costs, transmission costs and unbilled prior amounts. The most significant cause of the increase is the addition of a new power contract which calls for the purchase of 10MW of

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the Vermont Yankee nuclear plant and the sale of 10MW of the New Haven Harbor Unit during the May to October 1991 period. This transaction had a direct impact on the fuel charge rate due to the energy benefits realized from the Vermont Yankee Plant. The increase in the billed prior costs was the most significant cause of the increase. Fuel costs decreased due to a decrease in the unbilled prior cost and estimated decreases in production costs.

Mr. Gantz testified to accounting changes that were made and to support the resulting adjustments to the FAC and PPAC for Concord and Exeter & Hampton. The adjustments were:

(1.) An adjustment to reflect the expected receipt of a FERC ordered wholesale fuel charge refund from Public Service Company of New Hampshire (PSNH);

(2.) Adjustment for billing corrections involving errors in billed KWH values, and;

(3.) Adjustment to reflect the fuel and purchased power components of uncollectible revenues.

Staff witness Sullivan testified that the adjustment to the FAC and PPAC due to uncollectible bills was improper and contrary to accounting and ratemaking principles established by this Commission. He also testified that the adjustment for billing corrections would be improper if the Companies had included the corrections in their calculations in the months when the corrections were discovered. The billing corrections would be proper if it was done consistently and did not result in double counting.

The Companies filed revised calculations on June 25, 1991 to calculate the FAC and PPAC rates with the staff recommendations in the event that the Commission were to accept staff's position. The issue of double counting was reviewed by the Companies and it was determined that Concord had not double counted the billing adjustment. However, it appears that Exeter and Hampton may have double counted by over-correcting for the billing adjustment.[1(103)]

III. *Commission Analysis*

[1-5] The Commission agrees with the Staff witness Sullivan with respect to the treatment of the uncollectible portion of the FAC and PPAC rates. In each of the previous rate cases for these Companies an allowance for uncollectible expenses has been included in base rates. The Uniform System of Accounts adopted by this Commission for Electric Utilities includes uncollectible accounts in the operation and maintenance expenses (Account 904). That account provides for losses from uncollectible utility revenues and is included in base rate costs. It would be inconsistent to approve a change for this Company which is contrary to past ratemaking and accounting policy. Such a policy would make it possible for all companies improve their earnings by shifting base rate items to the fuel and purchased power clause.

Fuel clauses were established in the early 1970's to prevent serious deterioration of company earnings between and during pending rate cases. Because fossil fuel costs were volatile in the 1970's and comprise a large percentage of companies' total costs, fuel clauses were established to avoid the necessity of frequent rate cases.

In contrast, uncollectible bills account for a relatively small portion of the companies' total costs and are not particularly volatile. Substantial evidence during the hearing established that traditional ratemaking treatment of these costs protects the companies' interests and will not product frequent rate cases. On these bases we will not authorize the accounting change.

The Commission will accept the revised filings of the Companies. The rates of Concord Electric will reflect a change to eliminate the uncollectible adjustment. The rates of Exeter and Hampton Electric will reflect a change to eliminate the uncollectible adjustment and the billing adjustment.

Based upon the evidence provided and the response to record request #2, the Commission finds that the FAC for the July through December 1991 period will be ($0.02131) KWH for Concord Electric and ($0.02071)/KWH for Exeter & Hampton Electric, inclusive of the franchise tax. The PPAC for Concord Electric will $0.03931/KWH and for Exeter & Hampton Electric will be $0.03981/KWH for the same period.

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The Commission also finds the proposed short term avoided capacity rates to be just and reasonable, and calculated in accordance with the methodologies outlined in previous Commission Orders. We also find the short term avoided energy rates to be just and reasonable. Concord Electric and Exeter & Hampton Electric will be expected to correct its previous adjustment for uncollectibles and billing corrections to agree with our findings.

Our order will issue accordingly.

ORDER

Based upon the foregoing report which is incorporated by reference herein, it is hereby

ORDERED that Concord Electric Co. Fuel Adjustment charge for the period of July through December 1991 shall be ($.02131)/ KWH inclusive of a franchise tax; it is further

ORDERED that for the period of July through December 1991 Concord Electric Co. Purchased Power Adjustment Clause (PPAC) shall be $.03931/KWH; it is further

ORDERED that for the period July through December 1991 Exeter & Hampton Electric Co. Fuel Adjustment Charge (FAC) shall be ($0.02071)/KWH; it is further

ORDERED that for the period of July through December 1991 Exeter & Hampton Electric Co. Purchased Power Adjustment Clause (PPAC) shall be $0.03981/KWH; it is further

ORDERED that for the same period, Concord Electric Co. and Exeter & Hampton Electric Co. short-term power purchase (short-term avoided capacity and energy) rates for Qualifying Facilities (QF) shall be as follows:

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

*Energy Rates*On Peak 2.99 cents per KWH
Off Peak 2.42 cents per KWH
All-Hours 2.67 cents per KWH
Capacity Rate $0.00 per KW-year

By order of the Public Utilities Commission of New Hampshire this second day of July, 1991.

FOOTNOTES

[1]The staff also raised the issue of the pass-through to ratepayers of the expenses incurred by UNITIL to prevent a takeover by Eastern Utilities Associates (EUA) through the purchased power cost of UNITIL Power. Staff questioned whether the costs should be borne by the ratepayers or the stockholders. In testimony in the takeover proceeding, DF 89-085, Unitil witnesses testified that the company had not yet determined whether ratepayers would be responsible for costs related to the defense of the merger. The company is now claiming that it had always intended to pass though 100% of Unitil Power's share of the costs through the wholesale power contract, but had failed to make that point clear to the Commission during the evidentiary hearing.

The wholesale power contract is subject to jurisdiction of the Federal Energy Regulatory Commission (FERC). Accordingly, we will bring our concerns to the FERC's attention in response to Unitil Power's attempts to foreclose adjudication of this issue and, if appropriate, through other procedural mechanisms.

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NH.PUC*07/02/91*[27159]*76 NH PUC 453*Rosebrook Water Company, Inc.

[Go to End of 27159]

Re Rosebrook Water Company, Inc.

DR 91-032
Order No. 20,167

76 NH PUC 453

New Hampshire Public Utilities Commission

July 2, 1991

ORDER directing that no monies currently in the control of a water utility or its affiliates be distributed outside the normal course of utility business. Commission directs its staff to conduct an investigation of the finances and operations of the utility.

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1. DIVIDENDS, § 3

[N.H.] Jurisdiction and powers — State commissions — To prohibit payment — Water utility. p. 454.

Page 453

2. COMMISSIONS, § 43

[N.H.] Jurisdiction and powers — Over utility disbursement of funds — Outside course of utility business — Water utility. p. 454.

BY THE COMMISSION:

ORDER

[1, 2] On March 25, 1991, the Commission issued Order No. 20,091 requiring the principals and managers of Rosebrook Water Company, Inc. (Rosebrook) to show cause whether cash reserves on hand at the company should be declared as a dividend or used to insure the quality of water and the water distribution system pursuant to RSA 374:10 and RSA 374:12; and

WHEREAS, Order No. 20,091 further ordered that no dividend be declared until the resolution of this docket; and

WHEREAS, the Commission scheduled a hearing for May 14, 1991; and

WHEREAS, the May 14, 1991, hearing was continued to June 25, 1991; and

WHEREAS, Dartmouth Bank appeared at the June 25, 1991, hearing and moved to intervene without objection in this docket; and

WHEREAS, at the June 25, 1991, hearing the Commission received information which indicates that a transfer of funds has taken place either to Rosebrook Water, Inc. or to Rosebrook Trust; and

WHEREAS, the Commission is concerned that the revenues of the company remain in the company to insure its financial viability and a safe and adequate supply of water to its customers; and

WHEREAS, the Commission has questions concerning the individuals or entities in actual control of Rosebrook; it is hereby

ORDERED, that Dartmouth Bank's Motion to Intervene is granted; and it is

FURTHER ORDERED, that no monies currently in the control of Rosebrook or its affiliates be distributed in any way outside the normal course of utility business; and it is

FURTHER ORDERED, that the staff conduct an investigation into the finances and operations of Rosebrook pursuant to RSA 374:4; and it is

FURTHER ORDERED, that the staff supply the Commission with a recommendation for future action in this docket after completion of this investigation no later than 60 days from the date of this order.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Rosebrook Water Co., Inc., DR 91-032, Order No. 20,091, 76 NH PUC 192, Mar. 25, 1991.

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NH.PUC*07/02/91*[27160]*76 NH PUC 454*Granite State Electric Company

[Go to End of 27160]

Re Granite State Electric Company

DR 90-190, DR 90-194
Order No. 20,168

76 NH PUC 454

New Hampshire Public Utilities Commission

July 2, 1991

ORDER approving an electric utility's proposed method of refunding purchased power cost overcollections.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 57

[N.H.] Overcollections — Refunds — Purchased power cost adjustment — Electric utility. p. 456.

APPEARANCES: David J. Saggau, Esq. on behalf of Granite State Electric Company; Michael Holmes, Esq. on behalf of the Office of Consumer Advocate; James T. Rodier, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On March 1, 1991, Granite State Electric Company (Granite State or Company) filed a proposal to reduce its Purchased Power Cost Adjustment (PPCA) factor to reflect, *inter alia*, the

then pending settlement of New England Power Company's (NEP) W-12(a) Wholesale Rate Case. Included in the Company's filing, in addition to the reduced PPCA factor, was a proposal to refund over-collections that occurred as a result of 1) the refund received from NEP under the W-11 Supplement rate settlement approved by the Federal Energy Regulatory Commission (FERC) on January 23, 1991, for the period from January 1, 1989 through December 31, 1990, and 2) the Company's apportionment with interest of the estimated refund from NEP for over-collections from January 1, 1991 through March 31, 1991 as part of the final FERC approval of the W-12(a) Settlement.

On March 25, 1991, by Order No. 20,088, the Commission approved the Company's reduction in the PPCA factor by $0.00277 per kWh to the presently effective PPCA factor of $0.00979 per kWh and Granite State's proposed refund amount. However, it required that a hearing on the merits be held within 30 days to determine the manner of the refund. On April 24, 1991, said hearing was held.

The FERC approved the W-12(a) Settlement on April 29, 1991.

II. *Positions of the Parties*

A. *Granite State*

The Company proposes to separate the refund into two different refunds based upon the time periods in which NEP overcollected. Overcollections that occurred prior to December 31, 1990, will be refunded with interest on a bills rendered basis from July 1, 1991 through December 31, 1991. The refund factor for those overcollections is $0.00205 per kWh.

The Company also proposes that the overcollections that occurred from January 1, 1991 through March 1991, be refunded with interest during the same calendar months in 1992. The Company's proposal is intended to match better the refund with those customers who actually paid the higher rates during the same months of 1991. The actual refund factor for the January through March 1992 period is dependent upon Granite State's actual kWh sales during the January through March 1991 time period. The Company estimates the refund factor will be approximately 0.23 cents per kWh.

B. *OCA*

The OCA did not dispute the Company's calculation of the refund or the manner in which the Company proposes to refund the overcollection to customers. The OCA did, however, question the basis of the interest calculations by the Company and whether Granite State receives the same interest rate on refunds from NEP as the Company returns to ratepayers. The OCA also questioned whether the use of the prime rate in customer refunds is appropriate, although it did not move to use an alternative interest rate in this proceeding.

C. *Staff*

The Staff did not oppose the Company's refund proposal, but did question the Company on the timing of the refund. Particularly, Staff asked if a bills rendered basis, which uses a billing cycle in the case of the first refund from mid-June through mid-December, will fairly apportion to customers the over payment made during the 1989 and 1990 calendar period with the refund due them in the second half of 1991.

III. *Commission Analysis*

[1] We recognize that a perfect matching of the refunds with customer payments made during the overcollection periods is desirable, and certainly the most equitable. We are not, however, blind to the costs associated with that chore. While other circumstances may well warrant that the refunds be returned to customers on a customer specific basis, a practice we have ordered be undertaken in the past, we find that in the instant proceeding the Company's proposal to split the refund period into two periods to match reasonably the overcollection periods to the customer overpayment periods is just and reasonable. Therefore, the Commission will approve the following:

1. That the Company refund the overcollection that occurred prior to January, 1, 1991 during the period beginning July 1, 1991 and ending December 31, 1991; and

2. That the Company refund the overcollection that results from the FERC approved W-12(a) Settlement during the period January through March 1992.

We acknowledge the OCA's concerns about possible conflicts concerning the interest rate paid by the Company to customers and the Company's borrowing rate, but find no compelling reason at this time to alter the Commission's long standing interest rate policy.

Our order will issue accordingly.

ORDER

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

ORDERED, that Granite State Electric Company's proposal to refund to customers overcollections that occurred from January 1, 1989 through December 31, 1990 beginning July 1, 1991 and ending December 31, 1991, is hereby approved; and it is

FURTHER ORDERED, that the Company refund to customers during the months of January, February and March 1992, the overcollection resulting from the W-12(a) Settlement approved April 29, 1991 by the Federal Energy Regulatory; and it is

FURTHER ORDERED, that the Company carry over to the January through March 1992 refund whatever refund amount that has not by the end of 1991 been fully distributed to customers; and it is

FURTHER ORDERED, that Granite State Electric Company file as part of its monthly fuel adjustment filings the actual and projected refund amount by month until the refund is completed for both the six-month 1991 refund and the 1992 refund; and it is

FURTHER ORDERED, that Granite State file compliance tariff pages within 30 days following the issue date of this order.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Granite State Electric Co., DR 90-190, DR 90-194, Order No. 20,088, 76 NH PUC 189, Mar. 25, 1991.

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NH.PUC*07/02/91*[51031]*75 NH PUC 352*Telesphere Communications, Inc.

[Go to End of 51031]

75 NH PUC 352

Re Telesphere Communications, Inc.

DE 90-075
Order No. 19,869
New Hampshire Public Utilities Commission
July 2, 1991

ORDER establishing docket for investigation of telephone company's alleged operations as a public utility without authority.

FINES AND PENALTIES, § 4 — Commission authority — Operating without certification — Telephone.

Page 352

[N.H.] A docket was established for the purpose of investigating whether a telephone company should be fined up to $25,000 pursuant to RSA 365:41, or any of its agents or officers should be fined up to $10,000 for each day of a continuing violation pursuant to RSA 365:42, or whether the company and its officers and agents should be subjected to criminal prosecution or other appropriate sanctions for operating as a public utility without authority and charging rates without authority.

By the COMMISSION:

ORDER

On May 23, 1990, the New Hampshire Public Utilities Commission (commission) issued order no. 19,836 (75 NH PUC 297) setting a prehearing conference in order to determine whether Telesphere Communications, Inc. (Telesphere) was providing intrastate telecommunications in the State of New Hampshire without authority; this order shall supersede

said order due to a lack of service on Telesphere's registered agent in the State of New Hampshire; and

WHEREAS, Telesphere has not applied for or been granted franchise authorization pursuant to RSA 374:22; and

WHEREAS, RSA 374:24 provides in pertinent part that "[n]o permission under RSA 374:22 shall be granted to any business entity not organized under the laws of this state ..."; and

WHEREAS, Telesphere is not a New Hampshire corporation; and

WHEREAS, pursuant to RSA 362:2, the term "public utility" includes, in pertinent part "every corporation or company owning, operating or managing any plant or equipment of any part of the same for the conveyance of telephone and telegraph messages for the public"; and

WHEREAS, Telesphere has not filed appropriate rate schedules showing the rates, fares, charges and prices for any services rendered or to be rendered pursuant to, *inter alia*, RSA 378:1 *et seq.*, and N.H. Admin. Rules, Puc 1600; and

WHEREAS, the commission staff alleges, on information, and belief that Telesphere is charging customers for unauthorized intrastate telecommunication services in violation of, *inter alia*, RSA 374:22, RSA 378:1, *et seq.* and 374:2; and

WHEREAS, Telesphere Network, Inc. qualified with the New Hampshire Secretary of State on May 31, 1989, listing as its agent therein C. T. Corporation System, 9 Capital Street, Concord, New Hampshire; and

WHEREAS, the New Hampshire Secretary of State indicates that John W. Mitchell, Esquire of Sulloway, Hollis and Soden is the registered New Hampshire agent of C.T. Corporation System; it is hereby

ORDERED, that Docket DE 90-075 be established for the purpose of investigating whether Telesphere should be fined up to $25,000 pursuant to RSA 365:41 or any of its agents or officers should be fined up to $10,000 for each day of a continuing violation pursuant to RSA 365:42 or whether Telesphere and its officers and agents be subjected to criminal prosecution or other appropriate sanctions pursuant to, *inter alia*, RSA 365:41, RSA 365:42, or RSA 375:41 *et seq.*, for operating as a public utility without authority and charging rates without authority; and it is

FURTHER ORDERED, that Telesphere Network, Inc. and Telesphere Communications, Inc., its officers and agents including without limitation a representative of said C.T. Corporation System, specifically John W. Mitchell, appear before the commission for a prehearing conference at the offices of the commission, 8 Old Suncook Road, Building #1, Concord, New Hampshire at 10:00 a.m. on August 29, 1990 for the purposes of establishing a procedural schedule in this matter.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1990.

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NH.PUC*07/08/91*[27161]*76 NH PUC 456*Pennichuck Water Works, Inc.

[Go to End of 27161]

Re Pennichuck Water Works, Inc.

DF 91-091
Order No. 20,169

76 NH PUC 456

New Hampshire Public Utilities Commission

July 8, 1991

ORDER authorizing a water public utility to issue a $3 million tax exempt bond through the New Hampshire Development Authority and to use the bond proceeds to repay a currently outstanding bond, to repay short-term indebtedness, and for construction financing.

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1. SECURITY ISSUES, § 111

[N.H.] Financing methods and practices —

Page 456

Tax exempt bond — New Hampshire Development Authority — Water utility. p. 457.

BY THE COMMISSION:

ORDER

On June 28, 1991, Pennichuck Water Works, Inc. (Pennichuck or the Company) filed a petition for authority to issue and sell $3 million of unsecured debt in tax exempt financing; and

WHEREAS, the Company filed testimony in support of its petition on July 5, 1991; and

[1] WHEREAS, the testimony of the chief financial officer of Pennichuck indicates that the bond will be a tax exempt issue of $3 million through the New Hampshire Development Authority (Authority); and

WHEREAS, the testimony indicates that counsel for the Authority has informed the Company that unless a previously issued $2 million bond is repaid on the maturity date with proceeds from a new tax exempt issue the Company would be precluded from issuing a new tax exempt issue to refinance the original $2 million bond; and

WHEREAS, the Company was unaware of this fact prior to June 28, 1991, it has asked for expedited treatment of this requested $3 million tax exempt financing; and

WHEREAS, the proceeds of the bond will be used to repay a currently outstanding $2 million bond which has a balloon payment of $2 million due on August 1, 1991 with a rate of 13.375%; and

WHEREAS, $840,000 from the proposed refinancing is to repay short-term indebtedness

incurred with respect to reconstruction of the Bowers Dam; and

WHEREAS, $100,000 of the remaining $160,000 from this issue will be placed in an existing trustee bond account for the eventual construction of the proposed Shakespeare Tank project; and

WHEREAS, the interest rate on the $3 million tax exempt bond is 7.67% until December 1, 1994, with principal payments of $125,000/year commencing on December 1, 1992; and

WHEREAS, the interest rate on the bond after December 1, 1994, will be determined by the remarketing agent designated by the Company and will be based on the lowest rate which prevailing market conditions would then permit the bond to be sold at par; and

WHEREAS, at the option of the Company the rate will be fixed for a period of 1, 5, 10, 15 or 20 years before the next interest rate assessment; and

WHEREAS, RSA 369:1 provides that "[a] public utility lawfully engaged in business in this state may, with the approval of the Commission but not otherwise, issue and sell ... bonds ... "; and

WHEREAS, RSA 369:4 further provides that "the Commission, after such hearing or investigation as it may deem proper, shall determine the actual probable cost incurred or to be incurred and if in its judgment the issue of such security upon the terms proposed is consistent with the public good it shall authorize the same ... "; and

WHEREAS, the Commission finds that the proposed bond issuance based on the terms provided in the Company's petition and testimony is in the public good; it is hereby

ORDERED, *NISI*, that Pennichuck's petition to issue a $3 million tax exempt bond at an interest of 7.67% is hereby approved; and it is

FURTHER ORDERED, that on January first and July first of each year Pennichuck shall file with this Commission a detailed statement, showing the disposition of proceeds of each short term debt until the whole of such proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that Pennichuck shall file the final version of the terms and conditions of the note once it is closed; 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 by July 20, 1991; and it is

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FURTHER ORDERED, that Pennichuck 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 July 12, 1991 and designated in an affidavit to be made on a copy of this order and filed with this office on or before July 22, 1991; and it is

FURTHER ORDERED, that such authority shall be effective 15 days from the date of this order, unless a hearing is requested as provided above or the Commission otherwise directs prior

to the effective date.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1991.

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NH.PUC*07/11/91*[27162]*76 NH PUC 458*AT&T Communications of New Hampshire, Inc.

[Go to End of 27162]

Re AT&T Communications of New Hampshire, Inc.

DE 90-120
Order No. 20,171

76 NH PUC 458

New Hampshire Public Utilities Commission

July 11, 1991

ORDER authorizing a telephone interexchange carrier to revise its custom network service by introducing service enhancements, including reducing the initial time period for Software Defined Network (SDN) rate schedules, introducing three time-of-day rate periods, and introducing local access service.

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1. SERVICE, § 433

[N.H.] Telecommunications — Custom network services — Software defined network service — Enhancements — Local access — Interexchange carrier. p. 458.

2. RATES, § 553

[N.H.] Telecommunications — Custom network services — Software defined network service — Interexchange carrier. p. 458.

BY THE COMMISSION:

ORDER

On July 12, 1990, AT&T Communications of New Hampshire, Inc., having filed a petition seeking to revise their Custom Network Services by introducing a number of service enhancements; and

[1, 2] WHEREAS, the service enhancements included the following: reducing the initial time period for all three AT&T SDN rate schedules from thirty to eighteen seconds, introducing three time of day rate periods, and introducing local exchange access service; and

WHEREAS, the proposed tariff was filed for effect on August 13, 1990; and

WHEREAS, the filing was suspended by Order No. 19,909, dated August 8, 1990, in order to

give staff adequate time for investigation; and

WHEREAS, on March 1, 1991, AT&T filed a revised tariff page raising rates in SDN Schedule A, Rate Periods 2 and 3 to reflect the current intrastate access charge in New England Telephone's tariff, NHPUC No. 78; and

WHEREAS, the introduction of Local Exchange Service access will provide an economical choice for customers with lower calling volumes, thereby increasing the availability of SDN service to a greater number of New Hampshire customers; and

WHEREAS, each component of the service is recovering its declared incremental costs; it is hereby

ORDERED, *NISI*, that AT&T Communications of New Hampshire, Inc., be, and hereby is, authorized to implement the following tariff changes:

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Tariff PUC No. 1, pages:

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

Table of Contents - 2nd revised page 1
                    2nd revised page 4
                    1st revised page 5
       Section 1  - General Regulations:
                    1st revised page 22
                    2nd revised page 23
                    2nd revised page 24
                    1st revised page 25
                    original page 26
                    original page 27
       Section 2  - 1st revised page 2
                    1st revised page 3
                    1st revised page 4
                    1st revised page 5
                    1st revised page 6
                    1st revised page 7
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and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the company cause 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 July 15, 1991, and is to be documented by affidavit filed with this office on or before the thirty-first day of July, 1991; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than the thirty-first day of July, 1991; and it is

FURTHER ORDERED, that this Order *NISI* will be effective on August 9, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this eleventh day of July, 1991.

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[Go to End of 27163]

Re Granite State Electric Company

DR 91-061
Order No. 20,175

76 NH PUC 466

New Hampshire Public Utilities Commission

July 16, 1991

ORDER revising the fuel adjustment clause, oil cost adjustment, purchased power cost adjustment, and qualifying facility power purchase rates of a retail electric utility.

Page 466

1. AUTOMATIC ADJUSTMENT CLAUSES, § 7

[N.H.] Fuel adjustment clause — Rate revision — Reduction — Retail electric utility. p. 468.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Oil conservation adjustment — Rate revision — Increase — Retail electric utility. p. 468.

3. COGENERATION, § 25

[N.H.] Rates — Avoided costs — Short-term energy and capacity. p. 468.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchased power cost adjustment — Rate revision — Retail electric utility. p. 468.

APPEARANCES: David Saggau, Esq., for Granite State Electric Company; Thomas C. Frantz and James J. Cunningham for the staff of the Commission.

BY THE COMMISSION:

REPORT

I. INTRODUCTION

On June 3, 1991, Granite State Electric Company (Granite State or Company) filed tariff pages, testimony and schedules supporting changes to the Company's Fuel Adjustment Clause (FAC), Oil Conservation Adjustment (OCA), and Purchased Power Cost Adjustment (PPCA) for

the second half of 1991.

The Company also filed new tariff pages to reflect the Short-term Power Purchase (short term avoided capacity and energy) rates for Qualifying Facilities (QF). The Company proposed the following QF rates:

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

Energy Rates	*On Peak*	*Off Peak*	*Average*
Subtransmission Distribution	$0.02635	$0.02133	$0.02364
Primary Distribution	$0.02830	$0.02237	$0.02510
Secondary Distribution	$0.02930	$0.02290	$0.02584
Capacity Rate	$0.00 per kW-year		

The Company states that the capacity value of zero is based on the absence of short-term purchase contracts by its wholesale power supplier, New England Power Company (NEP), and the expectation that no contracts will be entered into in the next six months.

On June 12, 1991, the Company filed a revision to its June 3, 1991 FAC factor based upon an error in estimating NEP's power costs for the last four months of 1991. The present and proposed rates are as follows:

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

	Present Rate per kWh	*Proposed Rate per kWh*	*Change*
FAC	$0.00610	$0.00439	($0.00171)
PPCA	$0.01256	$0.00898	($0.00081)
OCA	$0.00116	$0.00121*	$0.0005

* represents a $0.00001 adjustment in the June 12 revision

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The decrease in the PPCA is based on the elimination of NEP's Conservation and Load Management (C&LM) Surcharge and the revised Hydro-Quebec (HQ) bonus share. Although the C&LM Surcharge will remain in effect until the end of July, Granite State proposes to change the PPCA on July 1, 1991 to coincide with the other factors, i.e. FAC, OCA, and C&LM, that are also proposed to change July 1.

The C&LM Surcharge elimination and the revised HQ bonus share lower the annualized purchased power expenses of Granite State by $477,249 over the Rate W-12(a)(S) level currently in effect. The decrease translates to a $0.00081 per kWh downward adjustment to the current PPCA factor, or a decrease of 41 cents on a typical 500 kWh bill.

A duly noticed hearing on the Company's FAC, OCA and QF rates was held on June 19, 1991. A hearing on the PPCA factor was postponed to June 27, 1991, at which time it was heard.

II. Commission Analysis

a. *Fuel Adjustment Clause (FAC)*

[1] The Commission will accept the revised testimony and exhibits filed by the Company on June 12, 1991. The revision is based on re-estimated purchased power costs associated with Ocean State Power Unit 2 (OSP 2), which is projected to be in-service on September 1, 1991.

The staff raised two issues concerning the proper interest rate calculation. Staff questioned the interest rate the Company used for the time period April 1991 through December 1991. The Company had used an interest rate of 8.75 percent, but agreed under cross-examination that the proper rate to have used was 8.875 percent. Staff also questioned the Company's use of compounding interest in the calculation instead of using simple interest. The Company agreed to file as a record request the effect the changes in interest rate calculation would have on the fuel factor.

The Company filed a revision to the FAC factor, based on the recalculation of the interest rate, on June 30, 1991. The net effect of the interest rate change was to increase the FAC factor from $0.00439 per kWh to $0.00440 per kWh and that is the FAC factor we will approve for the second half of 1991. The approved rate will decrease the average 500 kWh bill by 86 cents.

b. *Oil Conservation Adjustment (OCA)*

[2] We find the OCA factor proposed by the Company of $0.00121 per kWh is supported by the record and will approve it for the second half of 1991. The new OCA factor will increase the average 500 kWh bill by 3 cents.

c. *Qualifying Facility Rates*

[3] The Company has calculated the avoided capacity and energy rates in accordance with accepted Commission methodology and we will accept the Company's proposed QF rates for the period beginning July 1, 1991 and ending December 31, 1991.

d. *Purchased Power Cost Adjustment (PPCA)*

[4] We find, based upon the record, that the proposed reduction in the PPCA factor of $0.00081 per kWh to be just and reasonable and will, accordingly, approve it for the second half of 1991.

Our order will issue accordingly.

ORDER

Based upon the foregoing report which is made a part hereof; it is hereby

ORDERED, that Granite State ELectric Company's Fuel Adjustment Charge of $0.00440 per kWh for the period July 1, 1991 through December 31, 1991 be, and hereby is, approved effective July 1, 1991; and it is

FURTHER ORDERED, that the Oil Conservation Adjustment factor of $0.00121 per kWh be, and hereby is, approved effective July 1, 1991 for the period July 1, 1991 through December 31, 1991; and it is

FURTHER ORDERED, that Granite

State's Purchased Power Cost Adjustment of $0.00898 per kWh be, and hereby is, approved effective July 1, 1991; and it is

FURTHER ORDERED, that the short term avoided capacity and energy costs for the second half of 1991 be, and hereby are, approved as filed by Granite State and described in the attached report, effective July 1, 1991; and it is

FURTHER ORDERED, that the Company file compliance tariff sheets within two weeks of the issuance of this order.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1991.

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NH.PUC*07/16/91*[27164]*76 NH PUC 469*Copson v. New England Telephone Company

[Go to End of 27164]

Copson
v.
New England Telephone Company

DC 90-226
Order No. 20,176

76 NH PUC 469

New Hampshire Public Utilities Commission

July 16, 1991

ORDER directing a telephone local exchange carrier (LEC) to refund basic monthly service charges to a customer that had received inadequate service. Commission also directs the LEC to perform a comprehensive internal review of the extent of customer service deficiencies in New Hampshire.

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1. SERVICE, § 123

[N.H.] Duty to serve — Adequate service — Service standards — Telephone local exchange carrier. p. 471.

2. SERVICE, § 433

[N.H.] Telecommunications — Service standards — Local exchange carrier. p. 471.

3. REPARATION, § 35

[N.H.] Grounds for allowing — Service inadequacy — Refund of service charges — Telephone local exchange carrier. p. 471.

APPEARANCES: Douglas J. and Linda Copson, *pro se*; Beth Osler for New England Telephone Co.; Susan Chamberlin, Esq., for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Introduction*

By letter received at the commission on December 17, 1990, Douglas and Linda Copson of Whitefield, New Hampshire requested a hearing to investigate alleged ongoing repair problems with New England Telephone.

Pursuant to a letter sent to the Copsons and NET by Wynn E. Arnold on February 15, 1991, a hearing on the merits was held on March 1, 1991.

II. *Positions of the Parties*

Mr. Douglas Copson opened the hearing with a description of his complaint regarding serious and continuing service problems:

> And I guess that the beginning is that phone service was established in 1982. And basically we have had just a continual problem with our phone service, different nature, but interrupted service. Annoyance of technical problems. I guess that we don't really know what the nature of them is, but we know the results was years of the phone would ring and there would be just a loud static noise, all hours of the day and night, especially in the night.
>
> And this problem is, like I said, has been continuously since 1982 and in fact our

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> phone was out of service as of Wednesday afternoon and it was not in service this morning when we left at 7:00 o'clock. We had no phone for the last two days. No signal, no dial tone, no static or anything. Just dead. Tr. at 5,6.

Mrs. Linda Maria Copson elaborated further on the extent of the problem:

> Just to add to what Doug said, our problem has been so bad really that we have had to pretty much unplug our phone at night during many, it comes and it goes. For a couple of months it will be very bad so that every night the phone would ring two or three times a night and it would just be very loud static. Okay. At one point we would call repair repeatedly and never really get anywhere.
>
> They told us to start calling every time it happened. We did that. And it kind of got to the point where repair people would get mad at us for calling. But you have already called. But they have told us to call. So it was, they weren't informing their people of what they were telling us to do and it was kind of being taken out on us. Tr. at 10, 11.

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At one point it was really bad, which I think it was a few years ago I called the customer service number and I told them, this has been a repeated problem every night I am up answering the phone. I have had to unplug my phone at night so I can get some sleep. I just don't want to pay my service charge this month. And they told me if I didn't pay my service charge they would shut off my telephone. Tr. at 12.

Mrs. Copson concluded by adding:

I want to make it clear that this static is not like interference static. It is so loud that it can probably damage your ear at times. I have to hold the phone out, like out here, you cannot put it up to your ear, it is extremely loud. Tr. at 28.

Ms. Osler, on behalf of NET did not disagree with the Copsons:

Mr. Copson, I am not going to ask you too many questions because I think you will see it is NET's position today at this hearing that we are here more to try to find some resolution that is satisfactory to you. We are not trying to make a case that your service has not been out of order or that you have not had substantial problems with that service over a number of years.

We are not intending to try to argue with you on points of fact. Tr. at 21, 22.

Mr. Burton Smith on behalf of NET identified the problem as follows:

The problem that caused this are in an external line, someone else's line going in trouble. We are dealing with an office which has absolutely no intelligence. It follows the dial or it follows another external force. In this case, probably an outside, this is somewhat of an assumption, but I think I am correct and what is happening, I believe is when we have certain weather conditions on the line through whatever reason the insulation is breaking down causing the conductors to cross. Tr. at 34.

On cross-examination, Mr. Smith conceded to Staff that NET had been remiss:

[Ms. Chamberlin] Is there any reason that it took so long to come up with this determination?

[Mr. Smith] It shouldn't have been. I can't answer that. I saw the letter and like I say, in December, and recognized the potential trap and maybe there aren't too many electro-mechanical people left in New Hampshire. I don't know that. I can't say, again. But it should have picked up a long time ago. Tr. at 40.

NET did not know whether company procedure had been breached or whether breakdown in NET management had occurred:

HEARING EXAMINER: Is there a written manual implementing and describing a New England Telephone Company work

procedure that provides any kind of a guidance to a person in the field as to when they need to call in some expertise above and beyond what is available in the local garage?

THE WITNESS: Yes. There is a written procedure. There is a procedure in place for the technician to call, if their supervisor, and in the case of the supervisor calling in the manager, yes, there is a procedure in place.

HEARING EXAMINER: Was that procedure followed?

THE WITNESS: I can't answer that. I believe that a foreman was involved, but I don't know whether the manager was directly involved. Tr. at 49.

In her closing statement on behalf of NET, Ms. Osler was conciliatory.

MS. OSLER. Well, I think that Mr. Smith has essentially summed up the difficult position that both the Copsons are in, and frankly that we find ourselves in as well. We apologize publicly to the Copsons for the problem. We are not trying to minimize them. We would very much like to be able to find out what this problem is and solve it.

Unfortunately, right now from our perspective it seems to boil down to being associated with the phone number. And we stand willing to provide another number, we stand willing to make an appropriate adjustment to their account. And we stand willing to provide a free reference of calls while a separate number is utilized until the office conversion.

We are confident that after June 22, 1991, the Copsons will no longer be plagued with these problems, and again we offer our sincere apologies. Tr. at 66, 67.

III. *Commission Analysis*

[1-3] The Copsons' experience would be difficult to believe were it not told under oath, in their own words, and not challenged by NET in any substantial way. It is clear from the record that the level of service rendered by NET to the Copson's fell woefully short of that service standard mandated by utilities under RSA 374:1[1(104)]

NET is confident that after June 22, 1991, when the local NET office was converted, the Copsons will no longer be plagued with these problems. To that date, the record indicates that there was not much that NET could do to alleviate the situation that was reasonably acceptable to the Copsons.[2(105)]

NET has offered to rebate the previous two year's basic monthly service charge to the Copsons. This is approximately a total of $350.00. Tr. at 54. This is the maximum amount of reparation which the commission is empowered to order. RSA 365:29. Accordingly, NET should refund the basic monthly service charge for a period of two years in compliance with RSA 365:29 for the deficient service.

This reparation would not compensate the Copsons for the overall diminution of service, inconvenience, disruption and annoyance that they have experienced over the years. Moreover, on the present record, it is uncontroverted that the Copson's were treated rudely and with a lack of concern by NET's customers service personnel.

NET's tariff "provides that for whatever period of time the service is out of order, the customer would be credited to an adjustment of the basic monthly service charge", Tr. at 53, for a period of two years. Therefore, we will require NET to refund the basic monthly service charge for an additional period of two years as a punitive measure for NET's non-responsiveness to Mr.

and Mrs. Copson's deficient service. Since this result is in accordance with and authorized by NET's tariff, it is not necessary under the circumstances for the commission to consider further remedial action pursuant to RSA 365:41.

It also appears that NET's management allowed the field technicians to operate without guidance for years in search of a solution at substantial expense to the company and ratepayers.

Consequently, it appears necessary for the commission to require NET to perform a comprehensive internal review geared toward identifying and documenting the actual extent of customer service deficiencies in New Hampshire. The review should also identify any changes in NET practices and procedures that appear necessary in order to remedy any

deficiencies. The comprehensive review shall be filed within 60 days of this decision. We will also require NET to report within 30 days whether the Copson's problems have been corrected by the above-mentioned local office conversion.

Our order will issue accordingly.

ORDER

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

ORDERED, that NET shall refund the basic monthly service charge for a period of two years pursuant to RSA 365:29; and it is

FURTHER ORDERED, that NET shall additionally refund the basic monthly service charge for a period of two additional years under its tariff as compensation for NET's non-responsiveness to Mr. and Mrs. Copson's problem; and it is

FURTHER ORDERED, that NET file a report within 30 days specifying whether the Copson's problems have been corrected as a result of the local office conversion; and it is

FURTHER ORDERED, that NET file a comprehensive review within 60 days.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1991.

FOOTNOTES

[1]SERVICE. Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate in all other respects just and reasonable.

[2]Ms. Osler offered to provide another phone number and to provide a free reference of calls while a separate number is utilized until the office conversion. Tr. 66. This is not acceptable to the Copsons because of the disruption it would cause Mr. Copson's business and the anxiety it might cause the Copsons' small children who need to call home. Tr. at 15.

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Re Public Service Company of New Hampshire/Northeast Utilities Service Company

DR 90-186
Order No. 20,177

76 NH PUC 472

New Hampshire Public Utilities Commission

July 16, 1991; revised July 19, 1991

ORDER dissolving a protective order and requiring the public disclosure of certain status reports provided by New Hampshire Yankee to the Institute of Nuclear Power Operations (INPO). Commission finds that the public benefits of disclosure outweigh potential harms.

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1. PROCEDURE, § 16

[N.H.] Production of documents — Exemptions from public disclosure — Protective orders — Right-to-know law — Confidential status reports — Institute of Nuclear Power Operations. p. 474.

2. PROCEDURE, § 16

[N.H.] Production of documents — "Confidential" reports — Institute of Nuclear Power Operations — Public disclosure — Right-to-Know law — Balancing of interests. p. 474.

3. ATOMIC ENERGY

[N.H.] Institute of Nuclear Power Operations — "Confidential" status reports — Public disclosure. p. 474.

4. PROCEDURE, § 16

[N.H.] Production of documents — "Confidential" reports — Institute of Nuclear Power Operations — Public disclosure — Separate opinion. p. 476.

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5. ATOMIC ENERGY

[N.H.] Institute of Nuclear Power Operations — "Confidential" status reports — Public disclosure — Separate opinion. p. 476.

APPEARANCES: P. Sabin Willett, Esq. of Bingham, Dana & Gould for the Boston Globe; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Eve H. Oyer, Esq. of Rath, Young, Pignatelli & Oyer and Gerald Garfield, Esq. of Day, Berry & Howard for

Northeast Utilities Service Company; Shelley Nelkens, Pro Se; Robert Cushing, Jr., Pro Se for Campaign for Ratepayers Rights; James T. Rodier, Esq. and Audrey A. Zibelman, Esq. for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On December 13, 1990, the Office of the Consumer Advocate (OCA), acting upon behalf of Shelley Nelkens, an intervenor in the above-captioned docket, filed a supplemental data request seeking copies of certain documents submitted by New Hampshire Yankee (NHY) to the Institute of Nuclear Power Operations (INPO). The requested documents included NHY's June 30, 1990, and December 3, 1990, status reports responding to recommendations made by INPO in its September 3, 1989, reports. Public Service Company of New Hampshire/Northeast Utilities Service Company (PSNH/NUSCO) objected to the request on the grounds that the requested documents were confidential and not reasonably calculated to lead to the discovery of admissible evidence. Tr. Dec. 17, 1990 at 11-12.

On December 17, 1990, the commission issued a bench order ordering production of the documents for the purpose of discovery and granting PSNH/NUSCO's request for a protective order. *Id.* at 37. The commission expressly reserved judgment on the issue of whether the requested documents would be made public in the event any party introduced them into evidence in the evidentiary hearing. *Id*.

On April 16, 1991, John K. Milne of the Boston Globe requested the commission to lift its protective order pertaining to the documents submitted to INPO. A hearing was held on May 8, 1991, to address the merits of the request filed by the Boston Globe.

II. *Positions of the Parties*

PSNH/NUSCO

PSNH/NUSCO argues that the NHY status reports should not be released under New Hampshire's so-called Right-to-Know Law, RSA Chapter 91-A, because they are exempt from public disclosure. The New Hampshire Right-to-Know statute, RSA Chapter 91-A, gives citizens, *inter alia*, "the right to inspect all public records, including meetings of the bodies or agencies, and to make memoranda, abstracts and photographic or photostatic copies of the records or minutes so inspected except as otherwise prohibited by statute or RSA 91-A:5." RSA 91-A:4. The statute does not include a definition of what constitutes a "public record" but it expressly exempts from disclosure "confidential, commercial, or financial information ... " RSA 91-A:5, IV.

According to PSNH/NUSCO, the NHY status reports are confidential within the meaning of the statute. They argue that confidentiality is a primary feature of the INPO evaluation process. The object of strict confidentiality is to encourage the industry to concentrate on achieving excellence by promoting candid self-critical evaluation, rather than on protecting public image and financial viability.

PSNH/NUSCO contends that because the NHY status reports are confidential within the meaning of RSA 91-A:5, the commission should find that they are exempt from disclosure under

the Right-to-Know Law unless the benefits of disclosure are determined to

outweigh the benefits of nondisclosure.

B. *Boston Globe*

The Boston Globe argues that the NHY status reports are not exempted from disclosure under New Hampshire's Right-to-Know Law and therefore should be disclosed. The Boston Globe disagrees with NHY's assertions that the INPO information would be misconstrued by the public or misrepresented by the media as sufficient reasons for non-disclosure.

The newspaper relies heavily on the so-called *Critical Mass II* decision to support its argument that the information is not exempt from disclosure. *Critical Mass Energy Project* v. *Nuclear Regulatory Commission*, __F.2.d__, 1991 WL 64878 (D.C. Cir. Apr. 30, 1991). In *Critical Mass II*, the U.S. District Court was reversed and remanded because its decree of summary judgement was not based on an evidentiary record substantiating the Nuclear Regulatory Commission's claim that disclosure would cause a deterioration in the quality of information exchanged between INPO and utilities for the purpose of quality assurance. The Boston Globe contends that the record in this proceeding is similarly flawed because NHY did not present first-hand testimony from working level employees regarding the importance of maintaining confidential treatment of INPO documents in order to permit candid exchanges of information.

C. *Staff*

Staff suggested that if INPO information is obtained through discovery and is found to be useful and relevant to issues in future commission proceedings, it could very well end up on the public record. According to staff, any potential chilling effect associated with disclosure during future commission hearings is a circumstance that NHY cannot avoid. Staff also recommends that the commission issue a very narrowly drawn order on the facts of this case without setting any precedent in general or establishing commission policy.

III. *Commission Analysis*

[1-3] Upon consideration of the record in this proceeding, we find that disclosure to the public of the NHY status reports to INPO is warranted because the public benefit of disclosure outweighs the harm to NHY.

We begin our analysis with a review of the right to know standard. The Right-to-Know Law provides that the public has the right to inspect "public records". As noted, "public records" are not defined; however, the statute does exempt from disclosure "confidential, commercial, or financial information ... ", RSA 91-A:5, IV. Because of the nature of its function, most information at the commission is commercial and/or financial. Thus, we must determine whether otherwise public commercial or financial information has attributes that merit according it confidential status. We make this determination by: 1) assigning the burden to the proponent of confidentiality; 2) according significant weight to the public interest of disclosure; and 3) balancing that public interest against the harm disclosure would cause to the proponent of confidentiality. *Brent v. Paquette*, 132 N.H. 415 (1989).

The INPO report, dated September 3, 1989, was publicly disclosed prior to the commission's December 17, 1990, Energy Cost Recovery Mechanism (ECRM) hearing. The INPO report contains recommendations, an analysis with respect to Seabrook during a specific time period, as well as the initial responses of PSNH/NUSCO to the analysis and recommendations of INPO. The INPO report was provided to the parties by NHY as a part of the commission's ECRM proceedings conducted in December, 1989. The commission denied NHY's motion to keep this information confidential on the basis that it had been previously made public.

A discovery request followed for access to status reports, i.e., NHY's summaries of its status in addressing the matters raised in the INPO report. The commission directed that the status reports should be provided to the parties subject to a protective order. Under the protective order, any party seeking disclosure is subject to the Right-To-Know Law's standards for exemption. It is those status reports that are the subject of the Right-to-Know request of the Boston Globe.

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Four harms were articulated by NHY with respect to the question of whether the harm of disclosure would outweigh the benefits to the public:1(106)

1) While certain information has already become public, making it public again draws the public's attention to it and therefore the harm is compounded;

2) The commission will somehow misconstrue the nature of the information when it engages in prudency investigations with respect to allowing or disallowing certain expenses for ratemaking purposes;

3) The public will be misinformed or misled through the press or others who may take the material out of context; and

4) Public disclosure will have a chilling effect on what is, in essence, a quality assurance program that works better when people can comment without their statements and analyses being made public.

According to PSNH/NUSCO, the benefit to INPO of nondisclosure and its members is great. In order to achieve INPO's goal of promoting excellence and improving safety and reliability in the operation of commercial nuclear power plants, PSNH/NUSCO asserts that it is necessary to encourage frank and open dialogue among INPO and its members. Confidentiality among INPO and its members is essential for the achievement of this dialogue. The concerns are that public disclosure of INPO documents would have a chilling effect on the willingness of utilities to report troublesome matters resulting in watered-down reports by INPO members to the INPO, and would frustrate the industry's efforts to achieve excellence in nuclear power plant operations.

PSNH/NUSCO further asserts that there is no countervailing public interest in requiring disclosure of the NHY responses. Disclosure of the materials will not significantly advance the cause of safety and reliability in nuclear power plants because it will discourage INPO members from sharing information that enables them to pursue standards more stringent than NRC standards. To the extent that there is a public interest in monitoring self-critical information revealed by INPO members to INPO, the NRC's access to INPO materials adequately protects that interest.

With respect to status reports and INPO in general, the commission finds the first three identified harms to be unpersuasive. With respect to the first claimed harm, as PSNH/NUSCO stated in their closing argument, once the information is allowed to become public, the harm, if any, cannot be avoided or remedied.

The commission is also unpersuaded by the concern that the commission will misconstrue the information. The evidentiary proceeding supplies the parties with a full opportunity to explain and probe the INPO data. The commission is confident that this process allows all parties, including PSNH/NUSCO, ample opportunity to ensure that the commission will properly construe the material.

We are similarly unpersuaded by PSNH/NUSCO's claim of harm arising out of public misconception of the material. A fundamental tenet of the federal and state constitutions and the Right-to-Know Law is that the free and open discussion of an issue is essential to the maintenance of a democratic society. To the extent there is public misunderstanding, we are confident that NHY's highly qualified public information office will be able to explain the information to the public.

The fourth harm set forth by NHY is persuasive with respect to INPO information in general. The commission recognizes a very legitimate and substantial interest in being able to engage in quality assurance inquiries out of the public eye. *Cf*., RSA 151:13-a (according confidential status to hospital quality assurance reports). The response from Mr. Drawbridge concerning how this applies to the status reports in question here is that there would be no harm *per se* in disclosing the follow-up status reports; rather, PSNH/NUSCO is concerned that by making them public the commission would, in effect, set a precedent that signals that NHY cannot expect future reports to remain confidential. While Mr. Drawbridge's argument is persuasive in general, the commission does not find that it is persuasive with respect to the status reports at issue because the status reports

are follow-ups to an already public INPO report. Therefore, the commission will allow disclosure of the status reports.

Our action today completes disclosure of all of the INPO information which is in commission files. Therefore, the commission is not subject to any further disclosure requirements under the Right-To-Know Law. The commission hereby provides PSNH/NUSCO with the assurance that the commission recognizes the legitimacy of its argument with respect to future information and that it is not the commission's intent to establish a broad precedent.

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/Northeast Utilities Service Company and New Hampshire Yankee shall disclose to the public the INPO status reports; and it is

FURTHER ORDERED, that the bench protective order issued by the commission on December 17, 1990 regarding the aforementioned documents be dissolved in accordance herewith.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1991.

Separate Opinion of
Commissioner Ellsworth

[4, 5] The minutes of the Commission's weekly meeting of May 13, 1991 reflect my intention to dissent from the majority decision in this proceeding. That intention was based on my understanding of the majority's position as expressed orally at that meeting. My review of the majority's written opinion, attached hereto, reveals that our differences were not significant, and while I continue to differ with some of the supporting conclusions which lead to the majority's decision, I agree with the decision itself.

The intent of this separate opinion, therefore, is to concur with their decision to disclose to the public the specific INPO status reports which were the subject of these proceedings, but to set forth my position relative to the disclosure of INPO documents in general.

Inspections and audits are valuable tools in determining the effectiveness of a plant's operating characteristics and the thoroughness of operator capabilities. Nuclear generating facilities such as Seabrook are, and should be, held to the highest operational standards through the regulations, rules and operating requirements set forth by the Nuclear Regulatory Commission. Operator responses to inspections and evaluations by the NRC are, and should be, matters of public interest and concern, and it is appropriate that the results of those inspections be made available for public dissemination as well as regulatory review and critique. The results of such reviews help to reveal whether an operator is meeting established regulatory requirements. If it is, the public may find some comfort in the fact that the requirements were met. If it is not, then the public will know what steps are necessary to meet those stated requirements.

I find it understandable that a separate internal evaluation procedures such as those provided by INPO are in place to supplement the regulatory requirements. I find it reasonable to allow the company to pursue internal evaluations in the absence of public disclosure. I cannot find, as does the majority, that disclosure to the public of internal reports, such as INPO status reports, are warranted because the benefits of disclosure outweigh the benefit to NHY of non-disclosure.

Since INPO reports, and resulting status reports, do not address specific statutory or regulatory requirements, then their contribution to the overall safety and reliability of a plant must be considered more subjective than those that provide adherence to NRC regulations. Responses and reactions to INPO reports have the luxury of including opinions, observations and suggestions which do not reach the level of official response that are required by NRC regulations. It is to the industry's credit that they give the same level of credence to INPO investigations that they do to NRC investigations.

Since an INPO report does not focus on a specific regulatory requirement, and since as a result a response to such a report cannot focus on a specific corrective action which would meet a regulatory requirement, then there is very limited opportunity for the public to evaluate whether or not the corrective action is proper. The lack of a regulatory yardstick leaves the public to evaluate the company's reaction in a vacuum, and such evaluations cannot be expected to provide substantive benefits to either the public or the affected utility.

The public has a right to know the facts upon which a company makes its decisions. It has a right to know the level of proficiency that a utility is expected to meet and it has a right to know whether or not it is meeting that level. However, it will not necessarily benefit from the opinions and analyses of a company's search to reach a higher standard than is required by regulation.

The majority responded to four "harms" as articulated by NHY with respect to the question of whether the harm of disclosure would outweigh the benefits to the public. The majority was unpersuaded by the first three. I am not so persuaded on two of the three issues. Regarding the issue of information that has already been made public, I find little comfort in the response of the intervenor that the information was gleaned through other than appropriate or official channels in reaching the public. If the information was gleaned improperly or illegally, I would not compound that impropriety by contributing to its further publicity. My willingness to allow the responses to be published in this instance should not be read to infer that I condone the unauthorized taking and publishing of documents which have been otherwise classified as confidential.

I agree with the majority that the commission will not misconstrue the nature of the information when it engages in prudency investigations.

I disagree with the majority who believe that confidential INPO reports do not risk being taken out of context and that the public will not risk being misinformed or mislead. I believe those risks are real.

I strongly believe the general disclosure of these documents will have a chilling effect on the company's quality assurance program. I support their continued confidentiality and am satisfied that continued review by federal and state regulators provides adequate safeguards to assure that these internal standards — which are higher than regulatory standards — are aggressively pursued and reasonably maintained.

Concurring separately:

July 16, 1991

Bruce B. Ellsworth
Commissioner

FOOTNOTES

[1]On April 30, 1991, the D.C. Circuit Court of Appeals in *Critical Mass II*, *supra* reversed the grant of summary judgment maintaining the confidentiality of INPO documents. On remand, the district court was required to develop a record to enable the appeals court to make findings on disputed material facts.

Although *Critical Mass II* is not binding on the commission in this case, there was testimony on the potential harm of disclosure. Therefore, in contrast to *Critical Mass II*, the commission has a record upon which it can make findings and conclusions.

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NH.PUC*07/16/91*[27166]*76 NH PUC 478*Monteiro v. New England Telephone Company

[Go to End of 27166]

Monteiro
v.
New England Telephone Company

DC 91-005
Order No. 20,178

76 NH PUC 478

New Hampshire Public Utilities Commission

July 16, 1991

ORDER directing a telephone local exchange carrier (LEC) to reconnect a medically-disabled, delinquent customer, provided that the customer obtains an updated medical certificate every six months, keeps current on monthly bills, enters a payment plan to pay arrearages, and, pending full payment of all arrearages, submits to restrictive blocks limiting services to those required in a medical emergency. Commission requires the customer to pay the usual reconnection charges, as well as the blocking costs.

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1. PAYMENT, § 33

[N.H.] Enforcing payment — Denial of service — Conditions on reconnection — Payment of arrearages — Medical certificate — Blocking — Telephone local exchange service. p. 479.

APPEARANCES: Charles Paone and Janet Quint for New England Telephone; Ruby Monteiro, pro se; Eugene F. Sullivan, III, Esq., and Mary Anne Lutz for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

Procedural History

On January 8, 1991, Ms. Ruby Monteiro filed a complaint with the Commission alleging that New England Telephone (NET) improperly terminated her telephone service for failure to pay her bill. Ms. Monteiro alleges that she requires telephone service because of her medical

disabilities. The Commission scheduled a hearing for January 22, 1991. At Ms. Monteiro's request, the hearing was rescheduled for February 4, 1991, to allow Ms. Monteiro to get her medical records. On February 4, 1991, the Commission held the hearing on the merits.

Position of the Parties

Ms. Monteiro

Ms. Monteiro concurs with the company that her telephone bill is not currently paid. She believes that her medical disabilities allow her to fall within the exception provided in N.H. Admin. Rules, PUC 403.06(c) (3). Ms. Monteiro provided medical letters explaining that due to her and her son's medical conditions it would be unsafe to disconnect her telephone service. T 41. *See,* Exhibit 1 and a letter to the file received on February 25, 1991.

New England Telephone

NET asserts it is acting in conformance with PUC rules in disconnecting Ms. Monteiro's telephone because NET contends that Ms. Monteiro failed to follow the payment plans she entered into with the company. After considering Ms. Monteiro's payment record, the amount of the bill, the number of promises made and not kept and the monthly bills that were much higher than the monthly payments, NET believes it correctly decided to terminate her service. T. 70-73. Ms. Monteiro had not provided a current medical certification to the company when NET disconnected her service on June 28, 1990. T.42.

Issues

1. Did NET disconnect Ms. Monteiro's telephone service in accordance with PUC

Rules and the company's tariff?

2. Has Ms. Monteiro provided sufficient evidence of a medical emergency, as defined in PUC 403.06(c) (3) to qualify her for an exemption?

Commission Analysis

The record shows that NET and Ms. Monteiro entered into at least two different payment plans pursuant to 403.06(e) and that Ms. Monteiro did not adhere to those payment arrangements. T. 29, 32-35; (Exh. 7). Pursuant to N.H. Admin. Rules, PUC Rule 403.06(a) (2) (2), NET could disconnect Ms. Monteiro's service for failing to meet the payment plan terms. However, Ms. Monteiro provided medical letters explaining that due to her and her son's medical conditions it would be unsafe to disconnect her telephone service. T 41. (See also Exh. 1 and a letter to the file received on February 25, 1991.) Under rule 403.06 (c) (3), the company may not disconnect a customer if such a medical condition exists.

The rule also provides that the certification must be renewed every thirty days. Id. The record shows that Ms. Monteiro did not provide an updated letter every thirty days because her condition was an ongoing one. T 41-42.

Ms. Monteiro's difficulties arise from her failure to keep the medical certificates updated and from her inability to keep current with her large phone bills, despite blocks placed on her phone.

She has made payments on her bill totalling $948. T 59, Exh. 8. At the time of disconnection, Ms. Monteiro's outstanding balance was $2,008.05. See NET 2/15/91 response to data request #2. Strict interpretation of the rules would allow the company to disconnect Ms. Monteiro for her failure to provide an updated medical certification and her inability to meet the payment plan.

[1] Due to the ongoing nature of Ms. Monteiro's medical problems, the Commission will make an exception and directs NET to reconnect Ms. Monteiro's telephone under the following conditions:

1. Ms. Monteiro must provide a medical certificate verifying her need for telephone service every six months. A doctor must certify that there is no expected change in Ms. Monteiro's or her son's medical condition for the upcoming six-month period.

2. As NET acted properly in disconnecting Ms. Monteiro, she is subject to the usual reconnection charges and procedures.

3. Ms. Monteiro must keep current on her monthly bill and enter into a payment plan to pay her outstanding balance pursuant to PUC 403.06(c). This outstanding balance must be retired within one year of this Report and Order's issuance for Ms. Monteiro to maintain her telephone service.

4. NET will place restrictive blocks on Ms. Monteiro's telephone at her expense. If there is evidence that Ms. Monteiro circumvented the blocking, it is grounds for immediate disconnection. No toll calls should be accrued until the outstanding balance is paid.

Ms. Monteiro must meet the above stated conditions at all times for her to maintain her telephone service regardless of medical conditions.

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 Company accept a registered physician's certificate of a medical emergency every six months from Ms. Monteiro; and it is

FURTHER ORDERED, that New England Telephone Company enter into a payment schedule with Ms. Monteiro pursuant to N.H. Admin. Rules, PUC 403.06; and it is

FURTHER ORDERED, that the outstanding balance must be paid within one year from the effective date of this Order; and it is

FURTHER ORDERED, that Ms. Monteiro comply with a payment schedule to continue to qualify for the medical exception, pursuant to N.H. Admin. Rules PUC 403.06 (c) (3); and it is

FURTHER ORDERED, that New England Telephone Company place restrictive blocks on Ms. Monteiro's telephone, at her expense, to limit her services to those required in a medical emergency until her arrearage is retired.

By order of the Public Utilities

Commission of New Hampshire this sixteenth day of July, 1991.

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NH.PUC*07/17/91*[27167]*76 NH PUC 459*Public Service Company of New Hampshire/Northeast Utilities Service Company

[Go to End of 27167]

Re Public Service Company of New Hampshire/Northeast Utilities Service Company

DR 91-011
Order No. 20,173

76 NH PUC 459

New Hampshire Public Utilities Commission

July 17, 1991

ORDER adopting a stipulation establishing a temporary fuel purchase power adjustment clause (FPPAC) rate of 0.0 cents per kilowatt-hour, to be implemented on a services-rendered basis; establishing a schedule for a proceeding to establish a permanent FPPAC rate; and granting, subject to limitations, petitions to intervene.

Commission finds a temporary FPPAC appropriate since actual energy cost recovery mechanism (ECRM) costs would not be available until after the "First Effective Date" of the rate agreement to resolve the bankruptcy proceeding of Public Service Company of New Hampshire, which provides for the replacement of the ECRM with the FPPAC.

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1. PARTIES, § 18

[N.H.] Intervention — Grounds for allowing — Limitations. p. 462.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 9

[N.H.] Energy cost clauses — Fuel and purchased power cost adjustment — Temporary rate — Effective date — Services-rendered basis — Electric rate agreement. p. 463.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 51

[N.H.] Effective date — Energy cost clauses — Fuel and purchased power cost adjustment — Temporary rate — Services-

rendered basis — Electric rate agreement. p. 463.

4. RATES, § 249

[N.H.] Effective date — Services rendered basis — Electric rate agreement. p. 463.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Eve H. Oyer, Esq. of Rath, Young, Pignatelli & Oyer for Northeast Utilities Service Company; Michael W. Holmes, Esq. for the Office of Consumer Advocate; Shelley Nelkens, *pro se*; Victoria Turner, *pro se*,; Robert Cushing, Jr., for the Campaign for Ratepayers Rights; Audrey A. Zibelman, Esq., and James T. Rodier, Esq., for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Introduction and Procedural History*

The Rate Agreement, approved by the New Hampshire Public Utilities Commission (commission) in Docket No. DR 89-244, provides for the replacement of the Energy Cost Recovery Mechanism (ECRM) with the Fuel Purchase Power Adjustment Clause (FPPAC) as of the First Effective Date.

On February 22, 1991, Public Service Company of New Hampshire/Northeast Utilities Service Company (PSNH/NUSCO) submitted a proposed procedure for the commission's review and approval of a FPPAC rate to take effect on the First Effective Date.

At its open meeting on March 18, 1991, the commission rejected PSNH/NUSCO's proposal because it failed to allow for a final reconciliation of all the energy cost recovery mechanism (ECRM) costs data upon the First Effective Date. In lieu of PSNH/NUSCO's request, the commission expressed its preference for the proposal by the staff of the New Hampshire Public Utilities Commission (staff) establishing an initial temporary FPPAC rate upon the First Effective Date, to be followed by a proceeding for final reconciliation of ECRM costs as soon as practicable after the First Effective Date.

On April 24, 1991, the New Hampshire Supreme Court issued its order in *Appeal of Robert C. Richards, et al*., No. 90-406, affirming the commission's order in Docket No. DR 89-244 (Northeast Utilities/Public Service Company of New Hampshire Reorganization Proceedings). __N.H.__, (1991), 590 A.2d 586 (1991).

On April 29, 1991, PSNH/NUSCO filed with the commission testimony and exhibits in support of establishing an interim FPPAC rate of 0.0¢ /kwh for the period beginning on the First Effective Date and ending on July 31, 1991.

By Order of Notice issued in this proceeding on April 29, 1991, the commission scheduled a hearing for May 14, 1991, to address the issues of what the FPPAC rate should be for effect on the First Effective Date, pending ECRM final reconciliation, and to establish a procedural schedule for the remainder of the proceeding. At the May 14, 1991, hearing, staff, PSNH/NUSCO, and the Office of the Consumer Advocate (OCA) provided the commission with a stipulation in which they recommended that the commission, *inter alia*, establish a temporary FPPAC rate of 0.0¢ /kwh for the period beginning on the First Effective Date and ending on July 31, 1991.

The stipulation also recommended a procedural schedule to the commission for the remainder of the proceeding.

On May 17, 1991, the commission issued Order No. 20,132 which approved the FPPAC rate of 0.0¢ /kwh, as proposed, applicable to all service rendered by PSNH/NUSCO on or after May 16, 1991.

On July 2, 1991, PSNH/NUSCO submitted a motion to amend the procedural schedule in the following manner:

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

July 9, 1991	PSNH/NUSCO's responses to staff follow-up data requests.
July 12, 1991	Staff and intervenor testimony due.
July 16-18, 1991	Hearings on all issues unrelated to Seabrook outages and capacity swap with NU. Potential PSNH/NUSCO witnesses: Hall, Noyes, Swist, Coulson, Smagula, Delay, Lander, Vogel, Bowie, Packard.
July 19, 1991	Data requests on staff and intervenor testimony due.
July 26, 1991	Responses to data requests on staff and intervenor testimony.
July 31, 1991 & Aug. 1-2, 1991	Hearings on Seabrook outages, capacity swap with NU, and any other deferred issue.

II. *Intervention*

Motions to intervene were filed in this proceeding by Shelley Nelkens, Victoria Turner, and the Campaign for Ratepayers Rights (CRR). PSNH/NUSCO filed a written objection to the intervention of CRR and entered an oral objection to the interventions of Ms. Nelkens and Ms. Turner. PSNH/NUSCO argued that the mere status of Ms. Nelkens and Ms. Turner as residential customers of PSNH/NUSCO did not entitle them to intervention since residential customers in this proceeding are represented by statute by the OCA.

Additionally, PSNH/NUSCO objected to the intervention of CRR, *inter alia*, on the basis that CRR's office is in Concord, which is not in the service area of PSNH/NUSCO. PSNH/ NUSCO also contended that CRR must be represented by counsel as a pre-condition for intervention as a full party. Tr. at 102. Mr. Cushing, on behalf of CRR, argued that CRR is a statewide organization and represents PSNH/ NUSCO customers.

III. *Positions of the Parties*

A. *Temporary Rate and Procedural Schedule*

As noted, staff, PSNH/NUSCO, and OCA provided the commission with a stipulation in which they recommend that the commission, *inter alia*, establish a temporary FPPAC rate of 0.0¢ /kwh for the period beginning on the First Effective Date and ending on July 31, 1991. The

stipulation is appended hereto as Appendix A and is made a part of this report and order.

In support of their stipulation, the parties asserted that actual ECRM costs are unavailable and therefore, it will not be possible, until after the First Effective Date, to conduct a full investigation and hearing to reconcile actual ECRM costs and to identify and adjust as necessary all projected FPPAC costs.

Ms. Nelkens recommended that the commission not approve the stipulation establishing the temporary FPPAC rate so that the First Effective Date would be delayed. Ms. Nelkens argued that the rate plan requires PSNH/NUSCO to file a reasonable least cost plan before the First Effective Date can occur and contended that PSNH/NUSCO has not complied with this requirement.

Ms. Turner opposed the establishment of the temporary FPPAC rate at 0.0¢ /kwh because she contends that FPPAC costs would be about $24 million less if Seabrook was not in operation. Ms. Turner asserted that PSNH/NUSCO rates would be more just and reasonable without Seabrook in operation.

B. *Method for Implementation of Rate Changes on First Effective Date*

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Extensive testimony was provided by the parties at the hearing regarding whether the rate changes on the First Effective Date should be implemented on a bills-rendered basis or on a service-rendered (i.e., pro-rated) basis. This issue was not addressed by the stipulation.

PSNH/NUSCO argued that the rate increase scheduled to be effective on the First Effective Date should be implemented on a bills-rendered basis. While conceding that the first 5.5% rate increase under the rate plan was implemented on January 1, 1990, on a service-rendered basis, PSNH/NUSCO argued that situation can be distinguished from current circumstances. Specifically, PSNH/NUSCO contended that the enabling legislation for the rate plan which, *inter alia*, authorized the temporary rate increase to be placed in effect on January 1, 1990, was not enacted until December 14, 1990. PSNH/NUSCO cite *Nelson v. PSNH*, 119 N.H. 327 (1979) for the proposition that only rates authorized to become effective by operation of law, rather than commission order, must be implemented on a service-rendered basis. According to PSNH/NUSCO, the ruling in *Nelson* is inapplicable in this proceeding because the instant rate increase is being implemented pursuant to the commission's order approving the rate agreement in Docket No. DR 89-244.

PSNH/NUSCO further argued that the commission's rules require, absent a decision by the commission to the contrary or language in the company's tariff to the contrary, new tariffs providing for rate changes to be implemented on a bills-rendered basis.

Staff argued that the rate increase, to be placed into effect on the First Effective Date, should be implemented on a service-rendered basis. In support of its position, staff argued that the temporary rate increase placed into effect on January 1, 1990, was implemented on a service-rendered basis and all subsequent commission orders and communications to customers have not provided any notice that the rate increase to be placed in effect on the First Effective Date would be implemented otherwise. Staff further contended that if put into effect on a

bills-rendered basis, the increase in rates for certain customers would be effective for service rendered prior to the date the Supreme Court issued its decision in *Appeal of Richards, supra*. Staff also observed that if implemented on a bills-rendered basis, the rate increase would have a highly disparate effect on individual customers.

IV. *Commission Analysis*

A. *Intervention*

[1] PSNH/NUSCO argued that the mere status of Ms. Nelkens and Ms. Turner, in the absence of assertions of specific facts as to how their interests would be adversely affected by this proceeding, is insufficient as a matter of law to entitle Ms. Nelkens and Ms. Turner to intervene in this proceeding. We disagree.

> RSA 541-A:17 I. provides that the commission shall grant petitions for intervention if: (a) the petition is submitted to the commission at least three days prior to the hearing in the commission's order of notice, (b) the petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities and other substantial interests may be affected by the proceeding; and (c) the commission determines that the interest of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. The commission may grant petitions for intervention at any time upon determining that such intervention would be in the interest of justice and would not impair in the orderly and prompt conduct of the proceedings. RSA 541-A:17.II. The commission may impose limitations on a party's intervention as long as the limitations are not so extensive as to prevent the intervenor from protecting the interests which form the basis of the intervention. RSA 541-A:17 III -IV. It is these standards and their counterparts in N.H. Admin. R. Puc 203.02 that must govern the commission's actions in regarding petitions for intervention.

Re Public Service Company of New Hampshire 72 NHPUC 513 at 514 (October 27, 1987).

Under RSA 541-A:17 II, we have broad discretion to grant or deny petitions to

intervene, depending on whether we determine the intervention would in the interest of justice and would not impair the orderly and prompt conduct of the proceeding. Under the present circumstances, we believe that the grant of intervenor status to Ms. Nelkens and Ms. Turner, subject to appropriate limitations is more consistent with the interests of justice than the denial of intervenor status. The input of public "watchdogs" provides the commission with record information that has a reasonable probability of allowing it to perform better its responsibilities. Accordingly, we will grant the motions to intervene of Ms. Nelkens and Ms. Turner.

Nonetheless, we urge Ms. Nelkens and Ms. Turner to work together to consolidate their presentations. We also note that, at any time during this proceeding, the commission may limit interventions, *inter alia*, to promote the orderly conduct of the proceeding. RSA 541-A:17, III.

We will grant the petition to intervene of CRR. It is undisputed that CRR is a statewide

organization of utility ratepayers. The issue of Mr. Cushing's representation of CRR on whether, as PSNH/NUSCO contends, CRR should be represented by counsel as a condition of participation will be addressed separately.

B. *Temporary FPPAC Rate*

After review of the record, the commission finds that the proposed FPPAC rate of 0.0¢ /kwh is just and reasonable. Because a full investigation and hearing to reconcile actual ECRM costs and to identify and adjust as necessary all projected FPPAC costs could not occur by the First Effective Date and the rate is reconcilable, we find the proposal to delay actual hearings on FPPAC until mid-July, 1991, to be in the public good.

C. *Procedural Schedule*

We find that the procedural schedule, as amended by the Motion of PSNH/NUSCO and recommended by the parties, is just and reasonable. We urge the parties to consult, to identify and attempt to resolve as many issues as possible prior to the hearings.

D. *Method for Implementation of Rate Changes on the First Effective Date*

[2-4] We agree with staff's position regarding the method for implementation of the rate changes on the First Effective Date. Accordingly, the FPPAC rate of 0.0¢ /kwh shall be applicable to all service rendered by PSNH/NUSCO on or after May 16, 1991.

PSNH/NUSCO, consistent with the practice of virtually all utilities, normally renders its bills on a cycle-billing basis; that is, a proportionate number of meters are read on each working day of the month. For example, a bill rendered on the twentieth day of May would be based upon the entire amount of electricity used between the twentieth day of April and the twentieth day of May. Under the bills-rendered method proposed by PSNH/NUSCO, the change in rates on the First Effective Date would apply to all electricity used during this period.

In contrast, the service-rendered method would reflect the rate changes for only service rendered on and after May 16, 1991. With regard to the example set out above, if the rate changes were implemented on a service-rendered basis, the higher rates as of the First Effective Date would be applicable only to the electricity used for the period from May 16 to May 20, 1991.

As noted *supra*, PSNH/NUSCO contend that *Nelson* requires that rates authorized to become effective by operation of law must be implemented on a bills-rendered basis. We disagree. The issue in *Nelson* was whether PSNH had unlawfully imposed a rate increase retroactively, without the approval of the commission. The holding in *Nelson* is that a utility may charge new rates retroactively i.e., on a bills-rendered basis, only if authorized to do so by commission order:

> [I]n cases upholding retroactive application of rates, ... rate orders were put into effect by the commission. In the present case, the defendant company put the rates into effect under RSA 378:6, *without* the approval of the

> commission but rather by force of the statute. When the company charged its new rate retroactively, the charge was not based upon a commission order.

Id. at 331. (emphasis)

Moreover, to interpret N.H. Code Admin. R. Puc 1601.05 (1) (1) as permitting the charging of new rates on a bills-rendered basis, without commission authorization, as PSNH/ NUSCO urge us to do, would have the effect of overruling the Court's decision in *Nelson*.

The temporary increase of 5.5% in average annual base retail rates was "placed in effect as of January 1, 1990", pursuant to Section 5 of the Rate Agreement, on a service-rendered basis (Order No. 19,655, December 28, 1989). PSNH/NUSCO customers have not been provided notice that the rate changes scheduled for the First Effective Date would be implemented on any basis other than a service-rendered basis.

Moreover, implementation of the rate changes on a service-rendered basis ensures that all customers are treated in the same manner. *See Nelson* at 331. Were we to allow PSNH/NUSCO to implement the rate changes on a bills-rendered basis, some PSNH/NUSCO customers would pay higher rates on all electricity used on and after April 16, 1991. At the other extreme, some customers would not pay higher rates on electricity service used until May 16, 1991.

The contentions advanced by Ms. Nelkens regarding least cost plan requirements and Ms. Turner regarding the economic merit of keeping Seabrook in operation are not properly within the scope of this proceeding and, accordingly, it is not necessary nor would it be appropriate for us to address those contentions.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that a FPPAC rate of 0.0¢ /kwh, as proposed, is approved for effect as of the First Effective Date of May 16, 1991 and
applicable to all service rendered by PSNH/NUSCO on or after May 16, 1991; and it is

FURTHER ORDERED, that the proposed procedural schedule be approved; and it is

FURTHER ORDERED, that the motions for intervention of Ms. Nelkens, Ms. Turner, and CRR are granted insofar as they are consistent with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1991.

APPENDIX A

STIPULATION AGREEMENT

NOW COME, Public Service Company of New Hampshire (PSNH), Northeast Utilities Service Company (NUSCO), Staff of the Public Utilities Commission (Staff), and the Office of the Consumer Advocate (OCA), and offer the following stipulation for review and approval by the Commission in the above-captioned docket.

WHEREAS, the Rate Agreement approved by the Commission in Docket No. DR 89-244 provides for the replacement of Energy Cost Recovery Mechanism (ECRM) with Fuel Purchase Power Adjustment Clause (FPPAC) as of the First Effective Date; and

WHEREAS, on February 22, 1991, PSNH submitted a proposed procedure for the Commission's review and approval of a FPPAC rate to take effect on the First Effective Date; and

WHEREAS, at its open meeting on March 18, 1991, the Commission rejected PSNH's proposal because it failed to allow for final reconciliation of all energy cost recovery mechanism (ECRM) costs data upon the First Effective Date; and

WHEREAS, in lieu of PSNH's request, the Commission expressed its preference for Staff's proposal to establish an initial temporary FPPAC rate upon the First Effective Date to be followed by a proceeding for final reconciliation of ECRM costs as soon as practicable after the First Effective Date; and

WHEREAS, the parties to this stipulation

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agree in principle with the procedure recommended by the Commission; and

WHEREAS, on April 24, 1991, the New Hampshire Supreme Court issued its order in *Appeal of Robert C. Richards, et al.*, No. 90-406 affirming the Commission's order in Docket No. DR 89-244 (Northeast Utilities/Public Service Company of New Hampshire Reorganization Proceedings); and

WHEREAS, PSNH and NUSCO expect that the First Effective Date will be on or about May 16, 1991; and

WHEREAS, the undersigned parties agree that actual ECRM costs are unavailable and therefore it will not be possible until after the First Effective Date to conduct a full investigation and hearing to reconcile actual ECRM costs and to identify and adjust as necessary all projected FPPAC costs; and

WHEREAS, on April 29, 1991, PSNH made a filing with the Commission containing testimony and exhibits in support of establishing an interim FPPAC rate of 0.0 cents per KWH for the period beginning on the First Effective Date and ending on July 31, 1991, and

NOW THEREFORE, the undersigned parties jointly recommend that the Commission issue an order approving and adopting the following recommendations of the parties:

1. A temporary FPPAC rate of 0.0 cents per KWH shall be established for the period beginning on the First Effective Date and ending on July 31, 1991. There shall be no adjustment to the temporary FPPAC rate during this period notwithstanding the amount of any overrecovery or underrecovery that may accrue. By agreeing to such temporary FPPAC rate, no party shall be deemed to have waived any claim(s) that the temporary rate does not reflect estimated, actual or allowable FPPAC costs for this period.

2. The Commission shall, after a hearing pursuant to the procedural schedule suggested below, establish the permanent FPPAC rate for the FPPAC period beginning on the First Effective Date. In setting such a rate, the Commission shall consider projected FPPAC costs, final reconciliation of all ECRM costs, together with accrued interest as well as the duration the

rate is to be in effect. The parties recommend that the Commission establish the following procedural schedule for review and approval of such FPPAC rate:

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

a. June 4, 1991	PSNH's filing of an estimated proposed FPPAC rate to take effect on August 1, 1991, with supporting testimony;
b. June 14, 1991	Staff and Intervenors' data requests are due;
c. June 21, 1991	Company data responses are due;
d. June 25, 1991	Supplemental PSNH filing of actual ECRM data for May 1991 and final proposed FPPAC rate;
e. July 2, 1991	Staff and Intervenor Testimony due, if any. Staff and Intervenor Supplemental Data Requests;
f. July 9, 1991	PSNH's data requests to Staff and Intervenors due;
g. July 15, 1991	Staff and Intervenors' data responses due. PSNH's responses to supplemental data requests.
h. July 16-19, 1991	Evidentiary Hearings.

3. The parties further agree that if PSNH fails to file supplemental testimony by June 25, 1991, the evidentiary hearings may be rescheduled to commence on a date no earlier than three weeks subsequent to the date which PSNH's supplemental testimony is filed.

4. Commencing on the First Effective Date, interest shall be calculated on any overrecovery or underrecovery of FPPAC costs in a manner similar to that utilized under ECRM and at a rate equal to the prime rate (or mean of any range thereof) as reported in *The Wall Street Journal* for large U.S. money center commercial banks.

Respectfully submitted,
PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE
By its Attorney
By: Gerald M. Eaton, Esquire
NORTHEAST UTILITIES SERVICE
COMPANY
By its Attorney
RATH, YOUNG, PIGNATELLI & OYER, P.A.
By its Attorney
Date: May 15, 1991
By: Eve H. Oyer, Esquire
NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION

OFFICE OF THE CONSUMER ADVOCATE
By its Attorney
Date: May 15, 1991

By: Michael Holmes, Esquire
Consumer Advocate
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
By its Attorney

By: Audrey A. Zibelman, Esquire
General Counsel

Date: May 15, 1991

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Public Service Co. of New Hampshire, DR 89-219, Order No. 19,655, 74 NH PUC 493, Dec. 28, 1989. [N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities, DR 91-011, Order No. 20,132, 76 NH PUC 341, May 17, 1991. [N.H.Sup.Ct.] Re Appeal of Richards, No. 90-406, — N.H. —, 123 PUR4th 512, 590 A.2d 586, Apr. 24, 1991.

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NH.PUC*07/17/91*[27168]*76 NH PUC 480*Franchise Tax Electric Utilities

[Go to End of 27168]

Re Franchise Tax Electric Utilities

DR 91-096
Order No. 20,179

76 NH PUC 480

New Hampshire Public Utilities Commission

July 17, 1991

ORDER directing all electric companies to file revised tariffs to reflect the repeal of the franchise tax. Commission opens a docket to address rate issues related to the repeal of the franchise tax and the implementation of a tax on nuclear station property.

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1. RATES, § 147

[N.H.] Cost of service — Taxation — Repeal of franchise tax — Implementation of nuclear station property tax. p. 480.

2. RATES, § 235

[N.H.] Initiation of changes — Repeal of franchise tax — Electric utilities. p. 480.

3. EXPENSES, § 109

[N.H.] Taxes — Franchise tax — Nuclear station property tax — Electric utilities. p. 480.

4. ATOMIC ENERGY

[N.H.] Nuclear station property tax — Electric utilities. p. 480.

BY THE COMMISSION:

ORDER

WHEREAS, on July 2, 1991 NH Laws Chapter 354 became effective, which Chapter inserted RSA Chapter 83-D and revised RSA Chapter 83-C:I IV; and

[1-4] WHEREAS, RSA Chapter 83-D institutes a tax on nuclear station property and said tax is allowed as a credit against the tax liability under RSA 77-A; and

WHEREAS, 1991 NH Laws 354:4 amends RSA 83-C:1, IV to redefine the franchise tax to eliminate gross receipts from the sales of electricity, effective July, 1, 1991; and

WHEREAS, in *Re: Franchise Tax — Electric and Gas Utilities*, 68 N.H.P.U.C. 461, 462-463 (1983), the commission in allowing electric and gas utilities to incorporate the franchise tax into their respective tariffs based upon a petition filed by the Association of New Hampshire Utilities stated:

> After due consideration, we have concluded that it is reasonable under the circumstances to allow a rate adjustment for the purpose of recovering the increased tax liability ... . The circumstances here are limited (new legislation which imposes immediate liabilities on all intra state electric and gas utilities) and applicable to gas and electric utilities as a class, rather than as individual entities. Those circumstances are not likely to reoccur with any regularity.

and

WHEREAS, the tariff pages of the electric utilities incorporate the franchise tax by reference and a factor of 1% has been added to gross receipts; and

WHEREAS, the nuclear station property tax will be a credit against the business profits and the credit will be applied against the business profits tax liability on a unitary business basis; and

WHEREAS, the franchise tax was also a credit against the business profits tax; it is

ORDERED, that this docket be opened on motion of the commission to address issues relating to the rate effect of the tax law changes enacted in 1991 NH Laws Chapter 354; and it is

FURTHER ORDERED, that all electric companies shall file revised and corrected tariff pages to eliminate all reference to the franchise tax and reflect the changes in rates; and it is

FURTHER ORDERED, that each electric utility should address the issue of the effect that the repeal of the franchise tax and the adoption of the nuclear plant property tax will have on their respective rates; and it is

FURTHER ORDERED, that such filings will be filed at the commission no later than July 26, 1991; and it is

FURTHER ORDERED, that a hearing be held, pursuant to RSA Chapter 541, 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 fifteenth day of August, 1991; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard at said hearing by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than August 1, 1991, and is to be documented by affidavit filed with office on or before August 15, 1991; and it is

FURTHER ORDERED, that, pursuant to RSA 541-A:17 and Puc 203.02, any party seeking to intervene in the proceeding must submit a motion to intervene with a copy to the petitioner and commission at least three days prior to the hearing; and it is

FURTHER ORDERED, that the parties must file with the commission all direct testimony and exhibits, with copies to other parties of record, at least three days prior to the hearing.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1991.

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NH.PUC*07/18/91*[27169]*76 NH PUC 481*New Hampshire Electric Cooperative

[Go to End of 27169]

Re New Hampshire Electric Cooperative

DR 90-078
Order No. 20,180

76 NH PUC 481

New Hampshire Public Utilities Commission

July 18, 1991

ORDER terminating, effective August 14, 1991, a temporary surcharge on the retail rates of an electric cooperative, provided that the commission does not otherwise rule in an order issued prior to that date. The state statute that directed the commission to authorize the establishment of the surcharge required the termination of the surcharge and the refund of revenues collected if the cooperative failed to obtain commission approval of a rate plan within 90 days following the effective date of the bankruptcy plan of Public Service Company of New Hampshire.

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1. RATES, § 630

[N.H.] Temporary rate surcharge — Termination — Statutory considerations — Electric cooperative. p. 482.

BY THE COMMISSION:

ORDER

WHEREAS, pursuant to RSA 362-C:7 and *Re New Hampshire Electric Cooperative, Inc.*, 74 N.H.P.U.C. 521 (December 12, 1989), the New Hampshire Electric Cooperative, Inc. ("Cooperative" or "NHEC") was authorized to establish and place into an escrow account a 5.5% temporary rate surcharge on retail rates for service rendered on or after January 1, 1990; and

WHEREAS, the statute requires the

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termination of the temporary rate surcharge and the refund of the revenues collected if the Cooperative fails to have a rate plan approved by the Commission within 90 days following the date upon which a bankruptcy rate plan for Public Service Company of New Hampshire ("PSNH") became effective; and

WHEREAS, PSNH emerged from bankruptcy on May 16, 1991, and, accordingly, the Cooperative is required to have a rate plan approved by the Commission by August 14, 1991; and

WHEREAS, it is extremely unlikely that there will be Commission approval of a rate plan by the statutory deadline; it is hereby

[1] ORDERED, *NISI*, that the Cooperative's authority to impose a 5.5% surcharge as authorized in *Re New Hampshire Electric Cooperative, Inc.*, *supra* be, and hereby is, terminated effective August 14, 1991, unless the Commission rules otherwise in an order issued prior to August 14, 1991.

ORDERED, that a hearing will be held on August 8, 1991, at 10:00 o'clock in the forenoon at the offices of the Commission, 8 Old Suncook Road, Concord, New Hampshire 03301, for the purpose of addressing the method by which the Cooperative shall refund the escrowed sums; and it is

FURTHER ORDERED, that any parties wishing to file comments on this issue shall do so no later than the close of business on August 2, 1991.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1991.

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Re New Hampshire Electric Cooperative, Inc.

DR 91-057
Order No. 20,181

76 NH PUC 482

New Hampshire Public Utilities Commission

July 19, 1991

ORDER authorizing an electric cooperative to increase its purchased power cost adjustment (PPCA) rate on a service rendered basis, retroactive to May 1, 1991. The increase is found to properly reflect wholesale power cost increases. Proposed further increase to the PPCA to include a 5.5% temporary base rate surcharge is rejected. Commission also rejects the claim that its regulatory authority is impaired by the pending bankruptcy of the cooperative.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchased power cost adjustment — Wholesale cost increase — Electric cooperative — Exclusion of base rate surcharge. p. 483.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 51

[N.H.] Effective date — Purchased power cost adjustment — Services-rendered basis — Electric cooperative. p. 483.

3. RATES, § 250

[N.H.] Effective date — Retroactive rates — Purchased power cost adjustment — Services-rendered basis. p. 483.

4. BANKRUPTCY

[N.H.] Pending proceedings — Effect on state utility regulation — Impairment of commission authority — Electric cooperative. p. 483.

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APPEARANCES: Merrill & Broderick by Mark W. Dean, Esq. for the New Hampshire Electric Cooperative, Inc.; McLane, Graf, Raulerson & Middleton, by Richard A. Samuels, Esq. for the National Rural Utilities Cooperative Finance Corp.; Kenneth A. Colburn for the BIA; Michael Holmes, Esq., Consumer Advocate; Audrey Zibelman, Esq. for the Public Utilities Commission Staff.

BY THE COMMISSION:

I. PROCEDURAL HISTORY

On May 3, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC) filed a petition to change its Purchased Power Cost Adjustment from $0.00/Kwh to $0.02043/Kwh effective July 1, 1991 to reflect the increase in the cost of purchased power that NHEC buys from Public Service Company of New Hampshire (PSNH). An order of notice was issued May 11, 1991, scheduling a prehearing conference for May 28, 1991. At the prehearing conference the Commission granted intervention to the National Rural Utilities Cooperative Finance Corporation (CFC)[1(107)] and scheduled a hearing on the merits for June 21, 1991.

On June 14, 1991 the NHEC filed a revision to the proposed PPCA rate to $0.02045 to include the approximate $15,000 annual increase in purchased power costs from New England Power Company (NEP).

II. POSITIONS OF THE PARTIES

The NHEC asserts that the requested PPCA increase properly reflects the wholesale power cost increases from PSNH and NEP. At the June 21, 1991 hearing the NHEC testified that PSNH is currently billing NHEC the power costs associated with the phase-in wholesale settlement it filed before the Federal Energy Regulatory Commission (FERC) on April 26, 1991. The phase-in settlement filing is intended to be effective on May 1, 1991, and replaces the 182% increase approved by FERC on February 8, 1991. (See *Re Public Service Company of New Hampshire*, 54 FERC Para. 61,106 (1991) (*reh'g pending*). Although the FERC had not acted upon the PSNH settlement filing prior to June 21, 1991 the Cooperative anticipated an affirmative ruling by the FERC. The Cooperative further requested that it be permitted to increase its rates on July 1, 1991, and collect increased costs incurred from May 1 through July 1, 1991 over a six month period beginning July 1.

The Commission Staff did not challenge the Cooperative wholesale cost increases and their effect upon the Company's PPCA. However, Staff contended that the Company's proposal to increase its PPCA charges by adding on the 5.5% temporary rate surcharge authorized by RSA 362-C:7 violated the Commission's Order implementing the surcharge. Staff argued that in *Re New Hampshire Electric Cooperative*, 74 N.H.P.U.C. 521 (December 12, 1989), the Commission accepted the parties' recommendation not to add the surcharge to the Cooperative's fuel and purchase power adjustments.

The Office of the Consumer Advocate (OCA) objected to the Cooperative's requested increase. Citing the Cooperative's bankruptcy filing and the involvement of the REA and State in the bankruptcy proceeding, the OCA asserted that the Commission should not act to approve any increase in the Cooperative's rates until it is clear that we retain the full panoply of our regulatory jurisdiction.

The BIA limited its comments to noting the deleterious impact the rate increase would have on its constituency and requesting that, if possible, the Commission avoid an "across the board" increase.

III. COMMISSION ANALYSIS

[1-4] The record fully supports the petition by the NHEC to increase the PPCA to reflect the increased rates that PSNH and NEP are charging.[2(108)] We also agree with Staff and the OCA

that the NHEC incorrectly increased its purchased power costs by the 5.5% base rate increase authorized by RSA 362-C:7 and *Re New Hampshire Electric Cooperative*, *supra*. Under the terms of that Order, the temporary surcharge was not to be added to the Cooperative's fuel and purchase power charges.

We will accordingly accept the Cooperative's petition subject to this modification.

The Commission will not accept the OCA's recommendations that we order the Cooperative to refund the temporary surcharge and deny any increase due to the Cooperative's bankruptcy petition. With respect to the former, we will reserve to a properly noticed proceeding the Cooperative's obligation to refund the surcharge.

3(109) We also do not agree with the OCA's recommendation that we decline to authorize an increase because the Cooperative's pending bankruptcy has impaired our regulatory authority. To date, the Cooperative's bankruptcy filing has not affected our ability to regulate to the full extent of our statutory authority. While we recognize that the REA has asserted jurisdiction over the Cooperative, (Exh.3; 7 CFR § 1717, 350-356), the mere assertion of jurisdiction by an entity without enabling regulatory authority cannot compromise the statutory regulatory authority of this Commission. If in the future this changes, we will address the OCA's concerns.

We also will not accept the BIA's proposal to allow the Cooperative to increase its PPCA on anything other than a per kilowatt hour basis. While we are cognizant of the BIA's concerns, the issues it raises are beyond the scope of this proceeding.

Our order will issue accordingly.

ORDER

Based upon the foregoing report which is incorporated by reference herein, it is hereby

ORDERED, that the NHEC petition to increase its PPCA factor is granted on a service rendered basis retroactive to May 1, 1991; and it is

FURTHER ORDERED, that the NHEC remove from its purchased power costs that amount attributed to adding the 5.5% base rate increase to the PPCA calculation; and it is

FURTHER ORDERED, that the NHEC file compliance tariff pages within 20 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1991.

FOOTNOTES

[1]On June 5, 1991, the Business and Industry Association of New Hampshire (BIA) submitted a late filed motion to intervene. The BIA's request was not taken up at the June 21, 1991 hearing on the merits; however, it appeared at the hearing without opposition by any party. To the extent necessary, the BIA's request for intervention is hereby granted.

[2]On July 1, 1991 the FERC rejected the phased-in settlement rates. The FERC determined that a caveat demanded by the Cooperative that "it will not owe anything under the [phase-in] rates to the extent it will be deemed to have purchased the power from [the New England Electric System]," would require prejudgment of fact issues surrounding the Cooperative's obligations as a PSNH customer. Because the FERC was unwilling to tie its hands on those issues, it rejected the proposed phased-in rates and accepted the proposal to delay implementing the 182% from February 8, 1991 to May 1, 1991.

The NHEC has yet to file a petition to increase its PPCA to reflect the 182% PSNH increase authorized by the FERC. The record before the Commission in this proceeding supports only the phased-in settlement rate. Should PSNH implement the FERC allowed rate, the Cooperative will have to petition the Commission for a corresponding increase in its PPCA charges. At that time, one issue the Cooperative must address is whether it is legally prohibited from retroactively collecting the increase in its purchase power costs for the period prior to its new filing. *Pennichuck Water Works v State*, 103 N.H. 49, 164 A.2d 669 (1960).

[3]In Order No. 20,180 issued on July 18, 1991, the Commission Ordered NISI that the Cooperative cease collecting the surcharge as of August 14, 1991 and scheduled a hearing on August 8, 1991 to discuss matters relating to the manner in which the Cooperative shall refund the escrowed surcharges.

EDITOR'S APPENDIX

Citations in Text

[N.H.Sup.Ct.] Pennichuck Water Works v. New Hampshire, 103 N.H. 49, 36 PUR3d 374, 164 A.2d 699, Oct. 28, 1960.

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NH.PUC*07/22/91*[27171]*76 NH PUC 485*AT&T Communications of New Hampshire, Inc.

[Go to End of 27171]

Re AT&T Communications of New Hampshire, Inc.

DR 91-087
Order No. 20,182

76 NH PUC 485

New Hampshire Public Utilities Commission

July 22, 1991

ORDER authorizing a telephone interexchange carrier to revise its tariff for intrastate custom network service to allow for the introduction of new services. Commission finds the proposed revisions consistent with its desire to broaden the range of services available to intrastate customers and its interest in encouraging competition in the intraLATA toll market.

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1. SERVICE, § 468

[N.H.] Telecommunications — IntraLATA toll market — Intrastate custom network services — Tariff revision — New services — Interexchange carrier. p. 485.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — IntraLATA toll market — Intrastate custom network services — Interexchange carrier. p. 485.

BY THE COMMISSION:

ORDER

On June 18, 1991, AT&T Communications of New Hampshire, Inc. (the Company) filed a submission seeking to implement revisions to its Intrastate Custom Network Services; and

[1, 2] WHEREAS, the proposed revisions included the following:

the introduction of two new Custom Network Services, AT&T Distributed Network Service and AT&T One Line WATS; the introduction of a new option to its SDN service called Software Defined Data Network; and implementing administrative changes to the time of day periods for AT&T Software Defined Network; and

WHEREAS, the proposed tariff was filed for effect on July 19, 1991; and

WHEREAS, the New Hampshire Public Utilities Commission wishes to broaden the range of services available to intrastate customers and is interested in encouraging the emergence of competition in the intraLATA toll market on an interim basis; it is here by

ORDERED *NISI*, that AT&T Communications of New Hampshire Inc. be, and hereby is authorized to implement the following tariff changes:

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

PUC No.            -Custom Network Services
Table of Contents  -3rd Revised Pages 1 and 4
                   -original Pages 9 and 10
Tariff Information -3rd Revised Page 1
Section 1          -2nd Revised Page 7
Section 2          -2nd Revised Pages 2,3 and 7
                   -Original Page 8
Section 7          -AT&T One Line WATS Service
                   -Original Pages 1 through 6
Section 8          -AT&T Distributed Network Service
                   -Original Pages 1 through 6;
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and it is

FURTHER ORDERED, that these services will be offered subject to the terms and conditions specified in NHPUC Order No. 20,040 dated January 21, 1991, in Docket DE 90-002; and it is

FURTHER ORDERED, that pursuant to the N.H. Admin. Rules Puc 203.01, the Company shall cause 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 July 29, 1991, and that it be documented by affidavit filed with this office on or before August 19, 1991; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than August 13, 1991; and it is

FURTHER ORDERED, that this Order *NISI* will be effective on August 19, 1991; unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this nineteenth day of July, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 20,040, 76 NH PUC 58, Jan. 21, 1991.

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NH.PUC*07/22/91*[27172]*76 NH PUC 486*Exeter and Hampton Electric Company

[Go to End of 27172]

Re Exeter and Hampton Electric Company

DF 91-089
Order No. 20,183

76 NH PUC 486

New Hampshire Public Utilities Commission

July 22, 1991

ORDER authorizing an electric utility to issue and sell first mortgage bonds and to use the bond proceeds to pay off short-term indebtedness, cover current construction expenditures, and finance future purchase and construction costs.

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1. SECURITY ISSUES, § 44

[N.H.] Factors affecting authorization — Public good — Lawful purpose — Mortgage bonds — Electric utility. p. 486.

BY THE COMMISSION:

ORDER

WHEREAS, on July 12, 1991, Exeter & Hampton Electric Company (the "company") filed a Petition under RSA 369:1, 2, and 4, to issue and sell $5,000,000 of First Mortgage Bonds, Series J, 9.43% maturing 2003 (the "Bonds"); and

WHEREAS, the company's Petition states that the $5,000,000 of its Series J First Mortgage Bonds will be sold at par to The Travelers Insurance Company, said Bonds to be issued under a Supplemental Indenture supplementing the company's existing Indenture of Mortgage and Deed of Trust to The First National Bank of Boston, as successor trustee, dated as of December 1, 1952, as heretofore supplemented (the "Indenture"); and

[1] WHEREAS, the company's Petition represents that the net proceeds of the proposed sale of the Bonds are expected to be applied by the company (a) to pay off short-term indebtedness outstanding at the time of the said sale, the proceeds of which will have been expended in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the company's business, but may be applied in part, (b) to pay for current expenditures made by the company for said purposes, (c) to finance future purchase and construction of such property and facilities, and (d) to defray the costs and expenses of the financing contemplated by this Petition or for other proper corporate purposes; and

WHEREAS, the company has requested that the commission, in accordance with RSA 369:1, 2, and 4, approve and authorized the issuance and sale of the said Bonds in the manner and upon the terms set forth in the company's filing, as well as the mortgaging of the company's present and future property, tangible and intangible, including franchises, as security for the First Mortgage Bonds to be created; and

WHEREAS, the commission, after investigation and consideration, is satisfied that the granting of the Petition will be for the public good; and

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WHEREAS, the public should be offered an opportunity to respond in support or in opposition to the company's Petition before the commission finally acts on the company's 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 14, 1991; and it is

FURTHER ORDERED, that the company affect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which the operations are proposed to be conducted, such publication to be no later than July 25, 1991, and designated in an affidavit to be made on a copy of this Order and filed with this office on or before August 14, 1991; and it is

FURTHER ORDERED, *NISI*, that the company be and hereby is authorized, pursuant to the provisions of RSA 369:1, 2, and 4, to issue and sell $5,000,000 of First Mortgage Bonds, Series

J, 9.43%, maturing 2003, such Bonds to be sold under a Supplemental Indenture to the company's existing Indenture of Mortgage and Deed of Trust, and upon the terms and conditions set forth in the company's filing; and it is

FURTHER ORDERED,, that the company be and hereby is authorized to mortgage it present and future property, tangible and intangible, including franchises, as security for the Bonds to be issued; and it is

FURTHER ORDERED, that the proceeds from the sale of said Bonds be used solely for one or more of the following purposes:

A. To pay off short-term indebtedness outstanding at the time of said sale;

B. To pay for current expenditures made for the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the company's business;

C. To finance future purchase and construction of such property and facilities; and

D. To defray the costs and expenses of the financing contemplated; and

E. For other lawful corporate purposes; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, the company shall file with this commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of such securities until the whole of such proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that this Order shall become effective on August 14, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1991.

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NH.PUC*07/22/91*[27173]*76 NH PUC 487*Concord Electric Company

[Go to End of 27173]

Re Concord Electric Company

DF 91-097
Order No. 20,184

76 NH PUC 487

New Hampshire Public Utilities Commission

July 22, 1991

ORDER authorizing an electric utility to issue and sell first mortgage bonds and to use the bond proceeds to pay off short-term indebtedness, cover current construction expenditures, and finance future purchase and construction costs.

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1. SECURITY ISSUES, § 44

[N.H.] Factors affecting authorization — Public good — Lawful purpose — Mortgage bonds — Electric utility. p. 488.

BY THE COMMISSION:

ORDER

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WHEREAS, on July 12, 1991, Concord Electric Company (the "company") filed a Petition under RSA 369:1, 2, and 4, to issue and sell $6,500,000 of First Mortgage Bonds, Series H, 9.43%, maturing 2003 (the "Bonds"); and

WHEREAS, the company's Petition states that the $6,500,000 of its Series H First Mortgage Bonds will be sold at par to The Travelers Insurance Company, said Bonds to be issued under a Seventh Supplemental Indenture supplementing the company's existing Indenture of Mortgage and Deed of Trust dated as of July 15, 1958, to the First National Bank of Boston, as successor trustee; and

[1] WHEREAS, the company's Petition represents that the net proceeds of the proposed sale of the Bonds are expected to be applied by the company (a) to pay off short-term indebtedness outstanding at the time of the said sale, the proceeds of which will have been expended in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the company's business, but may be applied in part; (b) to pay for current expenditures made by the company for said purposes; (c) to redeem the remaining outstanding balance of the company's First Mortgage Bonds, Series F, 13 7/8%, due June 1, 1999; (d) to finance future purchase and construction of such property and facilities; and (e) to defray the costs and expenses of the financing contemplated by this Petition or for other proper corporate purposes; and

WHEREAS, the company has requested that the commission allow costs associated with the redemption of the First Mortgage Bonds, Series F, 13 7/8%, and the remaining unamortized debt expense related to said issue, to be incorporated as a portion of the costs of the new financing; and

WHEREAS, the company has requested that the commission, in accordance with RSA 369:1, 2, and 4, approve and authorize the issuance and sale of the said Bonds in the manner and upon the terms set forth in company's filing, as well as the mortgaging of the company's present and future property, tangible and intangible, including franchises, as security for the First Mortgage Bonds to be created; and

WHEREAS, the commission, after investigation and consideration, 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 to the company's Petition before the commission finally acts on the company's 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 14, 1991; and it is

FURTHER ORDERED, that the company affect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which the operations are proposed to be conducted, such publication to be no later than July 25, 1991, and designated in an affidavit to be made on a copy of this Order and filed with this office on or before August 14, 1991; and it is

FURTHER ORDERED, *NISI*, that the company be and hereby is authorized, pursuant to the provisions of RSA 369:1, 2, and 4, to issue and sell $6,500,000 of First Mortgage Bonds, Series H, 9.43%, maturing 2003, such Bonds to be sold under a Supplemental Indenture to the company's existing Indenture of Mortgage and Deed of Trust, and upon the terms and conditions set forth in the company's filing; and it is

FURTHER ORDERED, that the company be and hereby is authorized to mortgage its present and future property, tangible and intangible, including franchises, as security for the Bonds to be issued; and it is

FURTHER ORDERED, that the proceeds from the sale of said Bonds be used solely for one or more of the following purposes:

A. To pay off short-term indebtedness outstanding at the time of said sale;

B. To pay for current expenditures made for the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the company's business;

C. To finance future purchase and

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construction of such property and facilities; and

D. To redeem the remaining balance of the company's outstanding First Mortgage Bonds, Series F, 13 7/8%, due 1999; and

E. To defray the costs and expenses of the financing contemplated by the company's Petition; and

F. For other lawful corporate purposes; and it is

FURTHER ORDERED, that the company be and hereby is authorized to recover as a portion of the cost of this new financing the costs associated with the redemption of the First Mortgage Bonds, Series F, 13 7/8%, and the remaining unamortized debt expense related to said issue; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, the company shall file with this commission a detailed statement, duly sworn by its Treasurer, showing the disposition

of the proceeds of such securities until the whole of such proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that this Order shall become effective on August 14, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1991.

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NH.PUC*07/23/91*[27174]*76 NH PUC 489*Public Service Company of New Hampshire

[Go to End of 27174]

Re Public Service Company of New Hampshire

DR 89-148
Order No. 20,185

76 NH PUC 489

New Hampshire Public Utilities Commission

July 23, 1991

ORDER ruling that rates prescribed in a long-term rate order of a qualifying cogeneration and small power production facility (QF) do not apply to utility purchases of capacity and energy in excess of the levels specified in the rate order. Commission holds that energy and capacity in excess of the amounts specified in a QF rate order are subject to separate sales arrangements between the QF developer and the purchasing utility. Such separate arrangements may be based either on the utility's short-term rate or long-term avoided cost as calculated pursuant to its least-cost integrated resource plan.

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1. COGENERATION, § 24

[N.H.] Rates — Long-term orders — Purchases in excess of specified levels — Separate sales arrangements. p. 491.

2. COGENERATION, § 25

[N.H.] Rates — Long-term orders — Purchases in excess of specified levels — Separate sales arrangements — Avoided costs. p. 491.

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. The commission's order of notice, issued September 27, 1989, made all qualifying facilities mandatory parties, found that the motion for clarification raised only issues of legal interpretation and, therefore, ordered the filing of legal memoranda.

On October 17, 1989, Alexandria Power Associates, Bio-Energy Corporation, Bridgewater Steam Power Company, Hemphill Power & Light, Pinetree Power, Inc., Pinetree Power —

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Tamworth, Inc., Timco, Inc., and Whitefield Power & Light Company (the Biomass Producers) requested a hearing on factual evidence and an extension of the procedural schedule. The commission denied the motion for an evidentiary hearing on October 27, 1991 by order no. 19,585 but granted in part the motion for an extension of time. On November 13, 1989, the biomass producers filed an objection and motion for reconsideration of order no. 19,585. On December 21, 1989, by order no. 19,646, the commission denied the Biomass Producers' motion and established a new procedural schedule. On January 19, 1990, Granite State Hydropower Association (GSHA), the Biomass Producers and PSNH filed memoranda, and on February 9, 1990 the Biomass Producers and PSNH submitted reply memoranda.

II. *Positions of The Parties*

A. Biomass Producers

The Biomass Producers argue that PSNH's actual and appropriate past practice has been to base capacity payments to QFs on the audit value as modified by the Peak Reduction Formula (PRF) under the capacity payment formula, and that a QF is both entitled and, under report and order no. 17,104[1(110)] required, to sell its entire output to PSNH. The capacity payment formula calculates the capacity payment by multiplying the capacity rate set forth in the worksheets attached to the rate petition times the audit value times the PRF. The Biomass Producers argue that while report and order no. 17,104, 69 NHPUC 352, 359 states that "audit values are expressed in kilowatts and will generally be a fraction of nameplate rated capacity," it does not define or limit the audit value (estimated dependable capacity) by the rate petition's statement of size. They contend that the commission did not require that QFs attest to the size of the project in their rate petition and that use of the project size as described in the rate petition conflicts with the commission order adopting the capacity payment formula and the requirement that all energy and capacity of a site must be sold to PSNH. They assert that the statement of size in each rate petition did not supersede the payment formulas, but merely identified the QF as eligible for rates under the commission's policies.

Further, as the formula permits a PRF greater than one, the Biomass Producers argue that the order contemplates a calculation of dependable capacity greater than the audit value. Thus, they argue that the only limitation on the amount of capacity a QF can sell to PSNH at the price set by its time-of-use rate order is its actual average output during the on-peak hours in January (*i.e.*, the result of the audit times PRF calculation).

The Biomass Producers in particular cite the encouragement commission staff gave QFs in the winter of 1988-89 to maximize their output at the time of winter peak and staff's reminder that under the capacity payment formula facilities that increased their output in January would increase their capacity payment.

B. GHSA

GSHA argues that the hydroelectric projects that rely on long term rate orders have substantially different operating characteristics from base load QFs. It urges that the commission find that the long-term rate reflected in each facility's rate order applies to all kilowatts and kilowatthours produced by each hydroelectric facility. GSHA asserts that the project sizes embodied in the rate petition were conservative, good-faith estimates of capacity and output based on inherent factors of river flow, not values that corresponded with the maximum possible output conceivable at a given site. Therefore, GSHA argues that neither the preconstruction estimate of capacity and energy output nor the audited capacity should constitute a ceiling on potential output and revenue.

C. PSNH

PSNH describes its past practice as basing payment for capacity and energy to QFs on the audit value and the total output of the site, respectively. It argues, however, that while this practice was a reasonable reading of the commission's orders, it is not the only

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reasonable interpretation. It suggests that the use of the capacity level as stated in the rate filing is also a reasonable approach, especially since the QF controls the information filed in its own petition. It notes that the commission and the parties relied on the figures presented in the rate filing and observes that if the rate order can be said to substitute for an agreement between the utility and the QF, sales of energy and capacity in excess of the amount stated in the filing can arguably be termed to be outside the expectation of the parties.

PSNH notes that the ceiling on the size of hydroelectric facilities is determined by their site characteristics, and therefore agrees with GSHA that determinations made in this docket should not apply to them.

PSNH states that report and order no. 17,104 required rate calculations to be filed on worksheets which require an assumed value for the capacity of the proposed generating facility and an assumed value for the capacity factor for that facility. 69 NHPUC 367, 370-373. It notes that the commission relied upon the capacity levels claimed in the filings and in *Re Industrial Cogenerators*, 73 NHPUC 8, dismissed certain petitions based on the implications of adding those levels of capacity. Similarly, PSNH relied on the petitioners' calculations of capacity in presenting comments regarding front end loading of payments to the commission.

PSNH disagrees with the Biomass Producers that the operation of the capacity payment formula requires that PSNH purchase at rate order prices all capacity (and associated energy) of a plant that is expanding beyond the size stated in the developer's petition. It argues that the language "audit values ... will generally be a fraction of nameplate rated capacity" should be given its common meaning, with fraction defined as "a portion of a thing, less than the whole."

Black's Law Dictionary, 5th ed., p. 592 (1979). The PRF, which relates actual production to audit values, was intended to recognize that an audit value established when the facility achieves commercial operation may not reflect the full potential of the facility. PSNH contends that PRF values greater than one are appropriate to the extent that when they are multiplied times the audited capacity, the result does not exceed the capacity limit claimed in the rate petition. They were not designed to compensate QFs that increase the size of the facility over the years of their commercial operation.

PSNH concludes that the Biomass Producers' claim that the QF can unilaterally change the size of the facility after the rate order, interconnection agreement and audit are issued, signed and made binding on the utility, is fundamentally flawed. All these documents assume a given level of capacity that cannot be changed without substantively changing the terms documents themselves.

III. *Commission Analysis*

[1, 2] In report and order no. 19,646, the commission emphasized the narrow scope of the instant proceeding. We stated that the question before us 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 [QF's] rate filing." (Emphasis added in order no. 19,646.) We noted that we had not been asked whether PSNH was required to purchase energy and capacity from QFs in excess of the amount specified in the QF's rate filings, but only whether that excess must be purchased at the long term rate order price.[2(111)] Further, we found that the question was a specific, narrow query, one requiring legal interpretation rather than factual evidence. Therefore, this order will respond only to the question of the interpretation of the commission orders regarding the level of payment for capacity and energy in excess of the amounts specified in the QF's petition for a rate order. To the extent our findings raise factual issues regarding the petitioned, approved and installed capacity for specific facilities, those questions will be addressed in separate, individual dockets.

In addressing this issue, we are bound by RSA 362-A:4-a, which states:

> Any qualifying small power production facility already subject to rates established by order of the commission may increase its capacity and energy or energy, provided it

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> continues to be a small power production facility ... Such capacity addition and associated energy additions or energy additions shall not be purchased under the rates established by existing orders of the commission. Such rates and orders shall otherwise remain applicable to the qualifying small power production facility.

This statute was specifically amended to allow an increase in the maximum size of small power producers from 20 to 30 MW. Nevertheless, its statement of legislative intent and the clear reading of the language are equally applicable to additions to the capacity of facilities of smaller sizes subject to commission rate orders. Pursuant to RSA-A:4-a, nothing in this order should be interpreted to place in jeopardy the existing rate order applied to the level of energy and capacity approved by order of the commission. However, the legislature clearly intended that existing rate

orders should not apply to increments in excess of the level approved by those rate orders. The question before the commission, then, is the definition of the level of energy and capacity that was approved by the commission through its rate orders.

The GSHA argues that the operating characteristics of hydro-electric facilities are different from those of base load facilities (*i.e.*, the biomass producers) and developers provided the commission with good-faith, conservative estimates of capacity and output based on the inherent factors of river flow, which did not attempt to correspond with the site's maximum possible output. It urges that each facility's rate order should apply to all kilowatts and kilowatthours produced at the site and neither the pre-construction estimates nor the audit value should constitute a ceiling on their capacity and energy payments.

We recognize that the operational characteristics of hydro-electric facilities are different from those of combustion technologies and that production, and hence revenue, is largely capped by the physical characteristics of the site. However, it does not follow that a facility is therefore entitled to receive a capacity payment for its maximum possible output. Capacity payments compensate facilities for their *reliable* capacity. That level should coincide with the developer's "good-faith conservative estimates of capacity and output" which was subsequently confirmed by the audited value based on the 20 year load duration curves. There may be some developers who can identify discrepancies between the level of capacity for which they petitioned and the realistic level of reliable capacity. If so, they can bring these discrepancies to our attention in individual site-specific dockets.

The Biomass Producers argue that capacity payments to QFs are established and limited only by the audit value as modified by the PRF under the capacity payment formula, and that a QF is both entitled and required to sell its entire output to PSNH. They further contend that the commission did not require that QFs attest to the size of the project in their rate petition and that use of the project size as described in the rate petition conflicts with the commission orders regarding the capacity payment formula and the requirement to sell total output. Our review of report and order no. 16,619 reveals that their analysis is flawed, both in regard to their interpretation of the requirement that the producer must "sell its entire output to PSNH at the specified rates over the entire applicable time period", and their failure to note the further requirement that "the producer will abide by all applicable rules, regulations and orders of the Commission ... ." 68 NHPUC 531, 544.

The requirement that producers sell their entire output to PSNH at the specified rates over the entire applicable time period is not designed to assure that the rate order will apply to output in excess of that originally contemplated. Rather, the commission was concerned that QFs would be tempted to substitute retail sales for sales to PSNH in the later years of their rate order when the value of their energy and capacity (both for PSNH and in the retail market) was presumed to exceed their levelized rate order price. The commission had adopted a calculation of a levelized rate whose present value equaled that of the avoided cost stream. However, that calculation would be meaningless in terms of the dollars actually paid if the QF sold fewer kilowatts and kilowatthours at the end of

the rate period than it had at the beginning.

The Biomass Producers' interpretation of order no. 16,619 also errs when it suggests that the commission did not require QFs to attest to the size of their facility. One of the applicable rules of the commission by which QFs were required to abide was (and is) Puc 301.01 (a) which requires that "all facilities generating electricity shall notify the commission by letter of its intent to produce electrical energy at least six (6) months prior to the date energy is first produced." The commission adopted this rule because it has a responsibility generally under RSA 374 to assure the safety and adequacy of the electric system and therefore required information on the size and location of generating facilities connecting to the system. The commission staff developed a standard survey form on which it collected site information, including the expected capacity and energy output.[3](112) Completion of the survey form was a prerequisite to acceptance of the rate petition. Developers who filed rate petitions without completing the were informed by the commission staff,

> In checking our files I do not find a survey form for [...]. This form constitutes the official notification to the Commission of a project and its filing satisfies the requirement that developers notify the Commission six months prior to interconnection. It is Commission policy not to analyze a long term rate filing until the form has been received.

Thus, even if the developer did not specify the capacity and energy of his proposed facility in his rate filing, the information was on file at the commission before the rate order was approved.[4](113)

The importance the commission attached to the capacity level specified in the QF's rate petition and its expectation that that level would not change, is also emphasized in commission orders. For example, in *Re Industrial Cogenerators Corporation, et.al.*, the commission denied the petitions for long term rates for seven fossil fuel based cogenerators. 72 NHPUC 8 (1989). In doing so, we relied on the capacity levels submitted in the cogenerators' petitions and the sums of the capacities of facilities whose rate orders had already been approved. We found that the avoided cost methodology then in place would only allow us to approve approximately 215 MW of installed capacity or 160 MW of net capacity, and that it was

> clear that the amount of QF capacity we can reasonably approve will be exhausted before we reach considerations of those projects with lower priority status [*i.e.*, non-renewable technologies], if we are to remain within the constraints of the methodology.

72 NHPUC 8, 11.

Similarly, in *Re New England Alternate Fuels, Inc — Swanzey*, 71 NHPUC 423, 426 (1986) (*Re NEAF*), the commission denied the rehearing of its decision to rescind a long-term rate filing, stating, "The Commission long term rate orders are project specific. They are granted to projects with *stated* locations, *sizes*, technologies, design and commercial operation dates"; and further,

> we expect that the project planning is sufficiently mature at the time of the filing that the representations made by developers regarding the essential characteristics of their projects will continue to obtain when the projects achieve commercial operation.

Id. (emphasis added)

These orders also emphasized the relationship between the capacity added and the rate available for that capacity. The commission rescinded rate orders for projects that failed to achieve their commercial operation dates, noting the connection between the calculations of avoided costs and rates on the one hand and the timeliness and therefore the period of commercial operation on the other. In *Re NEAF*, the commission expressed its reluctance to foster a secondary market in rate orders:

> Creation of such a market would be especially likely if the Commission waives the importance of the commercial operation date in a period of declining avoided cost forecasts and therefore declining long term rates. Conceivably, any time during the 20 year rate

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> order it could be more advantageous for a developer to purchase an existing rate order from a defunct developer instead of petitioning the Commission for a rate order pursuant to the then long term rates. 71 NHPUC 423, 426.

In her concurring opinion in *Re D.J. Pitman International Corporation*, (72 NHPUC 166, 168), Commissioner Aeschliman observed that

> to allow developers to hold rate orders indefinitely or to use existing rate orders for substantially changed projects creates a discriminatory situation in a period of declining avoided costs relative to developers who apply for a rate order at a later time.

Thus, the commission's expectation that its rate orders applied to an explicit amount of capacity that achieved commercial operation at a specific point was clearly and frequently expressed. While these orders deal specifically with capacity developed at an independent site, the analysis is equally relevant to incremental capacity at an already existing site.[5(114)] In general, rates in the generic rate orders

[6(115)] were based on forecasts of electrical load, supply and, therefore, avoided cost made at a discrete point in time. They were available to capacity that attained commercial operation within a particular time period. Rate orders for individual projects were granted pursuant to the findings in the generic dockets and were based on the representations of the petitioner regarding the project characteristics. Therefore, capacity that does not match the amount specified in the developer's petition, either because the developer modified the project size during construction or added to the capacity after commercial operation, falls outside of the amount that can be deemed to be approved under the facility's rate order. Such incremental capacity, like any other offer of additional capacity and associated energy, is subject to separate arrangements between the developer and the purchasing utility. Such arrangements can be based either on the utility's short term rate or long term avoided cost calculations pursuant to its least cost integrated resource plan. They should not reflect the stale avoided cost calculations of the existing 18 rate order.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that payments to qualifying facilities for energy and capacity at rates prescribed in their long-term rate order is limited to the level of energy and capacity specified in their petition for the rate order; and it is

FURTHER ORDERED, that energy and capacity in excess of the amounts specified in the qualifying facilities' rate orders are subject to separate sales arrangements between the developer and the purchasing utility.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1991.

FOOTNOTES

[1]The requirement that any QF wishing to invoke the long term rates established by the commission must agree "to sell its entire output to PSNH at the specified rates over the entire applicable time period" is actually found in report and order no. 16,619, 68 NHPUC 531, 544, the commission's interim long term rate order, not report and order no. 17,104 as cited by the Biomass Producers.

[2]This same issue was recently resolved in New York State where the Public Service Commission was upheld on appeal in its finding that approval of a utility's agreement to purchase all of the electricity produced at a cogeneration facility did not cover the facility's increased capacity of approximately nine percent of the originally estimated output of 49 megawatts. *In the Matter of Indeck-Yerkes Energy Services, Inc. v. Public Service Commission of the State of New York*, 564 N.Y.S. 2nd 841 (Jan. 24, 1991).

[3]Staff assumed, and therefore in its analysis represented to the Commission, that the rated capacity and expected output were calculated and reported at nominal equipment rating and system conditions.

[4]PSNH is incorrect, however, when it states that the worksheets filed with the petition specified a level of capacity and energy. The worksheets only present avoided capacity and energy costs and rates for each on a per kilowatt and per kilowatthour basis. They do

not specify the kilowatts or kilowatthours to which the rates will be applied.

[5]Staff's letter to QFs in the winter of 1988-1989 urging them to maximize their output at the winter peak should only be interpreted as encouragement for the efficient and diligent management of a facility of an approved size, despite the challenges of mid-winter operation. It cannot be interpreted as a license to increase the size of the site beyond the level approved by commission in its rate order.

[6]*Re Small Power Producers and Cogenerators*, 69 NHPUC 352 (1984) and *Re Small Power*

Producers and Cogenerators, 70 NHPUC 753 (1985).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 89-148, Order No. 19,646, 74 NH PUC 486, Dec. 21, 1989. [N.Y.Sup.Ct.] Indeck-Yerkes Energy Services, Inc. v. New York Pub. Service Comm'n, 121 PUR4th 431, 564 N.Y.S.2d 841, Jan. 24, 1991.

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NH.PUC*07/23/91*[27175]*76 NH PUC 495*Granite State Electric Company

[Go to End of 27175]

Re Granite State Electric Company

DR 90-142
Order No. 20,186

76 NH PUC 495

New Hampshire Public Utilities Commission

July 23, 1991

ORDER revising the conservation and load management (C&LM) adjustment factor of an electric utility to reflect (1) the reconciliation of 1990 actual C&LM program costs with planned C&LM costs, and (2) authorization for an additional $2.4 million in 1991 C&LM program expenditures. Commission, expressing concern as to possible interclass inequities resulting from the use of a forward looking cents-per-kilowatthour cost recovery method, directs the utility to address, in its next C&LM adjustment factor filing, whether any such inequities could be alleviated through rate design. Planning costs associated with the utility's 1991 "Design 2000" C&LM program are disallowed in light of "compelling evidence" of poor planning on the part of utility management.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 34

[N.H.] Conservation and load management adjustment factor — Rate revision — Reconciliation — Electric utility. p. 499.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 34

[N.H.] Conservation and load management adjustment factor — Cost allocation — Rate design — Interclass equity. p. 499.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 34

[N.H.] Reconciliation — Conservation and load management adjustment factor — Rate revision — Electric utility. p. 499.

4. RATES, § 262

[N.H.] Cost elements — Conservation and load management — Rate design — Adjustment clause recovery. p. 499.

5. CONSERVATION, § 1

[N.H.] Cost recovery — Automatic adjustment factor — Interclass equity — Cost allocation — Rate design — Electric utility. p. 499.

6. EXPENSES, § 19

[N.H.] Conservation and load management — Program planning — Disallowance. p. 499.

APPEARANCES: Cynthia A. Arcate, Esq. and David Saggau, Esq. on behalf of Granite State Electric Company; Michael W. Holmes,

Esq. and Kenneth E. Traum on behalf of the Office of Consumer Advocate; and James T. Rodier, Esq. on behalf of the commission staff.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On October 1, 1990, Granite State Electric Company (GSEC or company) filed its 1991 conservation and load management (C&LM) program and cost recovery factor for commission review and approval. A hearing on the merits was held on December 12, 1990 and on December 31, 1990, the commission issued order no. 20,011 approving a C&LM factor of $.00423 per kilowatthour effective January 1, 1991. The commission also ordered GSEC to file on or before June 1, 1991, a reconciliation of actual 1990 C&LM program costs to be reflected in a C&LM factor to be effective July 1, 1991.

On February 22, 1991, GSEC filed its Fourth Quarter 1990 Conservation and Load Management Results Report reconciling 1990 actual to planned program results and costs. Data requests were issued and technical sessions were held in April and May 1991.

On May 10, 1991, GSEC filed a Petition for Expedited Authorization to expend an additional $2.4 million in its 1991 C&LM program and to reflect these additional costs in its C&LM factor effective July 1, 1991. In order no. 20,140, the commission denied the petition without prejudice and set June 19, 1991 for hearing on both the 1990 reconciliation and the 1991 authorization.

Testimony was filed by GSEC and staff. The hearing on the merits of both issues was continued from June 19, 1991 and held on June 27, 1991.

II. *POSITIONS OF THE PARTIES*

A. *GRANITE STATE ELECTRIC COMPANY*

GSEC presented one witness in support of the 1990 reconciliation and three witnesses in support of the 1991 petition for authorization to expend additional monies.

1. *1990 Reconciliation*

Ronald J. Boches, Manager of Rates for New England Power Service Company, presented a C&LM factor reflecting the reconciliation of the 1990 actual to planned program results and costs. He indicated that 1990 actual program costs exceeded planned expenditures by $290,260 and actual program value exceeded planned results by $634,600. Exh. A, Schedule RJB-2, p. 2 of 2. Mr. Boches calculated that the C&LM factor would increase by $.00164 to $.00587 per kilowatthour to reflect the reconciliation of 1990 program costs, including corrections to the program value estimation.

However, Mr. Boches further testified that GSEC was not proposing to put the $.00587 factor into effect. He indicated that GSEC was proposing a factor of $.00739, as outlined in his June 5, 1991 testimony and revised at the hearing, to reflect both the 1990 reconciliation and the 1991 increased expenditures.

2. *Additional 1991 Expenditures*

Mr. Boches testified that GSEC's proposed $.00739 factor contains two adjustments. First, GSEC adjusts the factor for the effects of estimated revenues to be collected through the first six months of 1991. This increases the current factor of $.00423 by $.00002. Second, GSEC adjusts for the reconciliation of 1990 results and the additional expenditures for 1991, proposing to collect both over an 18 month period from July 1, 1991 through December 31, 1992. This increases the factor by another $.00314. Summing both adjustments results in a factor of $.00739 proposed to be effective July 1, 1991. Exh. H, Schedule RJB-6.

GSEC presented two additional witnesses in support of its petition for authorization to expend an additional $2.4 million in its 1991 program. Lydia M. Pastuszek, President of GSEC, testified to the continuing value of the C&LM program and Peter G. Flynn, Director of

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C&LM Programs and Commercial and Industrial Services for New England Power Service Company, testified regarding two specific C&LM programs, Design 2000 and Energy Initiative.

Ms. Pastuszek testified that the overwhelming enthusiasm that GSEC's customers have shown for its C&LM program in 1991 is "proof positive that conservation can be a significant resource option for electricity supply". Exh. G, p. 4. She further testified that the C&LM program offered superb value for customers and that even though the increase in the C&LM factor would result in higher rates, GSEC's rates overall will remain among the lowest in New Hampshire and the region. In addition, Ms. Pastuszek responded to staff's recommendation for a disallowance of incentives related to the two Design 2000 projects responsible for the majority of the 1991 additional expenditures on this program, arguing that the incentives relate to the value created by the program and that there was no disagreement that this value was delivered.

Mr. Flynn addressed the reasons for the overruns in the 1991 budgets for the Design 2000 and Energy Initiative programs and GSEC's proposed plans for these programs for the remainder

of 1991. He also responded to staff's recommendation to disallow the portion of GSEC's Design 2000 incentives due to the Dartmouth Hitchcock Medical Center and the Mall at Rockingham Park.

With respect to Design 2000, he indicated that the budget was developed in the spring and summer of 1990 at the New England Electric system level and that GSEC was apportioned a *pro rata* share that amounted to $116,200. Exh. D, p. 3. Activity through the early part of 1991 has led GSEC to revise the Design 2000 budget upward by approximately $1.5 million. Mr. Flynn attributes this wide variance to three factors: 1) two of the largest construction projects in New England, Dartmouth Hitchcock Medical Center and the Mall at Rockingham Park, are located in GSEC's service territory; 2) the slow economy has heightened interest in the program; and 3) GSEC's aggressive marketing is producing results. Exh. D, p. 5. Mr. Flynn argued that the Dartmouth Hitchcock and Mall at Rockingham expenditures were hard to predict. Tr. at 34, 38.

GSEC proposes to continue the Design 2000 program in its present form through the end of 1991 in order to avoid lost opportunities, to purchase conservation when it is most economic and to avoid hardships for customers and their contractors. Exh. D. pp. 5-6.

With respect to Energy Initiative, Mr. Flynn explained that GSEC has received an "avalanche" of applications during the first quarter of the year. As a result, the company suspended acceptance of new applications on March 25, 1991. GSEC had budgeted $1.05 million for the 1991 Energy Initiative program. To serve applications received up to March 25, 1991, GSEC estimates it will cost approximately $1.8 million. Exh. D, p. 8.

GSEC proposes to process now all applications received as of March 25, 1991 to be fair to both customers and their contractors, to sustain the conservation contractor infrastructure and to avoid a backlog of applications that could create equity problems with serving customers in 1992. Exh. D, p. 10. GSEC also proposes to continue the suspension on accepting new applications through the remainder of 1991 in order to control program costs. Mr. Flynn also described the work being done on revision of the program to be filed September 1, 1991 as part of GSEC's 1992 C&LM program. Exh. D, pp. 13-16.

B. *STAFF*

Mr. Thomas C. Frantz, Electric Utility Analyst, presented staff's position on the 1990 reconciliation and the 1991 increased expenditures in GSEC's C&LM program.

1. *1990 Reconciliation*

Mr. Frantz testified that staff has no problem with the reconciliation of 1990 actual and planned program results as proposed by GSEC *per se*. However, staff does have concerns about the distribution of expenditures between the commercial and industrial (C&I) class programs on one hand, and the residential class programs on the other. Mr. Frantz pointed out

that underlying the underrecovery of 1990 program costs are increased expenditures of $562,600 for C&I class programs and reduced spending of $272,300 for the residential class when compared to the originally budgeted amounts. Exh. C, Attachment A. Staff is concerned about the equity issues this pattern of spending raises.

Staff recommends that the commission approve the 1990 reconciliation as proposed by GSEC but with several conditions. Specifically, staff recommends that the commission require GSEC, in testimony to be filed September 1, 1991 along with GSEC's 1992 C&LM program and adjustment factor, to reconsider the cents per kilowatthour method of cost recovery given that GSEC is spending proportionally more on C&I than residential programs. Staff also recommends that in that testimony, GSEC be required to address equity issues relating to the timing of cost recovery, *i.e.*, recovering C&LM costs now while savings/benefits accrue over time.

2. *Additional 1991 Expenditures*

Mr. Frantz also addressed several staff concerns with respect to GSEC's request for authorization to expend additional monies on its 1991 program. First, staff raised questions about how C&LM costs are projected for GSEC's Design 2000 program and what costs GSEC should be allowed to include in its C&LM factor. Second, staff responded to GSEC's proposals regarding changes to the Design 2000 and Energy Initiative programs for 1991; and third, staff reiterated the equity concern it had with respect to the 1990 program. Exh. J.

Staff believes that the magnitude of the variance in the Design 2000 spending raises questions about how GSEC projects this budget. Mr. Frantz pointed out that GSEC has known about the Dartmouth Hitchcock and Mall at Rockingham projects for several years and while the timing of rebates may have been in question, the fact that they would be paid, particularly for the Dartmouth Hitchcock storage cooling system, was not. Because of this budgeting error, staff recommends that the commission disallow the incentives associated with the newly revised Design 2000 expenditures for the Dartmouth Hitchcock Medical Center and the Mall at Rockingham Park. These incentives amount to approximately $300,000. Exh. J, p. 7.

With respect to program design for Design 2000 for the remainder of 1991, staff suggests that the program remain open but that the commission consider requiring GSEC to revise it soon after the 1992 program is filed on September 1, 1991 rather than waiting until 1992. Staff recommends that the customers listed on Exhibit F without asterisks be served by the revised Design 2000 program if their applications come in after October 1, 1991. Tr. at 191.

Staff generally supports GSEC's proposal regarding the Energy Initiative program. Mr. Frantz originally testified that GSEC serve under the current 1991 program only those customers whose applications have been encouraged or approved at any level by the company, and that unsolicited applications be served under a revised program. In response to Exhibit E showing that the costs for unsolicited applications amounted to only $24,840.27, Mr. Frantz indicated that since serving these customers would not have a substantial impact on program costs, they could be served under the current program. Tr. at 191. Staff did urge the company to consider restarting a redesigned Energy Initiative program well before January 1, 1992 so that the efficient contractor infrastructure being developed is not lost. Exh. J, p. 8.

Staff again noted that the additional 1991 expenditures GSEC was proposing were all in the C&I sector and recommended that, should this spending pattern continue, the commission require GSEC to justify why a cents per kilowatthour C&LM factor is more appropriate than some other recovery mechanism that puts more of the costs with the C&I sector where the vast majority of benefits are accruing. Exh. J, p. 9.

C. *OFFICE OF CONSUMER ADVOCATE*

The Consumer Advocate presented no witnesses but did offer a recommendation for the commission's consideration. Echoing staff's

concern about the distributional equity in GSEC's C&LM spending, the Consumer Advocate proposed that the C&LM factor not increase for residential customers on July 1, 1991 because residential programs were underspent in 1990 and the need for increased spending in 1991 was due to C&I programs. The Consumer Advocate believed that this was reasonable given that he was not requesting that the residential C&LM factor be reduced because of the underspending on residential programs in 1990 and 1991 to date.

III. *COMMISSION ANALYSIS*

A. *1990 RECONCILIATION*

[1-6] No party disputes GSEC's proposed reconciliation of 1990 actual to planned C&LM expenditures. The commission finds that GSEC's proposed 1990 reconciliation is appropriate and results in just and reasonable rates.

We will, however, accept staff's recommendation regarding the interclass equity issue, and condition our approval of the 1990 reconciliation by requiring GSEC to address the following issues in its September 1, 1991 filing for its 1992 C&LM program:

(1) the equity and reasonableness of the cents/kilowatthour method of cost recovery given the distribution of program expenditures and savings between the C&I and residential classes;

(2) whether some other recovery mechanism that allocates more of the costs where the savings are accruing would be more appropriate and fair; and

(3) the equity of recovering C&LM costs now while savings, and hence the value, of the program accrue over time, including consideration of methods that better match the timing of cost recovery and benefits to ratepayers.

The commission reminds the parties that in establishing the forward looking cents/ kilowatthour method of cost recovery now in place, we indicated that we were not necessarily establishing a long term policy and that the issue of the appropriate method of cost recovery should be revisited in the future. While we are not yet ready to abandon the current method, we do believe it is time to review it. In particular, the commission is interested in whether the equity concerns raised can be alleviated through rate design. We will therefore require the company to address this point in testimony in either its 1992 C&LM filing or its current rate design proceeding. GSEC should consult with staff to determine which proceeding is most appropriate.

B. *ADDITIONAL 1991 EXPENDITURES*

The commission is gratified to see the customer response to GSEC's 1990 and 1991 C&LM programs. While the strength and speed of the response to the 1991 Design 2000 and Energy Initiative programs may indicate that these programs can be redesigned to offer lower incentives

or rebates to customers without sacrificing results, the evidence is clear that they provide substantial system benefits. No parties dispute this; rather the questions before the commission for resolution are whether the response to the 1991 Design 2000 and Energy Initiative programs should have been anticipated, particularly the Design 2000 projects at Dartmouth Hitchcock Medical Center and the Mall at Rockingham Park, and whether GSEC's C&LM program as a whole during 1990 and 1991 has focused on the C&I sector to an inequitable extent given that costs are being recovered on a cents/kilowatthour basis from all customers, including residential.

1. *Design 2000*

The commission agrees with staff that GSEC should have reasonably anticipated the Design 2000 expenditures for Dartmouth Hitchcock Medical Center's storage cooling and that improper planning contributed to the need to request authorization at this time to expend additional monies in the program.

The company acknowledged that it knew in December 1990 that the installation of storage cooling equipment was moving forward

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and anticipated that it would be completed before the year's end. Tr. at 30, 68. The company should have known, and appears to have known (Tr. at 106-107), that it would be unable to test the equipment in the winter with the shell of the building not yet closed. While the company may not have known about the storage cooling project when the Design 2000 budget for 1991 was originally developed earlier in the year, it should have known about it by December 12, 1990, the date of the hearing on GSEC's 1991 C&LM program. The budget could have been revised at that time.

It is irrelevant whether inclusion of the costs at the time of the December hearing would have changed staff's position on GSEC's 1991 C&LM program, or the commission's decision to approve cost recovery for the 1991 program as proposed. Awareness of the costs at that time would have improved everyone's planning by providing additional information. It is not necessary to conclude that decisions would have been different in order to conclude that planning was inadequate.

The situation at the Mall at Rockingham Park is less clear. At the hearing GSEC testified that this customer had been "a hard sell". Tr. at 115. However, it appears that in December someone at the company was aware that the Mall had decided to install variable speed drives because an application for a rebate had been made, though perhaps on the wrong form. Tr. at 32. The problem here seems to be more one of internal mis-communication than an error in planning, but it is still troubling.

While the commission accepts staff's argument that poor planning accounted for the 1991 spending over budget for these two Design 2000 projects, we cannot accept the remedy proposed by staff. Our rationale for financial incentives for utilities for C&LM as articulated in docket no. DE 89-187 was that they were warranted when a company's C&LM program provided extraordinary benefits to ratepayers. Clearly, GSEC's performance in the Design 2000 program has provided benefits beyond those originally projected. The commission encouraged GSEC to pursue aggressively demand-side options, like Design 2000, and if we decline to include the

incentives earned by performance in this program, we will be withholding benefits for actions which the benefits were designed to encourage.

The commission does not, however, accept the company's characterization of the disallowance of any portion of the incentive as a penalty. Financial incentives to utilities for C&LM are payments over and above costs where costs include both direct costs and lost revenues. Report & Order No. 19,905 at 3 (August 7, 1990). In our view the withholding of a reward is not equivalent to a penalty.

Because the commission agrees with staff that there is compelling evidence of poor planning on GSEC's part, we will disallow GSEC's planning costs for the 1991 Design 2000 program. We accept that these planning costs amount to $12,800 as outlined in the stipulation appended hereto as Attachment A. In addition, we expect that GSEC will implement the revised budgeting process discussed by Mr. Flynn whereby system level budget estimates are checked against known activity at the retail subsidiary level.

The commission finds that the Design 2000 program should remain open through 1991 but that the rebate levels, and perhaps other program design elements, should be reviewed as soon as practicable. We will await the filing of GSEC's 1992 Design 2000 program on September 1, 1991 and will leave open the question whether the 1992 program design should take effect earlier than January 1.

The commission otherwise grants GSEC's request for authorization to spend approximately an additional $1,500,000 for the 1991 Design program.

2. *Energy Initiative*

The commission grants GSEC's request for authorization to spend approximately an additional $800,000 for the 1991 Energy Initiative program and accepts the company's proposal to serve all applications received by March 25, 1991 under the 1991 program design, including those listed in Exhibit E. While we agree with GSEC that controlling program costs is important, we will leave open the

question of whether the program should remain suspended through the end of 1991. We will await the filing of GSEC's 1992 Energy Initiative program on September 1, 1991 and consider at that time whether the revised program should take effect earlier than January 1, 1992.

3. *Equity Issues*

The commission finds that the concerns about distributional equity that have been raised by staff and the Consumer Advocate concerning both GSEC's 1990 and 1991 C&LM programs warrant consideration.

There are two benefits to cost-effective C&LM programs. One benefit is the benefit to all ratepayers of meeting resource needs at a lower cost. All ratepayers benefit, including residential ratepayers, even where the C&LM programs happen to be offered to C&I customers. The second benefit of C&LM programs is the direct benefit to the customers who participate in the programs and, therefore, have lower bills. The Consumer Advocate indicated that residential ratepayers are

not getting the direct benefit of lower bills for individual customers anticipated by the wide range of programs originally planned. Part of the commission's determination that GSEC's C&LM program offered extraordinary benefits for ratepayers and therefore warranted an incentive rested on our expectation that the broad array of programs proposed, including programs for residential customers, would be implemented. Report and Order No. 20,011 at 5 (December 31, 1990).

While the commission is concerned with GSEC's underspending on residential programs and believes the company needs to be encouraged to increase its spending to at least projected levels, at this point we believe it is premature to adopt the Consumer Advocate's recommendation that the C&LM factor for the residential class remain at the original authorized level ($.00423/kilowatthour) and that the overexpenditures be paid solely by the C&I classes. The commission notes that a reconciliation of the entire 1991 C&LM program will take place as part of the review of GSEC's 1992 program due to be filed September 1, 1991. If we discover in that review that the company is not recovering the ground in providing C&LM programs to residential customers, the commission will address this issue and decide whether to adjust the residential component of C&LM costs at that time. The commission is not inclined at this time to consider disallowing planning costs for residential programs as we have done for Design 2000, but we will hold that issue open for consideration during the 1991 program reconciliation. The interim period between now and then should provide the company with an opportunity to demonstrate what it can do in the residential area with the Home Energy Management and other residential programs.

As we indicated in our analysis of the 1990 C&LM program reconciliation, the commission believes that GSEC should begin looking at alternative rate structure/recovery mechanism proposals, both in the context of an adjustment clause mechanism, like the C&LM factor, and in the context of base rates. As the commission moves forward in its consideration of the treatment of C&LM program costs, retail rate design issues must be addressed in concert with C&LM. As one of the leading companies in the area of C&LM, GSEC should be given the opportunity to devote the resources of the company's innovative thinkers to this question.

Therefore, the commission will require GSEC to file testimony on alternative rate structures and mechanisms for C&LM cost recovery in either the 1992 C&LM program filing or its ongoing rate design proceeding. Specifically, the company should address how rate design can be used to allocate costs by class so that equity concerns are addressed. The company should also consider differentiating the C&LM factor between classes and, if appropriate, within classes. These issues can be addressed in combination with the issues outlined in our discussion of the 1990 reconciliation. We expect that staff and the Consumer Advocate will provide input in this area as well.

4. *Conclusion*

The commission accepts the stipulation of

the parties appended hereto as Attachment A and approves a C&LM adjustment factor of $.00739/kilowatthour for the period July 1, 1991 through December 31, 1991 as just and

reasonable. This factor is subject to reconciliation to actual costs as described in the stipulation and GSEC's tariff pages.

Our order will issue accordingly.

ORDER

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

ORDERED, that the reconciliation of Granite State Electric Company's actual 1990 conservation and load management (C&LM) program costs and financial incentives to the costs as estimated and approved in order no. 20,011 on December 31, 1990 be, and hereby is, approved; and it is

FURTHER ORDERED, that the planning costs for Granite State Electric Company's 1991 Design 2000 program in the amount of $12,800 be, and hereby are, disallowed; and it is

FURTHER ORDERED, that Granite State Electric Company's petition for expedited authorization to expend an additional $2.4 million in its 1991 C&LM program be, and hereby is, approved subject to the adjustment for the disallowance of the planning costs for the 1991 Design 2000 program; and it is

FURTHER ORDERED, that Granite State Electric Company's conservation and load management adjustment factor of $.00423 per kilowatthour be, and hereby is, revised to $.00739 per kilowatthour effective July 1, 1991; and it is

FURTHER ORDERED, that Granite State Electric Company prepare and file as part of its September 1, 1991 request for authorization for cost recovery for its 1992 C&LM program testimony addressing the equity issues raised by its current method of cost recovery as outlined in the foregoing report; and it is

FURTHER ORDERED, that Granite State Electric Company file tariff pages in compliance with this order within twenty days of the date of the issuance of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1991.

ATTACHMENT A

Petition for Authorization to Expend Additional Funds in C&LM Program

Stipulation of Staff and Company

At the Commission's meeting on July 1, 1991, the Commission approved Granite State Electric Company's (Granite State Electric or Company) request to increase spending on its 1991 Conservation and Load Management (C&LM) program over that previously authorized by this Commission in this docket. The Commission agreed with the Staff, however, that the Company could have planned and budgeted better in anticipation of a portion of the increased expenditures attributable to the Design 2000 program. Accordingly, the Commission determined that the portion of Granite State Electric's costs associated with planning and budgeting for the Design 2000 program should be disallowed and excluded from the company's C&LM cost recovery mechanism.

On June 28, 1991, the Company submitted a response to a record request from Chairman Smukler which indicates that the 1990 costs for the planning and budgeting of the Design 2000 program charged to Granite State Electric are approximately $2,400. Subsequently, in telephone conferences, Staff and the Company discussed the basis of the Company's calculation. The Staff did not agree that the Company's record response encompassed all of the planning and budgeting costs incurred by the Company for the Design 2000 program in that it did not (1) reflect any field personnel payroll expense; (2) allocate a sufficient percentage of personnel time to this process; and (3) reflect an allocation of non-payroll expenses to this process.

Based on these discussions, the Company and the Staff have agreed to an amount of $12,800 to be disallowed from the Company's C&LM cost recovery mechanism pursuant to the Commission's oral directive on July 1,

Page 502

1991. Further, the Staff and the Company agree that this level of funds does not warrant a change in the filed C&LM factor of $.00739 but rather should be deducted from the C&LM fund and reflected in the C&LM cost balance for July 1991, as submitted by the Company to the Commission in its monthly and quarterly reports.

CONDITIONS

A. This Stipulation is expressly conditioned on the issuance of a Commission order consistent with the oral determinations voted at the meeting of July 1, 1991 with respect to the Company's request. In the event that the issued Commission order results in no disallowance of costs or a disallowance other than the costs associated with planning and budgeting for the Design 2000 program, this Stipulation is null and void.

B. The parties' agreement to the terms of this Stipulation is subject to the approval and acceptance of its terms in their entirety and without change or condition by the Commission. Should the Commission modify or reject any of the terms herein, either Granite State or the Staff may withdraw from the Stipulation and no part thereof shall be offered or introduced as evidence or otherwise used in this or any other proceeding.

C. The discussions which have produced this Stipulation have been conducted on explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussion and are not to be used or disclosed in any manner in connection with this proceeding, any other proceeding or otherwise. Nothing in this paragraph shall be construed to prevent the Company or the Staff from providing testimony to the Commission in support of the justness and reasonableness of this stipulation.

D. This Stipulation is made on this 18th day of July, 1991 by and among the parties who represent that they are fully authorized to do so on behalf of their principals.
NEW HAMPSHIRE PUBLIC UTILITY
COMMISSION
By: James T. Rodier
Staff Attorney

GRANITE STATE ELECTRIC COMPANY
By: Cynthia A. Arcate
Counsel

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Granite State Electric Co., DR 90-142, Order No. 20,011, 75 NH PUC 765, Dec. 31, 1990. [N.H.] Re Incentives for Conservation and Load Management, DE 89-187, Order No. 19,905, 75 NH PUC 527, Aug. 7, 1990.

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NH.PUC*07/23/91*[27176]*76 NH PUC 503*New England Telephone and Telegraph Company

[Go to End of 27176]

Re New England Telephone and Telegraph Company

DR 89-010
Order No. 20,188

76 NH PUC 503

New Hampshire Public Utilities Commission

July 23, 1991

ORDER granting a motion by a telephone local exchange carrier for a protective order prohibiting public disclosure of confidential, commercial and financial information.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective order — Exemption from public disclosure — Confidential information — Telephone local exchange carrier. p. 504.

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BY THE COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company (NET), having filed a Motion for a Protective Order on June 11, 1991, which, in pertinent part, requested authority to decline to produce a document, identified as Responses Nos. 6 and 30 to Staff's Thirty-Second Set of Information Requests; and

WHEREAS, NET asserts that the disclosure of the aforesaid information would adversely

affect the ability of the public and other telecommunications companies to obtain competitively-sensitive confidential, commercial and marketing information; and

WHEREAS, confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, 91-A:5 IV exempts from public disclosure, *inter alia*, "... confidential, commercial, or financial information ..."; it is

[1] ORDERED, that NET shall, upon receipt hereof, provide the commission, the commission staff and parties to these proceedings the data requested, Responses to Nos. 6 and 30 to Staff's Thirty-Second Set of Information Requests, until otherwise ordered; it is to be viewed only by the commission, the commission staff and parties to these proceedings. Until such further order of the commission, said data and the information contained therein shall not be copied or reproduced, nor shall the information contained therein be further disseminated; and it is

FURTHER ORDERED, on motion by any party, the commission will consider the extent to which the material in question shall be made part of the public record pursuant to RSA Chapter 9, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good; and it is

FURTHER ORDERED, in the event that any member of the public seeks disclosure, the commission will notify the parties of such a
request prior to disclosure and the commission will provide an opportunity for a hearing. Upon a finding by the commission that there is a valid exemption claim by NET for the materials in question, the commission will determine whether the material is confidential (in addition to being commercial or financial) by applying a balancing test, weighing the benefits of disclosure to the public against the harm of disclosure to NET.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1991.

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NH.PUC*07/24/91*[27177]*76 NH PUC 504*Contel of New Hampshire, Inc.

[Go to End of 27177]

Re Contel of New Hampshire, Inc.

Additional Petitioner: Contel of Maine, Inc.

DE 91-066
Order No. 20,189

76 NH PUC 504

New Hampshire Public Utilities Commission

July 24, 1991

ORDER authorizing a telephone local exchange carrier, Contel of New Hampshire, Inc., to use

the trade name "GTE New Hampshire" and to change its corporate name to "GTE of New Hampshire, Inc." Commission also authorizes Contel of Maine, Inc., to use the trade name "GTE Maine" and to change its corporate name to "GTE of Maine, Inc." The name changes stem from the acquisition of Contel Corporation by GTE Corporation.

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1. CORPORATIONS, § 1

[N.H.] Corporate name change — Use of trade name — Telephone local exchange carrier — Merger. p. 505.

Page 504

2. CONSOLIDATION, MERGER, AND SALE, § 1

[N.H.] Merger effects — Corporate name changes — Use of trade names — Telephone local exchange carrier. p. 505.

BY THE COMMISSION:

ORDER

On May 15, 1991 Contel of NH, Inc., ("CNH") and Contel of Maine, Inc., ("CMe") (collectively, "the petitioners" or "the company") filed a joint petition for approval, permission, and consent of and to (i) the use respectively of the trade names, "GTE New Hampshire" and "GTE Maine"; and thereafter (ii) a prospective change of their respective corporate names to "GTE of New Hampshire, Inc." and "GTE of Maine, Inc."; and (iii) amend certain provisions of relevant loan documents for the purpose of making reference to such names changes.

WHEREAS, CNH provides local exchange telephone service to New Hampshire customers in the towns or villages of Antrim, Bennington, Deering, Francestown, Greenfield, Hancock, Henniker, Hollis, Moultonborough, Tuftonborough and Warner, New Hampshire pursuant to franchises duly authorized by this Commission; and

WHEREAS, CMe provides local exchange telephone service to New Hampshire customers in the towns of Chatham, and East Conway, New Hampshire pursuant to franchises duly authorized by this Commission; and

WHEREAS, each company is a wholly-owned subsidiary of Contel Corporation, ("Contel Corp.") a Delaware corporation; and

WHEREAS, Contel Corporation was acquired by and became a wholly-owned subsidiary of GTE Corporation ("GTE Corp."), and as a result, became a second-tier subsidiary of GTE Corp.; with all of its issued an outstanding capital stock owned by Contel Corp.; and

WHEREAS, the merger transaction described in part above was approved by the Commission in Order No. 19,950, dated October 11, 1990 in docket DE 90-154; and

WHEREAS, the petitioners assert that the company's Board of Directors authorized the

companies to commence use of new trade names, respectively, "GTE New Hampshire" and "GTE Maine," in addition to the continued use of the petitioners' full corporate name and existing trade name, "Contel"; and

WHEREAS, the use of a new trade name by each company will require the filing of new financing statements with certain public filing offices and may require certain other pro forma adjustments to each company's existing loan, note and security documents (collectively, "Loan Documents") that refer to, or are made necessary as a result of, the proposed name change; and

WHEREAS, the petitioners contend they expect and hope to begin using the new trade names exclusively by August 1, 1991; and

WHEREAS, the Commission finds that the requested name change is not inconsistent with the public good; it is hereby

[1, 2] ORDERED, that approval, permission and consent to use the trade names, "GTE New Hampshire" and "GTE Maine," by CNH and CMe respectively, is granted; and it is

FURTHER ORDERED, that approval, permission and consent to a prospective change of corporate names to "GTE of New Hampshire, Inc." and "GTE of Maine, Inc." by CNH and CMe respectively, is granted; and it is

FURTHER ORDERED, to the extent required by RSA 369:1 *et seq.*, the companies are authorized to amend Loan Documents and to make such filings as are reasonably necessary and desirable to provide for such name changes; and it is

FURTHER ORDERED, that the companies notify their customers of such name changes through bill inserts and publication of this Order once in a newspaper or newspapers having general circulation in the franchised service territories of CNH and CMe.

By order of the Public Utilities Commis-

sion of New Hampshire this twenty-fourth day of July, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Contel Corp., DE 90-154, Order No. 19,950, 75 NH PUC 664, Oct. 11, 1990.

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NH.PUC*07/24/91*[27178]*76 NH PUC 506*Contel of New Hampshire, Inc.

[Go to End of 27178]

Re Contel of New Hampshire, Inc.

Additional Petitioner: Contel of Maine, Inc.

DE 91-099

Order No. 20,190

76 NH PUC 506

New Hampshire Public Utilities Commission

July 24, 1991

ORDER revising the tariffs of two telephone local exchange carriers to reflect corporate name changes stemming from a merger.

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1. CORPORATIONS, § 1

[N.H.] Corporate name change — Telephone local exchange carrier — Tariff revision. p. 506.

BY THE COMMISSION:

ORDER

On July 1, 1991, Contel of New Hampshire, Inc. and Contel of Maine, Inc. filed a petition seeking a tariff revision; and

WHEREAS, the purpose of the tariff revision was to identify that Contel of New Hampshire, Inc. would now be doing business
as GTE New Hampshire, and Contel of Maine, Inc. would now be doing business as GTE Maine; and

WHEREAS, the proposed tariff was filed for effect on August 1, 1991; and

WHEREAS, by its Order No. 19,950, dated October 11, 1990 the commission approved *NISI* the merger of Contel Corporation and GTE Corporation; it is hereby

[1] ORDERED, that Contel of New Hampshire, Inc. and Contel of Maine, Inc. be and hereby are authorized to implement the following tariff changes:

Contel of New Hampshire, PUC Tariff No. 11
Title Page
Section 2-Sixth Revised Sheet 3
Contel of Maine, PUC Tariff No. 4
Title Page
Section 2-Third Revised Sheet 3.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of July, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Contel Corp., DE 90-154, Order No. 19,950, 75 NH PUC 664, Oct. 11, 1990.

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NH.PUC*07/24/91*[27179]*76 NH PUC 507*U.S. Sprint Communications Company

[Go to End of 27179]

Re U.S. Sprint Communications Company

DR 91-088
Order No. 20,191

76 NH PUC 507

New Hampshire Public Utilities Commission

July 24, 1991

ORDER authorizing a telephone interexchange carrier to introduce a new wide area telephone service (WATS) product designed for the hotel/motel industry. Commission finds introduction of the service consistent with its interest in encouraging competition in the intraLATA toll market.

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1. SERVICE, § 468

[N.H.] Telecommunications — IntraLATA toll service — Wide area telephone service (WATS) — New service — Interexchange carrier. p. 507.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — IntraLATA toll market — Wide area telephone service (WATS) — Interexchange carrier. p. 507.

BY THE COMMISSION:

ORDER

On June 20, 1991, U.S. Sprint Communications Company of New Hampshire, Inc. (the Company) filed a petition seeking to introduce a new WATS product, Hospitality Connection; and

WHEREAS, this new service is specifically designed for the hotel/motel industry; and

WHEREAS, the proposed tariff was filed for effect on July 24, 1991; and

[1, 2] WHEREAS, the New Hampshire Public Utilities Commission is interested in encouraging the emergence of competition in the intraLATA toll market on an interim basis; it is hereby

ORDERED *NISI*, that U.S. Sprint Communications Company of New Hampshire, be and hereby is authorized to implement the following tariff changes:

PUC Tariff No. 2
2nd Revised Page 1

1st Revised Page 5
1st Revised Page 37
1st Revised Page 41;

and it is

FURTHER ORDERED, that Hospitality Connection Service is to be offered subject to the conditions as specified in NHPUC Order No. 20,042, dated January 21, 1991, in Docket DE 90-127; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, the Company cause 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 August 5, 1991, and is to be documented by affidavit filed with this office on or before the 26th day of August, 1991; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than the 20th day of August, 1991; and it is

FURTHER ORDERED, that this Order *NISI* will be effective on August 26, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of July, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re U.S. Sprint Communications Co. of New Hampshire, DE 90-127, Order No. 20,042, 76 NH PUC 59, Jan. 21, 1991.

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NH.PUC*07/25/91*[27180]*76 NH PUC 508*Quin-Let Trust

[Go to End of 27180]

Re Quin-Let Trust

DE 90-126
Order No. 20,194

76 NH PUC 508

New Hampshire Public Utilities Commission

July 25, 1991

ORDER granting a petition by a water public utility to expand its franchise and adopting a

stipulation regarding temporary rates. Commission, citing the fact that the petitioner had been offering water service to the public in the expanded area free of charge for over two years, allows the franchise and temporary rates to take effect as of the date of the temporary rate hearing, rather than on the date of the temporary rate order. Nevertheless, the commission declines to permit the temporary rates to take effect on the earliest possible date, the date of the utility's temporary rate petition.

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1. CERTIFICATES, § 125

[N.H.] Water — Expansion of franchise — Commission authorization — Factors considered. p. 508.

2. SERVICE, § 210

[N.H.] Extensions — Water service — New territory. p. 508.

3. RATES, § 595

[N.H.] Water — New franchise — Temporary rates — Stipulation. p. 509.

4. RATES, § 630

[N.H.] Temporary rates — Water — New franchise — Effective date. p. 509.

5. RATES, § 249

[N.H.] Effective date — Temporary rates — Water — New franchise. p. 509.

BY THE COMMISSION:

REPORT

This docket was opened on March 9, 1990, on the filing of a petition by Quin-Let Trust (Quin-Let) to provide water service to a limited area in the Town of Albany, New Hampshire, in the development known as Wildwood, and to establish rates therefore. The Commission issued an Order of Notice on August 6, 1990, amended on August, 13, 1990, scheduling a prehearing conference for September 27, 1990.

The parties stipulated to a procedural schedule at the prehearing conference which was subsequently accepted by the commission and culminated in the hearing on the merits held on May 29, 1991.

At the hearing on the merits, the parties presented signed agreements relating to the award of a franchise area and the establishment of temporary rates (see Attachment A). The sole issue in dispute is the appropriate effective date for temporary rates. The company requested that temporary rates be effective at some date, without specification, prior to the temporary rate hearing. The staff recommended that the traditional commission practice of having temporary rates effective on the date of the issuance of the temporary rate order be followed in this case.

FRANCHISE AREA

[1, 2] All affected parties concur that the franchise should be granted. The required approvals from the New Hampshire Department of Environmental Services, concerning the

suitability and availability of water, were filed on October 5, 1990. The Town of Albany, by and through its selectmen, requested, by letter dated October 11, 1990, that the commission grant to Quin-Let a franchise for the operation of a water company in Wildwood Development in Albany. All known current and prospective customers of the proposed system were notified of these proceedings and no objections were filed. There were no interventions and the only parties participating in this docket are Quin-Let and the commission staff.

The stipulation, marked as Exhibit 1, states that Quin-Let has the financial, managerial and technical ability to provide water service in the proposed franchise area. The company offered no evidence on this issue. The only relevant evidence we have before us is the staff's statement that, based on their review of Quin-Let's capabilities, staff is of the opinion that Quin-Let has the requisite financial, managerial and technical ability.

Despite Quin-Let's failure to provide evidence on the issue of their financial, managerial and technical expertise, staff's testimony was marginally adequate to support the stipulation. Accordingly, we will award the proposed franchise in the requested area in the Town of Albany, known as the Wildwood Development, and more fully described in the petition, marked in this docket as Exhibit 2.

TEMPORARY RATES

[3-5] The company has not been billing for services rendered since April, 1989, and, indeed, is not authorized to do so unless and until a franchise is granted pursuant to RSA 374:22. The company is requesting a temporary rate of about $82 per quarter per customer to provide it with sufficient cash flow to function pending the permanent rate proceedings. The company has not yet filed its permanent rate request.

Staff argued that, based on its audit of Quin-Let, and based on other reports filed with the commission, the company's estimated annual operating costs for the Wildwood Development System of $13,454.89, or $328.35 per customer, provides a reasonable basis for the establishment of temporary rates. Accordingly, staff proposed and Quin-Let agreed to a revenue level of $13,454.89, which equates to an annual water rate of $268.18 per customer.

The parties further agreed to a rate base of $23,044.76, in accordance with the audit results. The stipulated rate of return on equity is 11.9 percent with an overall rate of return of 11.54 percent.

The only issue in dispute is the effective date of temporary rates. The company is currently not charging its customers and, thus, would like to have the temporary rates retroactive to the earliest allowable date. Staff recommends, on the other hand, that the temporary rates not take effect until the issuance of this order. Quin-Let Exhibit 3, financial records of the company purports to show that the company has been underearning for several years and deserves a retroactive temporary rate. However, the company offered no witness to support the Exhibit and, as a result, Exhibit 3 has little, if any, probative value. It is therefore inappropriate to establish a

temporary rate effective date at the earliest permissible time, which is the date of the company's petition. However, given the unique circumstance of having a utility that has been offering water service to the public free of charge for over two years we will allow the franchise authorization and the temporary rates to take effect on the date of the temporary rate hearing rather than on the date of this order.

For the reasons cited above, we will accept the stipulation of the parties regarding temporary rates for effect May 29, 1991.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition of the Quin-Let Trust for authority to operate as a public utility pursuant to RSA 374:22, is hereby granted in accordance with the terms set forth in the foregoing report for effect on May 29, 1991; and it is

FURTHER ORDERED, that the stipulation of the parties regarding temporary rates is hereby granted for effect on May 29, 1991.

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By order of the New Hampshire Public Utilities Commission this twenty-fifth day of July, 1991.

ATTACHMENT A

AGREEMENT

1.0 This agreement is entered into on this 22nd day of March, 1990 between Quin-Let Trust (Petitioner) and the Staff of the Public Utilities Commission (Commission) for the purposes and subject to the terms and conditions hereinafter stated.

2.0 *Introduction*: On March 9, 1990, Quin-Let Trust filed a petition to provide water service to a limited area in the Town of Albany, New Hampshire, in a development known as Wildwood, pursuant to RSA 374:22.

Pursuant to RSA 541:A:16 and PUC Rule 203.05 a prehearing conference was held at the Commission at 8 Old Suncook Road, Concord, New Hampshire on the 27th day of September, 1990 to establish a procedural schedule and to address matters of intervention. There were no requests for intervention filed.

On October 29, 1990, the Commission issued Order 19,968 which adopted the schedule agreed to by the parties for the purpose of establishing a hearing on the franchise and temporary rates.

The Company submitted testimony and supporting documentation concerning a revenue level for Quin-Let Trust on October 5, 1990. Staff will stipulate, based upon a review of the documentation submitted, that Quin-Let has the financial, managerial and technical ability to provide water service in the proposed service area. The Company estimated annual operating

costs for the Wildwood Water System at $12,315.00 or $293.21 per customer. Staff is proposing a revenue level of $11,263.69 which equates to an annual water rate of $268.18 per customer.

At the November 26th meeting the Company supplied new information showing an increase in insurance rates from $1,200 to $3,300 and an increase in caretaking from $2,500 to $5,200 per year. Staff agreed only to the adjusted insurance cost of $3,300 following documented evidence of the increase. Staff agreed to adjust its revenue calculations to reflect the insurance increase. Based upon these adjustments the parties agreed to a revenue level of $13,454.89.

3.0 *Rate Base*: It is agreed that the Company shall be allowed an opportunity to earn during the course of the proceeding, by a return on a rate base of $23,044.76.

4.0 *Rate of Return*: It was agreed that the Company shall be allowed a rate of return on equity of 11.9% on the stipulated rate base in paragraph 3.0 and an overall rate of return of 11.54%.

5.0 *Rate Structure*: It is agreed that the Company shall be allowed to charge each residential customer a flat annual fee of $320.35 billed *Pro-Rata* in arrears on a quarterly basis, effective the date of the issuance of a temporary rate order in this proceeding.

6.0 *General Conditions*: This agreement is subject to the following conditions:

6.1 The agreement shall be promptly presented to the Commission for approval, and approval shall be issued without delay.

6.2 The making of this agreement shall not be deemed in any respect to constitute an omission by any party that any allegation in these proceedings other than those specifically agreed to herein is true and valid.

6.3 The making of this agreement establishes no principles or precedent in any other proceeding or investigation.

6.4 The Commission approval of this agreement does not establish any principles or precedents.

6.5 The Commission approval of this agreement shall not in any respect constitute determination as to the merits of any allegations made in this rate proceeding.

6.6 This agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not approve it, the agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose.

6.7 This agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other

provision and is an essential condition of every other provision.

6.8 The discussions which have produced this agreement have been conducted on the explicitly understanding that all offers of settlement and discussions relating, there to shall remain confidential and privileged, and without prejudice to the position of any participant

presenting any such offer or participation in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS THEREOF, the parties fully authorized agents have reviewed this agreement.

Quin-Let Trust
By Its Attorneys
by: William D. Paine, II, Esq.

STAFF OF THE PUBLIC UTILITIES COMMISSION
By Its Attorneys
by: Susan Chamberlin, Esq.
Staff Attorney

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

SCHEDULE 1

REVENUE REQUIREMENT
TEMPORARY RATES

	AMOUNT
RATE BASE (SCH. 2)	23,044.76
RATE OF RETURN (SCH. 1A)	11.54%
REVENUE REQUIREMENT	2,659.37
OPERATING INCOME (LOSS) (SCH. 3)	(10,772.11)
DEFICIENCY	13,431.48
TAX EFFECT (SCH. 1B)	23.41
REVENUE DEFICIENCY	13,454.89

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

SCHEDULE 1A

OVERALL RATE OF RETURN
TEMPORARY RATES

	AMOUNT	*COMPONENT RATIO (PERCENT)*	*COMPONENT COST RATE (PERCENT)*	*WEIGHTED AVERAGE COST RATE (PERCENT)*
EQUITY	8,750.00	10.67%	11.90%	1.27%
SHORT TERM DEBT	73,250.00	89.33%	11.50%	10.27%
TOTAL	82,000.00	100.00%		11.54%

THE 11.90% RATE FOR RETURN ON EQUITY IS THE MOST RECENT P.U.C. APPROVED RATE FOR SMALL WATER COMPANIES. (SEE DR89-064 TILTON AND NORTHFIELD ACQUEDUCT COMPANY AND DR 89-053, PITTSFIELD ACQUEDUCT COMPANY, INC.)

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

SCHEDULE 1B
INCOME TAX COMPUTATION
TEMPORARY RATES

	AMOUNT
TOTAL RATE BASE (SCH. 2)	23,044.76
EQUITY COMPONENT OF CAPITAL	1.27%
COST (SCH. 1A)	
NET INCOME REQUIRED	292.67
TAX EFFECT AT 8% STATE OF N.H. ONLY	23.41

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

SCHEDULE 2
RATE BASE
TEMPORARY RATES

	TEST YEAR ACTUALS
PLANT IN SERVICE (SCH. 2A)	47,621.33
LESS: ACC. DEP./ AMORT. (SCH. 2A)	23,970.85
NET FIXED PLANT	23,650.48
LESS: CONT. IN AID TO CONST. (SCH. 2A)	2,400.00
NET PLANT IN SERVICE	21,250.48
ADD WORKING CAPITAL:	
TOTAL OP. & MAINT. EXP. (SCH. 3)	8,731.33
TIMES 20.55% (75/365 DAYS)	20.55%
CASH WORKING CAPITAL	1,794.29
ADD: MATERIALS & SUPPLIES	0.00
UNAMORT. RATE CASE EXP.	0.00
TOTAL WORKING CAPITAL	1,794.29
RATE BASE	23,044.76

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

SCHEDULE 2A
AVERAGE BALANCES
TEMPORARY RATE COMPUTATION

YEAR	*PLANT IN SERVICE*	*ACCUMULATED DEPRECIATION*	*CONT. IN AID TO CONSTR.*
1988	41,990.64	23,175.46	2,400.00
1989	53,252.01	24,766.24	2,400.00
TOTAL	95,242.65	47,941.70	4,800.00
AVERAGE	47,621.33	23,970.85	2,400.00

[1] PROFORMED IN ACCORDANCE WITH DR 81-231

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

SCHEDULE 3

OPERATING INCOME STATEMENT
TEMPORARY RATE COMPUTATION

ADJUSTED TEST YEAR PROFORMA	*ESTIMATED ANN. EXP.*	*REFERENCE*	*PROFORMA ADJTS.*	*TEST YEAR PROFORMA*	*PROPOSED INCREASE*
OPERATING REVENUES					
REVENUES - FIRM	0.00			0.00	13,454.89
13,454.89					
TOTAL REVENUES	0.00				
OPERATING EXPENSES					
PRODUCTION:					
WATER QUALITY TESTING	177.00	PR.ADJ. 3B-1	13.33	190.33	
190.33					
ELECTRICITY	1,584.00	PR.ADJ. 3B-2	0.00	1,584.00	
1,584.00					
TOTAL PRODUCTION	1,761.00		13.33	1,774.33	
1,774.33					
MAINTENANCE:					
CARETAKING (CHKG.SYS.)	2,500.00	PR.ADJ. 3B-3	(1,460.00)	1,040.00	
1,040.00					
MAINTENANCE - GENERAL	0.00	PR.ADJ. 3B-4	1,000.00	1,000.00	
1,000.00					
SNOW REMOVAL, W/HOUSE	2,004.00	PR.ADJ. 3B-5	(1,654.00)	350.00	
350.00					
TOTAL MAINTENANCE	4,504.00		(2,114.00)	2,390.00	
2,390.00					
GENERAL & ADMINISTRATIVE:					
OUTSIDE CONTRACTOR	2,300.00	PR.ADJ. 3B-6	(2,300.00)	0.00	
0.00					
OFFICE CLERICAL, RHODA QUINT, 4YRS.	2,100.00	PR.ADJ. 3B-7	(1,620.00)	480.00	
480.00					
INDEPENDENT ACCOUNTANT	0.00	PR.ADJ. 3B-8	747.00	747.00	
747.00					
P.U.C. ASSESSMENT	0.00	PR.ADJ. 3B-9	40.00	40.00	
40.00					
GENERAL INSURANCE	1,200.00	PR.AD. 3B-10	2,100.00	3,300.00	
3,300.00					
TOTAL GENERAL & ADMIN.	5,600.00		(1,033.00)	4,567.00	
4,567					
TOTAL OPTG. & MAINT. EXPS.	11,865.00		(3,133.67)	8,731.33	
8,731.33					
TAXES:					
F.I.T.	0.00		0.00	0.00	
PROPERTY	450.00		0.00	450.00	
450.00					
STATE	0.00		0.00	0.00	23.41
23.41					
DEPRECIATION	0.00		1,590.78	1,590.78	
1,590.78					

TOTAL EXPENSES	12,315.00	(1,542.89)	10,772.11	23.41
10,795.52				
NET OPERATING INCOME	(12,315.00)	1,542.89	(10,772.11)	13,431.48
2,659.37				

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

ESTIMATED ANNUAL OPERATING COSTS
WILDWOOD WATER SYSTEM
CALCULATED FOR 1988-1989 WATERBILLS

Water Quality Testing-State	$ 177.00
Electricity ($132.00 per month)	1,584.00
Caretaking (checking water system twice weekly)	2,500.00
Services rendered by Water Industries and contractor	2,300.00
Insurance (estimated)	1,200.00
Snow removal and care at well house and road services	2,004.00
Real estate taxes	450.00
Administrative and office expense	2,100.00
Total	$12,315.00

$12,315.00 / 43 lots = $286.40 per lot.

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Page 516

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Page 517

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Page 518

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

SCHEDULE 4

RATE CALCULATION
TEMPORARY RATES

	AMOUNT
TOTAL REVENUE REQUIRED FROM SCHEDULE 1	13,454.89
TOTAL NUMBER OF PAYING CUSTOMERS	42.00
ANNUAL CHARGE PER CUSTOMER	320.35
QUARTERLY (3MOS.) CHARGE PER CUSTOMER	80.09

QUIN-LET TRUST
FRANCHISE AGREEMENT

This agreement is entered into on this 29th day of May, 1991 between Quin-Let Trust (Petitioner) and the Staff of the Public Utilities Commission (commission) for the purposes of and subject to the terms and conditions hereafter stated.

On March 9, 1990, Quin-Let Trust filed a petition to provide water service to a limited area in a development known as Wildwood, in the Town of Albany, New Hampshire, pursuant to RSA 374:22. On October 29, 1990, the commission issued Order 19,968 which adopted the procedural schedule established by the parties to establish a hearing on the franchise and the temporary rates.

The Company submitted testimony and supporting documentation concerning a revenue level for Quin-Let Trust on October 5, 1990. Staff will stipulate, based upon a review of the documentation submitted, that the Company has the financial, managerial and technical ability to provide water service in the proposed service area. Staff agrees that it is in the public good for Quin-Let Trust to engage in the business of providing water service to the Wildwood service area.

Therefore, pursuant to RSA 374:22 and RSA 374:26 and upon acceptance of this agreement by the commission, Quin-Let Trust is granted permission and approval to operate as a franchise in the proposed service area.

This agreement is subject to the following conditions:

5.1 The agreement shall be promptly presented to the commission for approval, and approval shall be issued without delay.

5.2 The making of this agreement shall not be deemed in any respect to constitute an omission by any party that any allegation in these proceedings other than those specifically agreed to herein is true and valid.

5.3 The making of this agreement establishes no principles or precedent in any other proceeding or investigation.

5.4 The commission approval of this agreement does not establish any principles or precedents.

5.5 The commission approval of this agreement shall not in any respect constitute

determination as to the merits of any allegations made in this rate proceeding.

5.6 This agreement is expressly conditioned upon the commission's acceptance of all its provisions, without change or condition, and if the commission does not approve it, the agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose.

5.7 This agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

5.8 The discussions which have produced this agreement have been conducted on the explicitly understanding that all offers of settlement and discussions relating, there to shall

remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participation in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS THEREOF, the parties fully authorized agents have reviewed this agreement.

Quin-Let Trust
By Its Attorneys
by: William D. Paine, II, Esq.

STAFF OF THE PUBLIC UTILITIES COMMISSION
By Its Attorneys
by: Susan Chamberlin, Esq.
Staff Attorney

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NH.PUC*07/25/91*[27181]*76 NH PUC 520*Wilson v. ECI Telephone Company, Inc.

[Go to End of 27181]

Wilson
v.
ECI Telephone Company, Inc.

DC 91-104
Order No. 20,195

76 NH PUC 520

New Hampshire Public Utilities Commission

July 25, 1991

ORDER directing a telephone local exchange carrier to disconnect public access line service to a

place of business to allow the owner to replace a disconnected customer-owned, coin-operated telephone (COCOT) with alternate service. Commission assumes intent to discontinue service on the part of the COCOT provider based on the fact that it had removed its telephone set and had not responded to attempts at contact by commission staff.

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1. SERVICE, § 456

[N.H.] Telecommunications — Customer-owned, coin-operated telephone service — Discontinuance — Disconnection of public access line. p. 520.

2. SERVICE, § 63

[N.H.] Jurisdiction and powers — State commissions — To compel discontinuance — Telecommunications — Customer-owned, coin-operated telephone service. p. 520.

3. SERVICE, § 275

[N.H.] Discontinuance and substitution — Telecommunications — Customer-owned, coin-operated telephone service — Disconnection of public access line. p. 520.

BY THE COMMISSION:

ORDER

On January 27, 1989, John Buczynski, President of ECI Telephone Co. Inc, (ECI) applied for and was granted authorization to provide customer owned coin operated telephone (COCOT) service at Wilson's Mobile Station, Main Street, North Woodstock, NH.

[1-3] WHEREAS, on or about June 26, 1991, ECI removed the telephone set from Wilson's Mobile, at the owner's request, but failed to discontinue public access line (PAL) service; and

WHEREAS, existing PAL service prevents Wilson's Mobile from replacing the removed phone with alternate service; and

WHEREAS, the owners of Wilson's Mobile (the Wilsons) and the staff of the New Hampshire Public Utilities Commission (staff) have attempted repeatedly to contact ECI through ECI's answering service, without success; and

WHEREAS, staff left a message with ECI's answering service on July 5, 1991, that if ECI did not contact the staff by July 10, 1991, the PAL service at Wilson's Mobile would be

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disconnected; and

WHEREAS, ECI has not contacted the staff; and

WHEREAS the Commission finds it is clearly ECI's intent to discontinue COCOT service at Wilson's Mobile as evidenced by ECI's removal of the telephone set and its failure to contact the staff; it is hereby

ORDERED, that NET disconnect PAL service at Wilson's Mobile; phone number 745-8502.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of July, 1991.

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NH.PUC*07/29/91*[27182]*76 NH PUC 521*Southern New Hampshire Water Company

[Go to End of 27182]

Re Southern New Hampshire Water Company

DR 89-224
Order No. 20,196

76 NH PUC 521

New Hampshire Public Utilities Commission

July 29, 1991; revised July 31, 1991

ORDER establishing the revenue requirement and rate design for a public water utility. Gross revenue requirement is set at $5.034 million, reflecting an authorized rate of return on equity of 12.33% and an overall rate of return of 11.2%. The commission adopts an interim rate structure that moves toward uniform rates for the core and satellite systems of the utility.

The proposed rate base is adjusted to reflect the fact that the utility did not comply with its tariff relative to developer contributions for main extensions. The total disallowance was reduced to reflect the federal income taxes that the utility would have paid had it properly collected contributions from developers.

Commission rejects proposed adjustment clause recovery of purchased water and electricity costs finding no reason to depart from the normal rate-making treatment of such costs.

Oversized mains are included in rate base pending the results of a generic inquiry into least cost planning for water utilities.

Test-year management services costs paid by the utility to its corporate parent are subject to one-time disallowance.

Commission allows expenditures for certain capital projects despite the failure of the utility to file requisite reports. However, it opens a docket to determine whether the filing failure warrants civil penalties. Proposed rate reduction for inadequate service is rejected, but commission directs the utility to file a schedule indicating when all of its systems will achieve compliance with secondary (aesthetic) standards of quality. All of the utility's systems were found to be in compliance with primary (health-related) drinking water standards.

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1. VALUATION, § 414

[N.H.] Evidence — Burden of proof — Capital investments — Reports — Forms E-22 —

Water utility. p. 525.

2. REPORTS, § 1

[N.H.] Capital additions — Form E-22 — When required — Effect of failure to file — Water utility. p. 525.

3. VALUATION, § 266

[N.H.] Capital additions — Property included or excluded — Effect of failure to follow reporting requirements — Water utility. p. 525.

4. FINES AND PENALTIES, § 6

[N.H.] Grounds for imposition — Failure to report capital expenditures — Noncompliance with commission orders — Civil penalties. p. 525.

5. SERVICE, § 188

[N.H.] Extensions — Burden of cost — Contributions in aid of construction — Developer contributions — Water utility. p. 526.

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6. VALUATION, § 248

[N.H.] Property excluded — Water main extensions — Contributions in aid of construction — Effect of failure to enforce tariff — Tax-effected rate base adjustment. p. 526.

7. VALUATION, § 211

[N.H.] Property included or excluded — Used and useful property — Facilities for future needs — Oversized mains — Water utility. p. 528.

8. VALUATION, § 213

[N.H.] Property included or excluded — Plant Held For Future Use — Land — Storage tanks — Nonoperating property — Water utility. p. 529.

9. EXPENSES, § 84

[N.H.] Payments to corporate parent — Management services — Deficient service — One-time disallowance — Water utility. p. 530.

10. EXPENSES, § 54

[N.H.] Financing costs — Shareholder expense — Attraction of capital — Water utility. p. 530.

11. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Purchased water — Purchased electricity — Automatic recovery mechanism — Water utility. p. 531.

12. EXPENSES, § 144

[N.H.] Water — Purchased water — Purchased electricity — Proposed automatic adjustments p. 531.

13. EXPENSES, § 20

[N.H.] Damage repairs — Capitalization versus expense treatment — Water utility. p. 531.

14. EXPENSES, § 19

[N.H.] Miscellaneous expenses — Contest awards — Office parties — Alcoholic beverages — Water utility. p. 531.

15. EXPENSES, § 19

[N.H.] Depreciation — Contributed property — Water utility. p. 531.

16. RETURN, § 26.1

[N.H.] Reasonableness — Capital structure — Unconventional financing — Exclusion of capital lease — Water utility. p. 532.

17. RETURN, § 26.4

[N.H.] Reasonableness — Cost of equity capital — Discounted cash flow analysis — Capital asset pricing model — Water utility. p. 532.

18. RETURN, § 44

[N.H.] Reasonableness — Cost of equity capital — Proposed risk premium — Water utility. p. 532.

19. RATES, § 171

[N.H.] Reasonableness — Rate structure — Core and satellite system — Stand-alone versus average rates. p. 533.

20. RATES, § 597

[N.H.] Water rate structure — Core and satellite system — Stand-alone versus average rates. p. 533.

21. RATES, § 619

[N.H.] Water rate structure — Public fire protection — Availability fee — Hydrant charge. p. 535.

22. RATES, § 619

[N.H.] Water rate structure — Private fire protection — Cost elements — — Availability fee. p. 535.

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23. SERVICE, § 310

[N.H.] Water meters — Duty to install — Customer wishes. p. 535.

24. RATES, § 597

[N.H.] Water — Special factors — Quality of service. p. 536.

25. SERVICE, § 123

[N.H.] Adequacy of service — Quality standards — Water utility. p. 536.

26. SERVICE, § 480

[N.H.] Water — Quality, purity, and wholesomeness — Compliance with standards. p. 536.

APPEARANCES: McLane, Graf, Raulerson and Middleton by James C. Hood, Esq. and Steven V. Camerino, Esq. for Southern New Hampshire Water Company; Office of the Consumer Advocate by Joseph Rogers, Esq. for Residential Ratepayers; Richard Lewis for the Green Hills Residents' Association; and Eugene F. Sullivan, III, Esq. and Susan Chamberlin, Esq. for the New Hampshire Public Utilities Commission.[1](116)

BY THE COMMISSION:

I. PROCEDURAL HISTORY

On December 1, 1989, Southern New Hampshire Water Company, Inc. ("SNHW", "Southern" or the "Company") filed a notice of intent to file rate schedules pursuant to N.H. Admin. Rules, Puc 1603.02. On January 5, 1990, Southern followed its notice with a submission of its full rate case. The case was rejected pursuant to RSA 541-A:14 II(a) (supp.) by Order No. 19,711 dated February 12, 1990, because SNHW failed to file complete test year data, rate design information and a required depreciation study.

On February 28, 1990, Southern filed a motion for reconsideration and rehearing of Order No. 19,711. The motion was served on the Office of the Consumer Advocate ("OCA" or "Consumer Advocate"). The SNHW motion had attached a stipulation between Southern and Commission Staff dated February 16, 1990, which reflected certain commitments by Southern to supplement its filing and the position of staff with respect to the acceptability of those commitments. Over the March 7, 1990 objection of the OCA, the Commission accepted the stipulation.

The stipulation *inter alia* deferred the requirement for the filing of the depreciation study. Because that requirement had been imposed by Commission order, *Re Southern New Hampshire Water Company, Inc.*, 73 N.H.P.U.C. 305, 314 (1988), it could not be amended or modified without providing notice and an opportunity to be heard pursuant to RSA 365:28. Appropriate notice was provided by Order No. 19,754 and a hearing was scheduled and held on April 3, 1990. Subsequent to the issuance of Order No. 19,754 and prior to the April 3, 1990 hearing, Southern filed a request for emergency rates pursuant to RSA 378:9 and a document labelled "study of depreciation."

At the April 3, 1990 hearing, Southern represented, and the parties did not dispute, that Southern had supplemented its filing to address all deficiencies specified in Order No. 19,711, other than Southern's failure to file a depreciation study. Southern also requested that the Commission accept the document labelled "Study of Depreciation" or, in the alternative, waive the depreciation requirement. Upon consideration of the record evidence and the parties' arguments, the Commission rejected Southern's claim that the filed document was a satisfactory depreciation study, but determined that it was appropriate to waive the depreciation study filing requirement. *Re SNHW*, Report and Order No. 19,802 (April 4, 1990) (Order 19,802).

On May 9, 1990, the OCA filed a motion for rehearing seeking: (1) rehearing of Order No. 19,802; (2) dismissal of the instant docket until such time as Southern complies with Order No. 19,153 in its entirety; and (3) such other

relief as is just and proper. OCA Motion for Rehearing at 18-19. On May 14, 1990, the Commission issued Report and Order No. 19,826 denying the Consumer Advocate's motion.

On June 21 and 28, 1990, the Commission held two days of hearings on the issue of temporary rates/emergency rates. In *Re SNHW*, Report and Order No. 19,915 (August 13, 1990) (Order 19,915), the Commission granted a temporary rate increase in the amount of $750,000 and established a procedural schedule. Beginning in July, 1990, the parties engaged in extensive discovery.

On September 4, 1990, the OCA filed a motion for rehearing of Order No. 19,915. On September 10, 1990, the Commission issued Order No. 19,933 denying the Consumer Advocate's motion for rehearing.

The Commission held evening public hearings on Southern's permanent rate request in Raymond, New Hampshire on September 11, 1990; Derry, New Hampshire on September 26, 1990; and Hudson, New Hampshire on October 17, 1990. The Commission conducted evidentiary hearings on the permanent rate request at its offices in Concord over 9 days in April 1991.

On June 3, 1991, the Commission issued Order No. 20,143, resolving the issue of permanent rates and indicated that this Report and Order would follow.

II. POSITIONS OF THE PARTIES

Southern's revised filing supports a revenue deficiency of $1,935,990; however, the Company has limited its request to the $1,119,598 figure set forth in its original petition. The $1,119,598 revenue deficiency amounts to a 28.9% increase in rates if all rate classes are consolidated.

Southern's originally petitioned increase in revenues is based on a rate base of $19,261,104 which it submits was the result of prudent capital investments used and useful in providing service to the public; a rate of return on equity of 12.75% based on an evaluation of other rates of return on equity granted by the Commission to other utilities plus a risk premium because Southern is a small water utility; and operating and maintenance expenses in the amount of $1,397,510. Southern further requested that it be allowed to average the rates for all of its systems. As noted above, Southern filed revised schedules supporting an increased revenue requirement. For example, the revised rate base was $20,062,505, and the revised operation and maintenance expenses were $1,469,962.

Richard Lewis sought to lower rates to the Green Hills system because he contends that Southern's management performance and quality of service at the Green Hills community has been deficient.

Staff took positions contrary to those of Southern on the issue of rate base, rate of return on

equity, operating and maintenance expenses, and rate design. With respect to rate base, Staff argued that approximately $4,317,767 should be excluded: 1) because Southern had failed to file Forms E-22 as required by RSA 374:5, N.H. Admin. Rules, Puc 609.07 and Order No. 10,871; 2) because Southern had failed to obtain contributions from developers for main extensions in accordance with its tariff; 3) because mains had been oversized for current needs and, therefore, were not fully used and useful; 4) because mains had been sized and hydrants installed for fire protection where the local municipality had not agreed to pay for fire protection; and 5) because it reflected plant held for future use which was not to be used within one year.

Staff rejected Southern's methodology in deriving a rate of return on equity and proposed a rate of return on equity of 12.33% based on the Discounted Cash Flow ("DCF") methodology.

Staff proposed adjusting the Operation and Maintenance Expenses by increasing expenses related to Transmission and Distribution and storm damage repairs by $7,168. Staff also recommended adjusting Administrative and General expenses; disallowing alcoholic beverage charges and contest awards for finding unbilled customers; revising the pension and postage expenses; and disallowing certain Stockholders' expenses and legal expenses. The Staff's proposed modifications resulted in an increase of $5,813.

The Staff further recommended that

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Contributions in Aid of Construction be amortized over the remaining life of the assets. The Company currently reduces the value of the asset before calculating depreciation on the asset.

Finally, Staff objected to Southern's consolidated rate design proposal because it results in subsidization between non-interconnected water distribution systems and thereby violates RSA 374:10 and RSA 374:11.

The OCA supported the position of Staff relative to rate base exclusions, operating and maintenance expenses and rate design. With respect to rate design, the OCA argued that no change should be made in Southern's current rate design because it had not conducted a cost of service study to support average rates. The OCA further argued that mismanagement by Southern and its parent company, Consumers Water Company ("Consumers"), as well as poor water quality required an overall reduction in rates. Finally, the OCA filed testimony supporting an 11.84% rate of return on equity based on a combination of the DCF and Capital Asset Pricing Model ("CAPM") methodologies.

III. COMMISSION ANALYSIS

A. *Rate Base*

1. *Forms E-22*

[1-4] The first issue the Commission will address relative to rate base is the alleged failure of Southern to file Forms E-22 in accordance with RSA 374:5, N.H. Admin. Rules, Puc 609.07 and Order No. 10,871.

RSA 374:5 provides, *inter alia*:

> Additions and Improvements. For the purpose of enabling the commission to perform

> its duty to keep informed as provided in RSA 374:4, every public utility, before making any addition, extension, or capital improvement to its fixed property in this state ... shall report to the commission the probable cost of such addition, extension or capital improvement whenever the probable cost thereof exceeds a reasonable amount prescribed by general or special order of the commission ... . The commission shall have discretion to exclude the cost of any such addition, extension, or capital improvement from the rate base of said utility where such written report thereof shall not have been filed in advance as herein provided.

In accordance with the statute, N.H. Admin. Rule Puc 609.07 and Report and Order No. 10,871 required each water utility of Southern's size to file a Form E-22 with the Commission reporting any proposed capital addition, improvement, or extension, the estimated cost of which exceeded $30,000 on a quarterly basis.

In his direct testimony, Robert B. Lessels, Water Engineer, testified that Southern violated this requirement by failing to file a number of Forms E-22. Mr. Lessels recommended that the Commission exercise its discretion to disallow these capital additions, improvements and extensions from rate base.

The Commission finds that a number of Forms E-22 were not filed by the Company pursuant to RSA 374:5, Puc 609.07 and Order No. 10,781.[2(117)] The Company bears the burden of proof as to all elements of its case. RSA 378:8. While the Company was able to demonstrate that several of the E-22s subject to dispute had been filed, it failed to meet its burden on the remainder of the identified E-22s. Those remaining E-22s fall into two categories. The first category involves a dispute about whether the Company was required to file a particular E-22. This situation generally arose where an initial cost estimate fell below the threshold specified in the rule, but actual costs exceeded that threshold. We resolve this dispute by examining the reasonableness of the initial cost estimate and Southern's actions as it became apparent that the costs were going to be in excess of projections. The second category involves a dispute about whether the Company in fact filed E-22s that Southern acknowledges it was required to file. The staff took the position that those E-22s had not been filed because no record of such filing could be located within the Commission. The Company produced copies of those E-22s and claims that it indeed filed them with the Commission.

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With respect to the first category, the Commission finds that the Company violated our E-22 filing requirements because of an unreasonable cost estimate or failure timely to inform the Commission when it became apparent that projected costs would be exceeded for the following projects: Orchard View/Buttrick; Walnut Street Ayers; Quail Run; Barretts Hill Extension; Unicorn Industrial Park; April Drive; Elderly Housing; and Route 111A. Specifically, the Quail Run project was originally estimated to cost below $30,000, but actual cost was $36,649 — 22% above the minimum threshold. The Company failed to meet its burden of proof because it offered no justification of the reasonableness of the original estimate or of its failure to file an E-22 once the overrun became apparent. The same analysis applies to Barretts Hill Extension, April Drive and Route 111A.

The justification offered for the remaining projects is that no E-22 was required because the Company obtained customer contributions which resulted in a net cost of under $30,000, even though total cost exceeded that figure. We disagree. The purpose of RSA 374:5 and the E-22 requirement promulgated pursuant thereto is to keep the Commission informed of major capital additions which may affect *inter alia* rates, system reliability, or quality of service. While additions to rate base may be *de minimus* if contributions cause Company investment to fall under the threshold, other effects from major investment (including rate effects from other components of the ratemaking formula) will not necessarily vary from those pertinent to total investment. Thus, the E-22 filing requirement cannot be circumvented by netting contributions against total investment.

With respect to the second category, the Commission finds that Southern failed to file E-22s for the remaining projects listed herein at n. 2. As noted, Southern bears the burden of proof. In the absence of more definitive evidence, we rely on Mr. Lessels' testimony that the forms were not present in his files and that in his twenty-seven years with the Commission's Engineering Department he had never had any Forms E-22 delivered to the Commission that were not in his files.

Although RSA 374:5 provides the Commission with the discretion to disallow the expenditures made on projects where there was a failure to file an E-22, we will not do so in this case based on the evidence that each of the extensions, improvements or additions was prudent.[3](118) However, we will open a docket to determine whether civil penalties should be assessed against the Company, its officers or agents pursuant to RSA 365:41 and RSA 365:42 for the failure to comply with RSA 374:5, Puc 609.07 and Order No. 10,871.

2. *Contributions In Aid Of Construction*

[5, 6] The next issue is whether Southern obtained Contributions in Aid of Construction (CIAC) in accordance with its tariff when it constructed certain main extensions.

Southern's Tariff No. 7 Fourth Revised Page 15A and 15B states, in pertinent part:

> Extensions of water mains will be made upon petition of any real estate developer, development company [or] building contractor ... . If an extension is requested to provide water service to a prospective development ... , then the utility will require the developer to advance the entire estimated cost of the extension based on the size of pipe required to serve the development. The Company reserves the right to install large pipe [over 8 inches] in anticipation of future development.

Mr. Lessels testified that a number of main extensions were constructed by the Company which were not in compliance with Tariff No. 7, Fourth Revised Page 15A and 15B and certain other tariff provisions. In response to Mr. Lessels' testimony, Robert W. Phelps, President of Southern, filed rebuttal testimony (Exhibit 40) which addressed the main extensions identified by Mr. Lessels.

The Commission finds that Southern did not comply with its tariff relative to developer contributions for the following main extensions: a) David Prolman-Land Development; b) Norman Pelletier; c) Larchmont Estates; d) Naticook Landing; e) Sullivan Road; f) Williams

Mobile Corporation; g) Orchard View/Buttrick; h) Pelham Extensions; i) King

Richard Main; j) Rangers Drive; k) Walnut Street/Ayers Pond; l) Hudson Village Shops; m) Quail Run; n) April Drive; and o) Currier/Berkshire/Wilshire. The tax-effected test year rate base adjustment for Southern's failure to enforce CIAC tariff provisions is $531,823.[4](119) The tax-effected rate base adjustment for future years is $630,843.[5](120)

The description of the specific projects and the concomitant disallowances follow:

a) *David Prolman-Land Development Project.* The main extension consisted of 1,222 feet of eight-inch ductile iron and 241 feet of six-inch ductile iron. The total cost was $15,719 and the developer contributed $8,902. The Commission will disallow $6,817 which the developer should have paid.

b) *Norman Pelletier Project.* Exhibit 40 at RWP-6 lists the costs and contributions by this developer as not yet known. The Company shall provide the cost, contribution, and length and size of pipe for our review within one month of the date of this Report and Order.

c) *Larchmont Estates Project.* The extension consisted of 1,450 feet of twelve-inch ductile iron. The cost of the extension was $39,280 and the developer made no contribution. Under Southern's tariff, it is responsible for any costs for oversizing of mains larger than eight-inch ductile iron. The incremental cost of increasing eight-inch ductile iron to twelve-inch ductile iron is seven dollars ($7) per foot. Southern's actual investment in this main should have been $10,150 leaving a disallowance from Southern's rate base of $29,130, which was the developer's responsibility.

d) *Naticook Landing Project.* The extension consisted of 5,900 feet of twelve-inch ductile iron pipe, 2,300 feet of sixteen-inch ductile iron pipe and 1,229 feet of eight-inch ductile iron pipe. The cost of the extension was $366,053. Southern received a contribution from the developer of $158,584 and the cost of oversizing was $78,100 leaving a disallowance of $129,369, representing the additional amount that should have been contributed by the developer.[6](121)

e) *Sullivan Road Project (Hudson and Pelham).* The cost of the extension was $326,468 and the developer made no contribution. Notwithstanding Southern's argument that this was not a developer extension, the record leads us to find that the extension was made to serve an industrial park in Pelham and was, therefore, a developer extension. The extension consisted of 4,950 feet of 12" ductile iron leaving a disallowance of $291,888 after an adjustment for oversizing.

f) *Williams Mobile Corporation Project.* The extension consisted of 1,390 feet of twelve-inch ductile iron at a cost of $45,729. The developer contributed $24,200, leaving a disallowance of $10,799, after an adjustment for oversizing.

g) *Orchard View/Buttrick Project.* The extension consisted of 2,850 feet of twelve-inch ductile iron at a cost of $97,102. The developer contributed $59,102, leaving a total disallowance of $18,050, after an adjustment for oversizing.

h) *Pelham Extensions.* The extensions consisted of 474 feet of six-inch ductile iron and 577 feet of twelve-inch ductile iron at a cost of $69,000. The developer(s) made no contribution(s) leaving a total disallowance of $64,961, after an adjustment for oversizing.

i) *King Richard Main.* The extension consisted of 1,560 feet of eight-inch iron ductile at a cost of $96,423. The Company received a contribution of $13,125, leaving a total disallowance of $83,298.

j) *Rangers Drive Project.* The extension consisted of 2,240 feet of twelve-inch ductile iron. The cost of the extension was $38,978, leaving a total disallowance of $23,299, after an adjustment for oversizing.

k) *Walnut Street/Ayers Pond Project.* The extension consisted of 1,010 feet of eight-inch ductile iron at a cost of $44,079 The developer contributed $37,946, leaving a total disallowance of $6,133.

l) *Hudson Village Shops Project.* The extension consisted of 3,452 feet of sixteen-inch ductile iron and 400 feet of twelve-inch ductile iron at a cost of $258,475. The

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developer contributed $45,000, which leaves a total disallowance of $155,443, after adjusting for main oversizing.

m) *Quail Run Project.* The extension consisted of 2,363 feet of eight-inch ductile iron and 1,421 feet of six-inch ductile iron at a cost of $36,649. The developer contributed $1,346, leaving a total disallowance of $35,303.

n) *April Drive Project.* The extension consisted of 700 feet of twelve-inch ductile iron, 1,000 feet of eight-inch ductile iron and 300 feet of six-inch ductile iron at a cost of $43,996. The developer contributed $23,000, which leaves a total disallowance of $16,096, after adjusting for oversizing.

o) *Currier/Berkshire/Wilshire Project.* The extension consisted of 5,120 feet of ductile iron at a cost of $104,137. The developer contributed $18,900, leaving a total disallowance of $85,237.

3. *Used and Useful.*

[7] The rate filing reflects Southern's position that all of its main installations are used and useful because they are prudently sized for future growth expectations and fire protection. Southern specifically noted that all municipalities within which construction occurred required sizing adequate to provide fire protection.

The Staff took issue with the SNHW position through the testimony of Mr. Lessels who stated that Southern had vastly oversized certain of its mains constructed since its last rate case. Although Mr. Lessels did not believe that Southern's installation of any of the mains was imprudent because they were sized to account for reasonably anticipated growth, he did testify that the mains were not fully "used and useful" for the current customers. Mr. Lessels did not

believe it equitable for current customers to carry the cost of these oversized mains until some future date when the capacity provided by these mains may or not be required. As an additional matter, Mr. Lessels objected to Southern's inclusion of mains oversized for fire protection in rate base where the municipality had not agreed to pay for fire protection.

In its brief, the Staff reiterated these arguments and recommended that the Commission require Southern to defer recovery on the oversized mains until some future time when the customer load required by these mains materialized. The Staff further recommended that the Commission disallow all fire protection investments in municipalities that have not requested fire protection once a request had been made to the municipality to make the payments and the request was rejected.

The Staff further recommended that the Commission open a docket to address least cost planning for Southern New Hampshire Water Company.

The OCA in brief stated that the oversized mains should be excluded from rate base because they were neither prudently constructed nor used and useful to the public. Specifically referring to mains sized for fire protection, the OCA stated that it is inequitable to include fire protection in residential consumption rates as the service also benefits non-ratepayers situated near hydrants. Therefore, "... towns should be given the opportunity to decide whether they want [fire protection] or not." OCA Brief at 18-20.

After review of the record, we have determined that it is appropriate to allow Southern to include oversized mains in rate base for the present time.[7](122) We recently described this issue in *Re Manchester Water Works*, Report and Order No. 20,123 (May 6, 1991), where we stated:

> A hypothetical example of the planning issue may be where a new water main is required in an area experiencing growth. The present demand supports only a 4 inch main, which could be constructed at a cost of $100,000. Reasonably anticipated growth in the foreseeable future would require a 6 inch main which would cost $110,000. The cost of constructing a 4 inch main now and then reopening the trench and replacing the 4 inch main with 6 inch main in the foreseeable future would be $210,000. Under this circumstance, prudent utility management would elect to spend the $110,000 to construct initially the 6 inch main. Indeed, any

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> other decision may be imprudent, subjecting the utility to the risk of disallowances of investment in excess of $110,000.

Report at 5, n. 2. Thus, the issue here is not whether Southern should have the opportunity to recover its investment in appropriately oversized mains; rather, the issue is one of timing and risk allocation. The timing issue relates to whether current ratepayers should be asked to pay to support the total investment, as distinguished from a deferral mechanism which would allocate the incremental cost of the oversizing ($10,000 in the hypothetical above) to the future customers who were responsible for the need to incur the cost. The risk allocation issue relates to whether the Company should share with ratepayers the risk of incorrect decisions (either the new load does not materialize or it exceeds all reasonable projections). In such an instance, the

Company may receive less than full recovery if anticipated future growth is not as projected.

As is apparent from the above discussion, we are addressing generic policy issues. The instant record is not sufficient for us to resolve these issues in the context of this docket. Thus, the Commission agrees with the Staff that this issue should be examined as a part of a generic inquiry into least cost planning for water companies. Least cost planning for water utilities by necessity involves consideration of main extension policies. We will, accordingly, commence a generic proceeding to address water company least cost planning. We will include in that proceeding the issues of oversized mains and municipal obligations with respect to fire protection as they relate to the planning process. In the interim, the Commission will allow Southern to include all of its oversized mains in rate base. However, the Company is on notice that the results of the generic docket may affect the ratemaking treatment of any oversized or improperly planned mains by reducing the value of the rate base.

A final issue involves the so-called Pillsbury Road project. In Exhibit 40 at RWP-6, the Company admitted that it constructed 82 customer services that are currently not in use. The cost of the project was $28,000. The services will be excluded from rate base until they are used and useful. At that time, Southern may seek recovery on the investment in an appropriate rate filing.

4. *Plant Held For Future Use.*

[8] In its rate filing, Southern included a number of items in rate base account number 2307.08 (Plant Held for Future Use). These items of rate base include land and plant held for future use. Specifically, the items include $136,763 for land in Litchfield along the Merrimack River for a water treatment plant, $19,623 for land in Londonderry for a water storage tank, $43,104 for land in Litchfield for a water storage tank, $5,000 for land in the Beacon Hill area for a water storage tank, and $4,021 for storage tanks no longer in use.

Chapter 2307 of the Chart of Accounts for Water Utilities provides, *inter alia*:

> When land is acquired in excess of that required for water operations, or for which there is not a definite plan for its use in water operations *within one year*, the cost of such land shall be charged to Account 110 ... , except that, upon special order of the commission, land purchased for future use on development may be charged to Account 2307.08.

Uniform Classification of Accounts for Water Utilities, Order No. 3703 (December 30, 1939) at Note A (Emphasis supplied). Items placed in Account 2307.8 are included in rate base. Items placed in Account 110 are excluded from rate base.

Southern admits that none of the land it proposes to include in Account 2307.8 will be used in water operations within one year; however, it has requested a special order from the Commission allowing it to place these parcels of land in that Account.

The Company has presented no special circumstances that would justify a departure from normal accounting practices and the ratemaking treatment that flows therefrom. Accordingly, its request for special treatment will be denied.[8](123)

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With respect to the storage tanks, Account 2307.8 is not appropriate. These items are plant

(as distinguished from land) which is not currently used and useful. Accordingly, the tanks will be excluded from rate base and placed in Account No. 110 (Non-Operating Property).

B. *Operation and Maintenance Expenses*

1. *Management*

[9] In the 1989 test year, Southern paid $566,348 in management fees to its parent company, Consumers. The $566,348 contains two broad components. The first component is reimbursement to Consumers for certain fixed costs such as insurance, pension plans and health benefits. The amount of this component is $284,115. The second component is the Consumers' bill for actual management services. The amount of this component is $264,258. It is the second component which is the subject of this analysis.

The evidence in this case reveals that during 1988 and 1989 there were significant management problems at Southern. Southern initiated and completed major construction projects without following its own management practices. Further, the Company failed to keep its accounts properly. Additionally, the Company repeatedly failed to comply with established Southern and Consumers decision-making procedures. It is impossible on the basis of the current record to quantify the cost of these management deficiencies. We note that at a minimum these failures were a direct contributor to the poor and often rancorous relationship the Company has had with its customers which is reflected in the record of this proceeding. It is also certain that otherwise prudent investment and expenses could have been avoided, deferred or accomplished in a more efficient manner if the Company had the proper working relationship among all management levels. */See e.g.*, II Tr. at 129-137.

Based on these findings of mismanagement, the Commission will exclude from operation and maintenance expenses the $264,258 paid by Southern to Consumers for management services. The Commission expects that utilities will at all times act diligently to provide the highest quality management for the benefit of both ratepayers and investors. During the relevant period Southern and therefore its ratepayers did not receive the high quality management services for which they were billed.

It should be noted that we are not by this action laying the responsibility for management deficiencies on any particular individual. Where management problems are as substantial as those reflected in the instant record, responsibility must rest at the highest possible level. The disallowance of the management fee appropriately reflects the fact that the senior levels of leadership at Consumers failed to deliver to the Southern subsidiary the high quality management services to which Southern and its ratepayers were entitled.

We have tailored the disallowance to the management deficiencies reflected in the record. We recognize that the evidence also shows that Consumers and Southern are implementing measures to rectify these problems. Indeed, we can expect no less and therefore must provide for reasonable recovery of the current and future cost of high quality management. Thus, we will not disallow the management service fees on a continuing basis. The one-time disallowance of test year management fee expenses will be returned to ratepayers over three years with carrying costs set at the rate of return of Southern.

2. *Shareholder Expenses*

[10] The Staff and the OCA claimed that approximately $19,857 shareholder expenses included in Southern fees to Consumers should be disallowed because such fees are for the purpose of serving investors, rather than ratepayers. We decline to make such a disallowance. The record reflects that the expenses were incurred to raise capital for significant plant investments. The Commission finds that the expenses were necessary to attract and retain capital *inter alia* for the benefit of ratepayers.

3. *Automatic Adjustments For Purchased Water And Electricity; Proforma Adjustments For Certain Fees*

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[11, 12] Southern's rate filing requested that the Commission approve mechanisms for automatic purchased water adjustments and purchased fuel adjustments. Southern claimed that such a mechanism is reasonable given the difficulty of predicting the cost of purchased water and the relative certainty of increased costs for electricity.

Automatic adjustment clauses were developed for electric utilities in the late 1970s to provide a mechanism for dollar for dollar recovery of prudently incurred fuel costs without the need to undertake a full rate investigation. Since that time, utilities have, with varying degrees of success, sought to expand the application of automatic adjustment clauses because it offers efficient recovery of costs that may not otherwise be recovered through a rate proceeding because *inter alia* the utility is earning its allowed rate of return. It is therefore important to return to the touchstone of why automatic adjustment clauses have been allowed in rare instances. In the case of electric automatic adjustment clauses for fuel, the rationale is based on the facts that: 1) fuel costs were highly volatile; and 2) fuel represents a substantial percentage of the utility's operating costs. Thus, there is some certainty that automatic fuel adjustment clauses will accomplish their intended effect of avoiding the need for frequent rate cases. *See e.g.*, *Re Concord Electric Company and Exeter and Hampton Electric Company*, Report and Order No. 20,166 (July 2, 1991).[9(124)]

The evidence does not support a finding that the proposed automatic adjustment clauses are necessary to prevent frequent water company rate cases. We note in particular that the record does not contain evidence which shows that either water or electricity represent the type of proportional percentage to total costs as fossil fuels represent to electric utilities. Moreover, we cannot conclude on the present record that the prices of either purchased water or electricity are especially volatile. Thus, Southern did not demonstrate that circumstances exist which warrant a departure from normal ratemaking treatment of these costs. We will therefore deny the Company's requests.

We will also deny Southern's request to make proforma adjustments to certain fees and penalties charged by the Company. Proforma adjustments are appropriate where changes in costs or revenues are known and measurable. Because these requested adjustments are the subject of another docket open at the Commission and are as yet unresolved they are neither known nor measurable.

4. *Miscellaneous Expenses*

[13-15] Southern requested that the cost of certain storm damage repairs be capitalized as a part of the repaired plant. The Company claimed that the decision to expense or capitalize costs is a judgment call based on the particular circumstances of the repair. Under the instant circumstances, SNHW claimed its judgment was reasonable. The Staff recommended that the Commission treat the item as an expense. After review of the record, we find that the repairs in question did not add new "units" to plant as required by our chart of accounts. *Uniform Classification of Accounts for Water Utilities*, Order No. 3703 (December 30, 1939) at 51 (Fixed Capital Accounts) and Appendix A thereto at 146-148. The plant as it existed before and after the storm was the same in all material respects. Accordingly, the costs should be treated as a maintenance expense. We therefore agree with the Staff and will require the Company to expense these items.

The Company's original filing included as an expense the cost of alcoholic beverages purchased for its Christmas party. Southern agreed to absorb this cost for ratemaking purposes; accordingly, test year expenses will be adjusted to reflect this change. Test year expenses will also be adjusted to reflect Staff comments on proposed proforma adjustments to pension, postage and legal expenses. The Company did not dispute the Staff's comments. SNHW also included in test year expenses the cost of a contest award to employees for identifying and locating unbilled customers. We find that this program is an innovative and effective management practice which ultimately benefits ratepayers and we will accordingly allow the expense.

Lastly, the Staff recommended that

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Contributions in Aid of Construction be amortized over the remaining life of the assets. The Company currently reduces the value of the asset before calculating the depreciation on the asset. The Staff's recommendation allows the Company to depreciate the total value of the asset and to amortize the Contribution in Aid of Construction. The Staff's method also allows the Company to remove the Contribution in Aid of Construction from its books when the asset is retired. The Company's method, which has been the historical accounting method used by all utilities until recently, leaves the
Contribution in Aid of Construction on the Company's books forever.

The Commission accepts the Staff recommendation. The Staff's method tracks the Contribution in Aid of Construction to the asset directly and allows the Company's books to reflect accurate accounting of Plant in Service.

C. *Rate of Return*

[16-18] The capital structure and component cost rates proposed by the Company are as follows:

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

	Amount (000)	*Component Ratio %*	*Cost Rate %*	*Weighted Average Cost %*
Common	$9,360	39.48%	12.75%	5.03

LT Debt	8,495	35.84%	10.99%	3.94%
ST Debt	5,850	24.68%	10.12%	2.50%
Total	$23,706			11.47%

Exh. 4 at 1.

The Staff disputed the capital structure only to the extent of the Company's inclusion of a capital lease in long-term debt. With the exception of the establishment of the appropriate rate of return on equity, all other components were not disputed.

The Commission will accept the Staff's proposed capital structure based on the failure of the Company to meet its burden of proof with respect to the capital lease. RSA 378:8. We note that Staff Economist Planchet testified that her hypothetical calculations indicated that inclusion of the capital lease would lower the overall rate of return. No further record information was provided by the Company to address the issue raised by the Staff as it pertains to the nature, terms, conditions and cost of the capital lease other than the summary and cryptic line item information contained in Exh. 4 at 2. Under these circumstances, the record does not support the inclusion of unconventional financing instruments in the capital structure.

The remaining disputed issue in this area is the establishment of an appropriate rate of return on equity. As noted above, the Company proposed a return of 12.75% based on its survey of other returns allowed public utilities by the Commission with a risk premium for Southern's small size and for Commission ratemaking disallowances. Exhibit 40 at 15-17. Although pre-filed testimony was entered into the record, the Company did not present the witness who prepared the testimony. SNHW's proposed rate was orally supported in the course of the general testimony of Company President Phelps. In contrast, the Staff and the OCA both presented testimony by the experts who had undertaken the analysis. Staff Economist Elaine Planchet testified that her DCF calculations yielded an appropriate return of 12.33%. Exhibit 84. OCA witness Rohrbach recommended the adoption of a return on equity of 11.84% based on his blending of the DCF model, which yielded a 12.38% return, with the CAPM Model, which yielded an 11.29% return. Exhibit 88.

The Commission will accept Staff's recommended rate of return on equity of 12.33%. Ms. Planchet's analysis was consistent with the DCF methodology traditionally applied by the Commission, well supported and not seriously challenged.

We have been given an additional level of comfort by the analysis of Mr. Rohrbach.

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Although Mr. Rohrbach's DCF results were at the higher 12.38% figure, his CAPM approach provided a "reality check" that indicated that the lower 12.33% Staff figure is in the more appropriate range. We will go no further with the CAPM approach at this time. We recognize that Mr. Rohrbach has presented a thorough, well-documented and innovative analysis. The issue here, however, is whether to accord equal weight to the CAPM as has traditionally been accorded to the DCF. While the record in this case does support the use of the CAPM as a "reality check", we do not believe that it supports a departure from our traditional approach to establishing an appropriate return on equity. Thus, we decline to weight equally both approaches.

The Company's approach provides further support for the Staff analysis. As noted, Southern recognized that enterprises of comparable risk have had equity returns granted which are below the 12.75% figure. *Bluefield W.W. & Improv. Co. v. Public Serv. Com.*, 262 U.S. 679 (1923). It then added a risk premium based on its small size and disallowances to increase the return to the proposed 12.75%. The issue there
fore is whether the identified risk premium is appropriate. If it is not, we have additional validation of the Staff 12.33% figure.

After due consideration, we cannot accept Southern's risk premium analysis. We do not believe that the Company's "small" size should be considered in determining its rate of return. Southern's relationship with its parent company provides it with all the benefits of a large utility relative to financing. We also find no merit in Southern's argument that the disallowances made by this Commission create greater risk thereby requiring a greater return on equity. If the Commission were to increase the rate of return on equity to reflect disallowances, the Company would recover indirectly the expenses that were directly disallowed. We cannot allow such an obvious inconsistent result. *See Appeal of Public Service Company of New Hampshire*, 125 N.H. 46 (1984).

Because a risk premium is not appropriate, the Staff's proposed 12.33% return on equity will be adopted. When combined with the deletion of the capital lease from the capital structure, the capital structure and concomitant returns are as follows:

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

	Amount (000)	*Component Ratio %*	*Cost Rate %*	*Weighted Average Cost %*
Common	$9,360	40.12%	12.33%	4.95%
LT Debt	7,970	34.16%	10.79%	3.69%
ST Debt	6,003	25.73%	9.98%	2.57%
	$23,333			11.20%

Exhibit 84 at Exh. 8.

D. *Rate Structure*

1. *Stand-alone versus Average Rates*

[19, 20] The Southern system consists of a core utility and numerous satellites that are not physically interconnected. Currently, rates in the core and satellite systems are not uniform. In *Re Southern New Hampshire Water Company, Inc.*, 73 N.H.P.U.C. 305, 313 (1988), the Company agreed, *inter alia*, that "... in its next rate case [it] will file for uniform system-wide rates, without minimum usage levels ..." Pursuant to its agreement, Southern petitioned for and supported[10(125)] average rates throughout its system. In response, the Staff and the OCA contended that average rates are inequitable and could result in undue discrimination in violation of RSA 378:10 and RSA 378:11. *See e.g., Granite State Alarm, Inc. v. New England Telephone & Telegraph Co.*, 111 N.H. 235 (1971).

The issue of averaging rates in systems such as Southern's involves complex policy determinations. One of the prevalent objectives of ratemaking is to price services to reflect costs.

This provides accurate price signals which, in turn, promotes economic efficiency. Disaggregated cost based rates also minimize

the risk of inappropriate subsidies between groups of ratepayers. Cost, however, is not the sole determinant of a sound rate design. *See e.g.*, Bonbright, Danielsen and Kamerschen, *Principles of Public Utility Rates*, Pub. Util. Rep. (1988) at 383-385. We must also consider factors such as revenue stability and predictability, fairness, and the effectiveness of the rate structure in yielding the revenue requirement. *Id.*

In recent years larger water utilities, such as Southern, have been encouraged to purchase smaller systems which did not have the means or the "critical mass" to provide cost effective high quality service.[11](126) We expect this trend to continue, given the increased burdens confronting smaller systems resulting from, *inter alia*, the need to comply with the requirements of the Safe Drinking Water Act, 42 U.S.C. § § 300f *et seq.*, *see also* RSA Chapter 485. The policy of encouraging larger systems to rescue smaller distressed systems cannot be construed as a blank check. The benefits of the policy would be short-lived if existing customers are asked to pay substantial subsidies to rescue the customers of the smaller systems. Recently, in *Re Southern New Hampshire Water Company*, Report and Order No. 20,156 (June 19, 1991) (Order 20,156), we resolved this issue by requiring that the customers in the newly acquired system be ultimately responsible for the cost of upgrading their system to meet the service standards of the purchaser.[12](127) Thereafter, the new customers will be entitled to the uniform system rate inasmuch as the cost of supply, operation and maintenance of the upgraded system should not significantly differ from area to area. This procedure properly allocates costs to the cost causers, while ensuring that after initial upgrade costs are absorbed, the new customers will be entitled to the benefits of being part of the larger system.

In the instant proceeding, we must be mindful of the practical difficulties of an abrupt transition either to uniform or disaggregated rates. Indeed, for one satellite, the effect of stand-alone rates would be an annual revenue requirement of approximately $3,000 per customer; a result that is clearly unacceptable to any of the participants in this process. Thus, while we have developed in Order 20,156 a mechanism of properly allocating future costs, trending ultimately toward uniform rates, we must address the situation where costs have already been incurred.

Because we have not previously established the standards guiding our policy determinations in this area, it is appropriate to allow the parties to present their own analysis on how Commission policy is to be implemented in the current case. We will direct the Company to provide a proposal to the Commission stating its position on the proper method to address the retroactive problems caused by its acquisition of troubled satellite systems up to this time. The proposal should discuss the appropriate level of temporary satellite surcharges, if any, to allow the Company to recover upgrade costs, while in the long run maintaining the ability to provide service at uniform rates.

In the interim the Company shall follow the following procedures to mitigate significant subsidization:

1. Where the customer is currently paying rates below the average rate computed with the rate increase contained herein and would be paying lower than average rates on a stand-alone basis, the customer rates shall be raised to average rates.

2. Where the customer is currently paying rates higher than the average rates computed with the rate increase contained herein and would be paying less than average rates on a stand-alone basis, the customer rates shall be lowered to average rates.

3. Where the customer is currently paying rates below the average rate computed with the rate increase herein and would be paying higher than the average rate on a stand-alone basis, the customer shall pay average rates plus an amount equal to the overall pro rata percentage increase in rates of those customers currently paying the average rate.

4. Where the customer is currently paying rates above the average rate computed with the rate increase herein and would be paying higher than the average rate on a stand-alone basis, the customer shall pay

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average rates plus an amount equal to the overall pro rata percentage increase in rates of those customers paying the average rate.

2. *Fire Protection*

[21, 22] The Company proposed to restructure its public fire protection rates from a single per hydrant charge to an availability fee and a hydrant charge. The availability fee reflects extra capacity costs for fire protection — larger mains, greater pumping and storage costs — and the hydrant fee recovers fixed fire protection costs relating to the operation and maintenance of the hydrants. The Commission will accept Southern's proposal. The restructured rates more accurately relate to the costs of providing fire protection. As previously structured, there could be no certainty that availability costs and the number of hydrants would always be proportional. We will similarly accept the Company's proposal to restructure private fire protection rates. Those rates have been increased based upon an analysis of fire protection costs and will now reflect the cost of private fire protection more accurately than in the past. Because private fire protection customers maintain their own internal lines and hydrants, there will be no hydrant charge; the charge will be limited to an availability fee.

We note that the public availability fees are based on historic data based on the revenues generated by the previous rate structure. As noted, we cannot be assured that the previous rate structure accurately tracked the availability cost of providing fire protection. We will therefore direct that in the upcoming reexamination of Southern's rate structure, the Company provide the Commission with additional cost information which will support either the existing fire protection availability rates or an amended schedule to be submitted by the Company.

There are subsidiary issues with respect to the Town of Litchfield and the Town of Amherst. Both Towns refuse to pay for fire protection even though the Company has oversized mains and secured water supplies to provide fire protection. In Litchfield, Southern's customers pay for fire protection through a rate surcharge, a mechanism that was attacked by the OCA as unfair to

those customers. The Company did not propose to change this practice. We accept the OCA argument that Southern should not be permitted to recover for fire protection that is not desired by its customers. We are mindful, however, that fire protection is a serious public safety issue and that the towns and their citizens require adequate time to establish the means of paying for fire protection should they decide that they wish it provided. Thus, we will allow Southern to continue temporarily to impose a fire protection rate surcharge on Litchfield customers. Our authorization of the surcharge will terminate on the tenth day following the next town meeting of Litchfield, at which time either Litchfield will pay for fire protection in accordance with the tariff or it will not. If Litchfield chooses not to pay, it will not be entitled to fire protection.[13](128)

The Company should also apply the same procedures to any service area to which it is presently supplying fire protection without receiving payment in accordance with its tariff.

3. *Metering of Green Hills Customers*.

[23] The remaining issue of controversy is whether the customers of Green Hills should be individually metered. Currently, those customers do not have meters and are billed at a flat rate. Because Green Hills is a manufactured housing community, metering customers requires the installation of meter pits. The Company's tariff requires that the cost of a meter pit be borne by the customer. While the Green Hills customers have stated a desire for individual metering, Transcript of public hearing of September 11, 1990, we are uncertain whether the desire is substantive or a residue of the inept communication between the Company and the Green Hills customers.[14](129) This is particularly important because, under the tariff, the customers will bear the cost of meter pits. Accordingly, we will not order the installation of meters at this time, but will reserve the rights of the parties to petition for such an order at any time.

E. *Quality Of Service*

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[24-26] After review, we find that there exists an insufficient evidentiary basis to reduce rates because of inadequacy of service. All of Southern's systems are in compliance with primary drinking water standard and the Company is making significant efforts to reduce the effects of non-compliance with secondary standards.[15](130)

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It is undisputed that the Company has acquired numerous small sub-standard water distribution systems and that it has made significant investment in measures which have improved quality. *See* Exh. 34. It has taken some time to bring all of these systems into compliance with primary standards and near term compliance with secondary standards is anticipated. On this record, we cannot find that the time to achieve compliance is unreasonable. This is not to downplay the importance of bringing all water systems into compliance with secondary standards. While failure to achieve secondary standards may not result in health risks, customers paying rates based on high quality service should be entitled to water which does not taste or smell offensive and which does not stain clothing and other household items. *Cf*. Transcripts of public hearings of September 11, 1990, September 26, 1990 and October 17, 1990

(customer complaints about water quality). Therefore, the Company will be required to file a schedule indicating precisely when all systems will achieve compliance with secondary standards. To the extent that Southern's schedule or compliance therewith is not reasonable, the Company is hereby placed on notice that it is subject to rate reductions for delivering an inferior product to customers.

III. CONCLUSION

In conclusion the Company's revenue requirement will be determined as follows:

Rate Base: $19,912,610
Rate of Return: 11.20%
Operation and Maintenance
Expenses: $1,318,035
Gross Revenue Requirement: $5,034,418

See Appendix A, attached hereto.

The rate structure shall be in compliance with the foregoing Report.

Our order will issue accordingly.

ORDER

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

ORDERED, that Southern New Hampshire Water Company shall file tariff pages designed to recover $5,034,418 in revenue in accordance with the schedule attached hereto as Appendix A; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company shall file its tariffs to reflect the rate design set forth in the foregoing report; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company file its own proposal for rate design in accordance with the foregoing report; and it is

FURTHER ORDERED, that a generic least cost planning docket be opened for all water companies in accordance with the foregoing report; and it is

FURTHER ORDERED, that a docket be opened in order for Southern New Hampshire Water Company to show cause why it should not be fined for failure to file the Forms E-22 found not to be filed in the foregoing report

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1991.

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FOOTNOTES

[1]A number of other parties sought and received intervenor status in this case; however, they neither appeared at the permanent rate proceedings nor filed briefs based on the record evidence. Therefore, they are not included in the "Appearances" or "Position of the Parties" sections of the Report and Order.

[2]The specific projects to which these forms pertain are as follows:

In 1988: (Windham) Route 111A, (Litchfield) Page Road; Route 102; R&B to Litchfield Core; (Pelham) William Mobile Corp.; (Londonderry) Orchard View/Buttrick; Route 128; King Richard Main; (Londonderry) Harvey Road; (Hudson) Derry Road; Rangers Drive; Walnut/Ayers Pond; Hudson Village Shops; Sullivan Drive; Quail Run. In 1989: (Windham) Route 111A, Paving, Booster Pump, Main Extension; (Hudson) Telegraph, Executive Drive; Barretts Hill; Unicorn Industrial Park; (Litchfield) Page Road; Pilgrim Drive; April Drive; (Pelham) Elderly Housing; (Londonderry) Route 128; Currier/Berkshire/Wilshire.

[3]Our exercise of discretion here is based solely on the remedy for failure to file E-22s. As discussed below, rate base disallowances are appropriate for several of the identified projects which were otherwise prudent because of Southern's failure to enforce its tariff provisions relative to contributions in aid of construction.

[4]Contributions in Aid of Construction are subject to a 34% federal income tax. The taxes paid by the utility on these contributions are capitalized and included in rate base. Therefore, the total disallowance, $955,823, and the test year disallowance, $805,792, have been reduced to reflect the taxes Southern would have paid on contributions had they been properly collected.

[5]Because the Company's request for a rate increase is based on a test year average, the disallowance for current ratemaking purposes is less than the total disallowance. The matter is made even more complex by pending rate design issues because a beginning and ending point average for the rate base calculation was used, rather than the usual thirteen point average.

[6]According to Exhibit 40 at RWP-6, the incremental cost of oversizing eight-inch ductile iron to sixteen-inch ductile iron is $16 per foot.

[7]We are mindful of the OCA's concerns *vis a vis* sizing for fire protection that is not desired by the municipality. That issue is addressed in the Rate Structure section of this Report, *infra*.

[8]There also exists the issue of whether current inclusion in rate base of investment in land to be used three to five years in the future would violate RSA 378:30-a. Given the failure of the Company to create a record that would support a factual determination that current rate base treatment is appropriate, it is not necessary for us to address here this legal issue.

[9]On occasion the Commission has approved automatic adjustment clauses for costs other than fuel to further a sound public policy objective. For example, to remedy certain barriers to the deployment of certain least cost demand side (as distinguished from supply side) resources, the Commission has allowed certain conservation and load management costs to be recovered through an automatic adjustment clause. *See e.q., Re Generic Investigation of Financial Incentives for Conservation and Load Management*, Report and Order No. 19,905 (August 7, 1990). Southern has identified no such overriding public policy objective here.

[10]The stipulation approved by the Commission also provided: "While the Company agrees to file its next rate case on the basis set forth above, the filing of such information shall not in any way prejudice the Company's nor any other party's right to request that rates be set in a different manner." *Id*.

[11]Indeed, much of the controversy in the instant proceeding is a direct result of Southern's acquisition of smaller deficient systems.

[12]In Order 20,156 it was not necessary to address the issue of what happens when the cost of an upgrade requires financing. During public deliberations we commented that we would, in appropriate circumstances, be willing to entertain a request that such upgrade costs be financed by the purchasing utility to be paid by the customers in the acquired system through a rate surcharge.

[13]If Litchfield elects not to pay for fire protection, but uses it, the Town will be obligated to pay the tariffed fire protection charges. In such a circumstance, we would expect Southern to enforce its tariff by any available reasonable means.

[14]The record reflects that the Company sent a letter to Green Hills customers assigning to them the responsibility of high water usage when, in fact, the high usage was caused by leaks in the Company's mains.

[15]Primary drinking water standards are health related, while secondary standards address the aesthetic qualities of the water, such as taste, smell and appearance.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Concord Electric Co., DR 91-059, DR 91-060, Order No. 20,166, 76 NH PUC 450, July 2, 1991; revised July 3, 1991. [N.H.] Re Incentives for Conservation and Load Management, DE 89-187, Order No. 19,905, 75 NH PUC 527, Aug. 7, 1990. [N.H.] Re Manchester Water Works, DR 89-196, Order No. 20,123, 76 NH PUC 327, May 6, 1991. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 87-135, Fourth Supplemental Order No.

19,153, 73 NH PUC 305, Aug. 25, 1988. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 19,754, 75 NH PUC 169, Mar. 13, 1990. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 19,802, 75 NH PUC 243, Apr. 24, 1990. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 19,826, 75 NH PUC 282, May 14, 1990. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 19,915, 75 NH PUC 549, Aug. 13, 1990. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 19,933, 75 NH PUC 640, Sept. 10, 1990. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 20,143, 76 NH PUC 381, June 3, 1991. [N.H.] Re Southern New Hampshire Water Co., DR 90-211, Order No. 20,156, 76 NH PUC 430, June 19, 1991. [N.H.Sup.Ct.] Granite State Alarm, Inc. v. New England Teleph. & Teleg. Co., 111 N.H. 235, 90 PUR3d 210, 279 A.2d 595, June 30, 1971. [N.H.Sup.Ct.] Re Public Service Co. of New Hampshire, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20, June 12, 1984. [U.S.Sup.Ct.] Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Comm'n, 262 U.S. 679, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675, June 11, 1923.

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NH.PUC*07/30/91*[27183]*76 NH PUC 542*Public Service Company of New Hampshire

[Go to End of 27183]

Re Public Service Company of New Hampshire

DR 90-019
Order No. 20,199

76 NH PUC 542

New Hampshire Public Utilities Commission

July 30, 1991

ORDER approving electric utility's proposed nuclear decommissioning charge of 0.027 cents per kilowatt-hour.

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1. NUCLEAR PLANT DECOMMISSIONING, § 22

[N.H.] Revenue requirement — Decommissioning charge on customer bills — Rate of 0.027 cents per kilowatt-hour. p. 543.

BY THE COMMISSION:

ORDER

On June 28, 1991, Public Service Company of New Hampshire (PSNH) filed 1st Revised Page 14 to its current tariff, NHPUC No. 32 — Electricity to be effective August 1, 1991; and

WHEREAS, the tariff revision is in accordance with Commission Order No. 19,899 dated July 31, 1990, that, *inter alia*, approved a "method for reflecting [PSNH's] contributions to the [Nuclear Decommissioning] fund in customers bills"; and

WHEREAS, the Nuclear Decommissioning Charge is adjusted each year on August 1 to reflect the change in PSNH's contribution to the Nuclear Decommissioning Fund; and

WHEREAS, the Rate Agreement approved by the Commission in Docket No. DR 89-244 provides that the Nuclear Decommissioning Charge be collected under base rates, thereby not affecting customers rates or bills; and

WHEREAS, the calculation of the Nuclear Decommissioning Charge is in the same manner as the calculation of the first

decommissioning charge of 0.023 cents per kWh that appeared as Attachment C to Order No. 19,899; it is hereby

[1] ORDERED, that effective August 1, 1991, the proposed Nuclear Decommissioning Charge of 0.027 cents per kWh that will appear on customers' bills be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Nuclear Decommissioning Charge, DR 90-019, Order No. 19,899, 75 NH PUC 494, July 31, 1990.

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NH.PUC*07/31/91*[27184]*76 NH PUC 543*AT&T Communications of New Hampshire, Inc.

[Go to End of 27184]

Re AT&T Communications of New Hampshire, Inc.

DR 91-090
Order No. 20,200

76 NH PUC 543

New Hampshire Public Utilities Commission

July 31, 1991

ORDER approving proposal by interexchange telephone carrier for a new "10+ATT(288)" calling service for intrastate non-sent paid toll calls.

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1. RATES, § 582

[N.H.] Telephone — Long-distance calling — Intrastate non-sent paid calls — New "10+ATT(288)" calling service — To promote intraLATA toll competition. p. 543.

BY THE COMMISSION:

ORDER

On June 27, 1991, AT&T Communications of New Hampshire, Inc. (the Company) filed a petition seeking to introduce a new P.U.C. Tariff No. 4 providing for AT&T Long Distance Service for 10+ATT (288) calling in the State of New Hampshire; and

[1] WHEREAS, this new service is designed to enable AT&T subscribers to route their intrastate non-paid calls via the AT&T network and thus be billed by the Company at AT&T rates; and

WHEREAS, the proposed tariff was filed for effect on July 29, 1991; and

WHEREAS, the New Hampshire Public Utilities Commission is interested in encouraging the emergence of competition in the intraLATA toll market on an interim basis; it is hereby

ORDERED *NISI*, that AT&T Communications of New Hampshire, Inc, be and hereby is authorized to implement the following tariff changes:

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


CONTRACT PUC Tariff No. 4
         Title Page -         Original
         Table of Contents -  Original Pages 1 thorough 6
         Tariff Information - Original Pages 1 through 3
         Section 1 -          Original Pages 1 through 33
         Section 2 -          Original Pages 1 through 20;
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and it is

FURTHER ORDERED, that 10+ATT (288) Calling is to be offered subject to the conditions as specified in NHPUC Order No. 20,040, dated January 21, 1991, in Docket DE 90-002; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, the Company

cause 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 August 12, 1991, and it is to be documented by affidavit filed with this office on or before August 30, 1991; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than August 26, 1991; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on August 30, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this thirty-first day of July, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 20,040, 76 NH PUC 58, Jan. 21, 1991.

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NH.PUC*07/31/91*[27185]*76 NH PUC 544*Southern New Hampshire Water Company, Inc.

[Go to End of 27185]

Re Southern New Hampshire Water Company, Inc.

DE 91-108
Order No. 20, 201

76 NH PUC 544

New Hampshire Public Utilities Commission

July 31, 1991

ORDER approving water utility's proposed revisions to its private fire protection tariff, to include service to public buildings.

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1. RATES, § 616

[N.H.] Water — Private fire protection service — Tariff revisions — To include public buildings. p. 544.

BY THE COMMISSION:

ORDER

[1] WHEREAS, Southern New Hampshire Water Co., Inc. (Southern), has filed 29th Revised

Page 21E to revise its rate schedule PFP-Core, Private Fire Protection, with the proposed effective date of August 12, 1991; and

WHEREAS, the language of the existing tariff rate, PFP-Core, excludes the provision of this service to public buildings; and

WHEREAS, this is an important and necessary service to public buildings; it is hereby

ORDERED, that 29th Revised Page 21E shall be allowed to become effective on August 12, 1991, without hearing.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1991.

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NH.PUC*08/06/91*[27186]*76 NH PUC 545*Pennichuck Water Works, Inc.

[Go to End of 27186]

Re Pennichuck Water Works, Inc.

DE 89-239
Order No. 20,202

76 NH PUC 545

New Hampshire Public Utilities Commission

August 6, 1991

ORDER authorizing water utility to reduce rates applicable to service to residents of Ashley Common in the town of Milford, to reflect the fact that some of the plant used in providing service had been contributed by the homeowners.

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1. RATES, § 597

[N.H.] Water — Rate reductions — Special factors — Plant contributed by customers. p. 545.

BY THE COMMISSION:

ORDER

On December 12, 1989, the Commission received a petition to provide water service to a limited area of the Town of Milford, known as Ashley Common, from Pennichuck Water Works, Inc., ("Pennichuck" or the "Company") and to obtain rates therefore; and

WHEREAS, after notice and investigation the Commission issued Report and Order No. 19,885 dated July 17, 1990, granting a franchise to Pennichuck and setting rates in Ashley

Common; and

[1] WHEREAS, on March 7, 1991, Pennichuck submitted revised tariff pages decreasing the rates in Ashley Common to reflect the fact that certain plants in service had been contributed by the homeowners; and

WHEREAS, on April 5, 1991, the Commission suspended the proposed the tariff reflecting a rate decrease pending investigation; and

WHEREAS, after due investigation the Commission finds the rate decrease to be just and reasonable; and

WHEREAS, the rate decrease should be reflected in rates from the date of our original order; and

WHEREAS, the public should be afforded an opportunity to respond to this Order; it is hereby

ORDERED *NISI*, that Pennichuck's revisions to Page 32 of NHPUC #4, Water, are rejected; and it is

FURTHER ORDERED, that all persons requesting to be heard on this matter do so by filing comments or requesting a hearing twenty (20) days from the date of personal notification to each of the ratepayers of Ashley Common, said notification, to be accomplished by providing a copy of this order First Class mail to each of the current or prospective customers of the Company in Ashley Common to be verified by affidavit filed by August 19, 1991; and it is

FURTHER ORDERED, that Pennichuck file an original and seven copies of the final tariff, annotated with this Order Number no later than 60 days from the date of mailing, unless a request for hearing is filed.

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Pennichuck Water Works, Inc., DR 89-239, Order No. 19,885, 75 NH PUC 391, July 17, 1990.

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NH.PUC*08/06/91*[27187]*76 NH PUC 546*Shepherd's Crossing, Inc.

[Go to End of 27187]

Re Shepherd's Crossing, Inc.

DE 91-103
Order No. 20, 203

76 NH PUC 546

New Hampshire Public Utilities Commission

August 6, 1991

ORDER exempting condominium developer from commission regulation despite its construction of a water system designed to serve more than ten customers, where the system was to be transferred to the condominium owners association and would remain private.

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1. PUBLIC UTILITIES, § 122

[N.H.] Regulatory status — Land development water system — Exemption from regulation — Factors — Private system — Transfer from developer to owners association. p. 546.

BY THE COMMISSION:

ORDER

On July 31, 1991, Shepherd's Crossing, Inc., a New Hampshire Corporation with a place of business at Goffstown, New Hampshire filed a petition for exemption from Commission jurisdiction pursuant to RSA 362:4, I; and

WHEREAS, Shepherd's Crossing, Inc. (the "Corporation") proposes to build a development in Deering, New Hampshire to be known as "Shepherd's Crossing, A Condominium" consisting of 77 acres on which the Corporation proposes to build, in phases, a maximum of 25 duplex units (50 units total); and

WHEREAS, the Corporation has duly filed an application for registration with the Office of Attorney General, Consumer Protection and Anti-Trust Bureau pursuant to RSA Chapter 356-B for approval of the first phase of one duplex building (2 units); and

WHEREAS, in order to provide water to the condominium, the Corporation has designed a water system fed by two artesian wells, the design of which has been approved by the Water Supply and Pollution Control Division of the Department of Environmental Services; and

[1] WHEREAS, although the Corporation intends for the system to ultimately serve more then 10 consumers, the system will be owned by the unit owners' association and the unit owners themselves will have full control over the system; and

WHEREAS, the Corporation has filed for approval of a first phase of two units and depending upon the success of the sale of those units will decide whether to proceed further with the project; and

WHEREAS, the Corporation does not intend to charge the unit owners for water consumption and it is the intent of the Corporation that the system belong to the condominium association once the association has ten consumers; and

WHEREAS, the Commission finds it is in the public good to exempt the Corporation from regulation at this time based on the representations contained in the Corporation's petition; it is hereby

ORDERED, *NISI*, that Shepherd's Crossing, Inc. be granted an exemption from Commission jurisdiction as a public water utility pursuant to RSA 362:4, I until such time as the Commission finds the exemption to no longer be in the public good; 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 Sept. 9, 1991; and it is

FURTHER ORDERED, that Shepherd's Crossing Corporation 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 Aug. 21, 1991 and designated in an affidavit to be made on a copy of

Page 546

this order and filed with this office on or before Sept. 20, 1991; and it is

FURTHER ORDERED, that Shepherd's Crossing, Inc. notify the Town of Deering pursuant to RSA 541-A:22 by serving a copy of this order on the Town by first-class mail, said notification to be verified by affidavit filed Sept. 20, 1991; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of publication, 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 sixth day of August, 1991.

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NH.PUC*08/12/91*[27188]*76 NH PUC 547*Public Service Company of New Hampshire

[Go to End of 27188]

Re Public Service Company of New Hampshire

DR 91-011
Order No. 20,205

76 NH PUC 547

New Hampshire Public Utilities Commission

August 12, 1991

ORDER granting a one-month extension until August 31, 1991, of an electric utility's fuel and purchased power adjustment clause (FPPAC) rate of zero cents per kilowatt-hour.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Energy clauses — Fuel and purchased power adjustment clause (FPPAC) — Rate of zero cents per kilowatt-hour — Effective period — One-month extension. p. 547.

BY THE COMMISSION:

ORDER

[1] On July, 17, 1991, the Commission issued Report and Order No. 20,173 that, *inter alia*, approved for effect as of the First Effective Date (FED), May 16, 1991, an interim Fuel and Purchased Power Adjustment Rate (FPPAC) of 0.00 cents per kWh applicable to all service rendered from May 16, 1991 through July 31, 1991; and

WHEREAS, due to the number and complexity of issues, evidentiary hearings were continued until August 6, 1991; and

WHEREAS, Public Service Company of New Hampshire (PSNH) has proposed, in concurrence with the other parties in this proceeding, to extend the 0.0 cents per kWh FPPAC rate through August 31, 1991; and

WHEREAS, the parties have indicated an extension of one month is needed to provide time for written comments; and

WHEREAS, our deliberations in this case cannot be completed until after the outstanding record requests and written comments are submitted; it is hereby

ORDERED, that PSNH continue to bill an FPPAC rate through August 31, 1991, at 0.00 cents per kWh and that any interest on any additional underrecovery or overrecovery for August 1991 be calculated in a manner consistent with the Stipulation Agreement in Appendix A of Supplemental Order No. 20,173.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DR 91-011, Order No. 20,173, 76 NH PUC 459, July 17, 1991.

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NH.PUC*08/12/91*[27189]*76 NH PUC 548*Public Service Company of New Hampshire

[Go to End of 27189]

Re Public Service Company of New Hampshire

DR 91-011, DR 91-054
Order No. 20,206

76 NH PUC 548

New Hampshire Public Utilities Commission

August 12, 1991

MOTION by electric utility objecting to representation of the Campaign for Ratepayer Rights by a nonattorney in the utility's fuel and purchased power adjustment clause review proceeding; sustained.

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1. PARTIES, § 18

[N.H.] Intervenors — Formal intervention distinguished from participation — Representation by licensed attorney as a factor. p. 549.

2. PARTIES, § 18

[N.H.] Intervenors — Requirements — Representation by licensed attorney. p. 549.

3. PARTIES, § 18

[N.H.] Intervenors — Requirements — Representation by licensed attorney — Two exceptions — Individual not repeatedly appearing — Uncomplicated proceedings. p. 549.

4. PARTIES, § 18

[N.H.] Intervenors — Campaign for Ratepayer Rights — Representation by nonattorney — Disallowed — Factors — Repeated appearances — Complex fuel adjustment clause proceeding. p. 550.

APPEARANCES: As noted

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On May 9, 1991, the Campaign for Ratepayer Rights (CRR) filed a motion to intervene in Docket DR 91-011, Public Service Company of New Hampshire's (PSNH) Fuel and Purchased Power Adjustment (FPPAC) proceeding. On May 14, 1991, PSNH and Northeast Utilities Service Company (NUSCO) jointly filed a written objection to the motion citing *inter alia* that CRR is not located in PSNH's service territory and that its authorized agent, Robert C. Cushing Jr., is not a licensed attorney.

The Commission granted the CRR intervention at the prehearing conference on May 14, 1991.[1(131)] The Commission reserved for briefing the issue of whether CRR should be required to participate through a licensed attorney. Because the CRR and PSNH/NUSCO could not reach agreement on a briefing schedule, at its public meeting on July 8, 1991, the Commission established July 12 as the deadline by which parties could file responses to PSNH/NUSCO's motion.

On July 12, 1991, Mr. Cushing filed a memorandum of law in opposition to the PSNH/NUSCO motion. On the same date PSNH/NUSCO filed a supplemental memorandum and expanded their objection to include Mr. Cushing's participation in Docket DR 91-054, the Company's Integrated Resource Plan proceeding.

II. POSITIONS OF PARTIES

PSNH/NUSCO argue that Mr. Cushing's representation of the CRR violates RSA 311:1 and :7 which restrict the legal representation of others to licensed attorneys. Citing primarily *State v Settle*, 129 N.H. 171 (1987), the Companies argue that the complexity of the adjudication before the Commission and Mr. Cushing's common appearance on the CRR's behalf prevent him from coming within either of the two exceptions identified by *Settle* for permitting

Page 548

non-attorney representation of another individual or corporations.

Mr. Cushing contends that his representation of the CRR before the Commission is protected under the First, Fifth and Fourteenth Amendments of the United States Constitution. Relying primarily on *In Re New Hampshire Disabilities Rights Center, Inc.*, 130 N.H. 328 (1988), Mr. Cushing contends that because the CRR is a voluntary association, the prohibitions of RSA 311:7 do not apply and its appearance before the Commission is a constitutionally protected collective activity. Mr. Cushing further argues that because the CRR is a voluntary non-profit association, a Commission requirement that the CRR appear through counsel is tantamount to denying the organization a meaningful opportunity to participate in Commission proceedings.

III. COMMISSION ANALYSIS

[1] We begin our analysis by observing that it is the policy and practice of this Commission to encourage public participation in regulatory proceedings to the full extent permitted by law, *See e.g.*, RSA 541-A:17, N.H. Admin. R. Puc 203.02. Individual ratepayers and ratepayer groups such as the CRR and the Business and Industry Association (BIA) frequently supply important information to the Commission relative to their concerns and the concerns of their respective constituencies. However, the question before the Commission in this motion is not whether the CRR should be allowed to participate in proceedings involving PSNH/NUSCO; rather, the limited issue before us is whether Mr. Cushing's conduct as the CRR representative constitutes the unauthorized practice of law. For the reasons set forth below, we conclude that the rule of law prohibiting lay persons from commonly representing corporations and unincorporated associations applies to Mr. Cushing's representation of the CRR in Commission matters.

In so holding, we recognize that the determination of whether Mr. Cushing is engaging in the unauthorized practice of law is a factually complex issue. The technical nature of regulation means that utilities, the Staff and consumer groups frequently rely on non-lawyers to investigate and resolve disputed issues. Further, because the Commission acts both in adjudicative and legislative contexts, corporations and associations regularly appear and participate without the assistance of legal counsel. Our propensity towards maximum public participation in our proceedings counsels against fashioning a rule which would unnecessarily foreclose the CRR and other similarly situated groups from appearing before the Commission. Accordingly, as we

discuss more fully herein, we find that the issue of whether Mr. Cushing's conduct is prohibited must be addressed on an *ad hoc* basis in which *inter alia* the nature of the proceeding and Mr. Cushing's conduct are considered.

[2] In determining the applicability of the rule of law concerning non-attorney legal representation to Mr. Cushing and the CRR at the outset, we note that the PSNH/NUSCO Motion is not the first occasion upon which the issue of the legality of non-attorney representation of the CRR has been raised. On November 20, 1987, the Attorney General issued an opinion entitled the Representation of Corporations or Unincorporated Associations by Non-Attorneys in Commission Proceedings, Opinion of the Attorney General 87-85, November 20, 1987. (hereafter Opinion). The Opinion was requested by the Chairman of the Commission, Vincent J. Iacopino, following a request from the CRR to intervene and be represented by a non-attorney officer of the organization in a Commission proceeding. The Attorney General reviewed the relevant statutes and case law and concluded that subject to two discrete exceptions, *State v Settle*, 129 N.H. 171 (1987) prohibits non-attorneys from representing corporations and unincorporated associations in Commission proceedings. Opinion at 3.[2](132)

[3] The two exceptions identified by the Opinion relate alternatively to the frequency of the representation and the nature of the proceeding. The first exception authorizes individuals of good character to represent a corporation or unincorporated association in an individual case. RSA 311:1 allows a party to prosecute an action in his or her proper person or "by any citizen of good character". RSA 311:7 contains an additional limitation by prohibiting non-

attorneys from "commonly" engaging in the practice of law. In *Settle*, *supra*, the Supreme Court interpreted these statutory exceptions narrowly. The Court observed that although the exceptions permit a non-attorney to appear in an individual case on the behalf of a corporation or unincorporated association, they do not allow regular representation by the non-attorney of the corporation or association. *Id*., at 180.

The Opinion observes that this exception appears applicable to Commission proceedings involving rate change petitions filed by small water companies. These companies appear infrequently before the Commission and rely on Commission staff to assist them in developing the information necessary for the Commission to establish just and reasonable rates. Because the cost of legal representation is often quite high relative to the Company's total assets (which cost is generally included in the utility's revenue requirement as rate case expenses), this exception provides small utilities an opportunity to reduce significantly regulatory expense costs. Opinion at 6.

The second exception allows non-attorneys to represent corporations in uncomplicated legal proceedings where an attorney's skill is not required, such as small claims actions commenced under RSA chapter 503. *Settle*, at 179. As the Attorney General observes, the rationale behind this exception makes it applicable to uncomplicated consumer complaints against utilities. Opinion at 6.[3](133)

[4] Neither of these two exceptions are applicable to the CRR or the pending dockets. It is undisputed that Mr. Cushing regularly appears before the Commission in the capacity of the

CRR's agent. Thus, at least with respect to Commission proceedings he is "commonly" appearing on the CRR's behalf. It is equally clear that the evidentiary hearings on the FPPAC investigation and Integrated Least Cost Plan are complex. Both proceedings have the potential of raising complex legal questions for which an attorney's skill is required.

While finding that neither of the two exceptions are applicable, we do not believe that the CRR is incapable of participating and presenting its views in these proceedings without the assistance of legal counsel. The Opinion further observed that the determination of whether a corporation or unincorporated association should be required to appear through counsel may depend on the nature proceedings. Rate proceedings, financing petitions and certification proceedings can have both legislative and adjudicative aspects. Opinion at 5 citing *inter alia Appeal of Conservation Law Foundation*, 127 N.H. 562, 565-66 (1986); *Appeal of Easton*, 125 N.H. 205 (1984). To the extent the proceeding is legislative and more informal, an attorney may not be necessary. Moreover, even during more formal evidentiary hearings, the CRR will have the opportunity to participate through written and oral comment and the entry of sworn exhibits and testimony. However, should the participation include activities which clearly constitute the practice of law such as the filing of certain pleadings or objections and engaging in prolonged cross-examination, we conclude that the statutory restrictions on non-attorney representation compel the Commission to require the Association to obtain the assistance of licensed counsel.

The CRR argues that the Attorney General erred in concluding that *State v Settle* is applicable to it. The association contends that as a voluntary organization whose activities are not motivated by private gain, it is protected by the First and Fourteenth Amendments of the United States Constitution from statutes governing the unlawful practice of law. According to the CRR, *In Re New Hampshire Disability Rights Center, Inc.*, 130 N.H. 328 (1988), (hereinafter *Re DRC*) precludes the Commission from conditioning its participation on the use of legal counsel. The CRR additionally contends that if PSNH/NUSCO prevail on their motion, it will be unable to participate in Commission proceedings because it cannot afford to hire legal counsel.

We have reviewed the relevant cases and we disagree with the CRR's argument that application of statutory restrictions on the unauthorized practice of law violate the Association's First Amendment rights. Contrary to the CRR's contention, *Re DRC* does not authorize non-lawyers to practice law on the behalf of voluntary non-profit associations. At issue in *Re DRC* was whether a non-profit

organization formed to provide legal services to the poor under RSA 292:1-a could expand its services to represent individuals whose rights have been infringed because they are disabled. The organization's representation was challenged on the grounds that it violated the statutory prohibition contained in RSA 311:11 which prohibits lawyers from practicing in a corporate form. The question addressed by the Court was whether the right of the organization to represent the disabled was a protected associational activity under the First and Fourteenth Amendments of the United States Constitution.

The Court determined that the relevant law was found in a trilogy of United States Supreme Court decisions concerning the right of associations to assist members in obtaining effective

legal representation. *Id*., at 334-335. Based upon its review of *N.A.A.C.P. v Button*, 371 U.S. 415 (1963), *Mine Workers v Illinois Bar Ass'n*, 389 U.S. 217 (1967) and *Railroad Trainmen v Virginia Bar*, 377 U.S. 1 (1964), the Court concluded that organizations like the DRC have a protected First Amendment right to associate for non-commercial purposes to advocate for the rights of members. *Id*., at 336. So long as the organization's lawyers avoided the harms which the state statutes were specifically designed to prevent, the Court found that the First and Fourteenth Amendments shield the organization from the enforcement of state regulations restricting legal practice and solicitation of clients. *Id*.

The disparity between the issue addressed in *Re DRC* and the question presented here is apparent. In *Re DRC* the Court's review was limited to the impact of the First Amendment rights on the state's authority to regulate the practice of law by licensed attorneys. The question of whether the right of association allows non-profit organizations to hire non-lawyers as their legal representative was not an issue in either *Re DRC* or the United States Supreme Court decisions. Moreover, the ill addressed by *Re DRC* and the United States Supreme Court in *inter alia N.A.A.C.P. v Button* is the right of individuals to associate for the purpose of obtaining meaningful access to the courts. A determination that Mr. Cushing cannot engage in the unauthorized practice of law does not impair the CRR's ability to obtain meaningful access to the Commission. Our ruling does not limit the CRR's ability to intervene in Commission proceedings, make public comment, file testimony and exhibits, and ask appropriate clarifying questions of other parties' witnesses. Additionally, our ruling does not impair the CRR's ability to obtain data or participate in technical conferences and settlement discussions.

In conclusion, we reiterate that there is no "bright line" by which the Commission can measure whether particular conduct by Mr. Cushing is the unauthorized practice of law. The resolution of this issue is dependent upon the particular factual circumstances, including the nature of his conduct and formality or informality of the proceeding. The joint legislative and adjudicative aspects of regulation and the Commission's desire to allow full public participation in our proceedings requires us to use considerable caution before exercising our discretion to prevent Mr. Cushing from acting on the CRR's behalf. When, however, Mr. Cushing engages in conduct which plainly constitutes the practice of law, we conclude that we are constrained as a matter of law to prohibit such conduct.

4(134)

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 and Northeast Utilities Service Corporation's motion is granted with respect to their claim that Robert C. Cushing, Jr. may not provide legal representation of the Campaign for Ratepayers Rights in proceedings before the Public Utilities Commission.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1991.

FOOTNOTES

[1]In Report and Order 20,173 (July 17, 1991) the Commission confirmed its decision to grant

intervention to CRR.

[2]We note that though drafted by the current Chairman of the Commission, the Opinion was provided to the Commission as an Opinion of the Attorney General under RSA 7:8. This statute provides that the Attorney General exercises general supervisory authority over the Commission and other state agencies with respect to issues relating to our legal responsibility. An Opinion of the Attorney General concerning the Commission's responsibility to honor state statutes regulating the practice of law falls within the Attorney General's supervisory authority and, absent supervening authority, we must follow that opinion.

[3]The Opinion noted that *Settle* left open the issue of whether non-attorneys may commonly represent others in uncomplicated proceedings. Thus, in the absence of a definitive Supreme Court ruling to the contrary, the Attorney General advised that we could apply the exceptions.

[4]The CRR argued in the alternative that if the Commission compels the CRR to hire legal counsel, the Commission should reconsider its policies with respect to intervenor compensation under the Public Utility Regulatory Policies Act of 1978 (PURPA). We note that the CRR recently requested PURPA compensation in a separate motion in DR 91-011. We will reserve consideration of this issue to our deliberation on that motion.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DR 91-011, Order No. 20,173, 76 NH PUC 459, July 17, 1991.

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NH.PUC*08/13/91*[27190]*76 NH PUC 552*Granite State Electric Company

[Go to End of 27190]

Re Granite State Electric Company

DR 91-067
Order No. 20,209

76 NH PUC 552

New Hampshire Public Utilities Commission

August 13, 1991

ORDER authorizing an electric utility to reduce the monthly credit given residential customers

participating in a home energy management program under which water heater service is interrupted. To be more cost-based, the monthly credit of $14 for a 16-hour control option is reduced to $7, while the credit of $12 for the six-hour option is reduced to $5.25. However, customers with low monthly usage may not use the credit to reduce bills to less than the minimum monthly charge.

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1. RATES, § 321

[N.H.] Electric — Home energy management program — Water heater control options — Credits — Reduction in monthly credits — To be more cost-based. p. 553.

APPEARANCES: David Saggau, Esq., for Granite State Electric Company; Thomas C. Frantz and James J. Cunningham, Jr., for the Staff of the N.H.P.U.C.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On February 19, 1991, Granite State Electric Company (GSEC or Company) filed tariff sheets and supporting testimony for Residential

Page 552

Interruptible Credits for residential Rate D customers as part of its Home Energy Management (HEM) Program. On March 1, 1991, the Company filed to include its Limited Total Electric Living Rate (Rate T) in this docket and extend the HEM credits to Rate T customers.

An order of notice was issued April 2, 1991, scheduling a prehearing conference for April 24, 1991. No party filed for intervention at or before the prehearing conference. A hearing on the merits was held on June 27, 1991.

II. *Positions of the Parties*

GSEC presented the only witness in this proceeding. GSEC supports two separate credit levels for residential customers depending on the amount of time a customer chooses to have his or her water heater controlled. Radio control is proposed only for non-holiday weekdays during peak periods. For those customers who choose the six hour water heater control, GSEC proposes a $5.25 per month credit to the customer's bill. Customers who choose the sixteen-hour control option will receive a monthly credit of $7.00. The higher level of credit derives from the distributional savings associated with keeping customers' load off during local distribution peaks. The proposed credits would not be available to customers who currently receive the kWh discount under the controlled water heater residential rate.

GSEC believes that changing the current water heater credits to those proposed in the HEM Program will create too great a rate impact on customers. The Company proposes to phase-out

the current kWh discount to customers on controlled water heaters when GSEC files its next rate case. Approximately 1,000 customers participate in the current program and receive a monthly credit of $12 to $14.

III. *Commission Analysis*

[1] The proposal by GSEC to credit customers bills for participation in the HEM Program was included in GSEC's 1990 Conservation and Load Management (C&LM) filing in Docket DR 90-142. *Re: Granite State Electric Company*, Report and Order No. 20,186 (December 31, 1990). We reaffirm our support of cost-effective C&LM programs and we believe it is important that the Company develop and implement programs for residential customers such as the HEM. Control of water heaters by the Company during peak load periods reduces the costs GSEC must pay its power supplier, New England Power Company. The benefits of reducing costly peak power help to lower the purchased power costs to all GSEC customers. The credits proposed by GSEC reflect those projected cost savings. There are, however, deficiencies in the company's proposal which warrant conditioning our approval on certain modifications.

The Company's proposal to credit the bill of participants in the HEM Program does not reflect a customer's particular monthly usage. As such, a customer could sign-up and receive a monthly credit even if the customer used little or no electricity during that month. We do not believe that potential outcome was the intention of the proposal. We will therefore, condition our approval on a modification to the program so that participation in the program coupled with lack of usage would not result in a bill less than the monthly customer charge. We will also direct GSEC to address this problem in its 1992 C&LM filing.

We also do not find compelling the Company's desire to wait until a base rate filing before it changes those customers on the current program over to the credits available under the HEM Program. GSEC is currently before the Commission with a rate design filing that provides it with an opportunity to effectuate the needed change. Ample time should have elapsed by the conclusion of the rate design proceeding so that customers will not be unduly burdened by this change.

Subject to the conditions and modifications set forth above, we conclude that the proposed HEM program is consistent with the public good.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report,

which is made a part hereof; it is hereby

ORDERED, that Granite State Electric Company be, and hereby is, allowed to implement its Home Energy Management Program effective July 1, 1991 subject to the conditions set forth in the attached report; and it is

FURTHER ORDERED, that Granite State Electric Company file compliance tariff pages within twenty (20) days of the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 90-142, Order No. 20,011, 75 NH PUC 765, Dec. 31, 1990. [N.H.] Re Granite State Electric Co., DR 90-142, Order No. 20,186, 76 NH PUC 495, July 23, 1991.

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NH.PUC*08/13/91*[27191]*76 NH PUC 554*Manchester Water Works

[Go to End of 27191]

Re Manchester Water Works

DR 89-196
Order No. 20,210

76 NH PUC 554

New Hampshire Public Utilities Commission

August 13, 1991

MOTION by water utility for rehearing of commission order rejecting its proposal for expansion of the area in which its "Merrimack Source Development Charge" is applicable; denied. For prior order, see 76 NH PUC 327 (1991), supra.

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1. PROCEDURE, § 33

[N.H.] Rehearing — Grounds for granting — Issues not previously considered. p. 554.

BY THE COMMISSION:

REPORT

On January 9, 1990, Manchester Water Works ("Manchester") filed the fourth revised tariff, page 31 to NHPUC No. 3 which would, if made effective, expand the area in which the Merrimack Source Development Charge ("MSDC") would be applied. On January 22, 1990, by Order No. 19,680 dated January 22, 1990, the Commission suspended Manchester's filing and ordered a prehearing conference to address procedural matters and interventions. By Order No. 19,790 dated April 6, 1990, the Commission adopted the proposed procedural schedule establishing a hearing on this merits for July 30, 1990.

[1] On May 6, 1991, the Commission issued Report and Order No. 20, 123 rejecting

Manchester's Fourth Revised Tariff Page 31 to NHPUC No. 3. On May 24, 1991, Manchester filed a motion for rehearing. In its motion for rehearing, Manchester has raised no issues which the Commission did not consider when it issued Report and Order No. 20,123. Therefore, Manchester's motion for rehearing is denied.

Our order will issue accordingly.

ORDER

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

ORDERED, that Manchester Water Works' motion for rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Manchester Water Works, DR 89-196, Order No. 19,680, 75 NH PUC 47, Jan. 22, 1990. [N.H.] Re Manchester Water Works, DR 89-196, Order No. 20,123, 76 NH PUC 327, May 6, 1991.

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NH.PUC*08/14/91*[27192]*76 NH PUC 555*Granite State Telephone, Inc.

[Go to End of 27192]

Re Granite State Telephone, Inc.

DR 90-219
Order No. 20,211

76 NH PUC 555

New Hampshire Public Utilities Commission

August 14, 1991

PETITION by local exchange telephone carrier for proprietary status for certain data requests submitted by commission staff; granted. Confidential treatment is afforded audit and depreciation studies, cost allocations relating to nonutility operations, and individual employee wage records.

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1. PROCEDURE, § 16

[N.H.] Discovery — Data requests — Confidentiality — Proprietary status — Data of sensitive nature. p. 555.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On July 8, 1991, the Staff ("Staff") of the New Hampshire Public Utilities Commission ("Commission") propounded its first set of data requests as part of its rate investigation of Granite State Telephone, Inc. ("Granite State"). On July 25, 1991, Granite State filed a motion for a protective order for proprietary information pursuant to RSA 91-A:5, IV, of certain responses to five of Staff's data requests.

Specifically, Granite State asked for proprietary treatment of Data Request No. 7, which requested copies of audits and depreciation studies including any on-site or desk audits performed by AT&T; Staff Data Request No. 9, which requested a delineation of assets and cost allocations and justification for allocation of costs of non-utility operations; Staff Data Request No. 14, which requested 1989 and 1990 wage information and identifying the wage amount and individual's position with the company; Staff Data Request No. 28, which also requested wages and benefits paid to individual employees; and Staff Data Request No. 37, which requested production of a computer disk delineating Granite State's regulated and non-regulated cost allocations.

All parties excluding the Staff concurred in the motion. Subsequently, Granite State and the Staff came to an agreement on the proprietary treatment to responses to Data Requests 7, 9 and 37. In regard to responses to Data Requests 14 and 28, Staff and Granite State came to an agreement that all salaries and benefits of employees other than executives would be subject to a protective order.

II. *Commission Analysis*

[1] RSA 91-A:5 provides; *inter alia*,

> Exemptions. The records of the following bodies are exempted from the provisions of this chapter:
>
> (IV) records pertaining to internal personnel practices; confidential, commercial, or financial information ...

The Commission finds that Granite State has met its *prima facie* case of establishing the proprietary nature of this material pursuant to RSA 91-A:5, IV, and will grant its requests for a protective order. However, Granite State shall bear the burden of proof in maintaining the confidentiality of this material should any party or any member of the public request the disclosure of the information subject to the protective order.

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 Telephone, Inc.'s Motion for Protective Order in

accordance with its stipulation with Staff and the parties is hereby granted; and it is

FURTHER ORDERED, that Granite State Telephone, Inc. shall bear the burden of proof if any party or member of the public seeks disclosure of this material without the protection of this protective order; and it is

FURTHER ORDERED, that any party seeking to view the responses to Staff Data Requests 7, 9, 14, 28 and 37 shall sign the Acknowledgement of Confidentiality attached hereto.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of August 1991.

ACKNOWLEDGMENT OF
CONFIDENTIALITY

The undersigned party to the Granite State Telephone, Inc. Rate Investigation has read Order No. __ and requests a copy of the information subject to the above referenced protective order. The undersigned party acknowledges that it is PROPRIETARY AND CONFIDENTIAL INFORMATION within the meaning of the above-referenced order and that the undersigned will not divulge or use any of said information in any way, manner or form other than the adjudication of the above-referenced cases. The undersigned party further agrees not to furnish this Proprietary Information to any consultant or other agent unless that consultant or agent has read the Order and agrees in writing, in the form specified below, to comply with the requirement of the Order. The undersigned party further acknowledges that any other use of said information may result in criminal prosecution or fines pursuant to, *inter alia*, RSA 364:41 or RSA 365:42 or civil litigation by any affected party for all damages incurred by use of said data other than in the adjudication of the above-referenced cases.

Data Request #

Information Requested

Any and all information designated as proprietary by any party and/or intervenor to these proceedings.

Dated:_____ [party]

By:_____

Name of Representative

_____

Signature of Representative

ACKNOWLEDGEMENT OF
CONFIDENTIALITY BY CONSULTANT

I, __, of __, acting as consultant or other agent to _____, hereby acknowledge that I have read Order No. __ and agree to comply with and be bound by its terms.

Dated __

_____

Name of Consultant

_____

Signature of Consultant

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NH.PUC*08/14/91*[27193]*76 NH PUC 556*New Hampshire Electric Cooperative

[Go to End of 27193]

Re New Hampshire Electric Cooperative

DR 90-078
Order No. 20,213

76 NH PUC 556

New Hampshire Public Utilities Commission

August 14, 1991

ORDER approving plan developed by an electric cooperative and the Rural Electrification Administration (REA) for refunding customers through billing credits for escrowed amounts collected under a discontinued base rate surcharge.

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1. REPARATION, § 37

[N.H.] Grounds — Elimination of base rate surcharge — Electric cooperative — Primary refunding mechanism — Billing credits. p. 557.

Page 556

BY THE COMMISSION:

ORDER

[1] WHEREAS on July 18, 1991, the Commission issued Order No. 20,180 in this docket terminating NISI the authority of the New Hampshire Electric Cooperative (NHEC or Cooperative) to collect the 5.5 percent base rate surcharge that it had been collecting on retail rates for service rendered since January 1, 1990, pursuant to RSA 362-C:7 and *Re NHEC*, 74 N.H.P.U.C. 521 (1989), such termination of authority to be effective August 14, 1991; and

WHEREAS, Order No. 20,180 also scheduled a hearing for August 8, 1991, to address the method by which the Cooperative shall refund the escrowed surcharges; and

WHEREAS, at the hearing the Cooperative did not object to the Commission's authority to order a refund or the Commission's interpretation of RSA 362-C:7, but did note that the Rural Electrification Agency (REA) has asserted that it has sole regulatory authority over the NHEC as of May 6, 1991; and

WHEREAS, the Cooperative presented a witness to explain the NHEC's plan for dispersing

the refund; and

WHEREAS, pursuant to *Re NHEC, supra*, the Cooperative has kept customer specific billing data since it began to collect the rate surcharge; and

WHEREAS, the NHEC proposes to refund on a customer specific basis the total surcharge amount that each customer has paid to the Cooperative by crediting to each active customer's next bill the total surcharge amount the customer has paid to the Cooperative attributable to the 5.5 percent surcharge, and

WHEREAS, if the refund credit exceeds the current bill the customer would receive a credit amount up to the current month's bill and choose between receiving the remaining credit on the following bill or receiving a check from the Cooperative for the remainder; and

WHEREAS, to inform customers with inactive accounts that cannot be directly contacted and mailed a refund, the Cooperative proposes to advertise in local newspapers and has agreed to advertise in a paper with state-wide circulation; and

WHEREAS, inactive customers who do not owe the Cooperative money or who are not active members under a different, but active, account will be sent a form to return in order to receive their refund check; and

WHEREAS, customers who owe the NHEC money will first have deducted from the refund the amount owed the Cooperative; and

WHEREAS, the Cooperative proposes to return to customers the interest accrued on the escrowed funds through a credit on its fuel adjustment charge; and

WHEREAS, the Commission does not believe that the proposal of the Office of Consumer Advocate to return the escrow funds through the Office of the Treasurer affords additional protection to Cooperative ratepayers; and

WHEREAS, a direct Cooperative refund offers significant administrative and cost savings; and

WHEREAS, the efficient and timely return of the escrowed funds is in the public good; it is hereby

ORDERED, that the Treasurer of the State of New Hampshire, acting as Escrow Agent, be authorized to disburse the Supplemental Escrow Fund to the NHEC 30 days from the issuance date of this order; and it is

FURTHER ORDERED, that the Cooperative upon receipt of the Escrow Fund from the Treasurer shall begin crediting customers in accordance with its proposal; and it is

FURTHER ORDERED, that the Cooperative expressly account for the interest accrued during the refund period and file a report to the Commission by November 1, 1991 on the status of the refund; and it is

FURTHER ORDERED, that the NHEC shall accelerate its payment to the Treasurer of funds collected through the surcharge so that all such funds are in the possession of the Treasurer no later than 29 days from the issuance date of this order; and it is

FURTHER ORDERED, that this order is subject to other terms and conditions that will be

addressed in a full report and order to be issued forthwith.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of August, 1991.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., DR 90-078, Order No. 20,180, 76 NH PUC 481, July 18, 1991.

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NH.PUC*08/20/91*[27194]*76 NH PUC 558*New Hampshire Administrative Rules, PART Puc 410

[Go to End of 27194]

Re New Hampshire Administrative Rules, PART Puc 410

DRM 90-172
Order No. 20,215

76 NH PUC 558

New Hampshire Public Utilities Commission

August 20, 1991

MOTIONS for rehearing by MCI Telecommunications Corporation, AT&T Communications of New Hampshire, Inc., and US Sprint relative to new commission rules governing pay-per-call services; granted in part, to allow the carriers additional time to submit comments, where it appeared that only local carriers, and not the interexchange carriers, had had an opportunity to review the new rules before hearing.

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1. PROCEDURE, § 20

[N.H.] Hearing and notice — Proposed rule changes — Comment period — Extension of time — Factors — No opportunity to examine proposal before hearing. p. 558.

APPEARANCES: As previously noted.

BY THE COMMISSION:

REPORT

I. *Introduction*

On June 12, 1991, the Commission issued Report and Order No. 20,151 adopting Puc Rules 410.01 to 410.16 governing the provision of Pay-Per-Call Services. Motions for Rehearing of the Order were filed by MCI Telecommunications Corporation of New Hampshire (MCI) on July 2, 1991, AT&T Communications of New Hampshire, Inc. (AT&T) on July 3, 1991 and US Sprint of New Hampshire (US Sprint) on July 9, 1991. In their motions all parties argued that they had received inadequate notice of the Commission's proposed regulations. Additionally, MCI asserted that they were verbally assured by the Commission Staff in early January 1991, that MCI and the other carriers would receive drafts of the proposed rules and would have an opportunity to comment on the rules prior to adoption.

II. *Commission Analysis*

The Commission's notice requirements for rulemakings is contained in RSA 541-A:3, III. The provision states in relevant part as follows:

> The agency shall give at least twenty days notice of its intent to hold an oral hearing or to establish a cut-off date for the submission of written testimony on any proposed adoption, amendment or repeal of a rule. *The required twenty-day notice period shall begin on the date of publication in the rulemaking register*. The notice shall be in such form as the Director of Legislative Services shall proscribe ... .

The Commission proposed rules were published in the State's Rulemaking Register on November 12, 1990, and February 15, 1991. Accordingly, we find no merit to the companies complaints relative to lack of notice.

[1] However, MCI alleges and Staff concurs that Staff Counsel verbally assured MCI, AT&T and Sprint that he would personally afford them the opportunity to comment on the proposed rulemaking by providing them with copies of the proposed rules prior to the Commission hearing. Apparently, only the local

exchange companies were provided copies of the proposed rulemaking. Therefore, the Commission will afford MCI, AT&T and Sprint the opportunity to respond to the Commission's proposed rulemaking through written comments to be filed with the Commission for our consideration twenty days after the date of this order.

Our order will issue accordingly.

ORDER

Based upon the foregoing report which is incorporated by reference herein; it is hereby

ORDERED, that MCI, AT&T and US Sprint's Motion for Rehearing is granted to the extent that the companies may provide written comments on the substantive aspects of the proposed rules within twenty days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twentieth day of August 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re New Hampshire Administrative Rules, Part PUC 410, DRM 90-172, Order No. 20,151, 76 NH PUC 421, June 12, 1991.

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[Go to End of 27195]

Re Public Service Company of New Hampshire

Additional respondent: Northeast Utilities Service Company

DR 91-011
Order No. 20,216

76 NH PUC 559

New Hampshire Public Utilities Commission

August 20, 1991

MOTION by intervenor in Seabrook investigatory docket for discovery of internal station reports, operational data at nuclear plants located out-of-state, and Seabrook pipe and valve maps; granted in part and denied in part.

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1. PROCEDURE, § 16

[N.H.] Discovery — Court versus administrative proceedings — Balancing of interests — Relevance — Confidentiality — Burden to produce. p. 560.

2. PROCEDURE, § 16

[N.H.] Discovery — Seabrook investigation — Detailed internal station reports — Not required — Summary report already provided. p. 561.

3. PROCEDURE, § 16

[N.H.] Discovery — Seabrook investigation — Limited time frame — Documents on outages in other periods — Not required — Irrelevant. p. 562.

4. PROCEDURE, § 16

[N.H.] Discovery — Seabrook investigation — Documents on outages at other plants — Not required — Irrelevant. p. 562.

5. PROCEDURE, § 16

[N.H.] Discovery — Seabrook investigation — Maps of pipes and valves — Required to be

reproduced — Already available at public libraries. p. 562.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Eve H. Oyer, Esq. of Rath, Young, Pignatelli & Oyer and Gerald Garfield, Esq. of Day, Berry & Howard for Northeast Utilities Service Company; Shelley Nelkens, Pro Se; Robert Cushing, Jr., for Campaign for Ratepayers Rights; James T. Rodier, Esq. for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On May 20, 1991, Shelley Nelkens, a *pro se* intervenor, filed data requests seeking discovery of a substantial amount of information relating to, *inter alia* 1) Seabrook outages which occurred during the ECRM period ending December 31, 1990; 2) outages at other nuclear plants located outside of New Hampshire in which PSNH has an interest; and 3) numerous confidential "source" documents, including Institute of Nuclear Power Operations (INPO) documents, reflecting station employees' self critical analyses of the contributing causes for Seabrook outages, outage extensions and load reductions. On May 27, 1991, Public Service Company of New Hampshire (PSNH), New Hampshire Yankee (NHY) and Northeast Utilities Service Company (NUSCO) (hereinafter jointly referred to as PSNH) filed a joint objection to Ms. Nelkens' data requests Nos. 2, 3, 4, 5, 7 and A through H. On June 3, 1991, PSNH filed a report on the status of its efforts to reach agreement with Ms. Nelkens as to the proper scope of discovery. Although Ms. Nelkens had orally revised her data requests, PSNH continued to object to Ms. Nelkens' data requests on the grounds that her requests sought confidential information, were overbroad and unduly burdensome, and were not reasonably calculated to lead to the discovery of admissible evidence.

A hearing was held on June 12, 1991 to address and resolve PSNH's objections to Ms. Nelkens' data request.

II. POSITIONS OF THE PARTIES

PSNH objections relate to five categories of information sought by Ms. Nelkens:

1. Station Information Reports (SIRs), Operation Information Reports (OIRs) and INPO documents;

2. Outages outside the reconciliation period under examination in this proceeding;

3. Nuclear operating plants partially owned by PSNH, but located outside of New Hampshire;

4. Detailed work schedule for the upcoming Seabrook refueling outage; and

5. Maps of all of the pipes and valves at Seabrook.

Ms. Nelkens argues that the public interest is best served by complete disclosure of this information. PSNH's argument is that the public interest is best served by an unfettered quality

assurance self-criticism process that would otherwise be chilled or adversely affected if made public.

III. COMMISSION ANALYSIS

A. *Standards for Discovery*

Before we address the arguments of the parties, we will first articulate the standards employed by the commission for resolving discovery issues.

[1] In the context of Civil Practice in New Hampshire Courts, it is well settled that a party may obtain discovery of any relevant matter not privileged. *E.g.*, Superior Court Rule 35 (b) (1). Compliance with discovery in traditional legal proceedings involves full disclosure of all

requested information which the responding party has at the time of the discovery request. *See e.g., Kearsarge Computer, Inc. v. Acme Staple Co.*, 116 N.H. 705, 707 (1976). When responding to a discovery request, parties have a duty to find out and provide what is in their own records and what is within the knowledge of their agents and employees. *Id.*

Discovery standards in administrative proceedings are less well established. We start with this commission's broad powers for obtaining information in investigations and rate proceedings. We have exercised our discretion in this area to establish standards similar to those applied by the Courts:

> With regard to the administrative case at hand, PSNH has a duty to respond to data requests from the consumer advocate and other intervenors in a manner that, at a minimum, is consistent with discovery in traditional legal proceedings as described above. To the extent the consumer advocate's and other parties, requests go beyond that duty, the Commission will, upon a motion to compel, require responses to data requests that are designed to discover relevant data, that require relatively little effort to comply with, and where PSNH is clearly the party in the best position to undertake the effort to gather the information. In other situations the Commission will deal with motions to compel on a case by case basis balancing the necessary effort by PSNH, the relevance of the material, the potential of the requesting party to undertake the effort of preparing the requested information, *and any other relevant criteria.*

Re Public Service Company of New Hampshire 72 NHPUC 502 at 504 (1987) (Emphasis added).

Thus, when considering motions to compel discovery, the commission balances such factors as the relevancy of the requested information, the effort needed to gather it, the availability of the information from other sources, and any other relevant criteria.

Among the other relevant criteria that must be considered in this proceeding is the burden on PSNH associated with the chilling effect which would be caused by disclosing quality assurance self-criticism.

In this proceeding, the data sought by Ms. Nelkens is relevant, because it addresses the causes of Seabrook outages, and exists in the possession of PSNH. Thus, in this proceeding, our

task is reduced to assessing whether the burden to PSNH outweighs Ms. Nelkens' need for relevant information.

B. *SIRs, OIRs and INPO Source Documents*

[2] PSNH has offered to summarize and synthesize its findings into an Outage and Power Reduction Report (OPRR) that would contain a root cause for every partial or total outage which triggered the need for a SIR or a OIR during the relevant time period, along with recommendations and analysis. PSNH has also offered access to our staff to the underlying documents.1(135) Thus, the issue is whether the broader disclosure of the source documents would present a burden that outweighs Ms. Nelkins interest in this information.

PSNH claims that disclosure of the source documents would have a chilling effect on its ability to conduct an internal quality assurance program in pursuit of excellence in nuclear operations — a standard that exceeds health and safety regulatory requirements. The commission recognizes a very legitimate and substantial interest in protecting confidential internal quality assurance reports from public disclosure. DR 90-186, *Public Service Company of New Hampshire/Northeast Utilities Service Company,* Report and Order No. 20,177 at 9 (July 16, 1991).

Ms. Nelkens accurately framed the issue when she argued that the matter is one of trust. If we had complete confidence that the OPRR would be complete and accurate as represented by NHY, that should be sufficient to meet Ms. Nelkens need for disclosure without adversely affecting the interest of PSNH, and ultimately the public, in an unfettered quality assurance program.

Because our staff will have virtually unlimited access to the underlying source documents, we will sustain PSNH's objection and

Page 561

allow the OPRR's to be filed without the source documents. Our ruling is without prejudice to the rights of Ms. Nelkens or any other party to reinstitute requests for the underlying documents should this arrangement not work satisfactorily.

Our ruling may have been more definitive except that we do note that during the last ECRM hearing, information was not provided on the cracked piston despite discovery requests2(136) , approximately twenty pages of cross-examination, and subsequent record requests. When staff asks for the cause of a problem, it should not be held to the standard of preciseness that NHY apparently was applying.

3(137)

C. *Outages Outside The Reconciliation Period Including Refueling*

[3] The next category of data requests pertains to outages that occurred prior to January 1, 1991 and after May 16, 1991; *i.e.*, prior or subsequent to the applicable ECRM reconciliation period. Except for certain special exceptions noted below, we sustain PSNH's objection because the material sought is irrelevant to the reconciliation period which is the subject of the instant

proceeding.

The following will be excepted from our ruling: the information regarding the November, 1990 outage caused by feedwater valve 520; the September, 1990 outage caused by Ecolochem; and information requested about the work schedule for the upcoming refueling from July 27 to October 6, 1991. While all of this information is technically irrelevant to the instant proceeding, we have had representations both by Ms. Nelkens and by the staff that these are issues that they intend to raise in this proceeding. Additionally, to the extent that Ms. Nelkens' request for information regarding Seabrook refueling relates to an examination of Seabrook O & M costs for the period during which FPPAC will be in effect, it is relevant. Thus, if we were to sustain PSNH's objection, we would be elevating form over substance.

D. *Nuclear Units Located Outside New Hampshire*

[4] The next issue is information with respect to nuclear units in which PSNH has an interest that are located outside of New Hampshire. We will sustain PSNH's objection on two grounds. One, we do not believe that it is appropriate to allocate scarce staff resources to a full-scale investigation of those outages when that investigation is duplicative of that undertaken by the regulatory agencies in the host state. Thus, we will allow the processes in the host states to be completed.

We also note that, unlike Seabrook, where New Hampshire Yankee is the lead owner with operational responsibility over the plant as an agent for the joint owners, PSNH is not a lead owner of those other plants. Therefore, its ability to affect the work on those outages is less than what it is at Seabrook. Consequently, for purposes of this reconciliation, we sustain PSNH's objection.

E. *Maps of All of the Pipes and Valves at Seabrook*

[5] The remaining PSNH objection pertains to maps or diagrams of all pipes and valves at Seabrook. PSNH has represented that such a set of diagrams exists and is already contained in the Exeter Public Library. There was no evidence provided by PSNH about the burden to reproduce those documents. Thus, there is no reason that it should not be supplied to Ms. Nelkens and we will deny PSNH's objection. However, the objection will be sustained, insofar as it asks for a document that doesn't exist.

Our order will issue accordingly.

ORDER

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

ORDERED, that PSNH's objections to Ms. Nelkens' data requests are granted insofar as they are consistent with the foregoing report and otherwise are denied.

By order of the Public Utilities Commission of New Hampshire this twentieth day of August 1991.

FOOTNOTES

[1]Our staff would have access to the underlying documents even without NHY's offer. RSA 365:10 and 14.

[2]For example, prior to the hearings in December, 1990, in Docket No. DR 90-186, staff propounded the following data request:

> Please provide an explanation of the reasons for and cause of the November 9th outage at Seabrook, particularly focusing on the cracked piston.

Staff Set No. 2, Request 2.

[3]A party is obligated to respond to requests for discovery honestly, "fully and responsively." He must refresh his recollection, find out what information is in his records and what is known to his agents and employees, and, in general, attempt in good faith to give his opponent the information he has requested. He need not volunteer information which has not been requested, but neither should he be evasive and rely upon technicalities of semantics or defects in the request to avoid producing information which he knows that his opponent is seeking and is entitled to receive. 4 Wiebusch, *Civil Practice and Procedure*, § 811 at 499 (1984).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DR 90-186, Order No. 20,177, 76 NH PUC 472, July 16, 1991; revised July 19, 1991.

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NH.PUC*08/20/91*[27196]*76 NH PUC 563*Meriden Telephone Company

[Go to End of 27196]

Re Meriden Telephone Company

DR 91-112
Order No. 20,217

76 NH PUC 563

New Hampshire Public Utilities Commission

August 20, 1991

ORDER approving proposal by local exchange telephone carrier to eliminate separate charges for Touchtone service and roll the charges into basic service rates.

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1. RATES, § 553

[N.H.] Telephone — Touchtone service — Elimination of separate Touchtone charges —

Roll-in with basic service rates. p. 563.

BY THE COMMISSION:

ORDER

[1] On July 31, 1991, Meriden Telephone Company, (the company) filed a petition seeking to bundle Touchtone service into the basic exchange rate; and

WHEREAS, this petition was filed for effect on September 2, 1991; and

WHEREAS, this proposal is consistent with a number of past commission rulings in DR 89-069, Order No. 19,642 (Kearsarge Telephone Company); DR 89-070, Order No. 19,643 (Chichester Telephone Company); and in DR 89-010, Order No. 20,082 (New England Telephone Company) where the commission specifically stated that such a revised definition of basic service would allow the ubiquitous delivery of information products to all segments of society and expand the universal service objective of current telecommunications policy; and

WHEREAS, folding Touchtone into basic service will take place on a revenue neutral basis; the increase in monthly rates per access line will be $0.80 and $1.00 for residence and business respectively; and

WHEREAS, due to the already high Touchtone penetration rate, over 80% of the customers will experience a reduction in their monthly rates, while a lower priced two-party alternative will remain available for both residence and business customers; it is hereby

ORDERED, that the proposed tariff pages:

NHPUC No. 4 Meriden Telephone Company
Section-2 Eighth Revised Sheet 1
Section-3 First Revised Sheet G-8

be and hereby are approved.

By order of the New Hampshire Public Utilities Commission this twentieth day of August 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Chichester Teleph. Co., DR 89-070, Supplemental Order No. 19,643, 74 NH PUC 482, Dec. 15, 1989. [N.H.] Re Kearsarge Teleph. Co., DR 89-069, Supplemental Order No. 19,642, 74 NH PUC 480, Dec. 15, 1989. [N.H.] Re New England Teleph. & Teleg. Co., DR 85-182, DR 89-010, Order No. 20,082, 76 NH PUC 150, Mar. 11, 1991.

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Re EnergyNorth Natural Gas, Inc.

DR 90-045
Order No. 20,218

76 NH PUC 564

New Hampshire Public Utilities Commission

August 20, 1991

ORDER approving a natural gas local distribution company's interruptible service contract with Anheuser-Busch, under which (1) a floor price was set equal to the highest-cost spot market gas purchased by the company, and (2) the customer had the ability to refuse noncompetitively priced supplies and to renominate its monthly take.

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1. RATES, § 384

[N.H.] Natural gas — Interruptible service — Floor price — Highest-cost spot market purchase price. p. 564.

2. SERVICE, § 332

[N.H.] Natural gas — Interruptible service — Terms — Monthly renominations — Nonacceptance of noncompetitively priced gas. p. 564.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, the above docket was initially opened to investigate the 1990 Summer Cost of Gas Adjustment proposed by EnergyNorth Natural Gas, Inc. (ENGI); and

WHEREAS, hearings were held on the issue of whether ENGI was observing the procedures set forth in the 1988 Stipulation regarding ENGI's contracts for interruptible gas service; and

WHEREAS, after those hearings, the staff, the Office of Consumer Advocate (OCA), and ENGI entered into a second stipulation (the "1990 Stipulation") which supplements and amends the 1988 Stipulation; and

WHEREAS, the 1990 Stipulation was approved by the commission in Report and Order No. 19,875, dated July 3, 1990; and

WHEREAS, the 1988 and 1990 Stipulations require (a) the floor price for interruptible gas be set at the highest cost of gas purchased in the month adjusted for franchise tax and losses; (b) each customer submit a monthly gas volume nomination for the upcoming calendar month; and (c) each customer agree to use all the gas requested, unless ENGI is able to resell excess volumes; and

WHEREAS, on August 16, 1990, ENGI petitioned the commission for a hearing to resolve certain issues raised by Anheuser-Busch, including the retention of the contractual arrangements under its existing interruptible contract; and

WHEREAS, the commission determined that the retention by Anheuser-Busch's of its pre-1990 Stipulation interruptible contract would constitute an undue preference or advantage; and

WHEREAS, on July 19, 1991, ENGI filed a new interruptible contract with Anheuser-Busch that:

(a) Requires Anheuser-Busch to use during the month the nominated quantity of gas, provided the notified price for the month does not change.

(b) Allows Anheuser-Busch to request changes to its monthly nomination quantity (to reflect changes in actual consumption), while at the same time preserving ENGI's right to reject such changes;

(c) Sets the floor price at the "price per therm of spot gas billed by the Company's supplier(s)"; and

WHEREAS, the commission interprets the floor price language to mean that the price of interruptible gas cannot fall below the cost of the "highest cost" spot gas billed to the company; and

WHEREAS, the above contractual provisions taken together enable Anheuser-Busch to refuse un-competitively priced gas and afford ratepayers protection against the uneconomic sale of natural gas; it is hereby

ORDERED, that the commission finds the proposed interruptible contract to be in the public interest, and is hereby approved.

By order of the New Hampshire Public Utilities Commission this twentieth day of August 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-045, Order No. 19,875, 75 NH PUC 366, July 3, 1990.

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NH.PUC*08/20/91*[27198]*76 NH PUC 566*Tennessee Gas Pipeline

[Go to End of 27198]

Re Tennessee Gas Pipeline

DE 91-120
Order No. 20,220

76 NH PUC 566

New Hampshire Public Utilities Commission

August 20, 1991

ORDER granting certificate for the construction of a 4.55-mile, 12-inch, high-pressure natural gas pipeline crossing public waters.

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1. CERTIFICATES, § 104

[N.H.] Natural gas — Pipeline construction — Factors — Necessary for public service — Meeting environmental mitigation requirements. p. 567.

BY THE COMMISSION:

ORDER

Page 566

[1] WHEREAS, on May 22, 1991, Stone and Webster Environmental Services filed on behalf of Tennessee Gas Pipeline (TGP) a petition for license to construct and maintain a proposed 12-inch pipeline under and across the Suncook River, Meeting House Brook, the Soucook River and a number of small unnamed streams and wetlands; and

WHEREAS, on April 5, 1991, the Energy Facility Evaluation Committee (EFEC) declared the Northeast Settlement Project, Phase I, Concord Lateral #2 NESPA 11 as proposed by Tennessee Gas Pipeline to be exempt pursuant to RSA 162-H:5, IV under the provisions of the N.H. Code of Administrative Rules Chapter Ener 400; and

WHEREAS, the Department of Environmental Services has issued Permit No. WPT-3774 from the Water Supply and Pollution Control Division also Permit No. 91-757 from the Wetlands Board in relation to this project; and

WHEREAS, such construction is identified as 4.55 miles of 12-inch diameter, high pressure, natural gas, Lateral Loop pipeline to be constructed generally parallel and adjacent to TGP existing 6-inch line from Tennessee's Suncook Meter Station in Allenstown to Tennessee's Valve in the City of Concord; and

WHEREAS, the Commission's Engineering Staff has conducted site inspections of the wetlands and waterways as listed in the Wetlands Board Application which under RSA 371:17 may be considered public waters; and

WHEREAS, the Commission finds, based on the current record, the proposed pipeline crossings are reasonably necessary for the provision of gas service to the public and will not

unreasonably impact public safety or public use of any ponds, tidewater bodies or streams; and

WHEREAS, the Commission finds such evidence justifies waiver of public hearing according to RSA 371:20: it is

ORDERED, *NISI*, that a license for crossing Suncook River, Meetinghouse Brook and Soucook River and a number of small unnamed streams and wetlands along the proposed route; be and hereby is granted; and it is

FURTHER ORDERED, 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 New Hampshire Public Utilities Commission and all other applicable safety standards; 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 September 5, 1991; and it is

FURTHER ORDERED, that Tennessee Gas Pipeline effect said notification by publication of a copy of this order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than August 24, 1991, and designated in an affidavit to be made on a copy of this order and filed with this office on or before September 4, 1991; and it is

FURTHER ORDERED, that Tennessee Gas Pipeline notify the Town of Allenstown and Pembroke and the City of Concord pursuant to RSA 541-A:22 by serving a copy of this order on the Towns/City by first-class mail, said notification to be verified by affidavit filed on September 4, 1991; and it is

FURTHER ORDERED, that such authority shall be effective September 9, 1991, unless the Commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this twentieth day of August, 1991.

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NH.PUC*08/21/91*[27199]*76 NH PUC 565*New England Telephone Company

[Go to End of 27199]

Re New England Telephone Company

DE 91-072
Order No. 20,219

76 NH PUC 565

New Hampshire Public Utilities Commission

August 21, 1991

ORDER approving a local exchange telephone carrier's proposed special contract with Digital Equipment Corporation for high-speed, two-point channel service for the transport of "Flexpath" and "Superpath" services, where such services were deemed competitive and bypass could occur absent the special contract.

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1. RATES, § 534

[N.H.] Telephone — Special contracts — Factors — Prevention of bypass — Competitive services — High-speed digital services. p. 565.

BY THE COMMISSION:

ORDER

[1] On May 24, 1991, New England Telephone, (NET or the company) petitioned for commission approval of a special contract between NET and Digital Equipment Corporation, for the provision of a two-point channel to provide transport for Flexpath and Superpath services; and

WHEREAS, the company currently has no effective tariffed rates for the provision of 45mbps service under its local exchange tariff, NHPUC No. 75 in New Hampshire; and

WHEREAS, the terms of this contract are for a period of five years; and

WHEREAS, the cost support included with this filing differentiated between the costs for Flexpath tariffed services, and contract specific costs; and

WHEREAS, the monthly price for Flexpath service provides a contribution relative to the costs as provided in support of NET's Flexpath filing approved by the commission in Report and Order No. 18,327, dated July 7, 1986; and

WHEREAS, the non tariffed contract price provides a contribution well in excess of the contract specific incremental costs; and

WHEREAS, the commission has indicated that one test for approval of a special contract is the real possibility of the customer defecting from the utility's network; and

WHEREAS, in 1985 Digital Equipment Company circumvented NET's facilities by entering into a contract with NYNEX Business Information Services to design, install and service two customized fiberoptic intraLATA networks; and

WHEREAS, based on prior commission statements it is likely that the service that is the subject of this special contract will fall under the heading of an emergingly competitive service which will receive more relaxed regulatory treatment and pricing flexibility; it is hereby

ORDERED *NISI*, that New England Telephone's Digital Signal-3, Special Contract #91-1 be

and hereby is approved; and it is

FURTHER ORDERED, that the rates for this contract will be subject to review following the completion of the 1992 updated NET Incremental Cost Study and the provision of contract specific incremental cost support; and it is

FURTHER ORDERED, that pursuant to N.H. Admin Rules PUC 203.01, the company cause 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 September 3, 1991, and is to be documented by affidavit filed with this office on or before the twentieth day of September 1991; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than the eighteenth day of Sept., 1991; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on September 20, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twenty-first day of August, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 85-419, Supplemental Order No. 18,327, 71 NH PUC 388, July 7, 1986.

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NH.PUC*08/21/91*[27200]*76 NH PUC 568*New England Telephone Company

[Go to End of 27200]

Re New England Telephone Company

DE 90-134
Order No. 20,221

76 NH PUC 568

New Hampshire Public Utilities Commission

August 21, 1991

ORDER approving local exchange telephone carrier's special rate contracts for providing Centrex services in Manchester and Nashua, where the special rates would be cost-based, of limited duration, and responsive to competitive threats from customer-owned private branch exchange networks.

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1. RATES, § 566

[N.H.] Telephone — Centrex services — Special rate contracts — Factors affecting approval — Cost-based rates — Limited duration — Competition from customer-owned private branch exchanges. p. 568.

BY THE COMMISSION:

ORDER

[1] On August 1, 1990, New England Telephone, (NET or the company) petitioned for commission approval of two concurrent special contracts to provide Centrex service for the Cities of Manchester and Nashua; and

WHEREAS, the terms of the contract are for a period of seven years; and

WHEREAS, the costs contained in these contracts are based on the New Hampshire Intellipath Digital Centrex Service filing approved by the commission in Docket DR 86-236, Report and Order No. 18,753, dated July 10, 1987; and

WHEREAS, in the above Report and Order the commission found that NET had met its burden of proof that the proposed rates covered the costs of the proposed services; and

WHEREAS, the commission also stated that it would reserve judgement on whether the methodology used in DR 86-236 was the most appropriate method for determining NET's costs of service, upon completion of the NHPUC investigation into NET's costs of service in Docket DR 89-010; and

WHEREAS, the company chose to omit a re-examination of the costs of Centrex service when submitting its incremental cost study in DR 89-010; and

WHEREAS, in its Report and Order No. 20,082, dated March 11, 1991, the commission required that NET include an analysis of the incremental costs of Centrex service when filing its updated Incremental Cost Study in 1993; and

WHEREAS, the cities of Manchester and Nashua have competitive substitutes for Centrex service in the form of customer owned private branch exchanges; and

WHEREAS, based on prior commission statements it is likely that the services that are the subject of the special contracts will fall under the heading of emergingly competitive services which will receive more relaxed regulatory treatment and pricing flexibility; it is hereby

ORDERED *NISI*, that New England Telephone's Special Centrex contracts with the Cities of Manchester and Nashua be and hereby are approved; and it is

FURTHER ORDERED, that the rates for these contracts be subject to review, and possible revision, following the completion of the updated NET Incremental Cost Study to be supplied in 1993; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, the company cause 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 September 3, 1991 and is to be documented by affidavit filed with

this office on or before September 20, 1991; and it is

FURTHER ORDERED, that any

interested party may file written comments or request an opportunity to be heard in this matter no later than the eighteenth day of September, 1991; and it is

FURTHER ORDERED, that this Order Nisi will be effective on September 20, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twenty-first day of August, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 85-182, DR 89-010, Order No. 20,082, 76 NH PUC 150, Mar. 11, 1991. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 86-236, Order No. 18,753, 72 NH PUC 293, July 10, 1987.

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NH.PUC*08/27/91*[27201]*76 NH PUC 569*Hampstead Area Water Company, Inc.

[Go to End of 27201]

Re Hampstead Area Water Company, Inc.

DE 91-121
Order No. 20,224

76 NH PUC 569

New Hampshire Public Utilities Commission

August 27, 1991

APPLICATION by water utility for franchise authority to serve a small area in the Town of Hampstead; granted.

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1. CERTIFICATES, § 125

[N.H.] Water utility — Franchise authority — Expansion of service area — Factors affecting approval — Public need — Contiguous area — Continuation of existing rates. p. 569.

BY THE COMMISSION:

ORDER

[1] On August 15, 1991, the commission received a petition from Hampstead Area Water Co., Inc. (Hampstead) to provide water service to a limited area in the Town of Hampstead, New Hampshire, abutting Hampstead's service area known as Bricketts Mill, pursuant to RSA 374:22 and, implicitly, to establish rates therefore pursuant to RSA Chapter 378; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, Hampstead intends to charge rates in the area sought equal to those now being charged in Bricketts Mill; and

WHEREAS, Hampstead has supplied letters pursuant to RSA 374:22, III from the Department of Environmental Services, Water Supply and Pollution Control Division and Water Resources Division granting approvals needed for the proposed franchise extension; and

WHEREAS, Hampstead has the financial, managerial, administrative, legal and technical capabilities to provide water service to the area; and

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

WHEREAS, the public should be offered an opportunity to file comments and/or request an opportunity to be heard before the commission acts on this petition; it is hereby

ORDERED, *NISI* that Hampstead be granted a franchise in the area bounded and described as follows;

Beginning at a point 500 feet westerly from the intersection of Island Pond Road & West Road and on a line to the Northernmost town bound common to Atkinson and Hampstead, said point being the westerly edge of the existing franchise area on West Road;

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

THENCE: Southwesterly 1000 feet along said line to said bound common to Atkinson and Hampstead;
THENCE: Southeasterly 4600 feet along the town line of Atkinson and Hampstead to a town bound;
THENCE: Northeasterly 2100 feet along the town line of Atkinson and Hampstead to a town bound;
THENCE: Southeasterly 1200 feet along the town line of Atkinson and Hampstead to the southerly right of way line of Route 111, said point also abutting an existing franchise area;
THENCE: Northeasterly 3000 feet along said right of way, and abutting the existing franchise area to a point of curve;
THENCE: Along a curve to the left on the


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        right of way, and abutting the
        existing franchise area 1300 feet
        to a point being the easternmost
        intersection of the existing
        franchise area and the southerly
        right of way line of Route 111;
THENCE: Southeasterly 1900 feet along the existing
        easterly franchise area line to a point;
THENCE: Southerly 700 feet along said
        franchise line to the town line
        of Atkinson and Hampstead;
THENCE: Easterly 2900 feet along the town
        line of Atkinson and Hampstead to
        a bound;
THENCE: Northeasterly 4000 feet to a
        point common to the existing
        franchise area, said point being
        500 feet from the center line
        intersection of East Road and
        Faith Drive;
THENCE: Northwesterly 6400 feet along the
        existing franchise area line,
        said line being 500 feet west of
        the centerline of East Road, to a
        point;
THENCE: Southwesterly 3000 feet along the
        existing franchise area line,
        said line being 500 feet south of
        the centerline of Emerson Avenue,
        to a point;


THENCE: Southwesterly 400 feet along the
        existing franchise area line,
        said line being 500 feet south of
        the centerline of West Road, to a
        point;
THENCE: Along a curve with a radius of
        500 feet, the radius point being
        the intersection of West Road and
        Island Pond Road, said curve
        being the edge of the existing
        franchise area, 600 feet to the
        point of beginning.
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This area containing approximately 1246 acres; and it is

FURTHER ORDERED, *NISI* that Hampstead be allowed to charge rates pursuant to those rate schedules approved for Bricketts Mill; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the commission or submit a written request for a hearing no later than October 9, 1991; and it is

FURTHER ORDERED, that Hampstead effect said notification by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than September 9, 1991, and designated in a affidavit to be made on a copy of this order and filed with this office on or before October 9, 1991; and it is

FURTHER ORDERED, that Hampstead Area Water Company notify the Town of Hampstead pursuant to RSA 541-A:22 by serving a copy of this order on the Town by first-class mail on or before September 9, 1991, said notification to be verified by affidavit filed on or before October 9, 1991; and it is

FURTHER ORDERED, that such authority shall be effective on October 11, 1991 unless a request for a hearing is filed with this commission no later than October 9, 1991.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1991.

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NH.PUC*08/27/91*[27202]*76 NH PUC 571*North Atlantic Energy Service Corporation

[Go to End of 27202]

Re North Atlantic Energy Service Corporation

Additional applicant: Northeast Utilities Service Company

DF 91-100
Order No. 20,226

76 NH PUC 571

New Hampshire Public Utilities Commission

August 27, 1991

ORDER authorizing North Atlantic Energy Service Corporation (NAESCO) to issue 1,000 shares of $1 par value common stock and sell such stock at $10 per share to Northeast Utilities Service Company (NU) to facilitate NAESCO becoming a wholly owned subsidiary of NU.

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1. SECURITY ISSUES, § 57

[N.H.] Purpose of issuance — Facilitation of transfer of ownership — Issuing company becoming subsidiary of purchasing company. p. 572.

2. INTERCORPORATE RELATIONS, § 18.1

[N.H.] Securities transactions — Facilitation of transfer of ownership — Issuing company becoming subsidiary of purchasing company. p. 572.

Page 571

3. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Acquisition of subsidiary — Grounds for approval — Public good. p. 572.

BY THE COMMISSION:

ORDER

WHEREAS, North Atlantic Energy Service Corporation ("NAESCO") on July 16, 1991 filed

a petition, pursuant to RSA 369.1, for approval of the issuance of 1,000 shares of common stock, $1 par value, to Northeast Utilities ("NU") for $10 per share, or $10,000 in aggregate; and

WHEREAS, Northeast Utilities requests authorization to acquire that stock pursuant to RSA 374:33; and

[1-3] WHEREAS, the purpose of this issue and acquisition will be to capitalize NAESCO as a wholly owned subsidiary of NU and the proceeds of the issuance will be treated as common equity by NAESCO; and

WHEREAS, the commission in Docket No. 89-244 on July 20, 1990 approved the rate agreement between NU and the State of New Hampshire and found that it would be in the public good for NAESCO to be formed in order to achieve the savings projected for Seabrook in connection with implementing the plan; and

WHEREAS, NAESCO estimates that its costs of capitalization will not exceed the total amount paid by NU for the common stock; it is

ORDERED, that NAESCO is hereby authorized to issue 1,000 shares of common stock, $1 par value, to Northeast Utilities for $10 per share, or $10,000 in aggregate; and it is

FURTHER ORDERED, that Northeast Utilities is authorized to acquire the common stock of NAESCO pursuant to RSA 374:33; and it is

FURTHER ORDERED, that the probable cost to be incurred by NAESCO in its capitalization and the issuance of the NAESCO common stock on the terms proposed is consistent with the public good.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1991.

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NH.PUC*08/29/91*[27203]*76 NH PUC 572*Southern New Hampshire Water Company, Inc.

[Go to End of 27203]

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 20,227

76 NH PUC 572

New Hampshire Public Utilities Commission

August 29, 1991

ORDER granting the Town of Litchfield Board of Selectmen an extension of time until after its 1993 town meeting before a water utility may terminate fire protection service to the town. The extension of time would allow the town to establish its own fire protection districts and install town-owned fire hydrants.

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1. SERVICE, § 475

[N.H.] Water — Fire protection — Termination of service — Town creating own fire districts — Extension of time for termination. p. 572.

BY THE COMMISSION:

ORDER

[1] The Town of Litchfield Board of Selectmen (Litchfield), having filed a motion with the New Hampshire Public Utilities Commission (commission), on August 7, 1991, requesting a partial rehearing of Order No. 20,196, dated July 29, 1991, wherein the commission authorized Southern New Hampshire Water Company, Inc. (SNHW) to:

> ... terminate [fire protection services] on

Page 572

> the tenth day following the next Town Meeting of Litchfield, at which time either Litchfield will pay for fire protection in accordance with the tariff or will not. If Litchfield chooses not to pay, it will not be entitled to fire protection.

Report accompanying Order No. 20,196 at 38; and

WHEREAS, in its Motion for Rehearing, Litchfield requests that the commission reconsider its deadline of ten days following the next Town Meeting of Litchfield, scheduled for March, 1992, because this time frame does not allow Litchfield adequate time to create fire protection districts and hold requisite public hearings; and

WHEREAS, Litchfield requests that it be allowed until the Town Meeting of 1993 to determine whether it will continue to receive fire protection services from SNHW; and

WHEREAS, Litchfield asserts that the requested extension would allow the Town to budget monies for hearings and create fire districts, and

WHEREAS, in its Motion for Rehearing, Litchfield further requests that it be allowed to continue to request from developers that fire hydrants and properly sized mains for fire hydrants be installed in new developments, with said fire hydrants to be paid for by customer surcharges before Litchfield determines the appropriate method of payment for the hydrants and properly sized mains; and

WHEREAS, Litchfield further requests that the Board of Selectmen be advised of any PUC proceedings that concern the Town of Litchfield, asserting that the Town did not receive proper notice of the instant proceeding and, thus, did not move to intervene; it is hereby

ORDERED, that the request by Litchfield for an extension of time until ten (10) days following its 1993 Town Meeting to comply with the terms of Order No. 20,196 regarding fire protection services is hereby granted; and it is

FURTHER ORDERED, that SNHW shall continue to collect fire protection revenues from Litchfield residents through a customer surcharge until ten days following Litchfield's 1993 Town Meeting; and it is

FURTHER ORDERED, that legal notice requirements were met in this docket and the required notice provisions will continue to be applied regarding future proceedings involving Litchfield; and it is

FURTHER ORDERED, that in all other respects, the Town of Litchfield's Motion for Rehearing is denied.

By order of the New Hampshire Public Utilities Commission this twenty-ninth day of August 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., DR 89-224, Order No. 20,196, 76 NH PUC 521, July 29, 1991; revised July 31, 1991.

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NH.PUC*08/30/91*[27204]*76 NH PUC 573*Pennichuck Water Works, Inc.

[Go to End of 27204]

Re Pennichuck Water Works, Inc.

DR 91-107, DR 91-110
Order No. 20,228

76 NH PUC 573

New Hampshire Public Utilities Commission

August 30, 1991

ORDER granting water utility temporary franchise authority to expand service into a very limited area of the Town of Amherst, where although the area was certificated to another water utility, that utility had acquiesced to the arrangement. The expanded area would encompass only the site of a new high school and a residence with a contaminated well.

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1. CERTIFICATES, § 125

[N.H.] Water utility — Expansion of franchise authority — Into area certificated to another — Factors — Acquiescence by certificated utility — Service to two customers only. p. 574.

Page 573

2. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Water utilities — Expansion of franchise authority — Into area certificated to another — Factors — Acquiescence by certificated utility — Service to two customers only. p. 574.

BY THE COMMISSION:

ORDER

On August 6, 1991, Pennichuck Water Works, Inc. ("Pennichuck") filed a petition as amended on August 20, 1991 seeking authority pursuant to RSA 374:30 to provide temporary water service to a limited area in the Town of Amherst, New Hampshire and for approval of rate schedules pursuant to RSA Chapter 378; and

WHEREAS, Pennichuck is a public water utility operating under the jurisdiction of this Commission; and

[1, 2] WHEREAS, the requested temporary service will be provided to the site of a new high school to be located east of Boston Post Road, to wit, the Souhegan High School and to a residential site of a potentially contaminated well serving Ms. Marlene Pelletier at 465 Boston Post Road, also in the Town of Amherst; and

WHEREAS, the limited area sought to be served herein is within the franchise area of Southern New Hampshire Water Company, Inc. ("Southern") as granted in Docket DE 83-244, Order No. 16,655; and

WHEREAS, Southern, by petition dated August 23, 1991, has agreed to the temporary transfer to Pennichuck of its franchise rights in these limited areas of Amherst; and

WHEREAS, both Pennichuck and Southern agree that the temporary service herein sought by Pennichuck would revert to Southern if the permanent transfer of franchise rights and works sought herein in Docket DR 91-107 is not approved; and

WHEREAS, the Town of Amherst, by letter dated August 13, 1991, has indicated its acquiescence in this temporary service provision; and

WHEREAS, the Commission finds, pursuant to RSA 374:22 and RSA 374:26, that Pennichuck has the technical, managerial and financial expertise to operate as a public water utility in the limited areas sought herein, See e.g., *Re Pennichuck Water Works, Inc.*; and

WHEREAS, Pennichuck has satisfied the requirements of the Department of Environmental Services, Water Supply and Pollution Control Division and Water Resources Division pursuant to RSA 374:22, III; and

WHEREAS, the Commission finds that the provision of this temporary service at rates equal to those charged the customers of Pennichuck in Nashua and a portion of the Town of Merrimack, New Hampshire is just and reasonable; and

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

WHEREAS, the public should be offered an opportunity to respond to this order; it is hereby

ORDERED, *NISI*, that Pennichuck Water Works, Inc. is granted a temporary franchise to serve the site of the new Souhegan High School, East off Boston Post Road and the residential site of Ms. Marlene Pelletier at 465 Boston Post Road, both in the Town of Amherst; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the Commission or submit a written request for a hearing no later than twenty (20) days from the date of publication of this order; and it is

FURTHER ORDERED, that Pennichuck shall effect such notification by publication of an attested copy of this order once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than September 11, 1991, and designated in an affidavit to be made on a copy of this order and filed with this Commission on or before September 30, 1991; and it is

Page 574

FURTHER ORDERED, that such authority shall be effective on September 30, 1991, unless a hearing is ordered by this Commission pursuant to the foregoing paragraphs.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., DE 83-244, Order No. 16,655, 68 NH PUC 565, Sept. 26, 1983.

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NH.PUC*09/03/91*[27205]*76 NH PUC 576*Franchise Tax — Electric Utilities

[Go to End of 27205]

Re Franchise Tax — Electric Utilities

Respondents: Granite State Electric Company; Public Service Company of New Hampshire; New Hampshire Electric Cooperative, Inc.; Connecticut Valley Electric Company; Concord Electric Company; Exeter and Hampton Electric Company

DR 91-096
Order No. 20,230

76 NH PUC 576

New Hampshire Public Utilities Commission

September 3, 1991

ORDER considering proposals submitted by electric utilities as to the rate implications of the elimination of franchise tax liability for electric utilities. Various mechanisms are approved,

including reductions in base rates, reductions in fuel surcharges, and refunds through fuel or other adjustment clause credits.

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1. RATES, § 147

[N.H.] Factors affecting reasonableness — Taxes — Elimination of state franchise tax liability for electric utilities — Response alternatives — Proportionate reduction in base rates — Changes in fuel adjustment clause charges. p. 580.

2. RATES, § 147

[N.H.] Factors affecting reasonableness — Taxes — Elimination of state franchise tax liability for electric utilities — Offset for new tax on nuclear plant — Proportionate reduction in base rates. p. 580.

3. REPARATION, § 37

[N.H.] Grounds for allowing — Rate adjustments — Caused by elimination of state franchise tax liability for electric utilities — Approved mechanisms for refunding — Through fuel and purchased power clauses — As offset to other tax liabilities — Through conservation and load management clause. p. 580.

4. REPARATION, § 37

[N.H.] Grounds for allowing — Rate adjustments — Caused by elimination of state franchise tax liability for electric utilities — Proposal not to make refunds — Because of low earnings — Rejected. p. 581.

APPEARANCES: David J. Saggau, Esq. for Granite State Electric; Thomas B. Getz, Esq. and Rath, Young, Pignatelli and Oyer by William Ardinger, Esq. for Public Service Company of New Hampshire; Merrill and Broderick by Mark Dean, Esq. for the New Hampshire Electric Cooperative, Inc.; Kenneth C. Picton, Esq. for Connecticut Valley Electric Company; LeBouef, Lamb, Leiby and MacRae by Scott Mueller, Esq. for Concord Electric Company and Exeter and Hampton Electric Company; Kenneth Traum, for the Office of the Consumer Advocate; Eugene F. Sullivan, Finance

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Director, for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

The 1991 NH Laws Chapter 354 (effective July 2, 1991) *inter alia* enacted RSA Chapter 83-D which institutes a tax on nuclear station property, which tax is allowed as a credit against the tax liability under RSA 77-A. 1991 Laws 354:1. The measure also amended RSA 83-C:1, II

and IV effectively to eliminate franchise tax liability for the state's electric utilities, effective July 1, 1991. 1991 Laws 354:3 and 4.

The tax law changes cause a mismatch between existing tariffs which are based on a revenue requirement which includes the repealed franchise tax component and the actual tax liability of New Hampshire electric utilities under 1991 Laws Chapter 354. New Hampshire Public Utilities Commission (Commission) has addressed similar issues in the past. In *Re Franchise Tax — Electric and Gas Utilities*, 68 N.H.P.U.C. 461 (1983), the Commission allowed electric and gas utilities to incorporate the franchise tax into their respective tariffs based upon a petition filed by the Association of New Hampshire Utilities stating:

> After due consideration, we have concluded that it is reasonable under the circumstances to allow a rate adjustment for the purpose of recovering the increased tax liability ... . The circumstances here are limited (new legislation which imposes immediate liabilities on all intra state electric and gas utilities) and applicable to gas and electric utilities as a class, rather than as individual entities. Those circumstances are not likely to reoccur with any regularity.

Id. at 462-463.

As a result of that and subsequent orders, tariff pages of New Hampshire electric utilities incorporate the franchise tax by reference and a factor of 1% has been added to gross receipts from the sales of electricity for retail customers. The nuclear station property tax will be a credit against the business profits tax liability of each company on a unitary business basis. *See e.g.*, RSA 83-D:6. The franchise tax, which has been effectively repealed as of July 1, 1991 for electric utilities, was also a credit against the business profits tax.

On July, 17, 1991, the Commission issued Order No. 20,179 opening the instant docket for the purpose, *inter alia*, of addressing issues related to the rate effect of the tax law changes. The Commission ordered the state's electric utilities (jointly referred to as the Companies) to file revised and corrected tariff pages to eliminate all reference to the franchise tax and to address the issue of the effect that the repeal of the franchise tax and the adoption of the nuclear property tax would have on their respective rates.

A duly noticed hearing was held on August 15, 1991 at the offices of the Commission. Testimony was presented by Public Service Company of New Hampshire (PSNH); New Hampshire Electric Cooperative, Inc. (NHEC); Connecticut Valley Electric Company (CVEC); Granite State Electric Company (GSEC); and jointly by Concord Electric Company (Concord) and Exeter and Hampton Electric Company (Exeter).

II. POSITIONS OF THE PARTIES

A. *PSNH*

PSNH filed illustrative tariffs on July 26, 1991 which removed the franchise tax on gross receipts from PSNH's rates. PSNH determined the amount of franchise on gross receipts that was paid in 1990. That amount was divided by the total retail kilowatt hours sold by PSNH in 1990. The result was an amount of 0.096 cents per kilowatt-hour. The amount was increased by the 5.5% increase which went into effect on May 16, 1991 to arrive at a rate of 0.0101 cents per

kilowatt-hour. PSNH proposed reducing its rates by 0.0101 cents per kilowatt-hour. At the hearing PSNH witness, Gary A. Long, provided additional testimony which proposed that the additional franchise tax revenue collected since

July 1, 1991 be included as a one time credit to the fuel and purchased power adjustment clause (FPPAC).

The Commission Staff (Staff) questioned the appropriateness of applying the franchise tax reduction on a kilowatt-hour basis. The proposed changes to the various classes result in percent changes different from the overall rate impact. Mr. Long explained that when the nuclear property tax is added to the FPPAC that the impact is on a kilowatt-hour basis and should result in a direct offset.

B. *NHEC*

The NHEC proposed that its rates be reduced by approximately one percent. The mechanism which permits the NHEC to recover the franchise tax would be removed from its rate formula and its tariffs. The nuclear plant property tax which would be imposed based on its ownership interest in Seabrook would be included in the Sellback Agreement between the NHEC and PSNH and would not affect retail rates. To the extent that the nuclear property tax is reflected in wholesale rates there may be an impact in the future.

The NHEC proposes to refund the 1% franchise tax retroactive to July 1, 1991. The franchise tax revenues plus interest associated with the tax billed to customers after July 1, 1991 would be accounted for and refunded during a thirty day billing period commencing thirty days after the revised tariffs go into effect. NHEC witness Nancy A. McDonald testified that the projected refund would be approximately $.0014 per kilowatt-hour.

C. *CVEC*

CVEC proposed to reduce its base rates by 1%, or $151,000 on an annual basis. CVEC is not proposing to reflect the effect of the business profits tax in its rates because it believes that it will have sufficient franchise tax credits to offset the business profits tax in 1991. CVEC anticipates that the effect of the business profits tax in 1992 can be addressed in Phase II of its rate design which is expected to result in rates effective January 1, 1992.

CVEC did not file revised tariffs for its fuel adjustment clause (FAC) and its purchased power cost adjustment clause (PPCA). CVEC takes the position that the additional revenues collected through the PPCA and FAC could be reflected, with interest, in its year-end reconciliation of the FAC and PPCA.

CVEC did not propose a refund of the franchise tax billed since July 1, 1991. Instead of a refund, CVEC proposes to use the July and August franchise tax revenues as an offset to the Company's 1991 business profits tax. CVEC states that the two months collection of the gross receipts tax should approximate the July through December 1991 business profits tax.

D. *GSEC*

GSEC collects the franchise tax in its base rates, PPCA, FAC, and Oil Cost Adjustment

(OCA). GSEC estimates the net effect of the elimination of the franchise tax will be to reduce GSEC's cost of service, as approved in DR 90-013, by $258,000 annually. The change to GSEC's cost of service was calculated by replacing the franchise tax with the business profits tax, adjusted for state and federal tax effects.

GSEC is a wholly owned subsidiary of the New England Electric System (NEES). Another NEES subsidiary is the New England Power Company (NEP) which is the wholesale power supplier to *inter alia* GSEC. NEP is one of the joint owners of Seabrook and thus subject to the nuclear property tax. As GSEC and NEP are both parts of the same unitary business for state tax purposes, NEP's nuclear property tax liability is deducted from GSEC's business profits tax liability. Because the credit arises from NEP's ownership of Seabrook, GSEC believes the credit to its business profits tax should be apportioned to all of NEP's wholesale customers on a proportionate basis of their individual purchased power costs.

GSEC proposes to apportion the $258,000 base rate decrease based on the percentage of revenues allocated to each rate class in its latest Cost of Service Study. GSEC also supports a reduction to the test year FAC and OCA

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revenues of one percent thereby decreasing its base revenue requirement by $23,564. The kW and kWh charges are proposed to be proportionately reduced by the percentage cost reduction for each rate.

GSEC also proposes to lower the PPCA by $.00008 per kWh to reflect the elimination of the franchise tax. The new PPCA, based on GSEC's incremental purchased power costs over NEP's W-9(S) wholesale power costs, results in a new PPCA of $.00890 per kWh. GSEC also proposes to eliminate the franchise tax from the FAC and OCA factors. The new FAC factor would be reduced by $.00005 per kWh to $.00435 per kWh. The OCA factor would be $.00120, a decrease of $.00001 per kWh. To enact these changes GSEC has proposed a new tariff, NHPUC No. 13 — Electricity, effective for bills rendered on or after August 30, 1991.

GSEC expects an overcollection of revenues for the months of July and August, 1991. The overcollection attributable to franchise tax revenue on the PPCA, FAC, and OCA factors is proposed to be carried as an overcollection with interest through the reconciliation of GSEC's next PPCA, FAC and OCA filings. GSEC estimates it overcollected approximately $37,500 during July and August in franchise tax base revenues. It proposes to apply the base rate overcollection as a credit to the Conservation and Load Management (C&LM) Fund.

E. *Concord and Exeter*

Concord and Exeter (jointly referred to as UNITIL) propose to eliminate the one percent franchise tax from all rates (including base rates and the fuel and purchased power adjustment factors), remove all references to the franchise tax in the their tariffs, and include the business profits tax in the their base energy charge. The net effect is to reduce rates to Concord customers by .66 percent and to Exeter customers by .61%.

UNITIL proposes to effect FAC and PPAC rate decreases retroactive to July 1, 1991 by accounting for the franchise tax revenues in the FAC and PPAC [UNITIL calls its PPCA a

PPAC] as fuel and purchased power revenues rather than franchise tax revenues. This proposal would result in an estimated additional $9,788 credit to Concord's FAC, and an additional $34,996 reduction to Concord's PPAC for the months of July and August, 1991. Similar credits would result for Exeter's customers in the approximate amounts of $10,582 in the FAC and $36,809 in the PPAC, depending on actual sales during July and August. The credits, with interest, are proposed to be incorporated into the UNITIL's year-end reconciliation of the FAC and PPAC calculations.

Staff questioned what Concord and Exeter planned to do with the base rate franchise tax revenues collected during the months of July and August, 1991. UNITIL's position is to reflect the change in the franchise tax in base rates effective September 1, 1991, but not to make any adjustments for the July and August base rate franchise tax revenues collected. UNITIL proposes that the July and August base rate revenues, estimated to be $24,000 for Exeter and $25,000 for Concord, be used to bolster the currently significant under-earnings. UNITIL stressed its continued desire to avoid a rate case and its belief that the refund of the July and August base revenues from the franchise tax would only contribute to further revenue erosion.

III. COMMISSION ANALYSIS

Although legislative changes in utility state tax liability should be infrequent, this is not the first time we have addressed this issue. As noted above, in *Re Franchise Tax-Electric and Gas Utilities*, *supra*, we approved tariff pages for the state's electric and gas utilities to reflect a new (at the time) state tax liability based on one percent of gross revenues. *See also*, *Re Communications Service Tax*, DR 90-037, Report and Order No. 19,772 (March 30, 1990). After concluding that such an adjustment was appropriate, the remaining task was the more mechanical one of ensuring that the tariff filings accurately reflected the actual changes in tax liability. In the instant proceeding, there was no dispute about whether the Commission should be requiring tax change tariff adjustments; thus, in this order our review is limited

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to the more mechanical issues which arise from an examination of whether the proposals of the state's electric utilities accurately reflect the actual changes in those utilities' state tax liability.

The proposals of the Companies are designed to accomplish two objectives: 1) to adjust rates prospectively to reflect state tax law changes; and 2) to refund net revenues in excess of actual state tax liability for the July and August, 1991 period during which time the tariffs included the franchise tax surcharge which had been effectively repealed.

A. *Prospective Rate Adjustment*

[1] With respect to the first objective of adjusting rates prospectively, we find that the proposals of PSNH, the NHEC, and UNITIL accurately reflect changes in state tax liability. Accordingly, their proposals will be accepted.

CVEC's proposed adjustment to base rates also accurately reflects changes in state tax liability and, accordingly, it will be accepted. CVEC's proposal did not change its FAC or PPCA to reflect the elimination of the franchise tax; rather, it assumed that the tax change would be

subject to a reconciliation inasmuch as the FAC and PPCA provide for dollar-for-dollar recoveries. Other than the assurance that the elimination of the franchise tax would be included in the FAC and PPCA reconciliation, CVEC offered no reason why a rate reduction deferral is appropriate. Our independent analysis yields no reason in support of such a deferral not proffered by CVEC. Accordingly, CVEC's proposal will be rejected. CVEC will be directed to file amended FAC and PPCA tariffs which eliminate immediately the franchise tax surcharge.

[2] As discussed in Section II, D. (Positions of the Parties — GSEC) *supra*, GSEC is proposing to amend its tariffs to reflect the net change in tax liability caused by the elimination of the franchise tax and the corresponding increase in the business profits tax. GSEC's calculation does not accurately reflect actual changes in tax liability because the full business profits tax credit for the nuclear property tax has not been applied to reduce GSEC's New Hampshire tax liability. GSEC claims that its calculation is appropriate because the nuclear property tax benefit arises from its affiliate's ownership in Seabrook and, thus, the benefit should be proportionately shared with all customers of that affiliate. In further support of its calculation, GSEC refers (without citation) to Securities and Exchange Commission (SEC) regulations promulgated pursuant to the Public Utility Holding Company Act of 1935 (PUHCA) which require "appropriate and equitable" treatment of affiliates. GSEC Response to Record Request submitted under cover letter dated August 22, 1991.

1(138) We have been unable to identify a SEC regulation which requires the type of state tax benefit allocation proposed by GSEC; indeed, the thrust of PUHCA and the SEC regulations promulgated pursuant thereto is to require that each affiliate be treated on a stand-alone basis. On that basis, it is GSEC and not NEP that is entitled to the business profits tax credit. It is inappropriate to calculate rates based on a hypothetical GSEC business profits tax liability that is higher than GSEC's actual business profits tax liability. Because GSEC's proposal does not accurately reflect actual changes in state tax liability, it will be rejected. GSEC will be directed to file amended tariffs that reflect its actual business profits tax liability.

B. *Refund of July and August, 1991 Franchise Tax Revenues*

[3] The proposals of PSNH and the NHEC to refund franchise tax revenues recovered in July and August, 1991 through their fuel and purchased power clauses are reasonable and will be accepted.

CVEC claimed that its increased business profits tax liability roughly offsets the franchise tax revenues collected during July and August, 1991 and therefore it does not propose a refund. Our examination of CVEC's tax liability supports the CVEC claim. Thus, we will accept CVEC's proposal to treat July and August, 1991 franchise tax revenues as an offset to CVEC's business profits tax liability. No refund will be required.

GSEC has proposed a refund through its

C&LM fund. We find that GSEC's proposal is reasonable and, accordingly, it will be

accepted. The calculation of the amount to be refunded must reflect GSEC's actual business profits tax liability (including the full credit for NEP's nuclear property tax) as addressed *supra*.

[4] UNITIL has not proposed to refund July and August, 1991 revenues attributable to the franchise tax provisions of its tariff. UNITIL acknowledges that those revenues exceed its actual tax liability, but requests that the Commission consider its low earnings as a mitigating factor. UNITIL claims that retention of the July and August, 1991 franchise tax revenues will assist it in deferring a general rate proceeding which may otherwise be necessary due to those low earnings. The Commission is sympathetic to UNITIL's efforts to control costs and to defer a general rate proceeding. However, the scope of the instant docket is not broad enough to allow the Commission to afford UNITIL the relief requested. This docket was noticed specifically to provide for adjustments necessitated by the changes in state tax law. Like similar dockets that have occurred in the past (*e.g.*, *Re Franchise Tax — Electric and Gas Utilities*, *supra*), offsetting factors that may have impact in the context of a general rate investigation have been ignored. In the absence of the notice required to allow public input into proposed general rate adjustments, we cannot consider those factors herein. *See*, RSA 541-A:16, III and RSA 378:7. We must also state that it is such a duly noticed general rate proceeding that would provide us with the record to evaluate UNITIL's claims of low earnings and the effect of retention of July and August, 1991 franchise tax revenues on those earnings. The instant record is simply insufficient for us to evaluate these claims. Accordingly, UNITIL's proposal will be rejected. UNITIL will be directed to file tariff revisions providing for a full refund through its FAC and PPAC of revenues recovered in July and August, 1991 which exceed its actual franchise tax liability netted against any actual increase in business profits tax liability.

Our order will issue accordingly.

ORDER

Based upon the foregoing Report which is incorporated by reference herein; it is hereby

ORDERED, that the proposal of Public Service Company of New Hampshire be, and hereby is, approved effective September 1, 1991; and it is

FURTHER ORDERED, that PSNH file compliance tariff pages with the Commission within ten (10) days of the issuance date of this Order; and it is

FURTHER ORDERED, that the proposal of the New Hampshire Electric Cooperative be, and hereby is, approved effective September 1, 1991; and it is

FURTHER ORDERED, that the NHEC file a tariff page deleting the state franchise tax from its tariff as required in Puc 1601.05(f); and it is

FURTHER ORDERED, that the proposal by Connecticut Valley Electric Company to adjust base rates to reflect the changes in its state tax liability and the proposal to treat July and August, 1991 franchise tax revenues as an offset to CVEC's business profits tax liability be, and hereby are, approved effective September 1, 1991; and it is

FURTHER ORDERED, that CVEC file tariff pages and supporting calculations within ten (10) days from the issuance date of this Order reflecting the immediate elimination of the franchise tax surcharge in its FAC and PPCA; and it is

FURTHER ORDERED, that Granite State Electric Company's proposal be, and hereby is, rejected; and it is

FURTHER ORDERED, that GSEC file compliance tariff pages within ten (10) days of the issuance date of this Order reflecting its actual business profits tax liability; and it is

FURTHER ORDERED, that the recalculated refund of July and August, 1991 franchise tax revenues be returned, as proposed by GSEC, through the C&LM factor; and it is

FURTHER ORDERED, that the proposal by UNITIL to eliminate all rates by the one percent franchise tax, eliminate all references to the franchise tax in their tariffs, and include the business profits tax in base energy charges be, and hereby is, approved effective September 1, 1991; and it is

FURTHER ORDERED, that UNITIL's proposal to not refund the July and August, 1991 franchise tax revenues be, and hereby is, rejected; and it is

FURTHER ORDERED, that UNITIL fully refund the July and August, 1991 franchise tax revenues through its FAC and PPAC reconciliation and file compliance tariff pages with the Commission within ten (10) days of the issuance date of this Order.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1991.

FOOTNOTES

[1]GSEC was responding to a record request asking whether allocations in tax benefits similar to its proposal herein have been allowed for ratemaking purposes in other states. In essence, GSEC replied that this is a case of first impression because no other jurisdiction requires the filing of a consolidated return with taxes calculated on a unitary basis (*see* RSA 77-A:3). While there may be instances where tax benefits are deferred for ratemaking purposes (*e.g.* normalized tax accounting), we are unaware of any jurisdiction that allows utilities to withhold tax benefits from ratepayers. Thus, even in the absence of an analogous situation in another New England state, we are confident that we are treating GSEC in accordance with sound and well-accepted ratemaking principles.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Communications Service Tax, DR 90-037, Order No. 19,772, 75 NH PUC 196, Mar. 30, 1990. [N.H.] Re Franchise Tax Electric Utilities, DR 91-096, Order No. 20,179, 76 NH PUC 480, July 17, 1991.

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Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 20,231

76 NH PUC 582

New Hampshire Public Utilities Commission

September 3, 1991

ORDER suspending and requiring clarification of an electric cooperative's proposed tariff governing the saleback of its 2% share of Seabrook power to Public Service Company of New Hampshire.

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1. RATES, § 367

[N.H.] Electric — Wholesale — Saleback of share of Seabrook power — From cooperative to investor-owned utility — Proposed tariff — Clarification of terms required. p. 583.

2. RATES, § 367

[N.H.] Electric — Wholesale — Saleback of share of Seabrook power — From cooperative to investor-owned utility — Conditions — Cooperative remaining full-requirements customer of utility. p. 584.

3. RATES, § 367

[N.H.] Electric — Wholesale — Saleback of share of Seabrook power — From cooperative to investor-owned utility — Conditions — Seabrook investment recovery cap — $126 million. p. 584.

4. RATES, § 237

[N.H.] Schedules and procedure — Filing requirements — Rules for retail rate tariffs — No specific rules for wholesale rate tariffs. p. 584.

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APPEARANCES: As previously noted.

BY THE COMMISSION:

REPORT

On May 3, 1991, by Report and Order No. 20,122, the New Hampshire Public Utilities Commission (Commission or NHPUC) established the rates, terms and conditions under which the New Hampshire Electric Cooperative, Inc. (Cooperative or NHEC) may sell its 2.17391 percent share of Seabrook output (25 MW) to Public Service Company of New Hampshire

(PSNH), and ordered the Cooperative to file tariffs in compliance with the Report and Order. On August 9, 1991, NHEC filed NHPUC No. 14-W, New Hampshire Electric Cooperative, Inc., Tariff for Electric Service, Applicable to Sell-back of Seabrook Unit I to Public Service Company of N.H., retroactively effective to June 30, 1990. On August 20, 1991, PSNH and Northeast Utilities (NU) filed a Motion to Summarily Reject New Hampshire Electric Cooperative's Deficient Tariff Filing and for a Procedural Schedule and Hearing to Review Issues Raised by the Tariff (Motion). The NHEC filed an Objection to the Motion on August 30, 1991.

In its Motion, PSNH/NU argue that PSNH is entitled to be heard on key terms and conditions which NHEC's proposed tariff has placed before the Commission for the first time. In addition, they contend that the tariff should be rejected because: (1) it lacks sufficient detail to provide fair notice to PSNH and to implement the sellback relationship; (2) it fails to include key terms that are part of the sellback relationship; (3) it does not comply with the Commission's Orders No. 20,122, No. 20,142 and No. 20,164 (the Sellback Orders); and (4) it does not comply with the letter and spirit of the Commission's tariff filing requirements. Finally, PSNH/NU request that if the Commission does not summarily reject NHEC's filing, it suspend the effectiveness of the tariff pursuant to RSA 378:6 and establish a procedural schedule to review its terms and conditions.

In its objection, the NHEC claims: (1) it is not appropriate to hold the NHEC to general tariff filing standards because no rules have been promulgated and this is the first wholesale electric tariff filed with the Commission; and (2) PSNH had full notice of specific terms because it has been billed for Sellback power by the NHEC for over a year, the terms are inherent in the bills, and PSNH has never questioned those bills.

[1] After review, we will grant the PSNH/NU Motion to the extent of initiating a process of narrowing the areas of dispute, suspending the NHEC tariff in the interim, and rejecting certain terms of the NHEC tariff that are on their face inconsistent with the provisions of our Sellback orders. The remaining requests in the PSNH/NU Motion will be denied.

PSNH/NU list 10 specific items that they claim illustrate the importance of issues either raised in NHEC's tariff filing for the first time or omitted from the filing. Motion at 6-8, section 6 a-j. The first five issues (a-e) relate to the specification of the terms of the capacity charge formula; the remaining items relate to the following issues:

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

Item f - billing
Item g - notice requirements
Item h - specification of the impact of changes
           in NHEC's Seabrook entitlement to the
           Sellback Agreement
Item i - standard unit contract terms and
           conditions
Item j - late payment charges
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It is not clear that if NHEC were to provide additional definition of the terms and conditions of the tariff, all ten items would be matters in dispute. Therefore, we will require the Cooperative to respond to these ten items to provide additional specification and/or explanation of the terms and conditions of its tariff. NHEC should also indicate where it believes that issues raised by

PSNH/NU should not appropriately be contained in its tariff, either because they are unnecessary or because they contradict NHEC's understanding of the Commission's Sellback Orders. Following NHEC's filing of the additional information, we will convene a

prehearing conference to enable the parties to review NHEC's filing, to designate the issues that remain in dispute, and to recommend a procedural schedule for the remainder of this phase of the instant docket. In the interim, we will suspend the NHEC's NHPUC No. 14-W tariff.

[2] PSNH/NU raise two additional areas where they believe that the NHEC tariff fails to comply with the Commission's Sellback Orders. First, PSNH/NU argue that the tariff must include a provision detailing NHEC's obligation to remain an essentially total requirements wholesale customer of PSNH as a condition of sale for any NEPOOL power year and that the tariff immediately terminates if NHEC ceases to remain such a customer. As stated in our Sellback Orders (Order No. 20,142 at 15, Order No. 20,164 at 3-5), we have found that NHEC's status as an essentially total requirements wholesale customer of PSNH is a condition precedent to its right to sell its Seabrook power. Accordingly, we find that a statement reflecting that condition should be included in the tariff's "Availability" section.

[3] Second, PSNH/NU argue that the filed tariff would violate the Commission's maximum allowance of $126 million for NHEC's Seabrook investment in that the tariff would recover nuclear fuel amortization under the Energy Charge in addition to $126 million of investment under the Capacity Charge. PSNH/NU argue that the fuel cost was financed with REA/CFC debt and is therefore subject to the maximum authorized borrowing limit identified by the Commission in the Sellback Orders. We agree. Our Order No. 20,122 at 30 identified the formula set forth in the March 30, 1981 letter (NHEC Exh. 3) as defining the full cost term of the Sellback Agreement on which the Cooperative relied in agreeing to purchase its Seabrook share from PSNH. That formula included nuclear fuel. The Commission then cited the testimony of NHEC witness Anderson "that the Cooperative's approved investment in Seabrook 1 *inclusive of nuclear fuel* equals approximately $126 million" (at 34, emphasis added), and disallowed as a cost recoverable under the Sellback any Seabrook debt in excess of the $126 million authorized by this Commission. We therefore find that the NHEC tariff should be modified to recover no more than the approved $126 million of investment, appropriately allocated between the Capacity Charge and the Energy Charge.

[4] Finally, PSNH/NU argue that NHEC's tariff is deficient because it fails to comply with the Commission's tariff filing requirements as stated in N.H. Admin. Rule Puc 1601.04(d). The NHEC's Objection on this issue is well taken. The rules cited by PSNH/NU apply to tariffs for retail service. It is inappropriate to attempt to stretch their provisions to apply to the filing of a wholesale tariff. The Commission has not adopted rules applicable to the filing of wholesale tariffs. Therefore, we do not find that failure to comply with Commission tariff filing requirements is grounds on which the NHEC tariff should be rejected.

Our Order will issue accordingly.

ORDER

Based upon the foregoing Report which is incorporated herein by reference; it is hereby

ORDERED, that the New Hampshire Electric Cooperative, Inc. (NHEC) respond no later than September 27, 1991 to the ten specific items identified by Public Service Company of New Hampshire/Northeast Utilities (PSNH/NU) in order to provide additional specification and/or explanation of the terms and conditions of its tariff NHPUC No. 14-W; and it is

FURTHER ORDERED, that a prehearing conference to enable the parties to review NHEC's additional specification and/or explanation of its tariff, to designate the issues that remain in dispute, and to recommend a procedural schedule for the remainder of this phase of the instant docket be held on October 10, 1991 at the Commission offices at 8 Old Suncook Road, Building #1, Concord, New Hampshire; and it is

FURTHER ORDERED, that when NHEC files its compliance tariff at the conclusion of this phase of the instant docket it modify the Availability provisions and the Monthly Rate provision to reflect the findings in the foregoing Report; and it is

FURTHER ORDERED, that NHPUC No.

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14-W, New Hampshire Electric Cooperative, Inc., Tariff for Electric Service, Applicable to Sell-back of Seabrook Unit I to Public Service Company of N.H., Original Pages 1-7, be and hereby is suspended.

By order of the Public Utilities Commission of New Hampshire this third day of September 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-078, Order No. 20,122, 76 NH PUC 311, 124 PUR4th 135, May 3, 1991. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 90-078, Order No. 20,142, 76 NH PUC 373, 124 PUR4th 152, June 3, 1991. [N.H.] Re New Hampshire Electric Co-op., DR 90-078, Order No. 20,164, 76 NH PUC 448, July 2, 1991.

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NH.PUC*09/03/91*[27207]*76 NH PUC 591*Sharon Trauring

[Go to End of 27207]

Re Sharon Trauring

DE 91-109
Order No. 20,233

76 NH PUC 591

New Hampshire Public Utilities Commission

September 3, 1991

ORDER authorizing the installation of buried electric cable under a railroad crossing, where the New Hampshire Department of Transportation had no objection to the project and only private property of the petitioner would be disturbed.

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1. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Underground conduits — Electric cable — Crossing under railroad tracks — To serve private property — Approved. p. 591.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on July 29, 1991, Sharon Trauring filed with this commission a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct a utility crossing on state-owned railroad property in the Town of Meredith; and

WHEREAS, the entire crossing is to consist of a single 120-volt buried electric line, the same to pass beneath the railroad tracks inside a PVC sleeve (max. 3-inch diameter), all to serve the petitioner's proposed lakeside facilities on the southwestern shore of Lake Waukewan, as shown and described on plans filed with the petition and in supplemental information on file with the Commission; and

WHEREAS, said utilities are proposed to cross the Concord-to-Lincoln Railroad at approximate Valuation Station 2067 + 74, Map

V21/75; and

WHEREAS, the actual grade crossing referred to in the petition falls under the jurisdiction of the railroad and the NHDOT in accordance with RSA 373:1 and :33, and so is not addressed by this order; and

WHEREAS, the Commission finds the utility crossing is necessary to meet the reasonable requirements of the petitioner without substantially affecting public rights on said state property, thus it is in the public good; and

WHEREAS, the only private property affected is that of the petitioner; and

WHEREAS, the petitioner avers and staff has confirmed that the NHDOT Bureau of Railroads is in agreement with this petition; 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 October 1, 1991; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an attested copy of this order to be published once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Meredith area, said publications to be no later than September 17, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Meredith town clerk, by first class U.S. mail, postage prepaid, and postmarked on or before September 17, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the Commission on or before October 1, 1991; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq*. to Sharon Trauring, 23 Leicester Street, Brookline, Massachusetts 02146 to construct, use, maintain, repair and reconstruct the aforementioned crossing of an electric line on public railroad property in Meredith, New Hampshire identified at approximate Valuation Station 2067 + 74, Map V21/75, 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; and it is

FURTHER ORDERED, that all construction conform to requirements of the NHDOT Bureau of Railroads, the National Electrical Safety Code and others as mandated by the Town of Meredith.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1991.

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NH.PUC*09/04/91*[27208]*76 NH PUC 575*Public Service Company of New Hampshire

[Go to End of 27208]

Re Public Service Company of New Hampshire

DR 91-011
Order No. 20,229

76 NH PUC 575

New Hampshire Public Utilities Commission

September 4, 1991

APPLICATION by electric utility for authority to implement a fuel and purchased power adjustment clause (FPPAC) rate of 0.495 cents per kilowatt-hour for the period September 1, 1991, to April 30, 1992; rejected, and recalculation ordered, to account for profits stemming from a disallowance of nuclear fuel costs and certain replacement power costs.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Fuel and purchased power adjustment clause (FPPAC) — Recalculation — Factors — Disallowed nuclear fuel costs — Disallowed replacement power costs. p. 575.

BY THE COMMISSION:

ORDER

WHEREAS, on April 29, 1991, Public Service Company of New Hampshire (PSNH) filed testimony and exhibits in support of establishing an interim Fuel and Purchased Power Adjustment Charge (FPPAC) rate of 0.0¢ /kwh for the period beginning on the First Effective Date and ending on July 31, 1991; and

WHEREAS, on July 17, 1991, the commission issued Report and Order No. 20,173 that, *inter alia*, approved for effect as of the First Effective Date, May 16, 1991, an interim FPPAC of 0.0¢ /kwh applicable to all service rendered from May 16, 1991, through July 31, 1991; and

WHEREAS, on August 12, 1991, the commission issued Order No. 20,205 which authorized PSNH to continue to bill the interim FPPAC rate of 0.0¢ /kwh through August 31, 1991; and

WHEREAS, hearings on the merits were held in this proceeding on July 16 through 18, 1991 and on July 31, August 1 and August 2, 1991; and

[1] WHEREAS, PSNH has proposed an FPPAC rate of 0.495¢ /kwh for the period from September 1, 1991 through April 30, 1992; and

WHEREAS, at its public meeting on September 3, 1991, the commission determined that PSNH should credit to its ratepayers the $4.4 million profit flowing to PSNH as result of the commission's nuclear fuel disallowance in DR 90-186 associated with PSNH's sale of 250 Mw of Seabrook to NU; and

WHEREAS, at said public meeting, the commission also disallowed recovery by PSNH of $100,000 of replacement power costs associated with two Seabrook outages which should have been avoided by New Hampshire Yankee; it is hereby

ORDERED, that PSNH recalculate its proposed FPPAC rate in accordance with this order and file tariff pages accompanied by a technical statement implementing a revised FPPAC rate in accordance herewith; and it is

FURTHER ORDERED, that said revised FPPAC rate shall be applicable to the billing

period from September 1, 1991 through April 30, 1992 subject to a review by the commission of PSNH's filing in compliance with this order.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DR 91-011, Order No. 20,173, 76 NH PUC 459, July 17, 1991. [N.H.] Re Public Service Co. of New Hampshire, DR 91-011, Order No. 20,205, 76 NH PUC 547, Aug. 12, 1991.

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NH.PUC*09/04/91*[27209]*76 NH PUC 585*EnergyNorth Natural Gas, Inc.

[Go to End of 27209]

Re EnergyNorth Natural Gas, Inc.

DR 90-166
Order No. 20,232

76 NH PUC 585

New Hampshire Public Utilities Commission

September 4, 1991

ORDER approving local natural gas distribution company's proposed winter cost-of-gas adjustment, taking note of the take-or-pay costs incurred by the company in securing emergency natural gas and propane supplies.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 32

[N.H.] Winter cost-of-gas adjustment — Procurement practices — Emergency replacement supplies. p. 588.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Winter cost-of-gas adjustment — Demand charges — Waiver — Reason — Delay in delivery of supplies. p. 588.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 25

[N.H.] Winter cost-of-gas adjustment — Take-or-pay charges — To secure emergency replacement propane supplies — Prudent under circumstances. p. 588.

APPEARANCES: Jacqueline Lake Killgore, Esq. and Orr & Reno by Thomas C. Platt, III, Esq. for EnergyNorth Natural Gas, Inc,; Michael Holmes, Esq. for the Office of the Consumer Advocate; James T. Rodier, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On October 1, 1990, Energynorth Natural Gas, Inc. (ENGI) filed tariff pages, testimony and exhibits pertaining to the 1990-1991 Winter Cost-of-Gas Adjustment. The Seventh Revised Page to NHPUC 7-Gas proposed a CGA credit of $0.0212/therm before franchise taxes. An Order of Notice was issued by the New Hampshire Public Utilities Commission (Commission) initially scheduling a hearing for October 19, 1990 which was subsequently continued to October 29, 1990.

On October 29, 1990, ENGI filed an amendment to Seventh Revised Page 1 which increased the proposed credit to $0.0254/therm. This increased credit resulted from an agreement between the parties that allowed EUGI to recover 50% of a certain disputed gas cost, pending a final Commission decision on the

Page 585

issue.

The proposed rate is comprised of costs relating to two distinct periods, the so-called reconciliation period from November 1, 1989 through April 30, 1990, and the future billing period from November 1, 1990 through April 30, 1991. For the former reconciliation period, ENGI reported an overcollection of about $600,000 almost all of which was due to higher than expected interruptible sales profits for the 1989-1990 winter season and an erroneous double-counting of certain LNG costs. The CGA audit, performed by the Staff of the Commission (Staff), also revealed that the prior period overcollection reflected emergency and penalty charges from its pipeline supplier.

At the hearing on October 29, 1990, the Commission ruled that all reconciliation issues for the Winter 1989-1990 period would be deferred. Accordingly, on October 29, 1990, the Commission heard testimony pertaining to the estimated cost of gas and resulting CGA rate for the prospective billing period from November 1, 1990 through April 30, 1991.

On November 8, 1990, the Commission issued Order No. 19,980 which approved the aforementioned CGA credit of $0.0254/therm for effect for the period for November 1, 1990 through March 31, 1991, subject to Commission's adjudication of the reconciliation issues. Hearings on the reconciliation issues were held on November 5, 1990 and January 2 and 3, 1991. The hearings in January of 1991, addressed exclusively reconciliation issues associated with ENGI's propane purchases from Gas Supply, Inc. (GSI) during 1989-1990.

On October 25, 1990 the Staff filed the direct testimony of witness McCluskey. On November 30, 1990, ENGI filed the direct testimony of witnesses Mattaini and Reed and on December 3, 1990 filed the direct testimony of witness Fleming. The rebuttal testimony of witness McCluskey was filed on December 26, 1990.

II. PROTECTION OF CONFIDENTIAL INFORMATION

On two occasions during this proceeding, the record was sealed during Staff's cross-examination of ENGI's witnesses regarding written opinions of ENGI's outside counsel, Richard Samuels.

The record was sealed on November 5, 1991 with respect to certain evidence pertaining to

Mr. Samuels' opinion on any claim ENGI might have against Tennessee Gas Pipeline (TGP) as a result of the NOREX in-service delay. Tr. November 5, 1991, at 81-95.

The record was sealed on January 2, 1991 with respect to certain evidence pertaining to Mr. Samuels' opinion on whether ENGI had a cause of action against GSI arising out of the *force majeure* involving the Hesperus. Tr. January 2, 1991, at 65-70.

The respective portions of the sealed transcripts were placed in separate bound volumes and remained sealed for a period of ten days after being filed with the Commission. If no motion to keep the sealed transcripts permanently sealed was received by the Commission during the ten day period, those portions of the record were to be automatically unsealed. No motions were received by the Commission; consequently, those portions of the transcript have been unsealed and are part of the public record of this proceeding.

III. ISSUES PRESENTED BY THE PARTIES

As noted *supra*, hearings on the reconciliation issues were held on November 5, 1990, and January 2 and 3, 1991. The hearing on November 5, 1990 addressed reconciliation issues involving emergency charges, the NOREX in-service delay, and over-run charges. The hearings in January, 1991 addressed exclusively reconciliation issues associated with ENGI's propane purchases from GSI during the winter of 1989-1990.

A. *Reconciliation Issues Heard on November 5, 1990*

1. *Emergency Charges*

ENGI's filing included emergency gas charges in order to recover the cost of 19,107 MMBtu of emergency service received from TGP. The Staff raised the issue of whether

Page 586

ENGI had been correctly billed by TGP for the emergency gas. According to Mr. Fleming, ENGI purchased emergency gas starting December 13, 1989 to: (a) replace the TGP NOREX volumes that had been expected earlier but were not delivered until December 18, 1989; and (b) replace vapor supplies from Bay State Gas Company that had been discontinued on December 21, 1989.

2. *NOREX In-Service Delay*

ENGI's filing included NOREX demand charges covering the period November 1, 1990 to December 18, 1990. The Staff raised the issue of whether ENGI was liable to TGP for demand charges prior to the in-service date.

3. *Over-run Charges*

Staff raised two issues during the proceeding regarding over-run charges. On November 5, 1990, Mr. Fleming testified that the initial bill from TGP for over-run charges was reduced from $144,000 to $20,200 as a result of a "correction ... [of] ... two erroneous numbers at the Laconia take station on the fourteenth and fifteenth ...". Tr. November 5, 1990 at 55. Mr. Fleming also testified that the reduction of the over-run penalty had nothing to do with any waiver from TGP associated with the NOREX delay.

In contrast, on March 1, 1990, ENGI had previously submitted to the Commission, subject to Protective Order No. 19,721, an opinion of its outside counsel, Richard Samuels, which indicated that a primary reason for not asserting a claim against TGP for increased gas costs resulting from the NOREX delay was the fact that TGP waived the $144,000 over-run penalty because of the NOREX in-service delay.

Thus, Staff raised the issue, during the proceeding, as to which of the two explanations offered by ENGI for the waiver of over-run charges was correct.

The daily quantity of gas available to ENGI from TGP is generally limited to ENGI's contract demand. Mr. Fleming testified, however, that under TGP's tariff ENGI could order charge. Due to the unpredictability of demand, ENGI took a total of 2,020 MMBtu over and above the 17,236 MMBTU allowed under the 2% limit, for a total over-run cost of $20,200 for nine days in the latter part of December, 1989. Tr. November 5, 1990, at 22-23. The Staff also raised an issue during the proceeding as to whether the $20,200 over-run charge was prudently incurred.

B. *Reconciliation Issues Pertaining to ENGI's Relationship with Gas Supply, Inc.*

1. *Staff Pre-filed Testimony*

Mr. McCluskey's pre-filed testimony (Exhibit 23) analyzed the impact of certain propane contracts with one of ENGI's suppliers, Gas Supply Inc., on winter 1989-1990 gas costs. Although some of these issues were raised tangentially in the Affiliate Docket, DR 88-136, they are not related to the furnishing of propane by ENGI to ENPI; rather, they involve the furnishing of propane by GSI to ENGI.

Mr. McCluskey contended that GSI breached its firm contract with ENGI and unreasonably imposed an amendment on the optional contract that subsequently caused ENGI to incur $582,000 in additional gas costs. Mr. McCluskey asserted that it is unreasonable for ENGI to request recovery of these costs through the CGA without having first sought redress from GSI.

2. *ENGI Pre-filed Testimony*

The purpose of Mr. Mattaini's pre-filed testimony was to address the reasonableness of ENGI's gas supply decisions during the 1989-1990 winter season and, in particular, during the months of December, 1989 and January, 1990.

Mr. Mattaini asserted that ENGI's gas supply procurement decisions and related actions were reasonable and prudently designed to meet the needs of its customers. He was of the firm opinion that all of ENGI's fuel charges during the 1989-1990 winter season were reasonable and prudent.

ENGI also presented the testimony of Mr. Reed who took issue with Mr. McCluskey's

recommendation. Mr. Reed did not believe that any of ENGI's gas costs incurred during the 1989-1990 winter period should be disallowed. Mr. Reed disagreed with Mr. McCluskey's conclusion that GSI improperly invoked the *force majeure* clause and failed to cure the *force majeure* condition in a timely fashion under its firm propane contract with ENGI. He also disagreed with the notion that ENGI should initiate legal action against GSI and with Mr.

McCluskey's position that the failure to seek redress from GSI constitutes a basis for disallowing any of ENGI's gas costs. According to Mr. Reed, if one were to accept, for the sake of argument, that GSI should have resumed deliveries under the firm contract at an earlier date, ENGI's gas cost would not have been affected.

Mr. Fleming's pre-filed testimony addressed the gas supply and shortage situations in December, 1989 and the steps that ENGI took in the winter of 1989-1990 as a result. His testimony was similar to his prior testimony in ENGI's 1990 Summer CGA proceeding, DR 90-45, and in the Affiliates Dockets, DR 88-136 and DR 89-181.

3. *Staff Rebuttal Testimony*

Mr. McCluskey's rebuttal testimony (Exh. 23 A) addressed Mr. Reed's testimony. Mr. McCluskey reiterated his position regarding the non-availability of firm propane in the period starting with the resumption of supplies in early January, 1990 and ending late in January, 1990. His testimony concluded that the invocation of a *force majeure* during this period was in violation of the clause requiring that the action "be remedied with all reasonable dispatch" because product became available the day the Hesperus unloaded. With regard to the validity of the *force majeure*, Mr. McCluskey's opinion is that a *force majeure* is valid only if the supplier cannot foresee or overcome the event. According to Mr. McCluskey, no evidence has been offered or submitted by ENGI that demonstrates the event in question met either of these conditions.

IV. COMMISSION ANALYSIS

A. *Reconciliation Issues Heard on November 5, 1990*

1. *Emergency Charges*

[1] As we have noted, TGP supplied ENGI with a daily quantity of emergency gas to replace the volumes that TGP would otherwise have delivered under the NOREX project. TGP also delivered, at ENGI's request, emergency gas on December 21, 1989 to replace LNG vapor supplies discontinued by Bay State Gas Company. In both cases, we find ENGI's arrangements to be reasonable. However, emergency gas, according to Mr. Fleming, is billed at TGP's CD-6 rate if delivered through a CD take station. Because the emergency volumes were actually billed at the GS-6 rate, TGP had, in fact, overcharged ENGI by $1,420 (Exhibit 7). Because of this error, Mr. Fleming testified that ENGI has requested that the TGP overcharge be refunded. Tr. November 5, 1990, at 12.

Consequently, we will allow the recovery of the associated charges, but will require ENGI to report, within 45 days of the date of this Order, on the outcome of its discussions with TGP on the $1,420 overcharge for emergency service.

2. *NOREX Demand Charges*

[2] Mr. Fleming testified that as a result of the delay in obtaining the additional NOREX capacity ENGI would not be billed by TGP for the associated NOREX demand charges for the period November 1, 1990 through December 18, 1990. We therefore direct ENGI to report, within 45 days of the date of this Order the amount of the additional demand charges and the documentation that such charges will not be recovered from ratepayers.

3. *Over-run Charges*

[3] Mr. Fleming further asserted that by fully utilizing an allowable 2% variation, ENGI avoided about $100,000 of high cost propane supplies. He calculated the avoided cost by multiplying the 17,236 MMBtu avoided under the 2% limit by the difference in cost between

Page 588

TGP natural gas at $3.40/MMBtu and optional propane at $9.30/MMBtu. Thus, Mr. Fleming contends that ENGI was prudent in exposing ratepayers to over-run charges because such charges were less than the avoided costs. Tr. November 5, 1990, at 25-26. Mr Fleming also testified that at the time this decision was made and the over-run charges were incurred, ENGI had used only about 1.5 million gallons of the more expensive 3 million optional gallons under contract with GSI. Thus, according to Mr. Fleming, ENGI was in a position to displace costly optional propane supplies with less costly natural gas (over-run charges included). As we will find below, the take-or-pay nature of the amended optional propane contract subsequently required ENGI to take all of the high cost propane gallons. However, as also addressed below, we cannot find fault with ENGI's decision to accept a take-or-pay arrangement given the contemporaneous circumstances confronting it. Accordingly, we will allow recovery of the $20,200 over-run charges.

B. *Reconciliation Issues Pertaining to ENGI's Relationship with GSI.*

The positions of the parties regarding reconciliation issues pertaining to ENGI's relationship with GSI present us with the need to adjudicate the following two issues: (1) Whether ENGI was prudent when it decided on December 27, 1989 to amend its optional contract with GSI and to purchase 1,650,000 gallons of propane at a fixed price on a take-or-pay basis; and (2) Whether ENGI was prudent when it decided not to pursue legal action against GSI.

Under the totality of the circumstances confronting ENGI on December 27, 1989, the Commission does not find that ENGI acted imprudently in securing the supplies of gas at the price for which it had contracted. As to whether ENGI should have subsequently engaged in legal action to attempt to recover the cost, the record evidence does not lead the Commission to find that ENGI's decision not to pursue legal action was imprudent.

Prudence is "essentially ... an analogue of the common law negligence standard". *Appeal of Conservation Law Foundation*, 127 N.H. 606, 637 (1986). "While the scope of the prudence principle is by no means clear, it at least requires the exclusion from rate base of costs that should have been foreseen as wasteful." *Id*. "[P]rudence judges an investment or expenditure in the light of what due care required at the time an investment or expenditure was planned and made ..." *Id*. at 638. Moreover, a person who finds himself in an emergency through no fault of his own must conduct himself as a reasonably prudent man would under the circumstances and the fact that the actor is confronted with a sudden emergency is a factor in determining whether he acted with ordinary care. *Wiezeck v. Sepessy*, 116 N.H. 160 (1976).

The transcript of this proceeding containing the cross-examination of Mr. Mattaini by Staff reveals the basis for ENGI's decision to amend the optional contract:

Q. [Mr. Rodier] ********** If you want gas off the Hesperus, it is going to be

available at a higher price. Would you agree with that?

A. Yes.

Q. So that is really why you entered into the contract, is it not?

A. We could not expect under the circumstances any supplier to have anticipated the circumstances at SEA-3. SEA-3 informed our supplier what the price would be. We could not expect him to eat the difference.

Q. So, if you wanted propane in January to serve the needs of your customers, you needed to enter into this take or pay agreement?

A. As it turned out we didn't because the weather turned warm, but we made the decision, we didn't know.

Q. Right. So, at that time —

A. At that time we had to make a decision.

Q. And if you wanted propane in January —

A. At that particular time, yes.

Q. (continuing) — Your only decent option or good option or only option, in your view, was to enter into this take or pay

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agreement?

A. Yes. And in view it was and we still were not assured that the Hesperus was coming in.

Tr. January 2, 1991 at 69, 70.

Thus, as to the first prudency issue, it is clear that ENGI reasonably believed that the amended take-or-pay agreement was necessary to ensure that propane supplies would be available in January, 1990. It was also reasonable for ENGI to believe that it was necessary to secure such additional supplies given the record cold temperatures and propane shortages that existed at the time the decision was made. ENGI could not have known at the time that January temperatures would be relatively warm and that propane availability would be adequate.

With respect to the second prudency issue, Mr. Mattaini testified that there were pragmatic considerations for not enforcing the firm contract — primarily the long-term business relationship built up with GSI. *Id*. at 72. Mr. Mattaini regarded GSI as a reliable supplier. *Id*. at 72 and 76. Thus, according to Mr. Mattaini, "we couldn't expect any supplier to eat all that [the economic loss] when it was not his fault ..." *Id*. at 76. Additionally, New Hampshire statutory law provides that an agreement "modifying a contract ... [for the sale of goods] needs no consideration to be binding." RSA 382-A:2-209. The annotations to this statutory provision indicate that "modifications made thereunder must meet the test of good faith." More specifically:

The test of "good faith" between merchants or as against merchants includes observance

> of reasonable commercial standards of fair dealing in the trade (Section 2-103), and may in some situations require an objectively demonstrable reason for seeking a modification. But such matters as a market shift which makes performance come to involve a loss may provide such a reason even though there is no such unforeseen difficulty as would make out a legal excuse from performance.

RSA 382-A:2-209 (1961) (Uniform Laws Comments at 57)

The Commission expects utilities to pursue vigorously actions against vendors where there is a reasonable probability of recoveries that benefit ratepayers. Vendors should not be able to rely on ratepayer recovery of expenses as an excuse for shoddy performance when they deal with utilities; if anything performance should be enhanced because of the public interest in safe and reliable service. The Commission must also recognize, however, that it is management that must, in the first instance, exercise its judgment (in consultation with counsel) as to the costs and benefits of contemplated legal actions against vendors. Those judgments and our review thereof must, of necessity, be very fact specific. Thus, a finding here can carry no weight in subsequent investigations, where the facts will invariably be different. Under the particular facts of record in this case, ENGI reasonably balanced a number of factors including its relationship with a reliable supplier, the unusual circumstances causing the market shift which triggered the various parties' exposure to loss, and the state of the law with respect to the liability of the supplier under these circumstances. We also recognize that ENGI relied on a written opinion from the law firm of McLane, Graf, Raulerson and Middleton which advised against such legal action.

Thus, the record leads us to find that ENGI's decisions to accept new contract terms to secure additional propane volumes in January, 1990 and to forego subsequent legal action against its supplier were not imprudent and, accordingly, the cost of these decisions is a proper expense for ratemaking purposes.

V. CONCLUSION

This Order closes the book on the difficult situation confronting all parties caused by the record cold temperatures in December of 1989 and the concomitant shortages of propane product. As noted above, we have evaluated ENGI's actions under a prudence standard which requires us to evaluate management actions based on contemporaneous circumstances, rather than by the application of hindsight. The

existence of particularly unusual circumstances in December of 1989 causes us to give ENGI management a degree of latitude that would not be appropriate under the circumstances that normally prevail.

We must also note that ENGI could significantly improve the manner in which it provides the Commission with information. For example, Mr. Fleming should have advised the Commission during the January, 1990 COGA hearings of the GSI contract amendment. Given apparent conflicts in ENGI testimony and the failure to disclose material facts in a timely manner, the Commission finds that the thorough investigation undertaken by the Staff in this proceeding was appropriate and in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, that the ENGI 1990-1991 Winter Cost of Gas Adjustment be approved in accordance with the terms of the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this fourth day of September 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-166, Order No. 19,980, 75 NH PUC 717, Nov. 8, 1990.

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NH.PUC*09/09/91*[27210]*76 NH PUC 592*EUA Power Corporation

[Go to End of 27210]

Re EUA Power Corporation

DF 91-129
Order No. 20,235

76 NH PUC 592

New Hampshire Public Utilities Commission

September 9, 1991

ORDER authorizing electric utility to receive up to $15 million in short-term advances from United Illuminating Company and Connecticut Light and Power Company as financing for preserving the utility's interest in Seabrook, for which a senior lien on the utility's assets would be given in return.

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1. SECURITY ISSUES, § 98

[N.H.] Short-term notes — Advances — Electric utility — Purpose — Preserving interest in Seabrook plant — Lien on property. p. 593.

BY THE COMMISSION:

ORDER

WHEREAS, EUA Power Corporation ("EUA Power") has filed a petition with respect to

advances pursuant to a certain Stipulation and Consent Order; and

[1] WHEREAS, under the terms of the Stipulation and Consent Order filed in the United States Bankruptcy Court for the District of New Hampshire, United Illuminating Company ("UI") and Connecticut Light and Power Co., ("CL&P") have agreed to advance to EUA Power up to $15 million aggregate principal amount on a short-term basis for the purpose of paying EUA Power's share of certain expenses related to the Seabrook Power Plant ("Power Plant"); and

WHEREAS, UI and CL&P will receive a senior lien on all the assets of EUA Power until such time as any advances made, with interest, are reimbursed; and

WHEREAS, under the terms of the Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units, dated May 1, 1973 as amended ("JOA"), participating joint owners have a right to make advances on behalf of other joint owners such as EUA Power for Seabrook expenses upon certain terms and conditions; and

WHEREAS, the advances established under this Agreement will allow EUA Power to preserve the value of its interest in the Power Plant, as no other sources presently are willing to provide funds to the company; and

WHEREAS, the Official Committee of Bondholder representing Series B and Series C secured noteholders affected by the lien has consented to the placement of the senior lien on EUA Power's assets; and

WHEREAS, the amount of interest charged on the advances is based on the rate specified in the paragraph 25.1 of the JOA and the financing as proposed is generally consistent with the terms of the JOA; it is hereby

ORDERED, that pursuant to RSA Chapter 369, the commission finds that the proposed transaction, upon the terms proposed in the Stipulation and Consent Order, is consistent with the public good; and it is

FURTHER ORDERED, that EUA Power be and hereby is granted the authority to receive advances up to $15 million from United Illuminating Company and Connecticut Light & Power Co. and to take all actions necessary for the consummation of such advances including but not limited to providing a senior lien on all of EUA Power's assets to United Illuminating and Connecticut Light & Power; and it is

FURTHER ORDERED, that after executing all documents necessary to complete this transaction, EUA Power shall file copies of same with the commission.

By order of the Public Utilities Commission of New Hampshire this nineth day of September 1991.

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NH.PUC*09/10/91*[27211]*76 NH PUC 593*Dual Party Relay Service — Telecommunications Relay Service (TRS)

[Go to End of 27211]

Re Dual Party Relay Service — Telecommunications Relay Service (TRS)

DE 90-225
Order No. 20,236

76 NH PUC 593

New Hampshire Public Utilities Commission

September 10, 1991

ORDER selecting Sprint Services to develop and operate the state's telecommunications relay service (TRS) for the deaf and hearing- and speech-impaired.

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1. SERVICE, § 467.1

[N.H.] Telecommunications — Relay service for the deaf — Selection of carrier — Sprint Services — Factors — Quality of service — Technological ability — Experience — Cost-effectiveness. p. 596.

2. SERVICE, § 467.1

[N.H.] Telecommunications — Relay service for the deaf — Selection of carrier — Sprint Services — Conditions — Hiring of outreach manager. p. 596.

APPEARANCES: John B. Messenger, Esq., for New England Telephone Company,;

Dom D. D'Ambruoso, Esq., for Hamilton Telephone Company; Amy Ignatius, Esq., for Dunbarton Telephone Company, Granite State Telephone Company, Merrimack County Telephone, Wilton Telephone; Helen M. Hall, Esq., for United Telecom, Inc., dba Sprint Services; George Finklestein, Esq., for AT&T; Karon Doughty for Union Telephone Company; Steven Jones for Granite State Independent Living Foundation; Susan Auerbach for the State Department of Education, Program for the Deaf and Hard of Hearing; Eugene F. Sullivan III, Esq., for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Introduction*

Dual party relay service (or telecommunications relay service "TRS[1(139)] ") is a service that enables telephone communication between hearing people and deaf, hard of hearing or speech impaired people. Telephone calls are placed through a relay center where communications

assistants (CAs) relay the conversation. Hearing and speaking people communicate through the CA who types what is spoken to the deaf, hard of hearing and speech impaired people using a text telephone (TT). Deaf, hard of hearing and speech impaired people use TTs to communicate through the CA who says what is typed to hearing people. The relay center provides the ability for speech impaired people who can hear, to listen directly to the other party and for deaf and hard of hearing people who can speak, to speak directly to the other party, as the customer prefers. CAs are transparent to the conversation and serve as a conduit using eyes, ears and voice to facilitate the call. CAs adhere to a strict code of ethics and confidentiality and do not personally participate in the conversation.

II. *Procedural History*

On December 24, 1990, the Commission issued an Order of Notice setting a prehearing conference for February 7, 1991, pursuant to RSA 541-A:16 for all telephone utilities in the State of New Hampshire to address the Americans with Disabilities Act of 1990 (ADA). The Order of Notice stated that the ADA requires all telephone utilities to provide TRS to their respective customers and set a prehearing conference to determine the means of compliance with the ADA in the State of New Hampshire. At the February 7, 1991, hearing, the Commission determined and the Parties agreed, that the proper means of effectuating the goals of the ADA in the State of New Hampshire was a single TRS provider to which all New Hampshire telecommunications utilities shall subscribe.

On February 28, 1991, the Commission, by secretarial letter, established a procedural schedule for the implementation of a TRS service provider in the State of New Hampshire. In the secretarial letter the Commission bifurcated this docket to address separately the additional issue of cost recovery for TRS.

On April 15, 1991, the Commission issued a Request for Proposal (RFP) for a Franchise to Provide Dual Party Relay Service in New Hampshire. On May 15, 1991, proposals were submitted by AT&T, Hamilton Telephone Company (Hamilton), New England Telephone Company (NET) and Sprint Services (Sprint) (collectively the Parties).

On May 23, 1991, the Parties met for a settlement conference and drafted a Stipulation Agreement on cost recovery which was presented to the Commission at a hearing on May 28, 1991.

The Parties filed comments on the proposals by June 21, 1991. NET's comments included restated prices on a comparable basis to the other Parties. The Commission Staff (Staff) submitted its analysis of the proposals on June 28, 1991. Hearings on the merits of the proposals were held July 9, 10 and 11, 1991. Briefs and revisions to the proposals made during the hearings were submitted by the Parties August 6, 1991. Staff's revised analysis was submitted August 15, 1991.

III. *Positions of the Parties*

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Hamilton

In addition to meeting the requirements of the RFP, Hamilton asserted that its size and

alertness to customer needs were its greatest advantages. In support of its ability to provide the best service for New Hampshire, Hamilton stated its philosophy is to "hire people with a customer service attitude; give them the right tools; and make sure they have the education and training they need." (TR Day I pp 11-12) Throughout the proceedings Hamilton emphasized its dedication to customer needs and the commitment of and to its employees. Because the company is small, Hamilton argued its employees are more diversified and dedicated and thus are better able to serve its customers than a larger company.

Sprint

Sprint argued it provides a higher quality of service than the other companies, noting its commitment to exceed quality of service standards; utilization of a system that in most cases, distinguishes voice callers from TT callers without the need for a separate 800 number; utilization of an automatic number identification (ANI) database to reduce call set up time and improve quality of service; strong focus on the customer and New Hampshire including use of 1-800-RELAY-NH as its access number and by answering calls with "relay New Hampshire."

NET

NET argued it was best suited to provide service because it is a major employer and a member of the New Hampshire business community, familiar with New Hampshire customers. Its established presence in New Hampshire and New England, NET asserted, make NET more qualified than the other petitioners to best meet the needs of the customers. Additionally, NET asserted it was uniquely qualified to meet the requirements of the ADA because only NET could connect callers directly to their chosen interexchange carrier.

AT&T

AT&T argued it was the best provider for the relay users of New Hampshire because of its experience and historical commitment to serving deaf, hard of hearing and speech impaired communities. AT&T pointed out it was the first and remains the only provider of Operator Services for the Deaf, it was the first interexchange carrier to provide TDD discounts, it is the only provider to utilize a nationwide consumer panel on disabilities, it has invested in relay specific privacy technologies such as voice and hearing carryover and text to speech, it has a record of 100 percent on time implementation, it will use the AT&T fiber optic network, and it has a unique Disaster Recovery Plan.

Granite State Independent Living Foundation (GSILF)

GSILF supported the Sprint proposal and urged the Commission to implement a full time Outreach Program in New Hampshire. GSILF contended that without proper education, specifically directed to the hearing community, the TRS would become a special service for deaf, hard of hearing and speech impaired individuals. GSILF stressed that TRS is a service for all people and that organizations should be trained to use TRS as a valid, confidential method of communication.

State Department of Education

The State Department of Education Vocational Rehabilitation, Program for the Deaf and Hard of Hearing (Dept of Education) emphasized the importance of quality of service and specifically recommended having a single 1-800 number to access the relay service; discounts to

all relay users; a choice of interexchange carrier; one charge for multiple calls when leaving a message on an answering machine; and access to automated answering devices. In addition the Dept of Education advocated consumer involvement by deaf, hard of hearing, speech impaired and hearing consumers, as well as an Advisory Board and a full time Outreach Manager dedicated specifically to New Hampshire TRS.

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Staff

Staff revised its initial analysis after final proposals were submitted. It recognized final proposals improved AT&T's, Hamilton's, and NET's initial proposals. However, after evaluating all proposals in their final form, Staff recommended Sprint. Staff stated that Sprint's proposal offered the highest quality of service overall. Staff was also impressed by Sprint's consumer oriented approach, and suggested that the Commission's stated goals of quality first and cost second would best be satisfied by Sprint.

IV. *Commission Analysis*

[1] The Commission is convinced that all petitioners meet the minimum mandatory requirements of the RFP and are each qualified to provide telecommunications relay service in New Hampshire. As a result, our analysis is primarily geared towards selecting the highest cost-effective quality of service for the citizens of New Hampshire, and secondarily, provision of that service at the lowest cost. Based on all the evidence, we have determined that Sprint will provide the highest quality of service to the citizens of New Hampshire. Sprint's dedication to its customers and innovation were revealed throughout the proceedings. Sprint's efforts to improve consistently on or exceed the standards persuaded us that Sprint will provide the highest quality of service which we expect will continue to improve as technology progresses.

[2] We find GSILF's and the Dept of Education's arguments in favor of a full time Outreach Manager located in the state compelling and are persuaded that such a position would be in the public good. Therefore, Sprint will be required to hire a full time Outreach Manager to work in New Hampshire. The Manager's sole duties will be for the promotion of TRS and education of all New Hampshire citizens regarding TRS operations. Failure by Sprint to abide by this requirement will result in a reevaluation of this decision.

We find that without Outreach, Sprint's prices are generally the lowest. Upon review of Sprint's price per minute including Outreach however, the cost variation among the minutes per month categories is unclear. As a result, a condition precedent to Sprint's acceptance as the TRS provider is the submittal by Sprint of the actual costs for the Outreach Manager which will be allocated by access lines rather than on a price per minute basis.

Additionally, we find the Stipulation Agreement entered into by the Parties on May 28, 1991 (attached) is in the public good, and hereby approve it. Staff and Sprint shall estimate the annual costs of TRS on an access line basis and provide the required amount to the Local Exchange Companies (LECs) for incorporation in the basic exchange tariffs. Staff, Sprint and the LECs are instructed to establish the method of cost recovery for the provision of toll service because the Agreement left this issue open until the provider was selected. Results are to be reported to the Commission before cutover of the TRS in New Hampshire. Staff and the LECs are also directed

to determine an appropriate method of accounting for revenues and expenses before the TRS charge is billed to customers.

We note that recommendations for establishing an Advisory Board were unanimous and, therefore, the Commission will establish an Advisory Board in New Hampshire. The Board shall advise the Commission on necessary improvements to the New Hampshire TRS, on the resolution of complaints where necessary, and on technological developments in other TRS centers. The Board shall consist of one representative from each of the following organizations: the NH Association for the Deaf (deaf consumer); Self Help for the Hard of Hearing (hard of hearing consumer); Helen Keller National Center (deaf/blind consumer); NH Speech and Hearing Association (speech impaired consumer); NH Registry of Interpreters for the Deaf (interpreter); Granite State Independent Living Foundation; citizen appointed by Division of Vocational Rehabilitation; the Office of Consumer Advocate; New England Telephone; New Hampshire Telephone Association (independent telephone company representative); a member of the public appointed by the Commission; a member of the business community, a member of Staff and the TRS

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Outreach Manager.

The Commission is aware Sprint will require certain information from the LECs before cutover of the TRS. The LECs shall provide Sprint with all New Hampshire exchange numbers (NNX codes), extended local calling areas, municipal calling areas in municipalities divided by telephone exchange boundaries and any and all other information required to ensure local calls placed through the TRS are not billed as toll calls, no later than September 23, 1991.

Finally, we find from the record, that Sprint has the financial, managerial and technical expertise to operate the TRS for the State of New Hampshire and that Sprint's selection as the TRS provider is in the public good subject to the conditions stated above.

Our order will issue accordingly.

ORDER

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

ORDERED, Sprint Services (Sprint) is granted the franchise to provide telecommunications relay service (TRS) in the State of New Hampshire subject to the conditions stated below; and it is

FURTHER ORDERED, Sprint become incorporated in New Hampshire pursuant to RSA 374:24; and it is

FURTHER ORDERED, Sprint file tariffs incorporating rules, regulations and prices associated with the provision of TRS; and it is

FURTHER ORDERED, Sprint develop a full time Outreach Program for New Hampshire TRS and hire a full time employee to work in New Hampshire as Manager of the Outreach Program, the cost of which shall be reviewed, and allocated by access lines; and it is

FURTHER ORDERED, an Advisory Board be established to ensure the ongoing

improvement and success of TRS in New Hampshire as described in the foregoing report; and it is

FURTHER ORDERED, the Local Exchange Companies (LECs) file revisions to basic exchange tariffs incorporating the per access line cost of TRS to be determined by the Commission Staff (Staff) and Sprint; and it is

FURTHER ORDERED, Sprint, Staff and the LECs determine a method of toll compensation before cutover of the TRS in New Hampshire; and it is

FURTHER ORDERED, Staff and the LECs determine a proper method of accounting for revenues and expenses collected and incurred as a result of TRS before the TRS charge is billed to customers; and it is

FURTHER ORDERED, the LECs provide Sprint with the information required to ensure local calls placed through the TRS are not billed to customers as toll calls and that the information be provided to Sprint in electronic format, if possible, no later than September 23, 1991.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1991.

STIPULATION AGREEMENT
RE COST RECOVERY

1.0 This agreement is entered into this 28th day of May, 1991, between the local exchange companies, the other participating parties and the staff of the New Hampshire Public Utilities Commission for the purposes of and subject to the terms and conditions hereinafter stated.

2.0 *Introduction.* On December 24, 1990, the Commission issued an order of notice setting a prehearing conference for February 7, 1991, pursuant to RSA 541-A:16 for all telephone utilities in the State of New Hampshire to address the requirements of the Americans with Disabilities Act of 1990 (ADA).

2.1 At the February 7, 1991, hearing, the Commission determined, and the parties agreed, that the proper means of effectuating the goals of the ADA in the State of New Hampshire was a single dual party relay service provider to serve all New Hampshire telecommunications subscribers.

2.2 On February 28, 1991, the Commission, by secretarial letter, established a procedural schedule for the implementation of a dual party relay service provider in the State of New Hampshire. In the secretarial letter the Commission bifurcated the docket to deal with cost recovery for the costs associated with a dual party relay service and set a hearing date for a

prehearing conference on March 20, 1991.

2.3 A hearing was held on March 20, 1991, which resulted in Report and Order No. 20,090 setting a hearing for May 28, 1991. At a settlement conference held on May 23, 1991, the Staff, the local exchange companies, and all interested parties reached the following stipulation:

3.0 *Dual Party Relay Service Charge*. The local exchange companies ("LECS") will collect on a monthly basis, a dual party relay service charge per access line to be folded into basic exchange rates recognizing the fact that dual party relay service expands the definition of basic exchange service.

3.1 The charge per line shall be uniform throughout the state, in an amount approved by the PUC. The amount of the charge shall be the provider's tariffed price per minute times the estimated annual minutes of use, along with a reasonable allowance for uncollectibles and fund administration expenses, if any, the total of which is divided by the average number of access lines in service during the previous calendar year. For "seasonal service" lines or access lines which are temporarily suspended, the dual party relay service charge assessed against an access line shall be reduced to one-half the monthly charge during the month(s) in which service is temporarily suspended.

3.2 The amount of the charge shall be adjusted annually to reflect revised minutes of use estimates for the following year, and to make up for any over or underrecovery experienced by the fund administrator during the previous year.

3.3 Cost recovery, for the provision of toll, will be determined based on the selected provider's method of delivering the call once the provider is selected.

4.0 *Payment of Relay Service Costs by LECs*. Each month the relay service provider shall calculate the total relay service costs to be recovered from the LECS, based on the price per minute approved by the PUC in this proceeding and the minutes of use actually processed by the relay center. Each month the relay service provider shall render a bill to the fund administrator for the amount owed, including a statement showing how the amount was calculated. Any dispute over the calculation, billing, and payment of these amounts may be brought before the PUC.

5.0 *Escrow of Dual Relay Service Charge.*

The LECs shall contract with an escrow agent, acceptable to all of the LECs and the Commission, to be known as the fund administrator. Upon dispute among the LECs over the choice of the fund administrator a list of proposed fund administrators shall be presented to the Commission and the Commission shall resolve the dispute by selecting the appropriate fund administrator from the submitted list. The LECs shall remit to the fund administrator all funds received via the Dual Party Relay Service Charge. The fund administrator shall pay, upon presentation, all bills submitted to it by the Dual Party Relay Service Provider chosen by the Commission. Any interest earned on the escrowed funds shall be used to offset the Dual Party Relay Service Charge and any charge for fund administration shall be included in the Dual Party Relay Service Charge. The fund administrator shall file an annual report with the Commission delineating: the funds received and the LEC specific source of the funds, the funds dispersed, accrued interest and administration costs. The LECs and the Commission shall have the right to audit the fund administrator.

6.0 In light of the fact that all LECs have been made mandatory parties to this case and officially noticed of the issues involved the failure of a LEC to appear at the May 28, 1991, hearing and affix their signatures hereto shall be deemed to be a waiver of that or those LECs rights to object to this stipulation. Furthermore, any party to the proceeding whose signature is

not affixed hereunder, similarly waives its rights.

IN WITNESS WHEREOF, the parties fully authorized agents have executed this agreement.

STAFF OF THE NH PUBLIC
UTILITIES COMMISSION
By its attorney
Eugene F. Sullivan, III
Staff Attorney

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
VOCATIONAL REHABILITATION
Susan E. Auerbach

BRETTON WOODS TELEPHONE COMPANY

CHICHESTER TELEPHONE COMPANY (TDS)
Michael Roddy

CONTEL OF NEW HAMPSHIRE, INC.
Gloria Zarotny

DIXVILLE TELEPHONE COMPANY

DUNBARTON TELEPHONE COMPANY, INC.
Peter Montgomery

GRANITE STATE TELEPHONE WRS, INC.
William R. Stafford

KEARSARGE TELEPHONE COMPANY (TDS)
Michael Roddy

MERIDEN TELEPHONE COMPANY (TDS)
Michael Roddy

MERRIMACK COUNTY TELEPHONE COMPANY
John LaBonte

NEW ENGLAND TELEPHONE COMPANY
John B. Messenger

UNION TELEPHONE COMPANY
Richard P. Thayer

WILTON TELEPHONE COMPANY

7,0 I, Stephen Jones, on behalf of the Granite State Independent Living Foundation, agree not to object to this stipulation.

GRANITE STATE INDEPENDENT LIVING
Stephen Jones

FOOTNOTES

[1]The FCC in its Report and Order released July 26, 1991, in CC Docket No. 90-571 replaced the terminology dual party relay service (DPRS) with telecommunications relay service, among others, because the term DPRS "entrenches current technology, a result contrary to the intent of Congress. Therefore, TRS shall be the operative term for relay services." (Footnote 1 in the FCC Order). As such we will adopt the term TRS.

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NH.PUC*09/10/91*[27212]*76 NH PUC 599*New Hampshire Electric Cooperative, Inc.

[Go to End of 27212]

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 20,238

76 NH PUC 599

New Hampshire Public Utilities Commission

September 10, 1991

ORDER establishing a separate escrow account in which to place funds to be used by an electric cooperative to refund ratepayers for overcollected surcharges, during the cooperative's bankruptcy and reorganization proceedings.

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1. REPARATION, § 45

[N.H.] Procedure — Escrow account — For refunds of overcollected surcharges — During bankruptcy proceedings. p. 600.

BY THE COMMISSION:

ORDER

WHEREAS, on December 28, 1989, the New Hampshire Public Utilities Commission ("Commission") issued Report and Order No. 19,656 as part of Docket No. DR 89-245, instructing the New Hampshire Electric Cooperative, Inc. ("NHEC") to establish an escrow

account separate from the general fund of NHEC for the purpose of holding monies collected on the 5.5 percent temporary rate surcharge pursuant to RSA 362-C:7, which monies were prohibited from being commingled with any other NHEC funds; and

WHEREAS, said escrowed funds are now held by the State of New Hampshire, State Treasurer Georgie A. Thomas serving as escrow agent in accordance with the terms of Order No. 19,656; and

WHEREAS, on August 14, 1991, the Commission ordered NHEC to refund to customers all surcharge monies collected no later than September 13, 1991, and so instructed the State Treasurer and NHEC by secretarial letter dated August 22, 1991; and

[1] WHEREAS, on August 8, 1991, during a hearing before the Commission on the issue of the refund, counsel to the State of New Hampshire requested that a new escrow account be created to facilitate the refund of the surcharge monies, so that no surcharge monies would be commingled with other NHEC funds, to which the Commission staff concurred and to which no party, including NHEC, objected; *see*, Transcript August 8, 1991 at 58; and

WHEREAS, placement of surcharge monies into a general fund of NHEC presents the risk that these monies could be considered within of NHEC's estate subject to the claims of NHEC's creditors in connection with its reorganization filing before the United States Bankruptcy Court; it is hereby

ORDERED, that NHEC designate a separate escrow account into which the Treasurer may deposit the escrowed funds now within her control, which new account shall not contain other funds of NHEC and which shall be identified as funds earmarked solely for refund of the surcharge monies collected.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 89-245, Order No. 19,656, 74 NH PUC 521, Dec. 12, 1989.

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NH.PUC*09/10/91*[27213]*76 NH PUC 600*Public Service Company of New Hampshire

[Go to End of 27213]

Re Public Service Company of New Hampshire

Additional petitioner: Northeast Utilities Service Company

DR 91-011
Order No. 20,239

76 NH PUC 600

New Hampshire Public Utilities Commission

September 10, 1991

PETITION by electric utilities for confidential treatment of certain data requested by commission staff; granted.

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1. PROCEDURE, § 16

[N.H.] Discovery — Data requests — Confidentiality — Disclosure to commission staff but not to public. p. 600.

BY THE COMMISSION:

ORDER

[1] Public Service Company of New Hampshire/Northeast Utilities Service Company (PSNH/NUSCO), having filed a Motion for Protective Order on August 8, 1991, which, in pertinent part, requested authority to decline to produce a document, identified as The Kepner-Tregoe Analysis in response to Record Request 16; and

WHEREAS, PSNH/NUSCO asserts that disclosure of the aforesaid information would cause confidentiality, commercial and financial damages; and

WHEREAS, confidentiality of documents

filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, RSA 91-A:5 IV exempts from public disclosure, *inter alia*, " ... confidential, commercial, or financial information ... "; it is hereby

ORDERED, that PSNH/NUSCO shall, upon receipt hereof, provide the commission and the commission staff the data requested, The Kepner-Tregoe Analysis. Until such further order of the commission, said data and the information contained therein shall not be copied or reproduced, nor shall the information contained therein be further disseminated; and it is

FURTHER ORDERED, on motion by any party the commission will reconsider the extent to which the material in question shall be made a part of the public record pursuant to RSA Chapter 91-A, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good; and it is

FURTHER ORDERED, that unless otherwise ordered, all copies of the proprietary documents shall be destroyed or returned to the originator of the response within 30 days after the conclusion of these proceedings; and it is

FURTHER ORDERED, in the event that any member of the public seeks disclosure, the commission will notify the parties of such request prior to disclosure and the commission will provide an opportunity for a hearing. Upon a finding by the commission that there is a valid exemption claim by PSNH/NUSCO for the materials in question, the commission will apply a balancing test by weighing the benefits of disclosure to the public versus the benefits on

nondisclosure to PSNH/NUSCO.

By order of the Public Utilities Commission of New Hampshire this tenth day of September 1991.

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NH.PUC*09/10/91*[27214]*76 NH PUC 601*Public Service Company of New Hampshire

[Go to End of 27214]

Re Public Service Company of New Hampshire

Additional applicant: Northeast Utilities Service Company

DR 91-119
Order No. 20,240

76 NH PUC 601

New Hampshire Public Utilities Commission

September 10, 1991

ORDER noting intervenors and approving procedural schedule for a rate plan proceeding following the merger of two electric utilities.

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1. PARTIES, § 18

[N.H.] Intervenors — Showing of direct interest — In merger/rate plan proceeding. p. 602.

APPEARANCES: Rath, Young, Pignatelli & Oyer by Eve H. Oyer, Esq. and Robert P. Wax, Esq. Associate General Counsel for Northeast Utilities Service Company; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Merrill & Broderick by Mark Dean, Esq. for New Hampshire Electric Cooperative; Orr & Reno by Howard M. Moffett, Esq. for Granite State Hydropower Association, Inc.; Michael Holmes, Esq. for Office of Consumer Advocate; Dianne German, Esq. for the State of New Hampshire, Office of the Attorney General; Kenneth Colburn; Robert Cushing, Jr.; Shelley Nelkens; Robert C. Richards; Amy L. Ignatius, Esq. for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

Page 601

[1] This docket was opened on August 13, 1991 at the request of the New Hampshire Public Utilities Commission (the Commission) for the purpose of addressing 1) whether the conditions imposed by the Federal Energy Regulatory Commission (FERC) in its Opinion No. 364

approving the merger between Northeast Utilities Service Company (NU) and Public Service Company of New Hampshire (PSNH) materially affect the balancing of risks and benefits inherent in the rate plan approved by the Commission in *Re PSNH*, Docket 89-244, Report and Order No. 19,889 and 2) if so, what if any action should be undertaken by the Commission.

By Order of Notice dated August 13, 1991, the Commission scheduled a prehearing conference for September 3, 1991 at 2:00 p.m. for the purpose of establishing a procedural schedule.

The Commission granted NU's motion for the admission *pro hac vice* of Attorney Wax, NU's primary FERC counsel.

Eight motions to intervene had been filed by August 30, 1991, the deadline for intervention motions. The motions were addressed as follows:

NU filed a motion for full party intervenor status, to which no objections were noted. The motion was granted.

The New Hampshire Electric Cooperative (the Coop) filed a motion for full party intervenor status, to which the State of New Hampshire (the State) and NU objected on the grounds that the Coop alleged as a basis for intervention its status as a wholesale customer of PSNH. Neither the State nor NU objected to the Coop's intervention on the basis that it is a retail customer of PSNH. There were no further objections to the Coop's motion. The motion was granted.

Granite State Hydropower Association, Inc. (Hydropower) filed a motion for full party intervenor status, to which NU objected on the grounds that the scope of the proceedings as outlined in the Order of Notice did not involve issues directly affecting Hydropower. There were no further objections to Hydropower's motion. Hydropower stated it did not intend to participate in the issues as delineated in the Order of Notice but wanted to follow the proceedings should issues arise which directly affect Hydropower. Hydropower was granted intervenor status limited to its right to be served pleadings and Commission documents, without prejudice to request consideration of a motion to intervene as a full party if issues should develop which directly affect its interests.

Robert C. Richards filed a motion for full party intervenor status, to which the State, NU, the Office of Consumer Advocate (OCA) and the Commission staff objected on the grounds that as former stockholders of PSNH, Mr. Richards and Dr. Kaufman (who filed a separate motion to intervene but was not present at the hearing) do not demonstrate direct injury and thus do not have standing. *Appeal of Richards*, __N.H.__ (1991). Mr. Richards, on behalf of himself and Dr. Kaufman, argued that he has requested review of the *Richards* decision in the United States Supreme Court and that pending a ruling, they should be granted intervenor status in the event the *Richards* ruling is overturned. Mr. Richards' motion was denied. Dr. Kaufman's motion was not ruled upon, as he was not present. There were no objections to Mr. Richards being placed on the service list, with the understanding that such placement did not confer on him the right to submit testimony or discovery requests or to cross-examine witnesses. Mr. Richards stated Dr. Kaufman need not be listed on the service list.

Shelley Nelkens filed a motion for full party intervenor status, to which there were no objections. Both NU and the Commission staff noted, however, that the docket was narrow in scope and as such would not be a forum to relitigate the issues raised in the merger proposal and

rate plan. Ms. Nelkens' motion was granted.

The Campaign for Ratepayers Rights (CRR), through Robert Cushing, Jr. filed a motion for full party intervenor status, to which PSNH objected on the grounds that to allow Mr. Cushing to represent CRR would result in the unauthorized practice of law. The motion for intervention of CRR was granted. The matter of representation of CRR would be addressed separately.

Motions jointly filed by the Bankruptcy Court's Equity Committee and Unsecured

Page 602

Creditors Committee of PSNH were not acted upon as there were no representatives of the Committees present at the hearing. Similarly, the Business and Industry Association of New Hampshire (BIA), through Mr. Colburn, stated
that a late motion to intervene would be filed on behalf of the BIA at a later date.

The parties, after conferring off the record, presented the following joint recommended procedural schedule to govern the duration of these proceedings:

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

Anticipated FERC Order	10/16/91	10/30/91
Pre-filed testimony due	10/23/91	11/06/91
Interrogatories to parties	10/30/91	11/15/91*
Response to Interrogatories due	11/08/91*	11/22/91*
Hearing dates	11/15,18,22	11/25-27
Briefs due	11/27/91	— NA —
Commission decision	12/02/91	12/02/91

The parties agreed that due to the short time periods contained within the procedural schedule, filings are to be made in hand or by facsimile. Further, for filings due on those dates marked with a * delivery should be made no later than 12:00 noon. PSNH agreed to send any filings requested by Ms. Nelkens if she delivers them to the Hillsboro office of PSNH in a timely fashion. PSNH also agreed to provide a courier on filing dates to exchange documents with other parties.

The proposed procedural schedule and other terms agreed to by the parties appear to be reasonable and in the public good and are accepted by the Commission.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which is made a part hereof; it is hereby

ORDERED, that Robert P. Wax, Esq. be granted permission to appear *pro hac vice* on behalf of Northeast Utilities Service Company (NU); and it is

FURTHER ORDERED, that Northeast Utilities, the New Hampshire Electric Cooperative, Shelley Nelkens and the Campaign for Ratepayers Rights be granted full party intervenor status; and it is

FURTHER ORDERED, that the Granite State Hydropower Association, Inc. be granted intervenor status limited without prejudice to being placed on the service list; and it is

FURTHER ORDERED, that Robert C. Richards be placed on the service list of this docket; and it is

FURTHER ORDERED, that the procedural schedule recommended by the parties and set forth in the foregoing report is hereby accepted by the Commission.

By order of the Public Utilities Commission of New Hampshire this tenth day of September 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990. [N.H.Sup.Ct.] Re Appeal of Richards, No. 90-406, — N.H. —, 123 PUR4th 512, 590 A.2d 586, Apr. 24, 1991.

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NH.PUC*09/11/91*[27215]*76 NH PUC 604*ECI Telephone Company Inc.

[Go to End of 27215]

Re ECI Telephone Company Inc.

DE 91-133
Order No. 20,241

76 NH PUC 604

New Hampshire Public Utilities Commission

September 11, 1991

ORDER requiring a provider of customer-owned, coin-operated telephone (COCOT) service to appear and show cause why its certificate should not be revoked.

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1. CERTIFICATES, § 147

[N.H.] Revocation — Grounds — Customer complaints — Service deficiencies — Failure to file annual reports — Show cause proceeding — Customer-owned, coin-operated telephone (COCOT) service. p. 604.

BY THE COMMISSION:

ORDER

On or about May 1988, John Buczynski, President of ECI Telephone Company Inc, (ECI) applied for and was granted authorization to provide customer owned coin operated telephone (COCOT) service.

[1] WHEREAS, staff has received several complaints regarding maintenance, service quality, and the inability to contact John Buczynski to correct deficiencies from premise owners on which ECI COCOTs are located; and

WHEREAS, ECI has been under staff investigation for charging rates above those authorized and has not responded to questions asked by letter, dated April 9, 1991; and

WHEREAS, ECI did not file its annual report form F29, as required by New Hampshire Administrative Code (NH Admin Code) Puc PART 408.13 for the year ended 1990; and

WHEREAS, staff has attempted to contact John Buczynski by telephone, to no avail; it is hereby

ORDERED, that pursuant to RSA 365:15, Docket DE 91-133 entitled *Re ECI Telephone Company Inc.* is established and that ECI, its officers, specifically John Buczynski, and agent appear before the Commission, 8 Old Suncook Road, Building #1, Concord, New Hampshire at 9:00 a.m. on October 3, 1991 for the purpose of showing cause why its authority to provide COCOT service should not be revoked pursuant to NH Admin Code Puc PART 408.18 and for the purpose of showing cause why it should not be fined or brought before the Attorney General for criminal prosecution in accordance with RSA 365:41 or 365:42 for the possible willful violation of the above mentioned statute and PUC Rules.

By order of the Public Utilities Commission of New Hampshire this eleventh day of September 1991.

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NH.PUC*09/11/91*[27216]*76 NH PUC 604*Deer Cove Water Company, Inc.

[Go to End of 27216]

Re Deer Cove Water Company, Inc.

DE 90-016
Order No. 20,242

76 NH PUC 604

New Hampshire Public Utilities Commission

September 11, 1991

ORDER granting water utility a franchise to operate in the Town of Ossipee, and approving a temporary flat rate of $45.39 per customer per quarter.

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1. CERTIFICATES, § 88

[N.H.] Factors affecting grant or refusal — Public interest — Technical, managerial, and financial abilities — Local consents. p. 605.

2. RATES, § 630

[N.H.] Temporary rates — Factors affecting approval — Commencement of operations — Flat, quarterly rate structure — Water utility. p. 606.

APPEARANCES: Dennis A. Sands, Vice President, on behalf of Deer Cove Water Company, Inc.; Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

On January 19, 1990, Deer Cove Water Company, Inc. (the Company) filed a petition to provide water service to a limited area in the Town of Ossipee, New Hampshire and implicitly to establish rates therefore pursuant to RSA Chapter 378. On April 10, 1990, the Commission issued an order of notice scheduling a prehearing conference for July 20, 1990 (which was on October 9, 1990 revised to November 5, 1990) to establish a procedural schedule and to address matters on intervention. At the prehearing conference on November 5, 1990, the parties stipulated to a procedural schedule. The matter of temporary rates was not addressed at the prehearing conference in that the Company had not submitted a temporary rate request.

On December 4, 1990, the procedural schedule was revised. On January 9, 1991, the Company filed its initial rate and requested revenues in the amount of $6,400.00. The Commission held a hearing on January 9, 1991 on the issues of a franchise and temporary rates.

The Company testified that it had received the required approvals in letter from the Town of Ossipee, the Water Supply and Pollution Control Division and the Water Resources Division of the Department of Environmental Services. Mr. Dennis A. Sands, Vice President of the Company also testified that he was the operator certified by Water Supply and Pollution control Division of the Department of Environmental Services. This water system has been in operation since 1987.

Staff and the Company agreed to a temporary rate level of $181.54 per year to be billed quarterly in arrears. This rate is based on estimated operating expenses as set forth in Exhibit 2.

Pursuant to previous Commission decisions, a public utility is not allowed to charge rates for the provision of service until it has obtained a franchise. *See*, *Re Quin-Let Trust*, 74 NHPUC 415 (1989); *Re Southern New Hampshire Water Company, Inc*., 74 NHPUC 304 (1989). Deer Cove Water Company, Inc. has complied with these orders because the Company has requested a franchise and temporary rates pursuant to a petition for permanent rates.

II. *Commission Analysis*

A. Franchise

[1] RSA 374:22 and RSA 374:26 provide that the Commission shall not issue a franchise unless it would be for the public good. The public good standard requires the petitioning utility

to demonstrate, *inter alia*, the legal, technical, managerial and financial expertise to operate a public water utility and the acquiescence of the municipality in which the franchise is located. *See e.g.*, *Re Pennichuck Water Works, Inc.*, 73 NHPUC 279 (1988). In addition, RSA 374:22, III specifically requires the approval of the Department of Environmental Services, Water Supply and Pollution Control Division (WSPC) and Water Resources Division (Water Resources).

Deer Cove Water Company, Inc. has supplied the Commission with letters from WSPC, Water Resources and the Town of Ossipee indicating their support for the grant of a franchise.

In regard to the legal, technical, managerial and financial expertise of the petitioner to own and operate a public water utility, the Commission notes that Deer Cove Water Company, Inc. has been providing water service to its customers since 1987 without complaint.

Page 605

Based on these facts the Commission will grant the requested franchise in that area of Ossipee known as Deer Cove Water Company, Inc. and more particularly described as follows:

> Beginning at a point on the southerly side of Garland Road where it intersects Deer Cove Road and running along Garland Road in a general northerly direction a distance of 1,168 feet to a point; thence turning and running in a general easterly direction 99.75 feet to a point; thence turning and running in a general northerly direction 150 feet to a point; thence turning and running in an easterly direction 100 feet to a point; thence turning in a northeasterly direction a distance of 65.43 feet to a point; thence turning and running in a easterly direction a distance of 199.35 feet to Lakeshore Road; thence turning and running along Lakeshore Road a distance of 382.60 feet to a point; thence turning and running in a general westerly direction a distance of 322.16 feet to a point; thence turning and running in a general southwesterly direction along land of the New England Forestry Foundation a distance of 379.58 feet to a point at Patch Pond; thence turning and running in a southerly and southwesterly direction along Patch Pond to a point at land of the New England Forestry Foundation; thence turning and running along land of the New England Forestry Foundation a distance of 114.5 feet to a point; thence continuing along land of the New England Forestry Foundation a distance of 633.80 feet to a point; thence turning and running in a general southwesterly direction a distance of 405 feet to a point at Jewell Ridge Road; thence turning and running in a general southerly direction along Jewell Ridge road a distance of 93.01 feet to a point; thence turning and running in a general easterly direction a distance of 220 feet to a point; thence turning and running in a general southerly direction a distance of 600 feet to a point at Deer Cove Road; thence turning and running along Deer Cove Road a distance of 249.10 feet to a point at or near Garland Road; thence running in a general northeasterly direction along Garland Road a distance of 44.40 feet to the point of beginning. All distances are approximations. Together with an easement over property of the New England Forestry Foundation which easement is located easterly of Patch Pond.

B. Temporary Rates

[2] In regard to the request for temporary rates pursuant to RSA 378:27, staff, the petitioner and interveners have stipulated to a flat rate fee of one hundred eighty-one dollars and fifty-four

cents ($181.54) per year to be billed for the duration of the proceeding, quarterly in arrears in that the customers are not currently metered.

Because the temporary rates are based on annual operation and maintenance costs and are subject to recoupment or refund at the time of a permanent rate order, the Commission will reconcile any over or under collection of rates at that time. *See*, RSA 378:29 and RSA 378:30. The Commission, therefore, approves the attached stipulated schedule as the result appears just and reasonable.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report and attached stipulation schedule which is made a part hereof; it is hereby

ORDERED, that Deer Cove Water Company, Inc. be and hereby is granted a franchise to conduct business as a public water utility in that area of Ossipee, New Hampshire described in the foregoing report; and it is

FURTHER ORDERED, that Deer Cove Water Company, Inc. be, and hereby is, granted temporary rates in the amount of $181.54 annually to be billed at $45.39 per quarter effective the date of this order; and it is

FURTHER ORDERED, that a copy of this report and order be served on the Town of Ossipee via first class mail to provide said Commission with notice of this order.

By order of the Public Utilities Commission of New Hampshire this eleventh day of September 1991.

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

ESTIMATED OPERATION & MAINTENANCE EXPENSES
TEMPORARY RATES

COST OF POWER ($1,065/32 = 33.28*53) (ELECTRIC BILLS OF $1,065 FOR THE PERIOD ENDED DECEMBER 1990 WAS BASED ON 32 CUSTOMERS - WHEN COMPLETELY BUILT OUT THERE WILL BE 53 CUSTOMERS.)		$1,763.91
PRODUCTION EXPENSES:		
SUPERINTENDENCE	$1,040.00	
DES PERMIT FEE	590.00	
WATER TESTING:		
WELLS ($475 × 2/3) ($475 per well every three years. The Company has two wells.)	316.67	
BACTERIA TEST ($8 × 12) ($8 per system per month. The Company has one system.)	96.00	
MAINTENANCE	1,000.00	
TOTAL PRODUCTION EXPENSES		3,042.67
CUSTOMER ACCOUNTING (Bill heads, postage, telephone, rent)		1,200.00

ADMINISTRATIVE & GENERAL:	
PROFESSIONAL FEES	2,300.00
(PUC Annual report, IRS returns, and ongoing accounting services)	
PUC ASSESSMENT	40.00
FRANCHISE TAX (Secretary of State)	275.00
PROPERTY RENT (easement)	1,000.00
TOTAL ESTIMATED OPERATION & MAINTENANCE EXPENSES	$9,621.57
ANNUAL FLAT RATE PER CUSTOMER (Based on FULL build out-53 customers)	$181.54

NOTE: THIS RATE WILL PROVIDE THE COMPANY WITH $5,809.25 IN REVENUES FROM THE CURRENT 32 CUSTOMERS.

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NH.PUC*09/16/91*[27217]*76 NH PUC 608*Southern New Hampshire Water Company, Inc.

[Go to End of 27217]

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 20,243

76 NH PUC 608

New Hampshire Public Utilities Commission

September 16, 1991

MOTIONS for rehearing of commission order in water rate case; granted in part as to interest synchronization adjustment computations, but denied in other respects. For earlier order, see 76 NH PUC 521 (1991), supra.

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1. EXPENSES, § 114

[N.H.] Income tax expense — Interest synchronization adjustment — Computation — Recalculation — Settlement — Rehearing. p. 608.

BY THE COMMISSION:

REPORT

I. *Procedural History*

The previous procedural history of this case is set forth in extensive detail in Report and Order No. 20,196 dated July 29, 1991. Subsequent to the issuance of that order, the Commission received motions for rehearing from Southern New Hampshire Water Company, Inc.

("Southern" or the "Company"), the Office of Consumer Advocate ("OCA"), the Town of Litchfield and the Town of Amherst. This order will address the Company's and the OCA's motions. On August 23, 1991, the Staff of the Commission ("Staff") filed a response to Southern's motion.

II. *Commission Analysis*

A. Southern.

[1] In its motion for rehearing Southern raises a number of concerns relative to the Commission's findings in Report and Order No. 20,196 ("Rate Order"). Specifically, Southern alleged that the Commission erred in the accounting reflected in the schedules attached to the Rate Order. In particular, the Company alleged that the schedules were inaccurate with respect to: carrying charges for disallowed management expenses, proforma expenses, imputed interest or interest synchronization, proforma adjustment for year end customers, amortization of contributions in aid of construction, and accounting treatment of disallowed capital expenditures.

The Commission finds there may be merit to many of these concerns. Additionally, Staff in its Reply indicated that the Company may misunderstand the issue of interest imputation as applied to regulated industries under the federal tax code and the amortization of contributions in aid of construction as applied by the Commission.

In light of the above findings, the Commission instructs the parties to meet to attempt to resolve these issues through settlement. However, the Commission's substantive findings in its Report and Order are final and any changes should only reflect accounting practices and the booking of the Commission's findings.

The issue of interest imputation/interest synchronization is somewhat distinguishable, however, and may require a submission by the parties and Staff of their respective positions on the issue for its final determination.

The next issue raised by Southern is the Commission's findings relative to the Company's failure to file Forms E-22. In its motion Southern contended, and the Staff agreed, that an E-22 had been filed for a project on Route 111-A in Windham. The Commission agrees and the Company's motion for rehearing is granted in that respect. Southern further contended that there were mitigating factors relative to the filing of other E-22's. Our findings on Southern's failure to file E-22's are conclusive. To the extent the Company can present mitigating factors to the Commission

concerning its failure to file certain E-22's, it would be a relevant factor for the Commission to consider in the show cause docket opened in the Rate Order; however, we will not entertain such arguments in this docket.

Southern also contended that the Commission had not included the amortization expenses of a Hydraulic Study done by the Company. The Company is correct, and its motion relative to the study is granted.

Next, the Company contended that the Commission must address the issue of "lost"

investment in fire protection in Litchfield should the Town decline to take fire service. The Commission will not prejudge this issue and will address it if it is ever raised in a properly noticed proceeding.

Finally, in regard to rate case expenses, the Rate Order did not address the issue because all rate case expenses had not been incurred or submitted at the time of its issuance. The Company may submit its final bill for rate case expenses, with substantiation, for Commission review and ruling at the conclusion of the case.

B. OCA

The OCA has raised no issues in its motion that were not vigorously litigated in the case, considered and addressed by the Commission in the Rate Order. Therefore, its motion is denied.

Our order will issue accordingly.

ORDER

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

ORDERED, that the parties and Staff attempt to resolve through settlement a resolution of the alleged accounting or booking discrepancies in the schedules attached to Report and Order No. 20,196; and it is

FURTHER ORDERED, that the parties and Staff attempt to resolve any misunderstandings relative to interest synchronization/interest imputation; and it is

FURTHER ORDERED, that the Company's Hydraulic Study be amortized over three years and the E-22 for Route 111-A be withdrawn from consideration in Docket DE 91-074; and it is

FURTHER ORDERED, the Office of the Consumer Advocate's Motion for Rehearing is Denied.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., DR 89-224, Order No. 20,196, 76 NH PUC 521, July 29, 1991; revised July 31, 1991.

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NH.PUC*09/16/91*[27218]*76 NH PUC 609*Public Service Company of New Hampshire

[Go to End of 27218]

Re Public Service Company of New Hampshire

DR 91-011, DR 91-054
Order No. 20,246

76 NH PUC 609

New Hampshire Public Utilities Commission

September 16, 1991

ORDER affirming earlier ruling granting intervenor status to the Campaign for Ratepayer Rights but denying it authority to be represented by a nonlicensed attorney. For earlier ruling, see 76 NH PUC 548 (1991), supra.

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1. PARTIES, § 18

[N.H.] Intervenors — Representation before the commission — By licensed attorney only. p. 610.

BY THE COMMISSION:

REPORT

Page 609

[1] The Campaign for Ratepayers Rights (CRR) on August 30, 1991, filed with the New Hampshire Public Utilities Commission (Commission) a Motion for Rehearing of the Commission's August 12, 1991 Order No. 20,206 which held that while CRR was granted intervenor status in the proceeding, its Executive Director Robert C. Cushing, Jr. was not granted the right to represent CRR in the proceedings. CRR, through Mr. Cushing, argues that the Order should be reheard on the basis that Mr. Cushing's and CRR's rights under the state and federal constitutions have been violated. Mr. Cushing argues, *inter alia*, that CRR should be entitled to the representation it chooses, including representatives who are not attorneys and further that he does not "commonly" represent CRR before this Commission.

Public Service Company of New Hampshire (PSNH) and Northeast Utilities Service Company (NUSCO) jointly objected to CRR's Motion, arguing that Mr. Cushing's representation of CRR in numerous proceedings before the Commission constitutes the unauthorized practice of law. PSNH and NUSCO also argue that CRR has not alleged any new evidence to justify rehearing.

The standards regarding the unauthorized practice of law are to be found within RSA 311:7, *State v. Settle*, (*Settle I*) 124 N.H. 832 (1984), and *State v. Settle*, (*Settle II*) 129 N.H. 171 (1987). Mr. Cushing's appearances on behalf of CRR, his attempts to file discovery requests, present testimony, cross examine witnesses and argue legal issues in numerous dockets clearly constitutes the unauthorized practice of law in contravention of state law. This Commission may not allow conduct which the legislature and state Supreme Court have prohibited. No arguments are advanced in the Motion that were not addressed in the previous Report and Order. The Motion for Rehearing, therefore, is denied.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the Motion for Rehearing of the Campaign for Ratepayers Rights be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 91-011, DR 91-054, Order No. 20,206, 76 NH PUC 548, Aug. 12, 1991.

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NH.PUC*09/17/91*[27219]*76 NH PUC 610*Quin-Let Trust

[Go to End of 27219]

Re Quin-Let Trust

DE 90-126
Order No. 20,248

76 NH PUC 610

New Hampshire Public Utilities Commission

September 17, 1991

MOTION for rehearing as to effective date for temporary rates for water service in Albany; denied.

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1. PROCEDURE, § 33

[N.H.] Rehearing — Grounds for granting — Evidence unavailable for presentation at original hearing. p. 611.

BY THE COMMISSION:

ORDER

WHEREAS, Quin-Let Trust ("Quin-Let") has filed a petition to provide water service within the bounds of Albany, New Hampshire, pursuant to RSA 362:2, 362:4 and 374:2, and

WHEREAS, on August 15, 1991, Quin-Let filed a Motion to Reconsider Effective Date of Temporary Rates with the New Hampshire Public Utilities Commission (the "Commission"); and

[1] WHEREAS, Quin-Let alleges in its Motion that three issues should be addressed upon reconsideration: the Commission's jurisdiction in light of a deed provision, retroactivity of temporary rates, and confiscation of property without compensation; and

WHEREAS, the Commission staff filed on September 4, 1991, an Objection to the Motion, on the grounds that Quin-Let had failed to present evidence as to why the arguments advanced in the Motion could not have been presented at the hearing on temporary rates, and that the timing of the effective date of the temporary rates is due primarily to Quin-Let's delays, including failure to respond to staff requests for filing of a franchise petition, failure to provide timely information, and requests for procedural schedule changes; and

WHEREAS, upon consideration, the commission finds the staff arguments have merit; it is hereby

ORDERED, that Quin-Let's Motion to Reconsider Effective Date of Temporary Rates is denied.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September 1991.

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NH.PUC*09/20/91*[27220]*76 NH PUC 611*AT&T Communications of New Hampshire, Inc.

[Go to End of 27220]

Re AT&T Communications of New Hampshire, Inc.

DR 91-123
Order No. 20,250

76 NH PUC 611

New Hampshire Public Utilities Commission

September 20, 1991

ORDER approving interexchange telephone carrier's proposed tariff options for certain high-speed digital network access services.

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1. RATES, § 571

[N.H.] Telecommunications — Switched access service — High-speed digital network access services — New tariff options. p. 611.

BY THE COMMISSION:

ORDER

[1] On August 20, 1991, AT&T Communications of New Hampshire, Inc. (the Company) filed a petition seeking to introduce two new options to its Software Defined Network Service, and concurrently introducing two new Custom Network Services, AT&T 800 Plans E and K; and

WHEREAS, the proposed changes included the following:

AT&T Software Defined Data Network Service Schedule F, Providing special originating high speed digital access and terminating switched access;

AT&T Software Defined Data Network Service Schedule G, providing an on network originating and terminating high speed digital special access facility with a 384 kbps capability;

AT&T 800 Plans E and K, providing switched telecommunications service that permits 800 number calling from stations located within the state to a station associated with a customer local exchange telephone number; with Plan E aggregating calls from multiple locations and applying volume discounts to the customers aggregate use, and Plan K providing inward calling service specifically to low volume users and rendering a single bill for that usage;

and

WHEREAS, the proposed tariff was filed for effect on September 19, 1991; and

WHEREAS, the New Hampshire Public Utilities Commission wishes to broaden the range of services available to intrastate toll customers on an interim basis; it is hereby

ORDERED *NISI*, that AT&T Communications of New Hampshire Inc. be, and hereby is

Page 611

authorized to implement the following tariff changes:

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

    P.U.C. No. 1 — CUSTOM NETWORK SERVICES

Table of Contents  -4th Revised Page 1
                   -3rd Revised Page 5
                   -Original Pages 11 and 12
Tariff Information -4th Revised Page 1
                   -1st Revised Pages 2 and 3
                   -2nd Revised Page 4
    Section 2      -AT&T Software Defined Serv.
                   -4th Revised Page 3
                   -3rd Revised Page 4
                   -1st Revised Page 9
                   -Original Pages 10 and 11
    Section 9      -AT&T 800 Plan E
                   -Original Pages 1 through 5
    Section 10     -AT&T 800 Plan K
                   -Original Pages 1 through 4;
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and it is

FURTHER ORDERED, that these services will be offered subject to the terms and

conditions specified in NHPUC Order No. 20,040 dated January 21, 1991, in Docket DE 90-002; and it is

FURTHER ORDERED, that pursuant to the N.H. Admin. Rules Puc 203.01, the Company shall cause 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 14, 1991, and that it be documented by affidavit filed with this office on or before November 8, 1991; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than November 4, 1991; and it is

FURTHER ORDERED, that this Order *NISI* will be effective on November 8, 1991, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twentieth day of September, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 20,040, 76 NH PUC 58, Jan. 21, 1991.

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NH.PUC*09/23/91*[27221]*76 NH PUC 612*Pittsfield Aqueduct Company

[Go to End of 27221]

Re Pittsfield Aqueduct Company

DR 89-053
Order No. 20,253

76 NH PUC 612

New Hampshire Public Utilities Commission

September 23, 1991

ORDER granting water utility a step rate increase of $16,274 (9%), following the addition of meters and other plant to rate base.

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1. RATES, § 124

[N.H.] Factors affecting reasonableness — Capital additions to rate base — Water utility — Stipulated step rate increase. p. 612.

2. RATES, § 597

[N.H.] Water — Special factors — Fixed plant additions — Step increase. p. 612.

BY THE COMMISSION:

ORDER

On February 21, 1990, the Commission issued Report and Order 19,725 adopting a Stipulated Agreement between Pittsfield Aqueduct Company and the Staff of the Commission with respect to an increase in rates; and

[1, 2] WHEREAS, paragraph 9.0 of said Stipulated Agreement provided that Pittsfield Aqueduct Company would be entitled to file for an adjustment in its rate base to reflect additions to its fixed plant resulting from the installation

of meters and other capital additions as of April 30, 1990 which were, at the time of adjustment, completed and in service to customers; and

WHEREAS, on or before May 15, 1990, Pittsfield Aqueduct Company made such filing; and

WHEREAS, Pittsfield Aqueduct Company and the Commission Staff have met to narrow the issues and have entered into a Stipulated Agreement, dated September 23, 1991, for an incremental step increase, which is incorporated herein; and

WHEREAS, said Stipulated Agreement establishes a new rate base of $622,186, which when applied to the last found rate of return results in an incremental increase in Pittsfield's annual revenue requirement of $16,274, or 9%, over the amount approved by the Commission's in Report and Order No. 19,725 dated February 21, 1990 order; and

WHEREAS, it appears, after full investigation, that the capital additions made by Pittsfield Aqueduct Company are prudent and used and useful in the public service, and

WHEREAS, the resulting revenue increase is just and reasonable; it is hereby

ORDERED, *NISI*, that said Stipulated Agreement, dated September 21, 1991 is approved and that Pittsfield Aqueduct Company shall be allowed to increase its rates to afford the Company the opportunity to recover the increased incremental revenues of $16,274 for effect October 23, 1991 unless a request for hearing is filed as provided below; and it is

FURTHER ORDERED, that Pittsfield Aqueduct Company is required to file revised tariff pages effective for all service rendered on or after July 1, 1990, and it is

FURTHER ORDERED, that Pittsfield Aqueduct Company is authorized to recoup the incremental increase from July 1, 1990 through September 30, 1991 by a surcharge as per the Stipulated Agreement approved and adopted in Report and Order No. 19,725, and it is

FURTHER ORDERED, the Pittsfield Aqueduct Company is required to file a compliance tariff for the recoupment of the surcharge, and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or a written request for a hearing before the Commission by October 21, 1991; and it is

FURTHER ORDERED, that Pittsfield Aqueduct Company effect said notification by publication of this order once in a newspaper having general circulation in the Company franchise area. Said publication to be no later than September 30, 1991 and documented by affidavit to be filed with this office on or before October 18, 1991; and it is

FURTHER ORDERED, that said stipulation agreement is incorporated by reference in this order.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September 1991.

AGREEMENT

1.0 This Agreement is entered into this 23rd day of September, 1991, between Pittsfield Aqueduct Company ("Company") and the Staff ("Staff") of the Public Utilities Commission ("Commission"), for the purposes and subject to the terms and conditions hereinafter stated.

2.0 On January 2, 1990, the Company entered into a Stipulated Agreement with the Staff with respect to an increase in rates in the above-referenced docket. This Stipulated Agreement was approved by the Commission on February 21, 1990, in Order No. 19,725. Paragraph 9.0 of the Stipulated Agreement provided that the Company would be entitled to adjust its rates to reflect additions to its fixed plant resulting from the installation of meters and other capital additions as of April 30, 1990. The Stipulated Agreement also provided that the Company was entitled to adjust its rates to reflect the additions to fixed plant as of June 30, 1990, which were, at the time of adjustment, completed and in service to customers.

The parties met in consultation on July 19, 1991, for the purposes of narrowing issues and reaching this proposed Agreement for the incremental step increase which is described more fully herein. There are attached hereto certain revisions of schedules all marked "STIPULATION STEP ADJ", which reflect the agreement reached between the Company and the Staff on the issues of rate base and incremental revenue

requirement.

3.0 Rate Base. It is agreed that the Company shall be allowed an opportunity to earn, at the conclusion of this step increase proceeding, a return on a rate base of *Six Hundred Twenty-Two Thousand One Hundred Eighty-Six Dollars* ($622,186).

4.0 Rate of Return. As provided in the Commission's Order of February 21, 1990, the Company shall be allowed an opportunity to earn an overall rate of return of *Twelve and Five-hundredths per cent* (12.05%) on the stipulated rate base as set forth in paragraph 3.0.

5.0 Incremental Revenue Requirement. It is agreed that the Company shall be authorized to charge rates designed to collect an incremental increase in annual revenues of *Sixteen Thousand Two Hundred and Seventy-Four Dollars* ($16,274) over the amount in the Commission's

February 21, 1990 Order, as of July 1, 1990.

6.0 Rate Structure. It is agreed that the Company be and hereby is allowed to revise its rates to recover the increased annual revenues set forth in paragraph 5.0, and shall, upon issuance of an order approving this Agreement, file a compliance tariff adjusting its rates to reflect the annual increase. As such rates are effective from July 1, 1990, the Company will be allowed to recoup from July 1, 1990 through September 30, 1991, by a surcharge to be applied over the next five quarters subsequent to the issuance of the Commission order and fulfill a compliance tariff for this surcharge.

7.0 The Company agrees that on or before February 1, 1992, it will file with the Commission a methodology for the allocation of overheads to capital accounts.

8.0 General Conditions. This Agreement is subject to the following further conditions:

8.1 The Agreement shall be promptly presented to the Commission for approval, and approval shall be issued without delay.

8.2 The making of this Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation in these proceedings, other than those specifically agreed to herein, is true and valid.

8.3 The making of this Agreement establishes no principles or precedents in any other proceeding or investigation.

8.4 The Commission approval of this Agreement does not establish any principles or precedents.

8.5 The Commission approval of this Agreement shall not in any respect constitute a determination as to the merits of any allegations made in this step increase proceeding.

8.6 This Agreement is expressly conditioned upon the Commission's acceptance of all of its provisions, without change or condition, and if the Commission does not so approve it, any party to the Agreement may withdraw from it, and it shall not constitute any part of the record in this proceeding nor be used for any other purpose.

8.7 This Agreement constitutes an integrated writing, and each of the provisions is in consideration and support of every other provision and is an essential condition to every other provision.

8.8 The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudice to the position of any participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS WHEREOF, the parties' fully-authorized agents have executed this Agreement.

PITTSFIELD AQUEDUCT COMPANY
By Its Attorneys,
RANSMEIER & SPELLMAN,
By: Dom S. D'Ambruoso, Esquire

One Capitol Street
P.O. Box 1378
Concord, NH 03302-1378
Tel. # (603) 228-0477

STAFF OF THE PUBLIC UTILITIES COMMISSION
By Its Attorney,
By: Eugene F. Sullivan, III, Esq.

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

REVENUE REQUIREMENT

	STIPULATION STEP ADJ ATTACHMENT 1
RATE BASE (ORDER NO. 19,725, 2/21/90)	557,287
STEP ADJUSTMENT	64,898
	622,186
RATE OF RETURN	12.05%
REVENUE REQUIREMENT	74,973
OPERATING INCOME (ORDER NO. 19,725, 2/21/90)	27,085
DEFICIENCY	47,888
TAX EFFECT	16,269
REVENUE DEFICIENCY	64,158
REVENUE INCREASE (ORDER NO. 19,725, 2/21/90)	47,884
STEP ADJUSTMENT REVENUE INCREASE	16,274

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

DEPRECIATION

STIPULATION
STEP ADJ
ATTACHMENT 2

DESCRIPTION	*1989*	*1990*	*RATE*	*DEPR RES*
LAND	1,000	0		
STRUCTURES		1,228	1.33%	8
PURIFICATION EQUIP	614		3.00%	18
MAINS	54,855	557	1.50%	827
	(5,108)	(175)	1.50%	(78)
SERVICES	1,776		1.67%	30
METERS (See Note)	7,925	11,131	5.00%	476
MISC. EQUIP.		318	10.00%	16
	53,137	13,059		1,298

Note: 1989 meters have already been included as part of the original stipulation agreement

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

	STIPULATION STEP ADJ ATTACHMENT 3
TOTAL RATE BASE (EX 2)	622,186
EQUITY COMPONENT OF CAPITAL COST (EX 1, SCH 1)	9.38%
NET INCOME REQUIRED	58,361
OVERALL TAX EFFECT (EX 1, SCH 2)	16,269
TAX EFFECT - BUS. PROFITS TAX (EX 1, SCH 2)	5,075
TAX EFFECT - FEDERAL INCOME TAX (EX1, SCH 2)	11,195

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Pittsfield Aqueduct Co., DR 89-053, Order No. 19,725, 75 NH PUC 119, Feb. 21, 1990.

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NH.PUC*09/24/91*[27222]*76 NH PUC 616*Public Service Company of New Hampshire

[Go to End of 27222]

Re Public Service Company of New Hampshire

DR 91-011, R 91-119
Order No. 20,254

76 NH PUC 616

New Hampshire Public Utilities Commission

September 24, 1991

PETITION by the Campaign for Ratepayer Rights for compensation for its costs of intervening in two proceedings involving an electric utility; denied, for not complying with the requirement that the proceedings pertain to standards enunciated in the Public Utility Regulatory Policies Act of 1978 (PURPA).

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1. COSTS

[N.H.] Intervenor compensation — Eligibility under the Public Utility Regulatory Policies Act of 1978 (PURPA) — Proceedings involving PURPA standards — Material contribution by intervenor — No other representative of intervenor's interests. p. 616.

BY THE COMMISSION:

REPORT

[1] The Campaign for Ratepayers' Rights (CRR) filed on July 25, 1991, in docket DR 91-011 and on August 30, 1991, in docket DR 91-119, requests for findings of eligibility for PURPA compensation pursuant to the standards of the Public Utility Regulatory Policy Act of 1978 (PURPA) and the implementing regulations promulgated by the commission, N.H. Admin. Code Part Puc 205.

Docket No. DR 91-011 concerns the Public Service Company of New Hampshire (PSNH) Fuel and Purchased Power Adjustment Clause (FPPAC), previously established by this commission in docket DR 89-244. The purpose of the proceeding is for the commission to determine whether various costs incurred by PSNH were prudently incurred and are allowable under the rate agreement approved by this commission in docket DR 89-244.

Docket DR 91-119 is limited to the issue of what effect, if any, FERC Opinion No. 364, docket EC 90-10-000, has on the rate agreement approved by the commission in DR 89-244. In Opinion No. 364, FERC conditioned its approval of the proposed PSNH merger with Northeast Utilities (NU) on the restriction of

native load priority potentially affecting New Hampshire ratepayers.

To be found eligible for compensation, the applicant must, *inter alia*, demonstrate that the proceeding concerns a PURPA position, as defined in N.H. Admin. Code Puc 205.01(c) and complies with the requirements of N.H. Admin. Code Puc 205.02(a):

> In any commission proceeding in which a consumer substantially contributes to the adoption by the commission, in whole or in part, of a position advocated by the consumer in that proceeding, *and relating to a PURPA standard*, or for judicial review of that proceeding, the utility shall pay the consumer an award of compensation if such award is granted by the commission in accordance with the procedures and requirements of this rule. The utility shall not be liable for any award of compensation except in accordance with the standards and procedures established by this rule. (Emphasis added).

Since N.H. Admin. Code Part Puc 205 was promulgated as a mechanism for New Hampshire to implement the provisions of PURPA § 122, we will look to the authorizing statute in our analysis.

Compensation for consumer representation is governed by PURPA §§ 121 and 122. PURPA

§ 121 provides for intervention by electric consumers such as CRR in order for them to "... participate in the consideration of one or more of the standards established in subtitle B or other concepts which contribute to the achievement of the purpose of this title ..."

Docket DR 91-119/FERC Order No. 364

We will deny CRR's request for finding of eligibility for compensation in docket DR 91-119. Docket No. DR 91-119 was opened by the commission to determine the effect, if any, of FERC Order No. 364, 56 FERC ¶ 61,296, on the rate agreement which removed PSNH from bankruptcy and which was previously approved by this commission in docket DR 89-244, Report and Order No. 19,889, 114 PUR4th 385 (July 20, 1990). FERC Order No. 364 conditioned FERC approval of the proposed merger between PSNH and Northeast Utilities (NU) on the restriction of the native load priority of various New Hampshire and Connecticut electric utility customers. Objections to the CRR request were filed by the State of New Hampshire, PSNH and NU.

There are several reasons for our denial, each of which independently support our finding. First, we accept the argument set forth by the State of New Hampshire, PSNH and NU in their objections that the limited scope of this proceeding does not qualify it as a "PURPA proceeding." CRR does not specify in its request how this proceeding in any way relates to a PURPA standard and therefore should be considered covered under the compensation provisions of PURPA. Our own review reveals no rationale for considering this docket a PURPA proceeding. We therefore reject the CRR request pertaining to docket DR 91-119 because it is not a PURPA proceeding.

The second reason we reject the CRR request, applicable in both dockets in question, is that intervenor compensation under PURPA § 122 is required only if CRR's interests would not otherwise be adequately represented in the proceedings and if CRR's participation is necessary for a fair determination. CRR's pleadings do not demonstrate that the ratepayers it represents are not adequately represented by the Consumer Advocate and the PUC Staff, both of which are funded by utility ratepayers.

Finally, even had CRR properly cited PURPA standards in its pleadings, neither docket in question relates to the consideration and determination of the standards set forth in subtitle B of PURPA. PURPA § 122 authorizes compensation for participation in proceedings under PURPA Subtitle B, which is limited to the consideration and determination of PURPA standards (*i.e.*, policy development) rather than the implementation of previously established standards. DR 91-119 does not relate to PURPA at all and DR 91-011, to the extent it addresses PURPA related issues, concerns the implementation of previously established standards rather than consideration and determination of new standards.

Page 617

FPPAC Docket DR 91-011

Regarding the FPPAC proceeding in DR 91-011, CRR asserts that the issues therein include a number of PURPA purposes and standards and that its intervention in this proceeding will address said PURPA issues, including:

1. Conservation of energy supply by electric utilities. N.H. Admin. Code Puc

205.01(c) (1).

2. Optimization of the efficiency of use of facilities and resources. N.H. Admin. Code Puc 205.01(c) (2).

3. Equitable rates to electric consumers, including CRR members, in consideration of PURPA Title I, subtitle B, 113(b) (2), automatic adjustment clause. N.H. Admin. Code Puc 205.01(3) (b)2.

4. Equitable rates to electric consumers, including CRR members, in consideration of PURPA, Title I, subtitle B, 113(b) (3), information to consumers. N.H. Admin. Code Puc 205.01(c) (3) (b) (3).

PSNH filed an objection to the CRR request for compensation on July 30, 1991. PSNH argues that CRR's referral to the FPPAC proceeding as an "automatic adjustment clause" proceeding pursuant to N.H. Admin. Code Puc 205.01(e) (2) and PURPA § 113(b) (2) is mistaken in that PURPA defines an automatic adjustment clause as relating to a proceeding which provides for rate increases or decreases (or both) *without prior hearing*. 16 USC § 2625(e) (3); PURPA § 115(e) (3). FPPAC, according to PSNH, does not operate as an automatic adjustment clause under PURPA because a hearing is required before the rate is implemented. PSNH further argues that this FPPAC docket is not a PURPA proceeding under 16 USC § 2623 (PURPA § 113) because it involves the implementation of FPPAC and not the adoption of any PURPA standards such as an automatic adjustment clause, under 16 USC § 2623(b) (2) and PURPA § 113(b) (2).

PSNH's arguments are persuasive. Of CRR's asserted interests, only the "automatic adjustment clause" is defined as a PURPA standard pursuant to N.H. Admin. Code Puc 205.01(c) (1) and PURPA § 113 (b)(2). The remaining CRR assertions regarding optimization of efficiency relating to N.H. Admin. Code Puc 205.01(c) (2) and equitable rates to electric consumers relating to N.H. Admin. Code Puc 205.01(c)(3)(b)(3) constitute PURPA *purposes* (PURPA § 101) and not PURPA *standards* (PURPA § § 111 *et seq*). The FPPAC proceeding in docket DR 91-011 does not qualify as an "automatic adjustment clause" proceeding because it requires prior hearings. An "automatic adjustment clause" proceeding is defined in PURPA § 115(e) (3) as a proceeding in which rates are adjusted without hearing. For this reason, and for the reasons cited *supra* in conjunction with DR-91-119, we will deny CRR's request for a finding of eligibility in docket DR 91-011.

Our order will issue accordingly.

ORDER

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

ORDERED, that the request of the Campaign for Ratepayers' Rights for findings of eligibility for compensation in dockets DR 91-011 and DR 91-119, filed respectively on July 25, 1991, and on August 30, 1991, are hereby denied.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1991.

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NH.PUC*09/26/91*[27223]*76 NH PUC 619*Public Service Company of New Hampshire

[Go to End of 27223]

Re Public Service Company of New Hampshire

DR 89-148
Order No. 20,255

76 NH PUC 619

New Hampshire Public Utilities Commission

September 26, 1991

ORDER affirming earlier decision in which the commission held that approved capacity purchase rates payable to qualifying facilities were applicable only as to each project's nameplate capacity and not to any additional capacity. For earlier decision, see 76 NH PUC 489 (1991), supra.

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1. COGENERATION, § 24

[N.H.] Rates — Payable to qualifying facilities (QFs) — For purchases of capacity — Limits on applicability — To QF project's nameplate capacity — Not to further capacity additions. p. 620.

2. PROCEDURE, § 36

[N.H.] Legal doctrines of equitable estoppel and res judicata — Generally not applied to state acting in its governmental capacity — Not rigidly enforced in administrative proceedings. p. 621.

3. WAIVER AND ESTOPPEL

[N.H.] Doctrine of estoppel — Use against state agencies. p. 621.

BY THE COMMISSION:

REPORT

On July 23, 1991, the commission issued Report and Order No. 20,185 in this proceeding which provided, *inter alia*, that payments to qualifying facilities (QFs) for energy and capacity at rates prescribed in their long term rate orders are limited to the level of energy (kWh) and capacity (KW) specified in their petition for the rate order.[1(140)]

Timely Motions for Rehearing were filed by Biomass Producers and the Granite State Hydropower Association (GSHA).

In its Motion for Rehearing, Biomass Producers contends that the commission's order is

unreasonable and unlawful because it interprets the comprehensive regulatory process for determining payments to QFs as including the KW statement in rate petitions as a limitation on purchases at rate order rates. Biomass Producers also assert that the commission's order violated due process requirements that factual determinations in contested cases be made after hearing and development of a public record. According to Biomass Producers, the commission's order also violated the doctrines of equitable estoppel and *res judicata*.

In its Motion for Rehearing, GHSA agrees with the commission's decision to limit capacity payments to the capacity levels specified in the rate order petitions; however, GHSA contends that, with respect to energy payments, the commission's decision is unfair and discriminatory for hydro producers. In support of its contention, GSHA argues that hydro production is a function of naturally occurring river flows which means that energy output will always be lower or higher than estimates in the rate order petitions. The estimates were good faith projections based on historical records of river flows.

GSHA suggests that a possible way to resolve this limitation on energy payments for hydro projects subject to annual changes in river flow, would be to allow hydro producers to be paid for energy at rate order rates up to an amount equal to the product of their nameplate capacity multiplied by 8760 hours per year.

We shall address each of these Motions for Rehearing in turn.

The primary ground for rehearing argued by Biomass Producers is that the commission ignored its own comprehensive regulatory process for the determination of the output and corresponding purchase rates developed in *Re*

Page 619

Small Energy Producers and Cogenerators, 68 NH PUC 531 (1983) (the so-called "Interim Order"), *Re Small Power Producers and Cogenerators*, 68 NH PUC 575 (1983) (the "Interim Rehearing Order"), and *Re Small Energy Producers and Cogenerators*, 69 NH PUC 352, 61 PUR4th 132 (1984) ("Order No. 17,104"). Motion at 7. Biomass Producers contend that the commission erroneously and unlawfully created a regulatory requirement limiting a QF's sales at rate order rates to the KW statement in the rate petition or alternatively, in the staff survey form. *Id*.

[1] We disagree. The issue in this proceeding is not one of construction of the language of the "comprehensive regulatory process" by application of common-law principles of contract interpretation. Pursuant to *inter alia* Order No. 17,104, the commission issued individual rate orders for each QF project specifying the terms and conditions under which each QF may sell energy and capacity to Public Service Company of New Hampshire (PSNH). While the general principles established in *inter alia* Order No. 17,104 were certainly pertinent to the commission's adjudication of each of those individual QF rate orders, the terms pertinent to individual QFs must be found in those rate orders. *Cf.*, *Appeal of Marmac*, 130 N.H. 53 (1987) (provisions governing the relationship between PSNH and QFs is not a rule as defined in the New Hampshire Administrative Procedure Act, RSA 541-A:3). Thus, the issue here is whether the rate orders issued included consideration of potential additions to the capacity specified in the petitions for those rate orders.

The project characteristics specified in a rate order petition were a substantial factor in the commission's determination that issuance of each of the rate orders was just and reasonable. Specifically in our report in this proceeding we noted that

> ... rates in the generic rate orders were based on forecasts of electrical load, supply and, therefore, avoided cost made at a discrete point in time. They were available to capacity that attained commercial operation within a particular time period. *Rate orders for individual projects* were granted pursuant to the findings in the generic dockets and *were based on the representations of the petitioner regarding the project characteristics*.

Report and Order No. 20,185 (July 23, 1991). (Emphasis added)

Accordingly, the relevant issue before us is the identification of the specific project characteristics provided to the commission upon which we relied, and therefore which formed a substantial basis for our finding that approval of rate orders for those projects would be in the public interest. The project characteristics do not include capacity additions not reflected in the rate order petition.

Consequently, capacity that does not match the amount specified in the developer's petition, either because the developer modified the project size during construction or added to the capacity after commercial operation, falls outside of the amount that can be deemed to have been relied upon and approved for payment under the facility's rate order.

The Biomass Producers also contend that our report and order violates due process requirements because "factual determinations must be based on an evidentiary record". Motion at 18. We have repeatedly noted that our ruling in this case was a legal determination and not a factual finding. Nonetheless, we will grant the motion of Biomass Producers to the extent that our report and order can be read to establish conclusively that the limitations on energy and capacity payments must be based on the project characteristics specified in the rate order petition. Individual biomass producers will be allowed an opportunity to request a hearing to show, on a case-by-case basis, why their representations are inaccurate and that the making of those representations to the commission was a mistake not attributable to the negligence of the petitioner. QFs will bear a heavy burden in doing this, as the commission is entitled to rely on representations submitted in filings with the commission and to infer that the representation should not change to the advantage or disadvantage of any party simply because they are to be used for a different purpose.

The Biomass Producers also ground their motion on the assertion that our report and order is unlawful and unreasonable under the doctrine of equitable estoppel because the Biomass Producers relied on the comprehensive regulatory process to their detriment (Motion at 21) and also under the doctrine of *res judicata* because the commission has, in effect, relitigated an issue already determined by the commission or which could have been determined by the commission. Motion at 24.

[2, 3] We disagree. Without addressing the merits of the Biomass Producers specific contentions or determining whether each element of a proper estoppel claim has been satisfied,

we simply note that as a general rule the doctrine of estoppel will not be applied against the state in its governmental, public or sovereign capacity as distinguished from those instances in which the state is acting in its proprietary or contractual capacity. 28 Am.Jr. 2d Sec. 123. Estoppel may also be applied against the state where a representation was made (and reasonably relied upon) by a state employee or agency which reflects "wrongful conduct [which] threatens to work a serious injustice and if the public interest would not be unduly damaged by the imposition of estoppel." *City of Concord v. Tompkins*, 124 N.H. 463, 472 (1984). It is beyond question that the exercise of our regulatory function of establishing the terms and conditions under which QFs may sell electricity to PSNH is not a proprietary or contractual act of the state. The Biomass Producers have also failed to produce any evidence of wrongful conduct by the commission or its staff which would work a serious injustice. Our concentrated examination of the issue in this docket and our determination to limit costs to ratepayers to the QF's own representations of capacity value simply do not work the injustice necessary to sustain the application of estoppel. Additionally, the public interest is served by commission actions which protect ratepayers from unwarranted costs. For the foregoing reasons, the estoppel claim is denied.

The Biomass Producers also argue that our determination in Report and Order No. 20,185 is barred under the doctrine of *res judicata* by our findings and rulings in *Re Small Power Producers and Cogenerators*, Docket No. DR 88-107, Report and Order No. 19,728 (February 28, 1990) (Docket DR 88-107).

Biomass Producers contend that Docket DR 88-107 involved extensive commission inquiry into the proper calculation of amounts paid by PSNH for capacity actually purchased by the Biomass Producers under their rate orders. Therefore, according to the Biomass Producers, Report and Order No. 20,185, by limiting the level of energy and capacity to which the long-term rate orders are applicable, is in violation of the rule of *res judicata* as an impermissible attempt to relitigate an issue already determined or which could have been properly determined in that litigation by the commission.

In its Order of Notice in DR 88-107 (August 10, 1988), the commission noticed a prehearing conference "for the purpose of investigating PSNH's implementation of, ... the procedures for calculating and updating the Peak Reduction Factor as provided in DE 83-62 ... ." Similarly, our final decision in that proceeding narrowly addressed "the implementation and interpretation of the peak reduction factor ... ." Report and Order No. 19,728 (February 28, 1990) at 1. Our report identifies eight specific issues raised by the parties (Report at 4 and 5). The parties clearly did not raise the issue of whether the product of the capacity audit value and the peak reduction factor may exceed the amount of capacity claimed in the rate petition.

2(141)

A final judgment by a court of competent jurisdiction is conclusive on parties in subsequent litigation involving the "same cause of action," which means the right to recover and refers to all theories on which relief could be claimed arising out of the same factual transaction in question. *Radkay v. Confalone* 133 N.H. 294, 297 (1990). In DR 88-107, the "factual transaction in question" was, as noted *supra*, the procedures for interpreting and implementing the peak reduction factor. Thus, there was no opportunity in DR 88-107 for any party to have raised the much broader issue of whether a capacity payment, notwithstanding the amount calculated under

the capacity payment formula, is limited to the amount specified in the rate

petition. RSA 541-A:16, III; *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062 (1982). (PUC violated due process when it turned a financing hearing into a prudency determination without proper notice.)

In support of its position, the Biomass Producers cite *Appeal of Global Moving & Storage of N.H., Inc.*, 122 N.H. 784 (1982) for the proposition that the commission may not relitigate an issue already determined or which could have been properly determined in that litigation. However, in that case the court ruled that relitigation of an issue actually litigated but not noticed by this commission in a prior proceeding was not barred by the doctrine of *res judicata*. In Docket No. DR 88-107 there was neither notice nor an opportunity to be heard with respect to the issue we have adjudicated in this proceeding. For the foregoing reasons, we deny the claim of the Biomass Producers that our Report and Order No. 20,185 is precluded by the doctrine of *res judicata*. We also find that this result is fair and equitable under the circumstances and is in accord with accepted practice in administrative proceedings. In the context of administrative preclusion, the doctrines of collateral estoppel and *res judicata* must be tempered by fairness and equity and should not be as rigidly enforced as in judicial proceedings. Charles H. Koch, Jr., *Administrative Law and Practice* Sec. 6.63 (1990 Pocket Part)

With regard to the Motion for Rehearing filed by GHSA, we find that the argument of GHSA is reasonable and, accordingly, will modify Report and Order No. 20,185 to provide that the limitation on the amount of energy paid at rate order rates shall be equal to the product of nameplate capacity and 8760 hours per year. This would mean that in a year with abnormally high river flow, a hydro-producer could potentially reap the full benefit of that flow while not exposing ratepayers to the liability of paying for energy associated with facility expansions.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Motion for Rehearing of Biomass Producers is granted insofar as it is consistent with the foregoing report; and it is

FURTHER ORDERED, that the Motion for Rehearing of Granite State Hydropower Association is granted insofar as it is consistent with the foregoing report; and it is

FURTHER ORDERED, that the motions for rehearing of Biomass Producers and Granite State Hydropower Association be denied in all other respects.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of September 1991.

FOOTNOTES

[1]As explained in Report and Order No. 20,185, the level of capacity and energy specified in a rate order petition is either the amount actually contained in the rate order petition or,

alternatively, in the staff survey form.

[2]The amount paid by PSNH to a QF for capacity, is the product of the capacity rate component multiplied by the commission's audit value multiplied in turn by the peak reduction factor. The peak reduction factor is designed to adjust the price paid by PSNH to the QFs in accordance with the amount of actual peak load reduction of an individual QF or class of QFs.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 89-148, Order No. 20,185, 76 NH PUC 489, July 23, 1991. [N.H.] Re Small Power Producers and Cogenerators, DR 88-107, Order No. 19,728, 75 NH PUC 124, Feb. 28, 1990.

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NH.PUC*09/30/91*[27224]*76 NH PUC 623*Northern Utilities, Inc.

[Go to End of 27224]

Re Northern Utilities, Inc.

DR 91-081
Order No. 20,256

76 NH PUC 623

New Hampshire Public Utilities Commission

September 30, 1991

APPLICATION by natural gas local distribution company for authority to implement a temporary rate increase of $1.9 million (75% of its requested permanent rate increase); granted, based on evidence of underearnings.

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1. RATES, § 630

[N.H.] Temporary rate increase — Factors affecting approval — Evidence of underearnings — Gas utility — Temporary increase at level of 75% of permanent increase request. p. 623.

APPEARANCES: LeBoeuf, Lamb, Leiby, and MacRae by Eliah G. Farrah, Esq. on behalf of Northern Utilities, Inc.; Eugene F. Sullivan, III, Esq., on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

This report concerns the petition of Northern Utilities, Inc. for temporary rates. It sets forth

the procedural history, findings of fact, agreements of the parties, and analysis. It approves the temporary rates.

I. *Procedural History*

On July 18, 1991, Northern Utilities, Inc., (Northern) a gas public utility, operating in a portion of the state, filed revised tariff pages to NHPUC NO. 7, providing for increased revenues in the amount of $2,547,517 with a proposed effective date of August 19, 1991. On the same day, Northern filed a petition requesting a temporary rate increase, pursuant to RSA 378:27, in the amount of $1,900,000 (approximately a 11.5% revenue increase over the 1990/1991 test year total utility revenue). On August 9, 1991, Northern filed supplemental testimony to explain the company's proposed rate design and customer impact analysis.

On August 12, 1991, the commission issued order no. 20,207 suspending the revised tariff pages pending investigation. On September 5, 1991, the commission issued order no. 20,234 which established the procedural schedule recommended by the parties and set September 11, 1991, as the date for a public hearing on the temporary rate request.

II. *Positions of the Parties*

Northern argued in favor of a temporary rate level which is seventy-five percent of the requested increase in revenue. It contended that the increase was necessary to allow it to earn a reasonable return on its net plant. The commission staff presented testimony in support of the temporary rate request.

III. *Commission Analysis*

[1] The commission is authorized to set temporary rates effective during the pendency of a permanent rate proceeding if in its opinion the public interest so requires. RSA 378:27. The commission may establish temporary rates which are

> sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation.

Id. The commission's review and analysis in setting temporary rates is less extensive than is required in setting permanent rates. *Public Service Company of New Hampshire v. State*, 102 NH 66; 150 A. 2d 810 (1959).

In accordance with RSA 378:27, a calculation based on the most recent reports of the

company (on file with the commission) and the last allowed return on equity (13.75%) was performed, which reveals that Northern is under-earning by approximately $1,900,000. Based upon this limited inquiry, it appears that the requested temporary increase will allow Northern to earn a reasonable return on its net plant. Therefore, we will permit the temporary increase for service rendered on or after the date of this report and order.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report on Temporary Rate Petition which is made a part

hereof, it is hereby

ORDERED, that Northern Utilities, Inc. be permitted to increase its existing rates, on a temporary basis, at an annual level of $1,900,000, effective for service rendered on or after the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.Sup.Ct.] Public Service Co. of New Hampshire v. New Hampshire, 102 N.H. 66, 28 PUR3d 404, 150 A.2d 810, Apr. 21, 1959.

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NH.PUC*10/01/91*[27225]*76 NH PUC 624*Cold Spring Properties, Inc.

[Go to End of 27225]

Re Cold Spring Properties, Inc.

Additional respondents: Cold Spring Resort; White Mountain Country Club

DE 90-113
Order No. 20,257

76 NH PUC 624

New Hampshire Public Utilities Commission

October 1, 1991

ORDER requiring a property development water system to show cause why it should not continue to be subject to state franchise/ certificate requirements and why it should not be fined for violations of commission filing and safety regulations.

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1. PUBLIC UTILITIES, § 122

[N.H.] Property development water system — Regulatory status — Factors — Size — Quality of service — Desires of patron homeowners — Franchise requirements — Show cause proceeding. p. 624.

BY THE COMMISSION:

ORDER

[1] On July 6, 1990, Joseph L. Hyde, principal of Cold Spring Properties, Inc. which operates Cold Spring Resort (Cold Spring) and White Mountain Club (White Mountain) and a community

water system in the Town of Ashland, New Hampshire, requested an exemption from regulation as a public utility pursuant to RSA 362:4; and

WHEREAS, the Cold Spring Properties Townhouse Association and the Ropewalk West Townhouse Association (the Associations), two of the multi-unit customers served by the Cold Spring/White Mountain water system, objected

to the exemption request; and

WHEREAS, in Order No. 19,995 the New Hampshire Public Utilities Commission (the Commission) granted a temporary waiver from the provisions of Title XXXIV pursuant to RSA 362:4; and

WHEREAS, at a January 9, 1991 hearing before the Commission, Mr. Hyde was ordered to negotiate with representatives of the Associations regarding the franchising of the Cold Spring/White Mountain water system; and

WHEREAS, members of the Ropewalk West Townhouse Association, a residential section of Cold Spring, have complained to the Commission that the water system is deteriorating and may not be adequate in the future to serve the customers' needs; and

WHEREAS, certain residents of Cold Spring are concerned that Mr. Hyde may not have the financial resources to adequately repair and operate the water system; and

WHEREAS, although Cold Spring Properties, Inc. and White Mountain have been in Chapter 11 bankruptcy proceedings, the Bankruptcy Court on August 21, 1991 issued on order stating its intention to dismiss the case due to the debtor's failure to abide by the terms of the reorganization plan; and

WHEREAS, it appears that Mr. Hyde and the Associations are not progressing in their negotiations and that Mr. Hyde is not making commitments to the maintenance and operation of the Cold Spring/White Mountain water system; it is hereby

ORDERED, that pursuant to RSA 365:15, Joseph L. Hyde shall appear before the Commission, 8 Old Suncook Road, Building #1, Concord, New Hampshire at 2:00 p.m. on October 14, 1991 for the purpose of showing cause why Cold Spring Properties, Inc., White Mountain and/or Mr. Hyde should not be fined, referred to the Attorney General for criminal prosecution or subjected to other appropriate sanctions in accordance with, *inter alia*, RSA 365:4 or 365:42 for the possible willful violation of RSA 362:2, 362:4, 374:1, and other related statutes; and it is

FURTHER ORDERED, that Mr. Hyde shall show cause why he should not be required to seek a franchise pursuant to RSA 374:22; and it is

FURTHER ORDERED, that Mr. Hyde or other interested parties shall show cause why the water system serving Cold Spring and White Mountain should not be placed into receivership, pursuant to RSA 374:47-a; and it is

FURTHER ORDERED, that the Secretary shall serve a copy of this notice by first class United States mail on Anne R. Clarke, Esquire, counsel to the Ropewalk West Townhouse

Association and on Blair C. Wood, Esquire, counsel to the Cold Spring Properties Townhouse Association.

By order of the Public Utilities Commission of New Hampshire this first day of October 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Cold Spring Resort/White Mountain Country Club, DE 91-113, Order No. 19,995, 75 NH PUC 743, Dec. 3, 1990.

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NH.PUC*10/01/91*[27226]*76 NH PUC 625*Northern Utilities, Inc.

[Go to End of 27226]

Re Northern Utilities, Inc.

DF 91-134
Order No. 20,258

76 NH PUC 625

New Hampshire Public Utilities Commission

October 1, 1991

PETITION by natural gas local distribution company for authority to extend its short-term debt limit from $10 million to $13 million; suspended, and hearing ordered.

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1. SECURITY ISSUES, § 98

[N.H.] Short-term notes — Issuance limits — Extensions — Necessity for hearing. p. 626.

Page 625

BY THE COMMISSION:

ORDER

[1] WHEREAS, on September 6, 1991, Northern Utilities, Inc. ("Northern" or "Company") filed a petition for authority to issue securities and to extend the short-term debt limit authority until all necessary regulatory approvals have been received on the proposed notes; and

WHEREAS, upon review of the proposed issue of unsecured notes in an aggregate amount not to exceed $13,000,000 at an interest rate of 9.70% and with a maturity of 40 years it has been determined that further investigation is necessary; it is hereby

ORDERED, that the authority to issue and sell short term debt at a level not to exceed $10,000,000 is extended effective September 30, 1991 until all necessary approvals have been received for the unsecured notes; and it is

FURTHER ORDERED, that a hearing be held, pursuant to RSA Chapter 369:1, 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 twenty-third day of October 1991; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard at said hearing by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than October 11, 1991 and to be documented by affidavit filed with this office on or before October 23, 1991; 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 and commission on or before October 23, 1991.

By order of the Public Utilities Commission of New Hampshire this first day of October, 1991.

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NH.PUC*10/01/91*[27227]*76 NH PUC 626*Southern New Hampshire Water Company, Inc.

[Go to End of 27227]

Re Southern New Hampshire Water Company, Inc.

DE 91-148
Order No. 20,259

76 NH PUC 626

New Hampshire Public Utilities Commission

October 1, 1991

ORDER granting a water utility a waiver from the 30-day notice period normally required prior to commencement of reconstruction and relocation work.

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1. WATER, § 12

[N.H.] Water utilities — Construction and equipment — Reconstruction and relocation work — 30-day notice period — Waiver — Circumstances. p. 626.

BY THE COMMISSION:

ORDER

Southern New Hampshire Water Company, Inc. (SNHW), having filed on September 26, 1991, Form E-22, pursuant to N.H. Admin. Rule Puc 609.07, for Phases I, II and III for water main facilities modification, extension and relocation in connection with the Sam's Club project in Hudson, New Hampshire by Wal-Mart Stores, Inc.; and

[1] WHEREAS, SNHW requests waiver of the thirty day notification provision of N.H. Admin. Rule Puc 201.05, asserting that the public interest requires that construction commence prior to the expiration of the thirty day notice period in order to meet the construction requirements of the New Hampshire Department of Transportation (DOT); and

WHEREAS, the site work for the Sam's Club is scheduled to begin in early October, 1991 in order to meet a December, 1991, projected opening date; and

WHEREAS, SNHW asserts that it is essential that the water main improvements and relocations addressed in the E-22 filing be completed prior to the roadway work associated with the construction at Sam's Club that is being performed pursuant to DOT requirements; and

WHEREAS, SNHW is required under New Hampshire Law to ensure that the work performed in this matter is consistent with its approved tariffs on file with this commission and any resultant expenditures by SNHW are at SNHW's own risk, subject to possible commission review in subsequent rate proceedings; it is hereby

ORDERED, that SNHW request for waiver of N.H. Admin. Rule Puc 609.07 is granted pursuant to N.H. Admin. Rule Puc 201.05.

By order of the New Hampshire Public Utilities Commission this first day of October, 1991.

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NH.PUC*10/01/91*[27228]*76 NH PUC 627*EnergyNorth Natural Gas Inc.

[Go to End of 27228]

Re EnergyNorth Natural Gas Inc.

DE 90-215
Order No. 20,260

76 NH PUC 627

New Hampshire Public Utilities Commission

October 1, 1991

ORDER approving proposed tariff revisions of natural gas local distribution company phasing in an increase in the daily limit on supplies to nonresidential customers, from 100 Mcf to 150 Mcf to 200 Mcf.

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1. SERVICE, § 339.4

[N.H.] Natural gas — Allocation of supply — Nonresidential customers — Daily limits — Phase-in of increase in limits — From 100 Mcf to 150 Mcf to 200 Mcf. p. 627.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on November 30, 1990 EnergyNorth Natural Gas, Inc. (ENGI) filed a proposed revision to Tariff NHPUC No. 1-Gas, Second Revised Page 34 concerning daily volume limits for new and existing customers; and

WHEREAS, on April 11, 1991 ENGI amended its filing with a Third Revised Page 34; and

WHEREAS, the Second Revised Page 34 requires ENGI to meet new service requests up to 100 Mcf per day from non-residential customers; and

WHEREAS, the Third Revised Page 34 proposes to phase-in higher limits starting January 1, 1991 at 150 Mcf per day, rising to 200 Mcf per day effective November 1, 1992; and

WHEREAS, the Company submits that such demand increases can be met without unduly impairing the quality or reliability of service to the general body of existing customers; it is hereby

ORDERED *NISI*, that the above revisions are in the public interest and therefore approved; and it is

FURTHER ORDERED, that pursuant to the N.H. Admin. Rules Puc 203.01, the Company shall cause 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 general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than October 7, 1991, and that it be documented by affidavit filed with this office on or before Oct. 25, 1991; and it is

FURTHER ORDERED, that this Order *NISI* will be effective on October 28, 1991, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this first day of October 1991.

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NH.PUC*10/02/91*[27229]*76 NH PUC 628*Public Service Company of New Hampshire

[Go to End of 27229]

Re Public Service Company of New Hampshire

DR 91-001

Order No. 20,261

76 NH PUC 628

New Hampshire Public Utilities Commission

October 2, 1991

ORDER approving electric utility's proposed modifications to its time-of-use (TOU) rates, to eliminate one TOU schedule having no customers, and to eliminate Fast Day as a legal holiday and substitute Civil Rights Day in its place.

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1. RATES, § 326

[N.H.] Electric — Time-of-use (TOU) rates — Modification — Elimination of TOU schedule having no customers — Elimination and substitution of legal holidays. p. 628.

BY THE COMMISSION:

ORDER

On September 19, 1991, Public Service Company of New Hampshire (PSNH) filed revisions to its currently effective tariff, NHPUC No. 32 — Electricity. PSNH filed the following tariff pages:

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

1st Revised Pages 1, 11, 34, 35, 37, 38, 68,
                    69, 70, and 71
2nd Revised Pages 22, 31, 36, and 40
Supplement No. 1  1st Revised Page 1
Effective:        October 19, 1991; and
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[1] WHEREAS, Revised Page 11 proposes to eliminate Fast Day as a legal holiday and replace it with Civil Rights Day pursuant to 1991 NH Laws Chapter 206, which modified RSA 288:1, effective July 1, 1991; and

WHEREAS, Revised Pages 22, 31, and 40 propose to modify the Controlled Water Heating provisions of Rate D, Rate D-OTOD and Rate G so it does not end on September 30, 1991, as now specified in the currently effective tariff, but will remain in effect for the remaining life of the existing equipment; and

WHEREAS, Revised Pages 34 through 38 are being filed to eliminate Rate D-TOU because it currently has no customers and because the parties to the Rate Design proceeding anticipate a Rate Design proposal that will make Rate D-TOU unnecessary due to modifications to Rate D-OTOD; and

WHEREAS, Revised Pages 68 through 71 propose to eliminate Rate WI; and

WHEREAS, PSNH indicated in its May 1, 1991 report on Rate WI that it would eliminate Rate WI prior to the 1991-1992 winter period and concentrate on marketing NEPOOL

Interruptible Rate N-5; and

WHEREAS, the change to the targeted lifeline pilot program RATE D-TL, 1st Revised Page 1 of Supplement No. 1, is intended to clarify language in the "Availability" section so it is clear that the rate is not available to new customers nor to existing customers who move from their present locations; and

WHEREAS, none of the parties to the Rate Design proceeding disagrees with the Company's proposals; and

WHEREAS, the changes PSNH is proposing will either clarify existing tariff rates or eliminate unused or duplicative rate classes while leaving unchanged the rates of any particular customer or customer class; and

WHEREAS, the Commission soon will address, *in toto*, rate design changes for PSNH and these proposed changes by PSNH are just and reasonable; it is hereby

ORDERED, that the existing tariff pages 1st revised pages 22, 31, and 40 remain in effect until October 18, 1991; and it is

FURTHER ORDERED *NISI*, that the tariff pages filed on September 19, 1991 and described above be, and hereby are, authorized to become effective on October 19, 1991 unless otherwise ordered; and it is

FURTHER ORDERED, that pursuant to

N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted by October 8, 1991, such publication to be documented by affidavit filed with this office on or before October 16, 1991; 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 October 16, 1991; and it is

FURTHER ORDERED, that PSNH file compliance tariff pages within 20 days of the issuance of this Order.

By order of the Public Utilities Commission of New Hampshire this second day of October 1991.

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NH.PUC*10/04/91*[27230]*76 NH PUC 629*Hampton Water Works

[Go to End of 27230]

Re Hampton Water Works

DR 91-023

Order No. 20,262

76 NH PUC 629

New Hampshire Public Utilities Commission

October 4, 1991

APPLICATION by water utility for authority to implement a temporary rate increase while its request for a permanent rate increase was pending; denied.

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1. RATES, § 630

[N.H.] Temporary rates — Factors justifying disapproval — Poor quality of service — Customer complaints — Water utility — But high chlorine content — Insufficient reason for disapproval. p. 631.

2. RATES, § 630

[N.H.] Temporary rates — Factors affecting approval — Underearnings. p. 632.

3. RATES, § 630

[N.H.] Temporary rates — Factors affecting approval — Underearnings — Evidence of underearnings — Return below authorized level — Insufficient by itself to justify temporary rates. p. 632.

APPEARANCES: Ransmeier & Spellman by Dom D'Ambruoso, Esq. for Hampton Water Works; Office of the Consumer Advocate by Michael Holmes, Esq. and Kenneth Traum for the Residential Ratepayers; Susan Chamberlin, Esq. for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. *Procedural History*

On April 16, 1991 Hampton Water Works Company ("Hampton" or "Company") filed proposed rate schedules and supporting documentation for a 21.52% increase in annual revenues.

On April 16, 1991 the Company filed a petition for temporary rates requesting that the Commission establish the Company's existing rates as temporary rates.

On May 14, 1991, the Commission issued Order No. 20,131 suspending Hampton's proposed rate schedules and scheduling a pre-hearing conference and temporary rate hearing for July 2, 1991.

By letter of June 20, 1991, Hampton revised its filing to exclude consideration of the so-called Hobbes Well. By letter on June 28, 1991, the Company removed consideration of the Hobbes Well until such time as the well is completed and in service. These adjustments reduced the Company's present petition to a requested revenue increase of 14.72%.

On June 20, 1991 the Commission on its own Motion, determined it is generally in the public

good to separate the prehearing conference from the temporary rate hearing. The Commission ordered that a prehearing conference to determine a procedural schedule,

motions to intervene and any other administrative matters be held on July 2, 1991. Subsequently the temporary rate hearing was scheduled for July 19, 1991.

On July 2, 1991 the Commission granted the Town of North Hampton's Motion to intervene. Unsworn statements were made by the following interested persons: Councilor Ruth Griffin; Representative Kenneth W. Malcolm; Senator Burton Cohen; Ms. Shirley Fuller; Mr. Henry Fuller; Ms. Lillian Wylie; Mr. John Larkin. The parties formulated a procedural schedule and a Stipulation Agreement. The Stipulation rescheduled the temporary rate hearing for August 2, 1991 and set a July 19, 1991 effective date for temporary rates should they ultimately be granted by the Commission.

On July 8, 1991 the Commission granted the Stipulation pursuant to an order *NISI*. The Stipulation was approved by the full Commission at its July 15, 1991 public meeting.

On August 1, 1991 the Commission, on its own motion, continued the hearing on temporary rates to August 27, 1991, due to a conflict in the Commission schedule.

On August 27, 1991 the Commission held the temporary rate hearing. The arguments and the Commission's decisions are set forth below.

II. *Position of the Parties*

A. Introduction of Water Quality testimony

1. The Company

Prior to the hearing, Hampton filed two motions: Hampton's Objection to the Consideration of the Prefiled Testimony of the Town of North Hampton at the Temporary Rate Hearing; and Objection to the Introduction of `Water Quality' Testimony by the Office of the Consumer Advocate at the Temporary Rate Hearing. In its first Motion the Company argues that the issues raised by the Town of North Hampton were appropriate to a permanent rate hearing and not to a temporary rate hearing. In its second Motion, relying on RSA 378:27, the Company asserts the statute only allows consideration of the rate of return determined from the Company's annual reports; water quality testimony should be deferred to the permanent rate proceeding.

2. The OCA

The Office of Consumer Advocate (OCA) filed the testimony of Mr. Al French, a customer of Hampton Water Works who stated that the chlorine level of the water is so high as to be undrinkable for his household. The OCA objected to Hampton's motions which would prevent Mr. French from testifying, arguing that adequate service is fundamental and that without such an inquiry, temporary rates cannot be granted.

3. The Town of North Hampton

Robert Crowley, who intervened on behalf of the Town of North Hampton did not appear.

4. The Staff

The Staff supported the Company's objections on the grounds that water quality and service are traditionally investigated in the permanent rate proceeding. Staff relied on RSA 378:27 and long standing Commission practice in submitting testimony on the company's rate of return as computed from the company's filed annual reports and in deferring its investigation of water quality to the permanent rate proceedings.

B. Temporary Rates

1. The Company

a. Rate of Return

The Company witness, Mr. Rod Nevirauskas testified that as calculated from the Company's 1990 Annual Report, Hampton's rate of return is 9.64%. The last overall rate of return which the Commission found to be reasonable for the Company was 11.22%. The Company requests that temporary rates be set at current levels to stem the negative effects of this underearning.

The Company is underearning because of

Page 630

inflation which occurred during the approximately three and one half years since the company's last general rate relief. The Company has made capital investments during that time and has been subject to increased regulation by state and federal authorities.

The Company faces the risk that, if underearning continues, it will not be able to obtain competitive financing and will not be able to fund needed capital improvements. The Company states that there is a risk that it will be denied borrowing necessary to pay down short term debt in the first quarter of 1992. The Company to date has not attempted to sell the bonds necessary for this refinancing.

The result of the Company's 9.64% rate of return is a Company loss of $32,800 a month, if it is assumed that it should have been earning an 11.22% rate of return.

b. Water quality

Mr. Keith Bossung testified that management set the level of chlorine to have residual chlorine of .5 parts per million at the system's extremities. The Company determined this level would best prevent contamination of the system. The Company currently meets state and federal water quality requirements.

2. The OCA

The OCA argues that the Company's testimony does not support a finding that setting temporary rates is in the public interest. Due to customer dissatisfaction with water quality, as testified to by its witness Mr. French, the OCA requests that the Commission deny setting temporary rates. Mr. French testified that the chlorine levels in his water made it undrinkable. He and his wife relied on bottled water which was both expensive and inconvenient. The water was adequate for other customary uses. The Company's failure to meet its allowed 11.22% rate of return does not adequately support a finding that temporary rates are in the public good.

3. The Staff

The Staff concurs with the Company's request to set temporary rates at current levels. Mr. Richard Deres testified that the Company's rate of return at the end of 1990 was 9.62%, less than its allowed 11.22% rate of return. As Staff has not yet completed its audit of the Company, Mr. Deres testified that the recommendation is based on the limited information found in the annual report as well as past Commission practice. Water quality did not enter into Staff's recommendation.

III. *Commission Analysis*

A. Introduction of Water Quality testimony

RSA 378:27 authorizes the Commission to determine whether the public interest requires the establishment of temporary rates. In the context of the instant proceeding, the Commission granted the OCA request to entertain testimony on water quality. Although the threshold of relevance of such testimony at the temporary rate stage is very high, the Commission was unwilling to rule that water quality is *never* relevant to a temporary rate hearing. *Cf*., *Appeal of Roger Easton*, 125 N.H. 205 (1984) (the Public Utility Commission's duty to determine what is in the public good goes beyond a financial investigation). Accordingly, Hampton's Objection to the Introduction of "Water Quality" Testimony by the Office of the Consumer Advocate at the Temporary Rate Hearing was overruled.

In the instant case, the OCA evidence was that water quality was poor and did not support temporary rate relief because increased chlorine levels adversely affected taste and smell. Company Witness Keith Bossung testified that the level of chlorine in the water was a management decision designed to protect the system from contamination.

[1] We find that the chlorine complaint of Mr. French does not rise to the level of poor quality or mismanagement necessary to deny temporary rates.[1(142)] The instant record indicates that the higher chlorine level is the result of a deliberate management decision; a decision which attempted to balance adverse aesthetic affects against an increased assurance of health and safety. The prudence or imprudence of this

managerial decision will be adjudicated in the permanent rate case.

B. Adequacy of evidence regarding temporary rates

[2] The Commission's authority to set temporary rates is explicitly authorized by statute. RSA 328:27. The Commission's authority to set such rates is discretionary and is to be exercised only when such rates are in the public interest. *Id*. Temporary rates are set without such investigation as is required for the determination of permanent rates. *Re Pennichuck Water Works, Inc.*, 73 NH PUC 112 (1988); *New England Telephone & Telegraph Co. v State*, 95 NH 515 (1949). However, at a minimum, the Commission must have evidence that temporary rates are needed to ensure a properly operating and financially sound utility. The Commission determines temporary and permanent rates based on the standard that rates must be sufficient to yield not less than a reasonable return on the cost of utility property that is used and useful in the public service less accrued depreciation. RSA 378:28; *Re Southern New Hampshire Water Co., Inc.*, 73 NH PUC 352 (1988).

The Commission accepts the Company's testimony that it is earning a 9.64% return on its investment, which is below the Company's currently allowed return of 11.22%, set by this Commission in Hampton's last rate case.[2](143) *Re Hampton Water Works*, 73 N.H.P.U.C. 418 (1988). The Company's witness Mr. Rod Nevirauskas testified that the present underearning will have an adverse impact on a planned refinancing in the first quarter of 1992. However, the evidence also indicated that there would be little, if any, adverse impact on the proposed refinancing if the Company elects to put its rate increase into effect pursuant to RSA 378:6, III, as an alternative to RSA 378:27 temporary rate relief. Additionally, the testimony did not state that the company was unable to provide sufficient service at present or would be unable to provide service in the future because of severely deteriorated earnings.

[3] Earning less than the allowed rate of return does not automatically imply that a company's earnings are not reasonable. The Commission finds that where, as here, the Company is underearning by only 160 basis points, and the evidence indicates minimal, if any, adverse impact on access to capital markets, the record does not support imposing 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 Hampton Water Works' Petition for Temporary Rates be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1991.

FOOTNOTES

[1]It is not clear that a finding of poor quality should always lead to a denial of temporary rates; it is also possible that poor water quality might lead to imposing temporary rates in order to provide a company with the funds to improve it.

[2]The difference between Staff's 9.62% rate of return and the Company's 9.64% is so slight that it is unnecessary to choose between the two for this decision.

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NH.PUC*10/04/91*[27231]*76 NH PUC 632*Franchise Tax — Electric Utilities

[Go to End of 27231]

Re Franchise Tax — Electric Utilities

DR 91-096
Order No. 20,264

76 NH PUC 632

New Hampshire Public Utilities Commission

October 4, 1991

MOTION by Granite State Electric Company for rehearing of portion of earlier order relating to the elimination of the state franchise tax applied to electric utilities; granted. For earlier order, see 76 NH PUC 576 (1991), supra.

Page 632

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1. EXPENSES, § 112

[N.H.] Franchise tax — Elimination of applicability to electric utilities — Consequences — Limited rehearing. p. 633.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on September 3, 1991 the commission issued Order No. 20,230 in this docket ordering electric companies in New Hampshire to file revised tariffs to eliminate the franchise tax which was repealed on July 2, 1991 by the New Hampshire legislature; and

WHEREAS, Granite State Electric filed a petition for rehearing and suspension of the order on September 12, 1991; and

WHEREAS, upon consideration of the Motion and based upon a preliminary evaluation, it appears to be warranted to accept further testimony related to the proper treatment of the elimination of the franchise tax and the proper allocation of tax liabilities to Granite State Electric; it is

ORDERED, that a hearing be held pursuant to RSA Chapter 541, 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 fifth day of December, 1991; and it is

FURTHER ORDERED, that Granite State Electric shall file testimony on or before October 25, 1991; and it is

FURTHER ORDERED, that Granite State Electric shall implement the rates ordered in Order No. 20,230 effective October 4, 1991 as temporary rates subject to recovery of the tax adjustment based upon our final report and order in this docket.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Franchise Tax — Electric Utilities, DR 91-096, Order No. 20,230, 76 NH PUC 576, Sept. 3, 1991.

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NH.PUC*10/10/91*[27232]*76 NH PUC 633*New England Telephone Company

[Go to End of 27232]

Re New England Telephone Company

DR 91-141
Order No. 20,265

76 NH PUC 633

New Hampshire Public Utilities Commission

October 10, 1991

ORDER authorizing local exchange telephone carrier to reclassify nine exchanges where their rate group limits had been exceeded for two years.

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1. SERVICE, § 445

[N.H.] Telephone — Local exchange areas — Reclassification — Factors — Exceeding of rate group limits. p. 633.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on September 13, 1991, New England Telephone (NET or the Company) filed a petition to reclassify the Charlestown, Epsom, Lancaster, Lisbon, Lyme, Plymouth, Rindge, Seabrook and Woodsville exchanges; and

WHEREAS, the filing provides for the reclassification of portions of exchanges and localities serving some municipalities; and

WHEREAS, the exchanges and localities

Page 633

listed above have exceeded their rate group limits for two consecutive years as of June 1991; and

WHEREAS, the estimated increase in revenue for the first year as a result of these reclassifications is approximately $68,000; it is hereby

ORDERED, that the following tariff pages of NET's NHPUC No. 75 be and hereby are approved:

Part A Section 5

Eighteenth Revision of Page 8
Twelfth Revision of Page 23
Tenth Revision of Page 24
Tenth Revision of Page 25
Eleventh Revision of Page 26
Ninth Revision of Page 27

By order of the Public Utilities Commission of New Hampshire this tenth day of October 1991.

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NH.PUC*10/15/91*[27233]*76 NH PUC 634*EnergyNorth Natural Gas, Inc.

[Go to End of 27233]

Re EnergyNorth Natural Gas, Inc.

DR 90-166
Order No. 20,266

76 NH PUC 634

New Hampshire Public Utilities Commission

October 15, 1991

PETITION by natural gas local distribution company to temporarily seal certain parts of a commission order and related transcripts; denied and petition withdrawn.

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1. PROCEDURE, § 16

[N.H.] Discovery — Confidentiality — Sealing of record — Showing of necessity. p. 634.

BY THE COMMISSION:

ORDER

[1] WHEREAS, EnergyNorth Natural Gas, Inc. (ENGI), by letter, requested that the Public Utilities Commission (Commission) seal portions of the November 5, 1990 and January 2, 1991 transcripts and portions of Order No. 20,232 in Docket DR 90-166; and

WHEREAS, the Commission on September 9, 1991 agreed that while ENGI identified the issues for the Commission's consideration, the requested sections of the transcript and Order No. 20,232 be temporarily sealed, pending a more detailed analysis of the issues presented; and

WHEREAS, after further review, ENGI does not believe that it is necessary to keep the transcript sections or Order No. 20,232 under seal and by letter of October 4, 1991 has withdrawn its request; it is hereby

ORDERED, that the record as indicated in the transcripts of November 5, 1990 and January 2, 1991 remain unchanged and open to the public; and it is

FURTHER ORDERED, that Order No. 20,232 be unsealed and remain open to the public.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-166, Order No. 20,232, 76 NH PUC 585, Sept. 4, 1991.

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NH.PUC*10/16/91*[27234]*76 NH PUC 635*Southern New Hampshire Water Company, Inc.

[Go to End of 27234]

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 20,269

76 NH PUC 635

New Hampshire Public Utilities Commission

October 16, 1991

MOTION by water utility for rehearing of earlier order to correct mathematical error occurring when an acquisition adjustment was deducted from rate base twice; granted, even though the motion was filed one day beyond the deadline. For earlier order, see 76 NH PUC 608 (1991), supra.

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1. PROCEDURE, § 33

[N.H.] Rehearing — Grounds for granting — Correction of significant mathematical error — Effect of missing rehearing filing deadline — Of less importance than correction. p. 635.

BY THE COMMISSION:

ORDER

[1] On July 29, 1991, the Commission issued Report and Order No. 20,196 ("Rate Order"). By letter dated August 21, 1991, Southern New Hampshire Water Company, Inc. ("Southern") supplemented its Motion for Rehearing and/or Reconsideration to bring to the Commission's attention a numerical error that was included in the Commission's calculations which were the

basis for the revenue deficiency determined in the Rate Order; and

WHEREAS, the letter noted that in arriving at the revenue deficiency found in the rate order, the Commission had apparently deducted a $412,762 utility acquisition adjustment from rate base twice; and

WHEREAS, the Rate Order did not detail how rate base was calculated, and it was not possible for Southern to determine readily that the utility acquisition adjustment had in fact been deducted twice because the utility acquisition adjustment was not an issue in the case and therefore was not explicitly addressed in either the Commission's Rate Order or in the schedules attached thereto; and

WHEREAS, on September 16, 1991, the Commission issued Report and Order No. 20,243 ("Rehearing Order") instructing Staff and the parties to this case to confer in a settlement conference concerning possible numerical errors identified by Southern in its Motion for Rehearing; and

WHEREAS, on September 20, 1991, Southern moved for clarification of the Rehearing Order to determine whether the issue of the acquisition adjustment was the subject of the Rehearing Order in light of its August 21, 1991, letter for rehearing; and

WHEREAS, the Rehearing Order did not address the issue of the acquisition adjustment; and

WHEREAS, both the Staff and Company agreed that the schedules attached to the Rate Order did inappropriately deduct the acquisition adjustment twice; and

WHEREAS, on September 25, 1991, the Office of Consumer Advocate filed an objection to this Motion for Rehearing of the Rate Order as it was one day late from the statutory period prescribed by RSA 541:3; and

WHEREAS, while the Consumer Advocate is procedurally correct that the Motion for Rehearing was filed one day late, the Consumer Advocate has made no allegation that the proposed correction is substantively incorrect; it is hereby

ORDERED, that Southern New Hampshire Water Company, Inc.'s Motion for Rehearing is granted.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., DR 89-224, Order No. 20,196, 76 NH PUC 521, July 29, 1991; revised July 31, 1991. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 20,243, 76 NH PUC 608, Sept. 16, 1991.

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Re Littleton Water and Light Department

DR 90-122
Order No. 20,270

76 NH PUC 636

New Hampshire Public Utilities Commission

October 16, 1991

APPLICATION by municipal electric utility to increase rates and charges for customers residing outside city limits; granted as to a $5 customer charge and an energy charge of 6.664 cents per kilowatt-hour.

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1. PUBLIC UTILITIES, § 57

[N.H.] Public utility status — Exemption — Municipal utility — Serving beyond municipal limits — Factors — Rate parity with in-city customers. p. 636.

2. RATES, § 429

[N.H.] Municipal utility — Service beyond municipal limits — Rate increase — To prevent cross-subsidization by in-city customers. p. 638.

APPEARANCES: Littleton Water and Light Department by Lee Smith, Steven D. Griffin and James Thyng, and Staff of the New Hampshire Public Utilities Commission by Thomas C. Frantz and Edwin P. LeBel.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On September 14, 1990, the Littleton Water and Light Department (Littleton) filed a tariff page and supporting testimony for a rate increase of $7,895 or approximately 38 percent to its customers who live outside the Town of Littleton. At the same time Littleton requested temporary rate relief in the event its petition was suspended pending investigation by the New Hampshire Public Utilities Commission (Commission). Because Littleton's tariff filing did not conform to PUC 1601.04(b), the Commission rejected it by Order No. 19,961 on October 17, 1990.

Littleton refiled its tariff on October 4, 1991, effective October 14, 1990. On October 29, 1990, the Commission suspended the tariff and scheduled a pre-hearing conference for December 5, 1990 to address the temporary rate request and to establish a procedural schedule. At the duly noticed temporary rate hearing, Littleton requested that temporary rates to be set at

the level it proposed for permanent rates. Staff argued that insufficient information existed on which to base any temporary rate relief. The Commission directed Staff to work with Littleton to obtain the necessary information to establish temporary rates. The procedural schedule recommended by the parties was approved with the hearing date to be set at a later time.

On December 13, 1990, Littleton filed the required information on which to base temporary rates. The revision decreased its revenue request to $7,036. The Commission subsequently approved the proposed temporary rate request of 19.6 percent and directed Littleton to update its Cost of Service Study (COSS) from test year 1988 to a more representative test year for the purposes of setting permanent rates. Report and Order 20,047 on January 28, 1991.

[1] In Response to late filed data responses

by Littleton and the passage of HB 484-FN, effective January 1, 1992, which provides at RSA 362:4-a:

> A municipal corporation furnishing electric utility services shall not be considered a public utility under this title if it serves customers outside of its municipal boundaries and charges to its customers a rate no higher than that charged to its customers within the municipality, and provides those customers a quantity and quality of electricity equal to that served customers within the municipality;

an Order of Notice was issued August 30, 1991, scheduling a hearing on the merits for October 9, 1991, and directing Littleton, through bill inserts, to notify its outside customers of the scheduled hearing.

II. *Position of the Parties*

A. Littleton

Littleton presented two witnesses, Lee Smith of La Capra Associates, and Steven D. Griffin, the Controller for Littleton. Littleton states that the outside customers have not had a base rate change since January 10, 1983. Further, Littleton defended the need to increase its rates based on an allocated cost of service study done by Ms. Smith for the Town of Littleton during the 1988-1989 time period using a 1988 test year. Littleton states that the COSS shows that in-town customers are subsidizing the out-of-town customers. PR Exhibit 2. Littleton originally requested a $7,895 or approximately 38 percent increase for its 49 outside customers. The revenue request was later reduced to $7,036 and again reduced to $6,875 as a result of a data request to Littleton to update the COSS to 1990 actual purchased power costs.

At the time of the filing, the following rates, exclusive of the purchased power adjustment charge, were being paid by Littleton's residential customers:

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

	In-town Customers	*Outside Customers*
Customer Charge	$5.00 per month	$3.93 per month
Energy Rate	$0.6898 per Kwh	$0.05 per kWh

Littleton originally proposed moving the customer charge to $5.25 per month and the energy charge to $0.06892 per kWh. Because Littleton, a municipality, does not have any equity nor does it have any long-term debt, the COSS used an internally funded capital contribution in which to fund capital outlays. In agreement with Staff's suggestion, Littleton replaced the capital fund with a 7.25 percent rate of return based on long-term municipal bond rates and decreased its revenue requirement to $7,036. Other minor adjustments to rate base support Littleton's final proposal of a $6,875 (28%) rate increase. PR Exhibit 2.

B. Staff

Staff did not oppose Littleton's final rate request after changes had been made to the COSS for the update of purchased power costs from 1988 to 1990 based on a wholesale rate increase by New England Power Company (NEPCO), Littleton's power supplier, and the use of a municipal bond rate of 7.25 percent as a proxy for Littleton's cost of capital. Staff questioned the basis for the allocation of all the common fixed assets except trucks at 50 percent between the Water Department and the Electric Department. Trucks were allocated 75 percent to the Electric Department based on usage.

Staff also raised concerns about how Littleton proposes to recover the underrecovery. Littleton proposed to cap each customer's bill surcharge at $25 per month to recoup the underrecovery experienced during the temporary rate period. Staff argued that capping bills at $25 would impose significant hardship on many customers as they enter the heating season, especially if Littleton is granted its permanent rate request which during the hearing Littleton calculated would raise rates another 6.5 to 7.0 mills above temporary rates to 6.664 cents per kWh.

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III. *Commission Analysis*

[2] Pursuant to RSA 378:28 the Commission finds the proposed rate increase to be just and reasonable on those customers located outside of the Town of Littleton's municipal borders.

Littleton has conducted a cost of service study to substantiate those costs being incurred by service to customers outside its municipal borders requiring an increase in the charge per kilowatt hour.

However, the Commission agrees with the position of Staff relative to the recoupment of temporary rates and will require Littleton to recoup the difference between temporary rates and the permanent rates established herein by a $.006/kWh surcharge per month. This method of surcharge shall remain in effect even after January 1, 1992, but only until the underrecovery is recovered, because it involves charges that were incurred by customers while Littleton was still subject to the Commission's jurisdiction.

In conclusion Littleton is granted a rate increase on those customers outside its municipal boundaries as follows: customer charge $5.00, energy charge 6.664 cents per kilowatt hour. The temporary rate recoupment shall be collected via a $.006 surcharge per kilowatt hour.

Our order will issue accordingly.

ORDER

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

ORDERED, that Littleton Water and Light Department may charge its customers outside its municipal boundaries a customer charge of $5.00 per billing period and an energy charge of 6.664 cents per kilowatt hour; and it is

FURTHER ORDERED, Littleton Water and Light Department shall recoup the revenue shortfall experienced during the temporary rate period through an energy surcharge of $.006 per kilowatt hour; and it is

FURTHER ORDERED, that Littleton Water and Light Department file the exact amount collected under the temporary rate order; and it is

FURTHER ORDERED, that Littleton Water and Light Department file a monthly report with the Commission detailing the recoupment.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Littleton Water & Light Dept., DR 90-122, Order No. 19,961, 75 NH PUC 680, Oct. 17, 1990. [N.H.] Re Littleton Water & Light Dept., DR 90-122, Order No. 20,047, 76 NH PUC 66, Jan. 28, 1991.

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NH.PUC*10/17/91*[27236]*76 NH PUC 638*New Hampshire Electric Cooperative, Inc.

[Go to End of 27236]

Re New Hampshire Electric Cooperative, Inc.

DR 91-142
Order No. 20,271

76 NH PUC 638

New Hampshire Public Utilities Commission

October 17, 1991

ORDER authorizing electric cooperative to adopt as its own the avoided costs of its wholesale supplier, Public Service Company of New Hampshire.

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1. COGENERATION, § 25

[N.H.] Rates — Avoided costs — Basis for calculation — Proxy — Wholesale supplier. p.

639.

BY THE COMMISSION:

ORDER

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[1] On September 12, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC) filed to adopt for now the short-term avoided cost estimates of its current wholesale supplier, Public Service Company of New Hampshire (PSNH) for the period September 1, 1991 through April 30, 1992 as approved by the Commission in Order No. 20,229 in DR 91-011; and

WHEREAS, NHEC's adoption of PSNH's short-term avoided cost estimates is in accordance with the terms of the Settlement Agreement in Docket No. DR 86-41, *et al*., which provides for NHEC to adopt the avoided costs of its wholesale supplier, and Order No. 19,555 in Docket No. DR 89-079; and

WHEREAS, NHEC continues to remain a wholesale customer of PSNH at the current time; it is hereby

ORDERED *NISI*, that the short-term avoided cost rates approved for PSNH in Order No. 20,229 be applicable to NHEC under the same terms and conditions holding for PSNH for effect 11/18/91 unless otherwise ordered or unless there is a request for a hearing as provided below; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted by 10/25/91, such publication to be documented by affidavit filed with this office on or before 11/13/91; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than 11/13/91; and it is

FURTHER ORDERED, that NHEC file compliance tariff pages within 20 days of the issuance of this Order.

By order of the New Hampshire Public Utilities Commission this seventeenth day of October 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 89-079, Order No. 19,555, 74 NH PUC 375, Oct. 5, 1989. [N.H.] Re Public Service Co. of New Hampshire, DR 91-011, Order No. 20,229, 76 NH PUC 575, Sept. 4, 1991.

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[Go to End of 27237]

Re EnergyNorth Natural Gas, Inc.

DR 90-187
Order No. 20,272

76 NH PUC 639

Re Generic Discounted Rates Docket

DR 91-172
Order No. 20,272

76 NH PUC —

New Hampshire Public Utilities Commission

October 21, 1991

ORDER opening docket to investigate the reasonableness of discounted industrial rates and economic development rates.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development rates — Discounted industrial rates — Generic investigatory docket. p. 641.

APPEARANCES: Jacqueline Lake Killgore, Esq. for EnergyNorth Natural Gas, Inc.; Thomas Getz, Esq. for Public Service Company of New Hampshire, Inc.; Rath, Young, Pignatelli and Oyer by Eve Oyer, Esq.

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for Northeast Utilities Service Company; LeBoeuf, Lamb, Lieby & MacRae for Northern Utilities, Inc. by Scott Mueller, Esq.; Ransmeier & Spellman by John Alexander, Esq. for Anheuser-Busch Companies, Inc.; John E. Reilly, Esq. for New England Telephone; David Saggau, Esq. for Granite State Electric Company; Office of Consumer Advocate by Kenneth Traum for Residential Ratepayers; Amy L. Ignatius, Esq. for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

A. Procedural Background

EnergyNorth Natural Gas, Inc. (ENGI) on November 16, 1990, filed with the New Hampshire Public Utilities Commission (commission) a special contract with Hadco Corporation

(Hadco) pursuant to RSA 378:18, which contained a discounted industrial rate for natural gas service to Hadco. Dr. Sarah Voll of the commission staff (staff) filed testimony addressing significant policy considerations raised by discounted industrial and other economic development rates, including the threshold question of the commission's authority or mandate to engage in social ratemaking of this kind. A number of utilities and corporations (the parties) were granted intervenor status to allow them to respond to the policy issues raised in Dr. Voll's testimony.

B. Position of the Parties

The parties met on October 15, 1991. At that meeting, the parties recommended that the October 21, 1991 hearing on the special contract with Hadco should be continued, as the contract pertains to the rate design proposal now scheduled for hearing before the commission beginning January 21, 1992, the outcome of which may obviate the need for litigation of the Hadco contract itself.

The parties also recommended that because the policy issues raised in DR 90-187 are of importance, they should continue to be explored and resolved by the commission on a generic docket basis. The parties recommended that a new docket should be opened, with an order of notice confirming the creation of the docket, but that those entities already parties to DR 90-187 should be considered parties to the generic docket, without having to file new motions to intervene. Similarly, the parties recommended that the testimony prefiled in DR 90-187 be incorporated into the record of the generic docket, with leave for parties and new intervenors to withdraw some or all of their testimony, supplement their testimony or to file testimony for the first time.

The parties also recommended that if the commission were to open a generic docket, that issues of scope of the docket (including what types of utilities and utility services should be included) and how special contracts should be handled during the pendency of the generic docket should be addressed in writing by the parties and by those seeking intervention, prior to the prehearing conference.

Finally, the parties recommended the following procedural schedule for the generic docket:

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

Order of Notice	October 21, 1991
Notice published	October 25, 1991
Motions to Intervene, Memoranda on Scope of Docket and Interim Treatment of Special Contracts	November 8, 1991
Prehearing Conference	November 14, 1991
Commission ruling on Scope and Interim Treatment	November 25, 1991
Testimony from all Parties	December 23, 1991
Rebuttal Testimony	January 24, 1991
Settlement Conference	February 3, 1992
Hearing on Merits	February 6-7, 1992

C. Commission Analysis

[1] We agree that the policy issues raised by the staff in DR 90-187 are of importance and should be evaluated on a generic basis, rather than within the context of a particular special contract. We also believe that the generic proceeding should build on the testimony already developed in DR 90-187 while still giving an opportunity for entities who did not intervene in DR 90-187 case an opportunity to become involved in the generic process.

We conclude, therefore, that a generic investigation of the issues of discounted industrial rates should be commenced, incorporating the prefiled testimony in DR 90-187 into the record of the generic docket, and making all parties to DR 90-187 parties to the generic docket without the need for formal intervention. We also agree that issues of scope of the proceeding and interim treatment of special contracts during the pendency of the generic docket should be addressed by the parties and those seeking intervention. We find that the procedural schedule proposed by the parties and as outlined above is acceptable and will be adopted. Finally, we accept the request of the parties that the October 21, 1991 hearing on ENGI's special contract with Hadco be continued pending the outcome of ENGI's rate design 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 hearing in DR 90-187 be continued pending the outcome of the EnergyNorth Natural Gas, Inc. rate design docket, DR 90-183; and it is

FURTHER ORDERED, that a generic docket DR91-172 be opened to investigate issues of discounted and economic development rates for industrial customers, in accordance with the terms contained in the foregoing report; and it is

FURTHER ORDERED, that a prehearing conference be held, pursuant to RSA Chapter 378:28 and Puc 203.05, before said commission at its offices in Concord, 8 Old Suncook Road, Building #1 at ten o'clock in the morning on the fourteenth day of November, 1991; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and N.H. Admin. Rules Puc 203.02, any person wishing to intervene shall submit a motion to intervene with the commission no later than November 8, 1991 and that all parties and persons seeking to intervene who so desire may submit memoranda addressing the scope of the generic proceeding, also to be filed with the commission no later than November 8, 1991, and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the Executive Director shall notify all persons desiring to be heard to appear at said hearing by causing an attested copy of this order to be published once in a newspaper having general circulation in the State, such publication to be no later than October 26, 1991.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October 1991.

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Re Northern Utilities, Inc.

DF 91-134
Order No. 20,273

76 NH PUC 642

New Hampshire Public Utilities Commission

October 21, 1991

ORDER granting natural gas local distribution company an extension for issuing short-term debt increased from a limit of $10 million to a limit of $13 million.

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1. SECURITY ISSUES, § 98

[N.H.] Short-term debt — Increased issuance limit — Extension for completing issuance. p. 642.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on October 16, 1991, Northern Utilities, Inc. ("Northern") filed a motion to amend its petition to request authority to sell short-term debt at a level not to exceed $13,000,000; and

WHEREAS, the short-term debt level of $10,000,000 was approved in the order of notice issued on October 1, 1991; and

WHEREAS, Northern claims that the higher short-term debt level is required due to seasonal working capital and construction requirements until regulatory approvals are obtained for its proposed additional long-term debit; it is

ORDERED, that the authority to issue short-term debt at a level not to exceed $13,000,000 is extended until all necessary approvals have been received for the proposed unsecured notes effective with the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1991.

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NH.PUC*10/22/91*[27240]*76 NH PUC 643*Evans Group, Inc.

[Go to End of 27240]

Re Evans Group, Inc.

DE 91-160
Order No. 20,275

76 NH PUC 643

New Hampshire Public Utilities Commission

October 22, 1991

ORDER granting a license to construct, use, maintain, repair, and reconstruct a sewer main across state-owned railroad property.

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1. CERTIFICATES, § 125

[N.H.] Sewer main construction — License to cross state-owned property —

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Conditions. p. 644.

BY THE COMMISSION:

ORDER

WHEREAS, on October 3, 1991 Evans Group, Inc. filed with this Commission a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct a sewer main across state-owned railroad property in the Town of Tilton, New Hampshire; and

WHEREAS, the sewer main is intended to serve a proposed fuel mart/convenience store at the intersection of Routes 3 and 140 in Tilton; and

WHEREAS, the proposed sewer consists of 430 feet of 2-inch PVC force main, the last 20 feet of which enters state railroad property to tie into an existing state-owned 60-inch interceptor sewer, all as shown on plans on file with the Commission; and

WHEREAS, the proposed crossing of railroad property occurs at approximate Valuation Station 1049 + 05, Map V21/55 of the Concord-to-Lincoln Railroad; and

WHEREAS, the petitioner is seeking approval for the crossing prior to closing on the commercial property to be served by this petition, said property being currently owned by Pike Industries, Inc.; and

WHEREAS, the proposed sewer will cross two adjacent properties; and

WHEREAS, one of the adjacent properties is proposed as a restaurant site with its own 2-inch sewer force main to run parallel to that of this petition, as addressed in docket DE 91-161; and

WHEREAS, the second adjacent property is to be retained by Pike Industries, Inc.; and

WHEREAS, the petitioner expects to close on the proposed fuel mart/convenience store

property in the near future; and

WHEREAS, the Commission finds the above construction is necessary to meet the reasonable requirements of the petitioner without substantially affecting the public rights in said state property, thus it is in the public good; and

WHEREAS, the petitioner avers and staff has confirmed that the NHDOT Bureau of Railroads is in agreement with this petition; 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 18, 1991; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an attested copy of this order to be published once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Tilton area, said publications to be no later than November 4, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Tilton town clerk, by first class U.S. mail, postage prepaid, and postmarked on or before November 4, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the Commission on or before November 18, 1991; and it is

[1] FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq*. to Evans Group, Inc.,Box 246, Lebanon, New Hampshire 03766 to construct, use, maintain, repair and reconstruct the aforementioned crossing of a sewer main on public railroad property in Tilton, New Hampshire identified at approximate Valuation Station 1049 + 05, Map V21/55, 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; and it is

FURTHER ORDERED, that such authority is conditional upon the petitioner providing this Commission with copies of approval letters from the Town of Tilton and the Department of Environmental Services (DES) and of signed deeds, easements and operating agreements pertaining to the proposed sewer force main; and it is

FURTHER ORDERED, that this license shall be void if the petitioner does not close on the referenced property; and it is

FURTHER ORDERED, that all construction conform to requirements of the NHDOT Bureau of Railroads, the Department of Environmental Services and others as mandated by the Town of Tilton.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of October 1991.

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Re Public Service Company of New Hampshire

DR 91-011
Order No. 20,280
76 NH PUC 645

New Hampshire Public Utilities Commission
October 25, 1991

ORDER revising the fuel and purchased power adjustment clause (FPPAC) rate of Public Service Company of New Hampshire (PSNH). The rate is set based on the assumption that a Seabrook capacity buyback agreement between PSNH and an electric cooperative will not be in effect during the FPPAC period, subject to reconsideration once various ongoing proceeding involving the validity of the buyback agreement are settled.

Revenues received by PSNH in connection with the sale of the Seabrook plant to Northeast Utilities are credited to ratepayers, following the terms of the electric rate agreement for resolving PSNH's Chapter 11 bankruptcy proceeding.

Commission disallows replacement power costs associated with "imprudent" Seabrook outages.

PSNH is directed to credit to the FPPAC revenues received in connection with the sale of the Seabrook plant to Northeast Utilities as well as the value of interest on revenues from a temporary rate surcharge.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Fuel and purchased power adjustment clause — Interim rate changes — Trigger mechanism — Electric utility. p. 648.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 54

[N.H.] Over- and undercollections — Interest — Fuel and purchased power adjustment clause — Electric utility. p. 648.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Fuel and purchased power adjustment clause — Cost elements — Seabrook capacity — Effect of capacity buyback agreement — Electric utility. p. 648.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 59

[N.H.] Practice and procedure — Discovery process — Prehearing conferences — Fuel and purchased power adjustment clause proceedings. p. 648.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 51

[N.H.] Effective date — Timed to coincide with scheduled base rate increase — Fuel and purchased power adjustment clause — Electric utility. p. 650.

6. CONTRACTS, § 14

[N.H.] Construction — Intent of the parties — Electric rate agreement. p. 650.

7. AUTOMATIC ADJUSTMENT CLAUSES, § 51

[N.H.] Updates — Effective date — Synchronized adjustment of BA factor and base rates — Fuel and purchased power adjustment clause — Electric utility. p. 650.

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8. AUTOMATIC ADJUSTMENT CLAUSES, § 30

[N.H.] Credits — Fuel and purchased power adjustment clause — Seabrook capacity sales — Capacity swap agreement — Electric utility. p. 651.

9. REVENUES, § 5

[N.H.] Off-system capacity sales — Seabrook capacity — Allocation of gain — Electric utility. p. 651.

10. ELECTRICITY, § 3

[N.H.] Generating plants and interconnected systems — Capacity swap — Merger agreement — Reasonableness. p. 651.

11. EXPENSES, § 120

[N.H.] Electricity — Nuclear plant outages — Replacement power costs — Prudence — Legal standard. p. 653.

12. EXPENSES, § 15

[N.H.] Reasonableness — Costs included or excluded — Prudence — Legal standard. p. 653.

13. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Replacement power costs — Nuclear plant outages — Prudence — Legal standard. p. 653.

14. AUTOMATIC ADJUSTMENT CLAUSES, § 32

[N.H.] Procurement practices — Merrimack Station coal pile — Monitoring of actual weight of coal. p. 657.

15. AUTOMATIC ADJUSTMENT CLAUSES, § 49

[N.H.] Semi-annual adjustments — Fuel and purchased power adjustment clause — Reconciliation period — Electric utility. p. 657.

16. COGENERATION, § 30

[N.H.] Rates — Method of calculation — Average of increment and decrement to load — Capacity rate. p. 657.

17. AUTOMATIC ADJUSTMENT CLAUSES, § 40

[N.H.] Operations and maintenance expense — Fuel and purchased power adjustment clause — Reasonableness — Electric utility. p. 658.

18. AUTOMATIC ADJUSTMENT CLAUSES, § 28

[N.H.] Credits — Interest on temporary surcharge revenues — Fuel and purchased power adjustment clause — Electric utility. p. 658.

APPEARANCES: Gerald Eaton, Esq., for Public Service Company of New Hampshire; Eve Oyer, Esq., of Rath, Young, Pignatelli & Oyer and Gerald Garfield, Esq., Robert Knickerbocker, Esq. and David Doot, Esq., of Day, Berry & Howard for Northeast Utilities Service Co.; Robert Cushing, Jr. for the Campaign for Ratepayers Rights; Kenneth Colburn for the Business & Industry Association; Office of the Consumer Advocate by Michael Holmes, Esq., for Residential Ratepayers; Shelley Nelkens, *pro se*; James T. Rodier, Esq., for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

By Order of Notice issued on April 29, 1991, the New Hampshire Public Utilities Commission (commission) scheduled a hearing for Tuesday, May 14, 1991, to establish the Fuel and Purchased Power Adjustment Clause

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(FPPAC) rate effective as of the First Effective Date[1(144)] pending ECRM final reconciliation and to set a procedural schedule for the remainder of the proceeding.

At the hearing held on May 14, 1991, the staff of the commission, Public Service Company of New Hampshire (PSNH) and the Office of the Consumer Advocate (OCA) provided the commission with a stipulation in which they recommended that the commission, *inter alia*, establish a temporary FPPAC rate of 0.0¢ kwh for the period beginning on the First Effective Date and ending on July 31, 1991. The stipulation also recommended a procedural schedule to the commission for the remainder of this proceeding.

On May 17, 1991, the commission issued Order No. 20,132 which approved the FPPAC rate of 0.0¢/kwh, as proposed, applicable to all service rendered by PSNH on or after May 16, 1991. On July 17, 1991, the commission issued Report and Order No. 20,173 which, *inter alia*, approved a revised procedural schedule for the remainder of the proceeding.

On August 12, 1991, the commission issued Order No. 20,205 which authorized PSNH to continue to bill the interim FPPAC rate of 0.0¢/kwh from August 1 through August 31, 1991.

Hearings on the merits were held in this proceeding on July 16, 17 and 31 and August 1, 2, 5 and 6, 1991. During the proceeding, PSNH proposed an FPPAC rate of 0.495¢/kwh for the period from September 1, 1991 through April 30, 1992.

The commission issued Report and Order No. 20,216 on August 20, 1991 which, *inter alia*, resolved certain discovery issues posed by Ms. Nelkens' data requests. Report & Order 20,216 also required New Hampshire Yankee to file Outage and Power Reduction Reports (OPRR's) containing a root cause for every partial or total unplanned outage during the reconciliation period with analyses and recommendations.

The initial post-hearing memoranda of the parties were filed on August 20, 1991 and reply memoranda were filed on August 27, 1991.

On September 4, 1991, the commission issued Order No. 20,229 which instructed PSNH to recalculate its proposed FPPAC rate and file tariff pages reflecting certain determinations made at the commission's public meeting of September 3, 1991, which are the subject of this report *infra*.

In compliance with Order No. 20,229, PSNH filed tariff pages on September 4, 1991 incorporating an FPPAC rate of 0.361¢/kwh.

II. *Positions of the Parties*

A. *Uncontested Matters*

On August 19, 1991, PSNH submitted a letter to the commission (appended hereto as Attachment A) identifying issues raised during this proceeding which neither PSNH nor the staff intended to address in their memoranda because there was either general agreement on these issues or at least no disagreement. The other parties took no position on these issues.

1. Business Profits Tax

With regard to the amount of Business Profits Tax property includable in the Seabrook Power Contract, we note that staff has agreed with PSNH to defer consideration of this issue, but has reserved its right to contest the amount PSNH requests for cost recovery at any future FPPAC proceeding.

2. Seabrook Real Estate Taxes

With regard to Seabrook real estate taxes, the staff questioned whether PSNH had applied for all possible exemptions from state and local property taxes for pollution control facilities, in view of the fact that the amount of Industrial Development Authority (IDA) financing for pollution control facilities at Seabrook was in excess of $500 million. PSNH testified that there is a difference between what the IDA considers pollution control for financing purposes and what the Air Resources Agency and Water Supply and Pollution Control Commission classifies as pollution control for property tax exemption purposes. PSNH stated that it would provide a written report on this issue after the close of the proceeding. We will require PSNH

to file this report within 30 days of the issuance of this order.

3. Trigger Mechanism

[1] With regard to PSNH's proposed trigger mechanism for FPPAC, the staff did not disagree with PSNH's proposed mechanism summarized in Attachment A as follows:

> If any party believes the estimated under-recovery or over-recovery for the entire six month period will exceed five percent of estimated total costs for the entire six month period, that party may propose an interim change to the FPPAC rate. The estimated under-recovery or over-recovery will be calculated by PSNH each month. It will be equal to estimated total costs to be recovered less estimated FPPAC revenue, both for the entire six month period.

Since no party has objected to PSNH's proposal, we hereby approve its use for FPPAC purposes until further order by the commission. We note the proposed mechanism is the functional equivalent of the former ECRM trigger mechanism.

4. Interest Rate on Over- and Under-Recoveries

[2] With regard to the interest rate on over- and under-recoveries, PSNH does not object to the staff's recommendation of using the staff's prime interest rate forecast for the purpose of estimating interest on prospective over-recoveries or under-recoveries. That forecast is 8.5% for the third quarter of 1991, 9.1% for the fourth quarter of 1991, and 9.27% for the first half of 1992.

We note that these interest rates are lower for the remainder of this year than those proposed by PSNH. We find these interest rates are reasonable under current circumstances. They shall therefore be employed by PSNH in calculating the FPPAC rate approved in these proceedings.

5. Treatment of NHEC Buyback

[3] PSNH assumed that the New Hampshire Electric Cooperative, Inc. (NHEC) buyback will not be in effect and that NHEC will retain its share of Seabrook during the upcoming FPPAC period. The staff had no objection to that proposed treatment, subject to reservation of its rights to propose retroactive adjustment pending final resolution of this issue.

This is the same approach that we utilized in the last ECRM proceeding wherein we noted

> that there are several dockets pending before the commission and the FERC concerning the sellback agreement. The commission specifically reserves this issue for further consideration once those proceedings are completed.

Report and Order No. 20,022 (January 7, 1991) at 29.

We will again authorize PSNH to utilize the assumption that the NHEC sell-back is not in effect for FPPAC purposes, subject to reconsideration of this issue once the various proceedings involving the validity of the sell-back are settled.

6. Staff's Recommendations on Enhancing the FPPAC Discovery Process

[4] The only other item contained in Attachment A which we wish to address specifically in this report is with respect to Exhibit 65, staff's recommendations pertaining to information, data, and analysis to be provided by PSNH in order to enhance the discovery process associated with

future FPPAC proceedings. We note that Attachment A indicates that PSNH does not have any conceptual disagreement with staff with regard to the nature of the information sought, but it does wish to consult with staff to develop mutually agreeable methodologies and processes.

It is apparent to the commission that a substantial opportunity exists to improve the efficiency and completeness of the discovery process and ultimately the hearing process. Accordingly, we will require PSNH to consult with staff (as it has agreed) and to report to the

commission within 30 days as to the results of the foregoing consultations.

We also strongly suggest that the parties make greater use of prehearing conferences in accordance with the Administrative Procedures Act, to facilitate future FPPAC proceedings.[2(145)]

B. *Contested Issues*

1. PSNH

PSNH is proposing that the FPPAC rate determined by the commission in this proceeding be billed through April 30, 1992 and thereafter be adjusted semi-annually in May and November of each year during the Fixed Rate Period.

PSNH contends that the capacity swap with Northeast Utilities was reasonable and that the ECRM treatment of revenues attributable to the sale of Seabrook as part of the swap was proper; the BA factor should change on the anniversary of the First Effective Date each year (*i.e.*, May 16); and that no costs should be disallowed under ECRM for Seabrook outages or power reductions, because Seabrook was operated prudently.

2. Staff

Staff has no objection to PSNH's proposal to adjust FPPAC semi-annually in May and November of each year.

Staff recommended that the FPPAC change and base rate change scheduled for May 1 and May 16, 1991 respectively, should be coordinated in order to avoid an unnecessary and unacceptable level of customer confusion; that the commission (i) find that the 1992 BA be implemented on January 1, 1992, not on May 16, 1992, as proposed by PSNH; (ii) find that PSNH did not negotiate the swap with NUSCO on an arms-length basis, and consequently disallow recovery of $500,000; (iii) find that PSNH should have reasonably renegotiated the swap in the light of the commission's December, 1990 disallowance of one-half of Seabrook's nuclear fuel cost, and consequently require PSNH to credit ECRM with the $4.4 million profit received from NUSCO; (iv) find that the two Seabrook outages addressed by staff involving the conduct of NHY should have reasonably been avoided and consequently disallow recovery of $100,000 of replacement power costs; and (v) rule that the replacement cost of Seabrook outages involving third parties should be equitably shared by stockholders and ratepayers.

3. OCA

OCA recommends that the commission take definitive action regarding the chronic coal pile shortage at Merrimack Station; that PSNH should be required to flow through to ratepayers

100% of the $4.4 million profit associated with the swap between PSNH and NU; that the 1992 BA be implemented on January 1, 1992; that each Seabrook outage be subject to a thorough examination; that PSNH not be allowed recovery of the replacement power costs associated with the two outages caused by NHY; and that before any replacement power costs associated with the April, 1991 outage caused by the missing o-rings are passed on to ratepayers, PSNH should be required to pursue all legal avenues against the vendor, Byron Jackson.

4. BIA

BIA agreed with the position of PSNH that the 1992 BA should be implemented on May 16, 1992, and agreed with staff's recommendations regarding the swap issues and Seabrook outages.

5. CRR and Shelley Nelkens

The joint positions of CRR and Shelley Nelkens are that the commission should set the FPPAC rate to be in effect only until December 31, 1991 and not through April 30, 1992, as proposed by PSNH; the BA should change on January 1st of each year; all interest on the temporary surcharge should be credited to FPPAC; the Merrimack Station coal pile issue should be addressed; PSNH should be required to credit to ratepayers the $4.4 million in net revenue received from the swap with NUSCO; all of the outages since September 19, 1990 were caused

by NHY's imprudence and, therefore, PSNH should not be allowed to recover any associated replacement power costs; and any operation and maintenance expenses for Seabrook above the amounts included in the base assumptions in the Rate Agreement are not prudently incurred.

II. *Commission Analysis*

We will begin our analysis by addressing and resolving the major issues before us and then turn to a discussion and analysis of the remaining issues.

A. *Coordination of Future FPPAC and Base Rate Changes*

[5] We agree with staff's recommendation that the base rate increase scheduled for May 16 of each year and the FPPAC changes scheduled for May 1st, should be coordinated and should coincide with each other. Accordingly, we will order the parties to consult and to propose a method for effectuating both the FPPAC and base rate changes on the same day. Any such method should be economically neutral from the perspective of each party.

B. *Timing of BA Changes*

[6, 7] PSNH proposed to reconcile its actual FPPAC costs prior to the Second Effective Date to the 1991 BA level of 3.57¢/kwh and after the Second Effective Date through April 30, 1992 to the 1991 updated BA level of 3.509¢/kwh.

The issue raised by staff during this proceeding is whether it is appropriate for PSNH to reconcile its actual FPPAC costs for the period from January 1, 1992 to the 1991 updated BA level of 3.509¢/kwh, as PSNH proposes, or whether actual fuel costs and purchased power costs (including Seabrook) for the period from January 1, 1992 through April 30, 1992 should be reconciled to an updated BA level for 1992.

PSNH argues that the Rate Agreement requires that the annual adjustments to the BA factor reflected in FPPAC occur at the same time as the corresponding annual 5.5% adjustments to base rates during the fixed rate period. According to PSNH, synchronized adjustment of the BA factor and base rates is the only method to implement fairly and reasonably the intent of the parties to the Rate Agreement to achieve a stable rate track during the fixed rate period and to effect the sharing of risks between investors and consumers approved by the commission in *Re Northeast Utilities/Public Service Co. of N.H.*, 114 PUR4th 385 (1990), PSNH contends that any proposal to decouple adjustments to the BA factor and base rates would be contrary to the Rate Agreement, would undermine the stability of rates during the fixed rate period and would unfairly shift costs from consumers to investors in a manner contrary to the Rate Agreement.

Staff argues that the commission's decision on this issue turns on a question of law, not fact. Staff, OCA, and CRR/Nelkens contend that PSNH's position is inconsistent with the express definition of BA in Exhibit C in that it asks the commission to rule, in effect, that during the period from January 1, 1992 through April 30, 1992, the amount of contemporaneous power costs at that time in base rates would be equal to the 1991 BA level. Staff also contends that if the language of the Rate Agreement is plain and unambiguous, the intention expressed and indicated thereby controls, rather than whatever may be claimed to have been the actual intention of the parties.

The issue before us is simply whether the implementation of the annual BA factors should coincide with the commencement of the calendar year (January 1) or with the anniversary of the First Effective Date (May 16). As staff correctly argues, this is an issue of law involving the interpretation of a contract; *i.e.*, the Rate Agreement. We begin our analysis by identifying the applicable principles of common law:

> Rules for the interpretation of contracts are not inflexible, their purpose being to reach the probable intent of the parties. In the construction of contracts, form should not prevail over substance and a sensible meaning of the words should be sought.

17A Am. Jur. 2d Contracts Sec 336.

In interpreting a contract, the New

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Hampshire Supreme Court has instructed us to focus on the intent of the parties at the time of the agreement. *R. Zoppo Co., Inc. v. City of Dover*, 124 N.H. 666 (1984). Moreover, we must also consider the situation of the parties at the time of their agreement and the object that was intended thereby, together with all provisions of their agreement taken as a whole, because the interpretation of a contract is, by necessity, fact oriented, *Id.*; *see also, Post Machinery Co., Inc. v. Targes*, 705 F. Supp. 55 (D.N.H. 1989) (language of any written agreement is not completely dispositive of parties' intent, but must be considered in light of parties' situation at time of agreement and object that was intended thereby, together with all provisions of their agreement taken as a whole).

The commission believes the company's position more accurately reflects the intent of the

Rate Agreement. In looking at the provisions of the Rate Agreement taken as a whole and the testimony of Mr. Noyes, the commission is convinced that the Rate Agreement allocated the risks in such a way that the BA change was to coincide with the First Effective Date. We do not believe that it was the intent of the parties to the Rate Agreement that if the First Effective Date should occur after January 1, 1991 that implementation of the BA factor should be decoupled from the annual base rate increases on the anniversary of the First Effective Date, thereby substantially reducing the income available to PSNH to offset the expense created by the phase-in of Seabrook under the Seabrook Power Contract.[3](146)

C. The NUSCO/PSNH Swap

1. Reasonableness of the Swap

[8-10] PSNH and NU entered into a capacity swap for the period from January, 1991 through June, 1991. According to PSNH, this capacity swap was designed to realize some of the energy savings, prior to merger, that will be created by the PSNH/NU merger. The capacity swap was developed such that the forecasted energy savings were to be allocated evenly between PSNH and NU, thereby lowering the energy costs on each system.

According to PSNH's testimony, NU provides PSNH with entitlement in NU units which have more of an energy benefit on the PSNH system than they have on the NU system. Similarly, PSNH provides NU with entitlement in PSNH units which have more of an energy benefit on the NUSCO system than PSNH's system.

The swap essentially consists of PSNH providing NUSCO with the following approximate entitlements in PSNH units:

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

Seabrook  250 MW Nuclear
Merrimack 150 MW Coal
Newington 240 MW Oil
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in return for the following approximate entitlements in NU units:

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

Northfield  175 MW Pumped Storage
Millstone   150 MW Nuclear
Other Units 325 MW Oil
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According to PSNH, this capacity swap was negotiated pursuant to the express requirement in the Rate Agreement that NUSCO and PSNH capture as much as possible of the energy expense savings expected from the merger prior to the merger through energy exchange contracts.

PSNH contends that the capacity swap negotiated with NUSCO is the product of almost three months of analysis and arms-length negotiation by PSNH and NUSCO. PSNH's analysis entailed over 200 POLARIS runs, in which PSNH sought to identify an optimal mix of NU units on PSNH's system and an optimal size of the capacity swap.[4](147) According to PSNH, the utility of the POLARIS runs was enhanced by an unprecedented level of cooperation between the two systems and an agreement to exchange detailed operational data concerning each other's

units.

The position of staff and the other parties is that the design and risk allocation of the swap was one-sided and was not negotiated on an arm's-length basis in that PSNH did not at least

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attempt to create leverage by playing off NUSCO against other potential markets such as Boston Edison Company or New England Electric System. Staff observes that the equal split of savings appears to have been pre-ordained and non-negotiable. According to staff, this is in stark contrast to the object and structure of PSNH's short term wholesale tariff under which PSNH seeks to claim as much of the joint gain from economic sales as possible rather than only 50%. Staff asserts that the acquiescence by PSNH to the equal split with NUSCO is particularly troublesome because the source of virtually all of the savings is the PSNH units, which are being paid for by PSNH ratepayers. Staff also argues that PSNH has the burden of proving that the benefits obtained by PSNH ratepayers were reasonable.

We agree with staff that PSNH must demonstrate by a preponderance of the evidence that the costs of the swap were reasonable under RSA 378:8, and we find in this case that PSNH has met its burden. In making our decision, we rely primarily upon the expert testimony of Ms. Swist. In finding that the transaction was reasonable, we do not intend to subscribe to the PSNH contention that the transactions between itself and NUSCO were at arms-length. Clearly, there was a degree of cooperation between the two utilities that would not exist but for the proposed merger. Indeed, this level of cooperation was contemplated by the Rate Agreement as a means of capturing the most efficient level of economic benefits for both New Hampshire and Connecticut ratepayers.[5](148) The tension between the cooperation contemplated by the Rate Agreement and what would take place in a true arm's-length negotiation requires PSNH to ensure that the benefits of these types of transactions are properly documented.

PSNH has the burden of demonstrating that its ratepayers are obtaining the maximum benefits possible from the sale of PSNH's surplus capacity. In subsequent proceedings, we will require PSNH to demonstrate quantitatively that not only has it optimized its contractual arrangements with NUSCO, but that it has also ascertained that other possible markets for the sale of the surplus power would not be as productive and profitable for PSNH ratepayers as selling the surplus to NUSCO.

2. Effect of the Commission's Nuclear Fuel Cost Disallowance on the Swap

In its decision in Docket No. DR 90-186 setting an ECRM rate from January 1, 1991, through the First Effective Date, the commission found that

> it would be fair to include in ECRM the cost of nuclear fuel consumed in lieu of more expensive fuel costs that would have been incurred had the plant not been operating, regardless how the cost may have been reflected on the company's books at various times.

Report and Order No. 20,022 (January 7, 1991) at 27.

For purposes of valuing nuclear fuel, the commission then reasoned that PSNH should be

allowed to recover approximately half of its nuclear fuel cost consistent with the overall allowed level of Seabrook recovery:

> As noted, under the rate plan, PSNH essentially wrote down its Seabrook investment from $2.9 billion to $1.5 billion; a write down of approximately 48%. The same rationale will be applied to PSNH's $72,087,036 nuclear fuel investment. Accordingly, for ECRM purposes, PSNH will be permitted to recover its nuclear fuel costs, with nuclear fuel valued at 52% of PSNH's total nuclear fuel investment.

Id. at 28.

The record in this proceeding establishes that for purposes of analyzing the swap Seabrook was dispatched at its full fuel cost of $13.52/MWH. According to PSNH, NUSCO paid the full fuel cost of $13.52/MWH associated with its 250 MW purchased entitlement in Seabrook, while PSNH only credited ECRM at the rate of $7.479/MWH. PSNH conceded that it retained as income the difference between the $13.52/MWH that NUSCO paid and the

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$7.479/MWH credited to ECRM costs during the months of January through May 15, 1991. The total amount retained by PSNH and not credited to customers was approximately $4.4 million.

PSNH contends that as a result of the commission's decision in DR 90-186, PSNH's customers were only charged a portion (52%) of the actual cost of the fuel PSNH incurred. When PSNH received revenue from NU for the sale of some of its share of Seabrook, it credited to ECRM costs an amount of revenue equivalent to the rate customers paid for Seabrook power.

PSNH argues that if it were to credit the entire amount of revenue it received from the sale of Seabrook to ECRM costs, customers would receive a credit higher than the rate that they were charged for Seabrook. According to PSNH, it would be inappropriate, unfair and inequitable to apply the commission's disallowance with respect to recovery of fuel costs, but ignore the unanticipated effect of the commission's disallowance with respect to crediting of revenue from the sale of Seabrook.

Staff and the parties contend that PSNH should be required to credit the additional $4.4 million revenue received from NUSCO to ECRM, in accordance with long-standing ECRM accounting conventions. According to staff, PSNH ratepayers should receive 100% of the revenue from the sale of the 250 MW of Seabrook to NU because they were deprived of the opportunity to pay only 52% of the fuel costs.

Staff also contended through rebuttal testimony that PSNH should not have executed the swap contract as originally negotiated in light of the commission's decision on that same day or, in the alternative, should have demanded a timely renegotiation with NU to explore and reflect the economic impact on ratepayers of the disallowance of one half of Seabrook's fuel cost.

We agree with staff's position that the $4.4 million in revenue related to the sale of Seabrook to NU should be credited to customers. PSNH sold Seabrook output at a price that was based on the full book value of nuclear fuel. The company acknowledged that in a conventional ECRM

proceeding, any profit that the company makes on the sale of off-system power is generally allocated back to ratepayers. It sought to vary from this long established procedure on the basis of equity and justice because it had not been able to recover under the Rate Agreement the fixed costs of Seabrook or the full cost of nuclear fuel prior to the First Effective Date. In this instance, we believe the Rate Agreement expressly allocates the risk to the investors. The consequences of a delay in the First Effective Date were defined and specified, and the fact that the company is unable to recover what it might otherwise have been able to recover but for the Rate Agreement is a risk that the investors knowingly assumed. The difference between book and commission valuation fuel, about a $4.4 million difference, will therefore be reallocated back to ratepayers.

D. Seabrook Outages

1. Introduction

[11-13] Since Seabrook began regular full power operation in August, 1990, it has achieved one of the highest first cycle capacity factors of any plant of similar size, type and vintage in the United States. During the ECRM period from January 1, 1991 to May 16, 1991 which is under review in this proceeding, the unit achieved a capacity factor of 87.2%. In fact, Seabrook's performance during its first cycle of operation compared to all nuclear plants which have come on line in this country since the 1960's places it among the top performers in the history of the American nuclear industry.

Pursuant to the commission's bench order on June 13, 1991 resolving certain discovery problems, New Hampshire Yankee (NHY) submitted the nine Outage/Power Reduction Reports (OPRR's) embodied in staff Exhibit 61. The OPRR's provide the following useful information for each outage or partial reduction addressed during this proceeding:

- Duration of the outage or reduction;
- Description and evaluation of circumstances;

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- Work performed on critical path items;
- Root cause and contributing causes; and
- Recommendations and corrective action to prevent reoccurrence.

The OPRR's, NHY's responses to extensive data requests, and NHY's testimony under cross-examination allowed the parties to present to the commission an adequate record pertaining to whether the replacement power costs associated with the Seabrook outages or reductions should be recovered from ratepayers. The Seabrook outages fall into two broad categories: (1) those involving the conduct of NHY itself and (2) those involving third parties such as vendors or manufacturers.

2. Issues of Law

Before determining whether PSNH may recover replacement power costs associated with the Seabrook outages, we must first define the appropriate legal standard for commission evaluation

of the outages.

The Legislature granted the commission authority to determine rates based upon what is "just and reasonable." RSA 378:7. The Rate Agreement contemplated the application of a prudence standard to Seabrook operation for FFPAC purposes. The case law provides guidance for interpreting this standard. The prudence standard is one of the principles that has been developed to govern the inclusion or exclusion of costs for ratemaking purposes. *Appeal of Conservation Law Foundation*, 127 N.H. 606, 637 (1986).

Prudence is "essentially ... an analogue of the common law negligence standard". *Id.* "While the scope of the prudence principle is by no means clear, it at least requires the exclusion from rate base of costs that should have been foreseen as wasteful." *Id*. "[P]rudence judges an investment or expenditure in the light of what due care required at the time an investment or expenditure was planned and made ... . "*Id*. at 638.

The test of due care asks what a reasonable person would do under the circumstances existing at the time of a decision. *Fitzpatrick v. Public Service Co. of N.H.*, 101 N.H. 35 (1957). Stated differently, a lack of due care is the failure to use that degree of care that the ordinary reasonably careful and prudent person would use under like circumstances. 57A Am. Jur. 2d Negligence Sec 7.

One of the factors relevant to determination of reasonable care under the circumstances is special skill or knowledge:

> One who engages in a business, occupation, or profession must exercise the requisite degree of learning, skill, and ability of that calling with reasonable and ordinary care; furthermore, the specialist within a profession may be held to a standard of care greater than that required of the general practitioner.

Id. at Sec. 190.

One of the principal issues of law which arose during the proceeding was whether a lawful prudence review should examine individual outages or whether we need only examine overall plant capacity factor.

We agree with staff and OCA that a lawful prudence review of generating plant outages must examine the reasonableness of individual outages. When faced with this issue, Pennsylvania regulators determined that

> [t]he prudence of the management of electric utility in connection with the operation of its nuclear power plants should *not* be measured *only* on an overall utility performance basis or by comparison with other nuclear power plants, but should be determined on a plant and incident basis; a utility is required to operate its plants efficiently and overall efficient operation should not insulate a utility from specific, established incidents of management imprudence.

David M. Barasch, Consumer Advocate v. Philadelphia Electric Company, 95 PUR4th 50 at 54 (1988) (Emphasis in original); *see also*, *Re Consumers Power Company*, 116 PUR4th 177, 196 (1990). Just as a poor capacity factor is not determinative of imprudence, an excellent capacity factor cannot be determinative of

prudence. We must examine the circumstances in their totality.

In its initial memorandum PSNH argued that the commission may not disallow outage costs where there is no mismanagement by utility officials. According to PSNH, management imprudence involves a persuasive pattern of unreasonable conduct by management, not merely isolated errors by individual employees.

We disagree. Even in the absence of "any pervasive pattern of mismanagement", employee negligence causing an outage should be imputed to the utility, as the law of agency applies to utilities. *Re Consumers Power Company Co.*, 106 PUR4th 45 (1989); *see also, Clough v. Schwartz*, 94 N.H. 138 (1946).

We now turn to an examination of the Seabrook outages.

3. Outages Involving the Conduct of New Hampshire Yankee

There were two outages at Seabrook within the scope of this proceeding addressed by staff which involved the conduct of NHY as distinguished from the conduct of third parties such as a manufacturer or vendor.

(a) The first outage involved a cracked piston in the MS-V-127 valve. NHY described this event in OPRR-002. The analysis of this valve failure had remained an open issue from DR 90-186, pending completion of a metallurgical analysis of the cracked piston (Exhibit No. 63). On November 20, 1990, while preparations were underway to return the plant to service from the unplanned outage on November 9, 1990, the MS-V-127 air operated gate valve failed to pass a required surveillance test due to a cracked piston. The valve could not be closed, rendering it inoperable. A partial cooldown was performed and the piston in the air actuator was replaced. The plant was returned to full power on November 24, 1990.

NHY concluded that the cracking was due to a sharp notch machined into the piston, thus creating a stress concentration site. The crack developed and propagated, likely due to hard backseating of the piston against the stop pad. The root cause of the problem was determined to be poor documentation which failed to give the machinist the necessary instructions to ensure machining the appropriate radius on the replacement piston. PSNH contends that this failure is not an indication of management imprudence by NHY, but only an indication of isolated employee error.

Staff agreed with the description and evaluation outlined in OPRR-002 by NHY. However, staff argued that this situation, resulting in unplanned lost generation, could have been avoided if greater attention to detail had been exercised. In reaching this position, staff testified that hindsight was not used; rather, the situation was compared to what could be expected of a competent manager and machinist exercising reasonable care given the conditions at that time. Indeed, the old piston with the rounded corners was supposedly used as a template, but in the new piston the rounded corners were not incorporated.

We agree with staff's position that the outage reasonably could have been avoided by the exercise of due care under the circumstances. We find that the NHY manager who did not

provide the machinist with proper directions failed to exercise reasonable care under the circumstances and therefore was negligent. *West v. Boston & M.R.R.*, 81 N.H. 522 (1928) (where question of negligence relates to matters of common experience, observation, or knowledge, it is not necessary that expert testimony be introduced). As we ruled *supra*, the negligence of the employee is attributable to NHY.

(b) The second outage involved a turbine trip resulting from the loss of busses 14 and 21. This outage was described in OPRR-004. On February 12, 1991, an automatic trip occurred while the plant was operating at 100% power due to the loss of power to both electrohydraulic pumps, as depicted on the one line diagram in Exhibit No. 55.

This event resulted when the supply breaker for bus 21 tripped due to an overload after bus 14 and bus 21 were cross connected in preparation for maintenance. An analysis of the circumstances revealed that two large intermittent loads had not been adequately considered during this condition. The intermittent loads were the turbine building crane and the guardhouse megatherm tank heaters. NHY

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determined the root cause of this event to be an incomplete procedure in developing the full load rating, as it did not address the full potential condition on the bus for the duration of the cross-tie activity.

In regard to the automatic plant shutdown on February 12, 1991 due to the loss of busses 14 and 21, staff concurred with NHY's evaluation that the root cause was an incomplete procedure. However, staff argued that it would have been reasonable in the context of standard electrical engineering principles for the procedure to recognize design limitations and to consider and include all load conditions affected by the cross-tie at the time of design. Moreover, possible load limitations reasonably could be expected to be provided in the procedure for a given circuit breaker size. Staff contended that NHY must apply greater effort in the areas of documentation, procedures and attention to details.

PSNH argued that neither the procedure nor NHY personnel reasonably could have anticipated the simultaneous occurrence of the incorrect timer setting and the respective use of the turbine crane. The established procedure, according to PSNH, had been followed on three previous occasions and went without incident.

We find that this outage could have been reasonably avoided by the exercise of due care during the design of the procedure so as to recognize properly design limitations.

Staff has presented a methodology for calculating the replacement power costs for the foregoing two outages and has recommended a $100,000 disallowance which it characterized as conservative. We agree with staff's conservative disallowance because we recognize that Seabrook was in its first fuel cycle and that NHY took a number of protective measures to reduce outage time.

4. Outages or Reductions Caused by Third Parties

Staff also recommended that PSNH not be allowed full cost recovery for the outages or reductions caused by third parties other than NHY.

The issue here is whether a defective product furnished by a vendor, supplier or manufacturer which causes an outage or reduction at Seabrook is imputable or attributable to NHY as a matter of law, with the result that PSNH not be allowed full cost recovery for its replacement power costs. Staff and the other parties believe that the commission should resolve this issue in the affirmative.

According to NHY, most vendors disclaim liability for consequential damages and thus liability for replacement power costs. Vendors do agree to warrant their products against defects for a specified period, and typically provide a remedy of repair or replacement of the defective product or component. According to NHY, it aggressively pursues these remedies to the benefit of ratepayers.

PSNH's view is that it is entitled to recover its full replacement power costs in the absence of its own imprudence. We agree with PSNH. Under the instant circumstances, we do not believe it is appropriate to allocate these costs to the investors is the absence of imprudence.[6](149)

With one exception, the commission believes that PSNH met its burden of showing that it was prudent in not undertaking actions against the third party vendors whose equipment caused the outages. The exception relates to the legal action which is currently being considered by the Company related to Feedwater Check Valve FW-V-330. OCA contends that PSNH should be required to pursue all legal avenues against the vendor before recovery of any replacement power cost is allowed.

During preparations to resume generation on April 1, 1991, operators observed a reduced feedwater flow capacity to the "A" steam generator. Investigation by NHY revealed a problem with a check valve. The valve was disassembled revealing that seven of the eight cap screws which hold the dash plate in place were broken. This allowed the dash plate to become misaligned and to impede the movement of the valve piston. Further investigation of three identical valves showed similar deficiencies with two of the three valves. According to NHY, the failures occurred because the vendor's design was not adequate to accommodate normal loading of the valve internals in the valve opening direction. A design change was prepared and

implemented, increasing the number of cap screws from eight to sixteen.

The contract with the vendor, Edward Valve, did not disclaim consequential damages, and NHY is now in the process of evaluating whether to pursue legal action against the vendor. During the next FPPAC proceeding, we will review the prudency of NHY's actions in this regard.

E. *Merrimack Station Coal Pile*

[14] In Report and Order No. 20,022 in Docket No. DR 90-186 (January 7, 1991), the commission expressed concern about the continuing negative survey results and ordered PSNH to ascertain the adequacy of the procedures for monitoring the actual weight of coal between the time it is loaded at the mine to the time it is placed into the bunker. In response to the commission's order, NUSCO/PSNH formed a task force to investigate the continued negative survey results. PSNH reported on the actions that it plans to take to minimize the shortfall

between coal survey results and booked inventory. These actions include hiring an independent laboratory to audit the loading of rail cars at the coal mine; conducting another aerial survey in June of 1991, and studying the possibility of purchasing coal on a dry rather than on an as-received basis.

The commission is concerned about the continued negative survey results at the Merrimack Station coalpile which are to the disadvantage of ratepayers. While we acknowledge the above-mentioned steps that PSNH has taken to address this problem, we believe it necessary to order PSNH to file a definitive report to us within 45 days explaining to the maximum extent possible why the survey results are always less than booked inventory. This will provide a basis for us to re-examine this issue in the next FPPAC proceeding.

F. *Semi-annual FPPAC Adjustments in May and November of Each year*

[15] PSNH is proposing that the FPPAC rate determined by the commission in this proceeding be billed through April 30, 1992 and thereafter be adjusted semi-annually in May and November of each year during the Fixed Rate Period. Staff has no objection to this proposal.

CRR/Nelkens argue that PSNH's proposed FPPAC rate through the end of April undermines RSA 362-C and this commission's final order in DR 89-244 approving the Rate Agreement. We disagree.

The Rate Agreement does not require a January through June and a July through December rate calculation and reconciliation period. Under the Rate Agreement, "PSNH's existing ECRM fuel adjustment clause shall be replaced as of the first Effective Date and for the ten-year period following the First Effective Date by the new clause governing fuel and purchased capacity ("FPPAC") set out in Exhibit C hereto." Rate Agreement, Section 7. Exhibit C provides that the FPPAC rate "will be calculated for a six-month period based on forecasted data and will be reconciled to actual data at the end of each six-month period." Rate Agreement, Ex. C at 1. These key provisions addressing FPPAC reflect the clear intent of the parties to the Rate Agreement to implement FPPAC on the First Effective Date and to have full six-month rate calculation and reconciliation periods thereafter.

The only Rate Agreement provision cited by CRR/Nelkens is the final timing paragraph of the FPPAC exhibit.[7](150) We believe this provision should be read simply to provide the intent of the parties that, if the First Effective Date had occurred on January 1, 1991, the FPPAC billing periods would be January to June and July to December. CRR/Nelkens' more rigid reading of the timing paragraph directly contradicts the clear intent of the Rate Agreement to implement FPPAC on the First Effective Date and to have full six-month rate calculation and reconciliation periods for ten years thereafter. Such a rigid and contradictory interpretation should be rejected. *Colebrook Water Co. v. Parsons*, 88 N.H. 217 (1937).

G. *QF Rates*

[16] PSNH proposes the following rates to be paid for purchases from QFs under short-term rate provisions from August, 1991 through April, 1992:


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

Energy Rates (not including adjustments for the
  Loss Factor and Indirect Factor):
  On-Peak Hours ......  2.899¢ /Kwh
  Off-Peak Hours ...... 1.405¢ /Kwh
All Hours ......        1.989 ¢ /Kwh
Capacity Rate (not including adjustments for the Loss Factor
  and Peak Reduction Factor):
    $0.00/Kilowatt-year.
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The energy rates are calculated using an average of an increment and a decrement to load in accordance with previous commission orders.

8(151) The capacity rate of $0.00/KW has been calculated in accordance with previous commission orders and reflects the fact that PSNH is currently surplus in capacity and therefore not planning on entering into any short term contracts for capacity over the relevant time frame.

H. *Seabrook Operation and Maintenance Expense for FPPAC Period*

[17] CRR/Nelkens recommend that the commission find that any and all operation and maintenance (O&M) expenses for Seabrook for the upcoming FPPAC period that are above the amount of O&M expenses included in the Seabrook synergy approved by the commission in Docket No. DR 89-244 are not recoverable. Report and Order No. 19,889 (July 20, 1990) at 116.

We acknowledge that the operation and maintenance costs for Seabrook are higher than those presented to us by NUSCO in DR 89-244. We understand that this is primarily due to the delay in consummating the merger and the takeover of Seabrook operation by NUSCO. However, the O&M estimates contained in the proposed FPPAC rate are reasonable estimates of what NHY actually expects to expend during the upcoming period. Whether these expenditures are prudent and whether NUSCO has exercised its best efforts to achieve the synergy levels represented to us in DR 89-244 are matters that are properly within the scope of the next FPPAC proceeding, rather than this proceeding.

I. *Interest on Temporary Rate Surcharge*

[18] On the First Effective Date, PSNH credited the ending balance of the ECRM overrecovery with interest earned on the Supplemental Escrow Fund, pursuant to the commission's Order No. 19,655 in Docket No. DR 89-219. Interest was earned on all deposits made from August, 1990 through May 15, 1991. Surcharge revenue attributable to sales from April 1 through May 15, were not deposited in the Supplemental Escrow Fund because the First Effective Date occurred before the close of PSNH's books for the months of April and May. Consequently, interest earned by PSNH and credited to the ECRM overrecovery was based on surcharge revenue through March 31, 1991. No interest has been credited to ECRM for surcharge revenue from April 1 through May 15, 1991.

Staff did not object to PSNH's handling of interest earned on the Supplemental Escrow Fund and with the amount of interest credited to the ECRM over-recovery because it believed that a literal interpretation of the Rate Agreement supported PSNH's position.

CRR/Nelkens argue that PSNH is under an obligation to account for the time value of the temporary surcharge revenues which were held by the utility on the First Effective Date but not

actually deposited into the Escrow Fund. We begin our analysis by examining the applicable provisions of the Rate Agreement and escrow agreement.

Paragraph 5(a) (i) of the Rate Agreement requires PSNH to escrow the revenues it collected under the temporary 5.5% increase until those rates are made permanent. The portion of the escrowed funds collected from July 1, 1990 to the First Effective Date were designed to be

released on the First Effective Date for inclusion in income and use by the reorganized PSNH. Paragraph 5(a) (i) also provides that:

> "Interest on such escrowed revenues shall be used to reduce rates recoverable under the fuel and purchased power mechanism in effect at the application or refund of such revenues."

In Docket DR 89-219, the parties negotiated an agreement on the escrow arrangements entitled Recommendations of the Parties for Escrow of PSNH Temporary Rates which became Exhibit 4 in that proceeding. Exhibit 4 provides:

> 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).

Revenues attributable to sales from April 1 through May 15, 1991 were not deposited in the Supplemental Escrow Fund because the First Effective Date took place before the close of PSNH's books for the months of April and May. PSNH contends that only the interest earned on the escrowed funds should be credited to the fuel recovery mechanism because it did not agree to pay interest on the revenues it held before deposit in the Escrow or Supplemental Escrow Funds.

We do not agree with PSNH's overly restrictive interpretation. We believe that CRR/Nelkens are correct in their view that PSNH is under an obligation to account for the time value of the temporary rate surcharge revenues received by PSNH prior to the First Effective Date, but not actually deposited into the Escrow Fund.

Our ruling *supra*, that changes to the BA factor should coincide with the anniversary of the First Effective Date, was premised upon our reading of New Hampshire law requiring us to consider the language of any written agreement in light of the parties' situation at the time of the agreement and the object that was intended thereby. We believe that it unquestionably was the intent of the parties to the Rate Agreement that ratepayers should receive the benefit of all of the interest on the temporary rate revenues and that PSNH stockholders should receive none of it.

Consequently, we will require PSNH to credit to FPPAC the value of the interest on the surcharge revenue received from April 1 through May 15, 1991 until the time that it is actually refunded.

Our order will issue accordingly.

ORDER

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

ORDERED, that a revised FPPAC rate of 0.361¢ /kwh shall be applicable to the billing period from September 1, 1991 through April 30, 1992; and

FURTHER ORDERED, that the parties consult and propose to the commission a method for coordinating future FPPAC and base rate changes; and it is

FURTHER ORDERED, that PSNH file a definite report within 45 days hereof explaining why the Merrimack Station coal pile survey results are less than booked inventory.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of October, 1991.

August 19, 1991

Wynn E. Arnold, Esquire
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
Eight Old Suncook Road, Building One
Concord, New Hampshire 03301-5185

Re:*Docket No. DR 91-011*

Dear Mr. Arnold:

This letter is to summarize the issues

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raised in this proceeding which neither PSNH nor the Staff intend to address in their briefs, because either there is general agreement between PSNH and the Staff, or there is no disagreement at this time.

Business Profits Tax in Seabrook Contract

The Staff and PSNH agree to defer the issue of the effect of the Business Profits Tax as applied to the Seabrook Contract. The Staff will not contest the amount included in prospective costs for the sole purpose of determining the FPPAC rate to be billed in the prospective FPPAC period, without prejudice or precedent to its right to contest the amount PSNH requests for cost recovery at a future FPPAC proceeding.

Seabrook Real Estate Taxes

The Staff questioned whether PSNH had applied for all possible exemptions from property tax for pollution control facilities, in view of the fact that the amount of IDA financing for pollution control facilities was in excess of $500 million. PSNH explained that there is a difference between what the IDA considers pollution control for financing purposes and what the state Air Resources Agency and Water Supply and Pollution Control Commission classify as pollution control and qualifying for property tax exemption. PSNH stated that it would provide a written report on this issue after the close of the proceeding.

Trigger Mechanism

The Staff does not disagree with PSNH's proposed trigger mechanism, summarized as follows:

If any party believes the estimated underrecovery or overrecovery for the entire six month period will exceed five percent of estimated total costs for the entire six month period, that party may propose an interim change to the FPPAC rate. The estimated underrecovery or overrecovery will be calculated by PSNH each month. It will be equal to estimated total costs to be recovered less estimated FPPAC revenue, both for the entire six month period.

Interest Rate on Over- and Underrecoveries

PSNH will not object to the Staff's recommendation of using the Staff's prime interest rate forecast for the purpose of estimating interest on prospective overrecoveries or underrecoveries. That forecast is 8.5% for the third quarter of 1991, 9.1% for the fourth quarter of 1991, and 9.27% for the first half of 1992.

Interest on Escrowed Surcharge Revenue

On the First Effective Date, PSNH credited the ending balance of the ECRM overrecovery with interest earned on the Supplemental Escrow Fund, pursuant to the Commission's Order No. 19,655 in Docket No. DR 89-219. Interest was earned on all deposits made from August 1990 through May 15, 1991. Surcharge revenue attributable to sales from April 1 through May 15, 1991 were not deposited in the Supplemental Escrow Fund because the First Effective Date occurred before the close of PSNH's books for the months of April and May. Consequently, interest earned by PSNH and credited to the ECRM overrecovery was based on surcharge revenue through March 31, 1991. No interest has been credited to ECRM for surcharge revenue from April 1 through May 15, 1991. The Staff does not object to PSNH's handling of interest earned on the Supplemental Escrow Fund and with the amount of interest credited to the ECRM overrecovery.

Fuel Handling Costs

The Staff does not object to PSNH's position that fuel handling costs are recovered through FPPAC.

PSNH Coal Procurement

The Staff will not object to recovery of all costs of coal incurred by PSNH.

BECO Swap

The Staff does not disagree with PSNH

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that the capacity swap with Boston Edison Company was prudent.

NHEC Buyback Treatment

In its filing, PSNH assumed that the NHEC buyback will not be in effect, and that NHEC will retain its share of Seabrook. The Staff has no objection to that proposed treatment, subject to

reservation of its rights to propose retroactive adjustment pending final resolution of this issue.

Timing of FPPAC Rate Changes

The Staff agrees with PSNH's proposal to have the FPPAC rate remain effective until April 30, 1992. The Staff also agrees that future FPPAC rates should become effective in May and November of each year.

Fossil Unit Outages

The Staff will not challenge the prudency of any fossil unit outages which occurred prior to May 16, 1991.

Coal Inventory Adjustment

The Staff will accept PSNH's proposal to recover through FPPAC the value of the Merrimack Station coal inventory adjustment.

Information and Analysis to be Performed by PSNH

In Exhibit 65, the Staff recommended various pieces of information and analysis be provided by PSNH in order to provide for efficiency in the conduct of future FPPAC proceedings. PSNH does not have any conceptual disagreement with the Staff regarding the provision of information. PSNH wishes to conduct discussions with the Staff, however, in order to develop mutually agreeable methodologies and processes to be used to develop the analyses desired by the Staff in order to reasonably limit the amount of additional work required by PSNH to perform such analyses.

Attached hereto is a list of the FPPAC rate scenarios submitted by PSNH in this proceeding describing the changes made to assumptions for each successive scenario. We believe this information may be helpful to the Commission in its deliberations.

Very truly yours,

Stephen R. Hall
Rate Research and
Administration Manager

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[Graphic Not Displayed Here]

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FOOTNOTES

[1]The First Effective Date, which occurred on May 16, 1991, is the date on which Public Service Company of New Hampshire emerged from bankruptcy under its plan of reorganization.

[2]In order to facilitate proceedings and encourage informal disposition, the presiding officer may, upon motion of any party, or upon his own motion, schedule one or more informal prehearing conferences prior to beginning formal proceedings. The presiding officer shall

provide notice to all parties prior to holding any prehearing conference.

Prehearing conferences may include, but are not limited to, consideration of any one or more of the following:

(1) Offers of settlement.

(2) Simplification of the issues.

(3) Stipulations or admissions as to issues of fact or proof, by consent of the parties.

(4) Limitations on the number of witnesses.

(5) Changes to standard procedures desired during the hearing, by consent of the parties.

(6) Consolidation of examination of witnesses by the parties.

(7) Any other matters which aid in the disposition of the proceeding.

RSA 541-A:16 V (b) - (d)

[3]Staff's reply memorandum correctly points out that even with our decision that the implementation of the annual BA factors should coincide with the anniversary of the First Effective Date, PSNH will significantly under-recover its Seabrook investment. This is because the first contract year under the Seabrook Power Contract will actually occur from May 16, 1991 to May 15, 1992; during this first contract year 80% of the Seabrook investment will be excluded from rate base. However, the BA for calendar year 1991 which will be utilized from May 16, 1991, to May 15, 1992, will reflect an approximate 70% exclusion of Seabrook from rate base. Staff Reply Brief (August 27, 1991) at 13 to 15.

[4]In the POLARIS runs, Seabrook was modeled using the NUSCO composite nuclear availability factor of 87%. We see no reason why in the future, a plant specific factor for Seabrook should not be utilized.

[5]PSNH's argument that the capacity swap was negotiated pursuant to an express requirement in the Rate Agreement is flawed because, as pointed out by staff, Section 4 is only applicable to the Interim Period. The Interim Period is the period between the First Effective Date (May 16, 1991) and the date of the merger. Rate Agreement, Section 1 at D-13. Thus, the above-cited provision of the Rate Agreement does not apply to the reconciliation period (January 1, 1991 to May 16, 1991) for this proceeding.

[6]Staff's memorandum points out that in other jurisdicitions, courts have upheld the decisions of regulators to disallow recovery of replacement power cost incurred when a nuclear power plant was shut down as a result of a defective component manufactured and supplied by a contractor, *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 522 Pa. 338, 561 A. 2d 1224 (1989); imputed the blameworthy conduct of availability to another as a matter or proper regulatory policy *Commonwealth Electric Co. v. Department of Public Utilities*, 347 Mass. 361 (1986); and imputed irresponsible decision making of a third party contractor to a utility as an incentive to minimize outages, *Hamm v. South Carolina Public Service Commission*, 352 S.C.2d 476 (1987).

[7]Timing. In December and June of each year, stand alone PSNH or NUNH will file with the

NHPUC the calculation of the FPPAC for the next January through June and July through December billing periods. Exhibit C at D-105.

[8]By letter dated September 10, 1991, PSNH informed staff's attorney that it had discovered a minor error in the calculation of the avoided energy costs. On-peak avoided energy costs were overstated by .117¢ /Kwh and off-peak by .057¢ /Kwh. PSNH indicated that it has decided to pay QF's based on the over-stated, approved rates rather than seek commission approval of the lower, corrected rates. As a result of this decision, PSNH energy costs will be about $100 higher per month, a negligible amount. Based upon these factors, we agree with PSNH's decision to forego a very small downward adjustment in the QF rates.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990. [N.H.] Re Public Service Co. of New Hampshire, DR 89-219, Order No. 19,655, 74 NH PUC 493, Dec. 28, 1989. [N.H.] Re Public Service Co. of New Hampshire, DR 90-186, Order No. 20,022, 76 NH PUC 11, Jan. 7, 1991. [N.H.] Re Public Service Co. of New

Hampshire/Northeast Utilities, DR 91-011, Order No. 20,132, 76 NH PUC 341, May 17, 1991. [N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DR 91-011, Order No. 20,173, 76 NH PUC 459, July 17, 1991. [N.H.] Re Public Service Co. of New Hampshire, DR 91-011, Order No. 20,205, 76 NH PUC 547, Aug. 12, 1991. [N.H.] Re Public Service Co. of New Hampshire, DR 91-011, Order No. 20,216, 76 NH PUC 559, Aug. 20, 1991.

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[Go to End of 27242]

Re EnergyNorth Natural Gas, Inc.

DR 91-151
Order No. 20,281

76 NH PUC 664

New Hampshire Public Utilities Commission

October 25, 1991

ORDER approving a revised cost of gas adjustment clause rate for a natural gas local distribution company (LDC), reflecting a credit of $0.0391 per therm. Approval was made subject to review of the prudence of the costs incurred by the LDC in association with the so-called "cosmic settlement", which purportedly would resolve numerous proceedings before the Federal Energy Regulatory Commission that affect the LDC and its interstate pipeline

supplier.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Credit — Natural gas local distribution company. p. 666.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect costs — Cost of gas adjustment rate — "Cosmic settlement" costs — Prudence — Final judgment reserved — Natural gas local distribution company. p. 666.

APPEARANCES: Jacqueline Lake Killgore, Esq., for EnergyNorth Natural Gas, Inc., James T. Rodier, Esq., for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

In October, 1991, EnergyNorth Natural Gas, Inc. (ENGI) filed tariff pages, testimony and exhibits pertaining to the 1991-1992 Winter Cost-of-Gas Adjustment. Eighth Revised Page 1 of ENGI's tariff proposed a CGA credit of $0.0400 per therm. An Order of Notice was issued on October 1, 1991, scheduling a hearing for October 16 and 17, 1991.

On October 11, 1991, ENGI filed a motion for a protective order to keep confidential information requested in staff data requests #6 and #4 regarding the testimony of Christopher Fleming. ENGI's motion was granted at the commission meeting of October 14, 1991, confirmed by secretarial letter of October 25, 1991.

II. POSITIONS OF THE PARTIES

EnergyNorth presented three witnesses in support of its filing: Caroline J. Huber, Manager of Regulatory Affairs and Budgets; David B. Doskocil, Manager of Gas Supply; and Christopher P. Fleming, Vice President of Gas Supply/Corporate Development.

At the hearing on October 16, Mrs. Huber presented a revised filing proposing a CGA credit of $0.0391 per therm. The revised filing incorporated both data corrections and certain revised information. Mrs. Huber confirmed that one reason for the reduction in ENGI's 1991-92 CGA rate relative to 1990-91 is due to the

refund this winter of $368,000 overcollected last winter.

Staff raised an issue pertaining to ENGI's plan for making the requisite filings pursuant to the Commission's final order in last winter's CGA proceeding in DR 90-166 (Report and Order No. 20,232, September 4, 1991). Mrs. Huber indicated that the filings would be made within the

requisite 45-day period.

In response to staff questioning, Mrs. Huber confirmed that ENGI's sales forecast for this year was less than the sales forecast for last year. Mrs. Huber attributed this decline to the loss of commercial and industrial accounts.

With regard to Mr. Doskocil's testimony, staff raised the following issues:

1. Cost of storage withdrawals;

2. Impact of Anheuser-Busch on the interruptible sales margin; and

3. Progress of construction on the Iroquois pipeline and ENGI's contingency plan if it is delayed.

Mr. Doskocil explained that the cost of gas withdrawals from storage was substantially in excess of the cost interruptible gas injected into storage due to storage and financing costs. Mr. Doskocil also explained that the interruptible sales margin credited to the CGA of $332,595 had been substantially reduced from the amount that otherwise would have been due to Anheuser-Busch's use of No. 6 oil during the period from April through July.

With regard to the Iroquois project, Mr. Doskocil testified that 82% of the full Iroquois volumes are expected to become available December first. In October, approximately four miles of pipe is scheduled for installation between Concord and Suncook, New Hampshire, in connection with the Iroquois project. This construction will complete the looping of Tennessee Gas Pipeline's (TGP) distribution system in New Hampshire. According to Mr. Doskocil, this work increases the reliability of the pipeline deliverability. The remaining 18% of the Iroquois volumes are expected to be available in the spring of 1992.

Mr. Doskocil contended that the company is prepared for a 30-60 day delay of the Iroquois volumes because EnergyNorth has approximately 500,000 MMBTU's of supplemental liquids available for this winter period. In addition to about 170,000 MMBTU's of supplemental liquids currently in the storage facilities, the company has contracts for an additional 312,000 MMBTU's of liquids. These contracts include 75,000 MMBTU's of firm LNG with Bay State and 25,000 MMBTU's of LNG available through an optional arrangement with Bay State. The company also has 137,000 MMBTU's of firm LPG under contract with Gas Supply, Inc.

Mr. Fleming described the sweeping regulatory changes which have occurred in the gas industry since 1984. Additionally, in June of this year Tennessee filed its Cosmic Settlement which resolves 20 independent FERC cases and includes Comparability of Service as a major feature. According to Mr. Fleming, Comparability of Service will provide transportation service to customers that mirrors the transportation component embedded in the firm sales service of Tennessee. Finally, in July, 1991 the FERC issued a Notice of Proposed Rulemaking, known as MEGA-NOPR that outlines pipeline industry operations in the future. The MEGA-NOPR will be negotiated separately by each pipeline, but clearly, the unbundling of the integrated network will have far reaching effects on how the business will operate.

For several years Tennessee and its customers have been negotiating several complex issues which impact all customers. Mr. Fleming explained that because each of the individual items effected other issues being negotiated, an attempt was made to consolidate all issues into one comprehensive settlement. The result was the Cosmic Settlement, which resolves numerous

other proceedings affecting Tennessee and its customers' and affects all other facets of Tennessee's operations.

The four major areas addressed in the Cosmic Settlement and described by Mr. Fleming are:

1. Take-or-Pay;
2. Rates;
3. Gas Inventory Charge; and
4. Comparability of Service.

Page 665

The Take-or-Pay allocation methodology calls for Take-or-Pay to be calculated based on Tennessee customers' 1988 Annual Volumetric Limitations (AVL's). The 1988 AVL methodology was the best method for all New England Gas Distributors and ENGI.

The settlement calls for a two part mechanism for the recovery of Take-or-Pay. The first part will continue to be collected on a direct bill method. The direct bill is now being calculated as a percentage of total Company exposure. Approximately, 84% of the Company's obligation will be collected by the direct bill.

The second part of the Take-or-Pay settlement calls for a volumetric surcharge. The bifurcated surcharge will be collected on all market area volumes at a rate of $.031/DTH. The volumes will include Canadian, Firm Transportation, Sales Gas, LNH Displacement and Underground Storage Supply. The surcharge is capped at 5 TCF of volumes which will travel on the Tennessee system. It has been estimated that the surcharge will take about three years to be collected.

In the resolution of the Tennessee Rate Case, the two part, D1 and D2, Modified Fixed Variable rate design has been replaced with a one part demand based on the Company's new MDQ. Tennessee will not have seasonal rates which account for the differentiated allocation of storage costs. A new storage service, Storage Service, New England, (SS-NE) allows the Company to reduce its MDQ to average day and maintain peak day entitlement. The conversion of FSST-NE service to FT-A, point to point firm transportation, provides rolled-in rate treatment. This program for future rolled-in rate treatment of existing incremental facilities, such as Boundary and Iroquois will occur over about 10 years and will result in lower costs to customers.

The gas inventory charge is the cost paid by LDC that compensates Tennessee for securing long term gas supply. In the Cosmic Settlement Tennessee proposes to implement a Transition Gas Inventory Charge (TGIC) which will last for a two-year period. The charge is demand-based on the Company's MDQ.

The commodity supply charged under the plan would be capped at 102% of average of spot market prices as reported in the publication "Inside FERC Gas Market Report". To ensure that the Tennessee commodity price will be market based the plan allows for a Firm Capacity Entitlement (FCE) which will allow customers to move 50% of sales gas volumes as third party producer supply.

Because its Purchase Gas Account (PGA), Account 191, will be suspended, Tennessee will charge all customers converting sales service to firm transportation service $3.62/DTH exit fee, payable over a twelve-month period, which will collect unrecovered gas costs. Tennessee will use any dollars which it may over-collect in its TGIC mechanism to pay down the 191 Account.

In the settlement the Comparability of Service allows customers converting to firm transportation to have access to Tennessee receipt points on equal priority with Tennessee. The Company will have the ability to transfer its sales and transportation entitlement to third parties which will give it protection from pre-granted abandonment of converted supply and means Tennessee has given up its right to abandon transportation service at the end of ENGI's Tennessee Contracts in November, 2000. A new service FT-B will allow primary and secondary receipt point flexibility. The settlement also allows 100% third party gas injection into storage. As part of the agreement, Tennessee has committed to fully unbundling its system by the end of the TGIC period.

Tennessee filed the Cosmic Settlement with the FERC in June, 1991. The initial comment period was August 5, 1991, with final comments filed August 26, 1991. The Company anticipates the Commission will rule in November, 1991 with an implementation date of January 1, 1992.

III. COMMISSION ANALYSIS

[1, 2] Based upon the foregoing record, we find that ENGI's revised proposed CGA credit of $0.0391 is just and reasonable, subject to our review of the prudency of the costs incurred by ENGI associated with the Cosmic Settlement. These costs for the period from November, 1991 through April, 1992 will be audited and

reviewed for prudency during the hearings in 1992 on ENGI's 1992-93 CGA filing. Prior to this time, we expect to have concluded a similar examination of Northern Utilities' costs associated with the Cosmic Settlement.

Consequently, in this proceeding it is neither necessary nor appropriate for us to address ENGI's costs of the Cosmic Settlement except to note that reasonable estimates of those costs have been reflected in the current filing. It is our understanding that the proposed CGA credit would decrease by approximately $0.045¢ /therm without the effect of the Cosmic Settlement.

We do wish at this time to offer the following observations on the Comparability of Service issue. In the Cosmic Settlement, ENGI has nominated the conversion of a part of its firm gas sales contract with Tennessee to third party producers.

According to Mr. Fleming, ENGI, along with five other New England distributors, formed a consortium approximately eighteen months ago, to begin the process of interviewing potential suppliers. The result has been that the group has interviewed some twenty-three party suppliers. The group will act independently when execution of contracts is undertaken. Mr. Fleming explained that the ability to review each potential supplier was established by the creation of a request for proposal (RFP). The request was structured to address the major concerns of the group. A matrix was developed which listed 13 critical components which the group felt

required review. The components included strength (assets, net income, total thruput on Tennessee), proven reserves, production source, 100, 500 and 800 line capability, storage, pricing, gas inventory charge, price cap, minimum monthly take requirements, ability to make mid-month renominations and warranty of supply. According to Mr. Fleming, this segment of the evaluation process eliminated many of the potential suppliers.

Mr. Fleming further explained that after a separate review of each of the proposals, a further document was drafted, Contractual Considerations, which detailed specific requirements of the supplier. This phase of the process reduced the approximate twenty producers/ supplier/marketers to four potential suppliers. The Company chose to convert approximately one-third of its existing Tennessee Gas Contract demand, after the conversion of the new Storage Service (SS-NE), served by two producer/ marketers.

According to Mr. Fleming, the Company was concerned regarding the dramatic change the industry was going through and what effect the contract conversion might have on its customers. For these reasons, management felt it was prudent to have its decisions reviewed by an outside independent consultant. The Company hired Stone & Webster Management Consultants, Inc. (S&W) to review all of the documents and give the Company an independent analysis. S&W reviewed two separate parts of the Company's portfolio. The first part was the conversion from Tennessee to producer suppliers and the second part was to evaluate opportunities the Company had with its Londonderry General Services (GS-6) gate station.

The record in this proceeding is clear that Mr. Fleming and S&W believe third party firm gas transportation is not only less expensive than CD-6 gas from Tennessee but is "as reliable". Additionally, the S&W report concludes that a better selection of receipt points is currently available than is likely to be available for future conversions. While, as noted *supra*, we are reserving final judgment on this and other matters associated with the Cosmic Settlement for a future hearing, it does appear, based upon the information at hand, that ENGI has acted reasonably at least with respect to the amounts it has currently nominated for conversion to firm transportation. Whether or not ENGI should have converted additional amounts, is a matter to be examined in a future hearing.

Our order will issue accordingly.

ORDER

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

ORDERED, that ENGI's revised proposed CGA credit of $.0391 is approved for effect from November 1, 1991 through April 30, 1992.

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

October, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-166, Order No. 20,232, 76 NH PUC 585, Sept. 4, 1991.

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NH.PUC*10/28/91*[27239]*76 NH PUC 642*Keene Gas Corporation

[Go to End of 27239]

Re Keene Gas Corporation

DR 91-152
Order No. 20,274

76 NH PUC 642

New Hampshire Public Utilities Commission

October 28, 1991

ORDER approving reduction in local gas distributor's cost of gas adjustment (CGA), because of greater contract supply commitments and less reliance on spot market purchases.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Energy clauses — Cost of gas adjustment (CGA) — Reduction — Factors — Greater contract supply commitments — Less reliance on spot market purchases. p. 642.

APPEARANCES: For Keene Gas Corporation: John F. DiBernardo, Assistant General Manager. For Staff: Richard B. Deres, PUC Examiner.

BY THE COMMISSION:

REPORT

[1] On October 1, 1991, Keene Gas Corporation, (Keene or the Company), a public utility engaged 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 winter period 1991-1992 Cost of Gas Adjustment (CGA), effective

November 1, 1991. The filing requests a CGA rate of $(0.0411) per therm, excluding the NH State Franchise Tax, which is a decrease from the CGA rate of $0.2286 per therm allowed by the commission for the prior winter period. The proposed CGA of $0.3803 per therm is a decrease from the base rate of $0.4214 per therm excluding the NH Franchise Tax.

A duly noticed public hearing was held at the commission's office in Concord, NH on October 15, 1991.

Areas covered by direct testimony and cross examination of the Company witness included: an explanation of the filing, contracts, the general business climate and its effects in the Keene area and on the Company, and unaccounted for gas.

In response to questions from the staff and the commission, Company witness, Mr. DiBernardo, explained now the Company arrived at its projections for this forthcoming period as well as expanding on the unaccounted for gas. In addition, questions concerning how contracts are arranged for, the amount of gas under contract, the price, and the shipping arrangements were also explained.

In prior years the Company contracted for roughly 50% of its needs and consequently went into the market for the other 50%. The Company indicated that this year it placed approximately 75% of its estimated propane needs under contract. Its combined contracts amount to over 2 million gallons of propane for this forthcoming winter period.

The projected sales, costs and adjustments to the 1991-1992 winter 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 $(0.0411) per therm is just and reasonable and therefore accepts it as filed.

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 14th Revised Page 26, Superseding 13th Revised Page 26 of Keene Gas Corporation Tariff, NHPUC No. 1 — Gas, providing for a Cost of Gas Adjustment of $(0.0411) per therm for the period November 1, 1991 through April 30, 1992 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff page approved by this order become effective with all billings issued on or after November 1, 1991; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by a one time publication in newspapers having a 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.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Franchise Tax — Electric and Gas Utilities, DR 83-205, Order No. 16,524, 68 NH PUC 461, July 8, 1983.

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Re Northern Utilities, Inc. — Salem Division

DR 91-150
Order No. 20,282

76 NH PUC 668

New Hampshire Public Utilities Commission

October 29, 1991

ORDER approving a revised cost of gas adjustment clause rate for a natural gas local distribution company (LDC), reflecting a credit of $0.0433 per therm, excluding the New Hampshire state franchise tax.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Credit — Natural gas local distribution company. p. 668.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 54

[N.H.] Over/under collections — Interest rate — Cost of gas adjustment rate — Natural gas local distribution company. p. 668.

APPEARANCES: LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; Michael W. Holmes, Esquire for the Office of the Consumer Advocate; James T. Rodier, Staff Attorney.

BY THE COMMISSION:

REPORT

On October 1, 1991, Northern Utilities, Inc. — Salem Division (Salem or company), a public utility engaged in the business of supplying gas to the towns of Salem and Pelham, New Hampshire filed with this commission 6th Revised Page 28, Superseding 5th Revised Page 28 N.H.P.U.C., providing for the 1991/1992 Winter Cost of Gas Adjustment (CGA) effective November 1, 1991. The filing requested a CGA rate of $0.0433 per therm excluding the New Hampshire state franchise tax.

The topics covered in the company's direct testimony included a description of the gas supplies and costs for the Salem division.

Commission Analysis

[1, 2] Based on staff review of the filing and the books and records of the company, the commission finds that this rate is just and reasonable and in the public interest. We will therefore issue an order approving the rate for effectiveness on November 1, 1991.

Our order will issue accordingly.

ORDER

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

ORDERED, that 6th Revised Page 28, Superseding 5th Revised Page 28, N.H.P.U.C. tariff of Northern Utilities, Inc. — Salem Division, providing for a cost of gas adjustment of $0.0433 per therm for the period of November 1, 1991 through April 30, 1992 is approved by this Order, said rates to become effective with all billings issued for service rendered on or after November 1, 1991; and it is

FURTHER ORDERED, that the over/under collection 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 the quarter; and it is

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that above rate is to be adjusted by a factor of approximately 1% according to the utility classification in the Franchise Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of October, 1991.

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NH.PUC*10/30/91*[27244]*76 NH PUC 669*Claremont Gas Corporation

[Go to End of 27244]

Re Claremont Gas Corporation

DR 91-157
Order No. 20,283

76 NH PUC 669

New Hampshire Public Utilities Commission

October 30, 1991

ORDER revising the cost of gas adjustment clause rate of a gas distributor (LDC). Commission reviews the propane purchasing policy of the distributor and directs the distributor to file written documentation detailing its plans to replace commercial customer meters as part of its effort to reduce lost and unaccounted for gas.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Gas local distribution company. p. 670.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 32

[N.H.] Procurement — Propane purchasing policy — Affiliate transactions — Competitive bids — Gas distribution company. p. 670.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 22

[N.H.] Cost of gas adjustment clause — Indirect costs — Lost and unaccounted for gas — Meter replacement program — Gas distribution company. p. 670.

APPEARANCES: R. Stevenson Upton, Esquire of Ransmeier and Spellman on behalf of Claremont Gas Company; Stuart Hodgdon, for Staff.

BY THE COMMISSION:

REPORT

PROCEDURAL HISTORY

On October 3, 1991, Claremont Gas Corporation, (Claremont or the company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission 134th Revised, Page 12-2 Tariff, N.H.P.U.C. No. 9 — Gas. (Exhibit #2). Said tariff was withdrawn prior to the CGA hearing.

On October 15, 1991, Claremont filed with this commission 135th Revised, Page 12-2 Tariff, N.H.P.U.C. No. 9 — Gas. (Exhibit 3). Said tariff provided for a 1991/1992 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1991 of $0.0647 per therm, before franchise tax. This is an increase of $0.1065 over the current effective rate of $(0.0418).

An Order of Notice was issued setting hearings for October 15, 1991. It was further ordered that a copy of the Order of Notice be published in a local newspaper.

ISSUES

During the hearing the following issues were addressed: a.) Claremont's propane purchasing policy; b.) competitive bidding; c.) lost and unaccounted for gas; d.) billing error.

PROPANE PURCHASING POLICY

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Claremont Gas Corporation, is an affiliate of Synergy Gas Corporation, (Synergy), a non-regulated propane retailer. All propane purchased by Claremont is obtained from Synergy who in turn obtains the product from the Texas Eastern terminal at Selkirk, New York.

Company witness, Mr. James Allen, Manager Corporate Accounting at Synergy, was questioned by staff on the company's practice of relying only on the spot market for propane purchases. Mr. Allen explained that deliveries to Claremont are invoiced at the Selkirk, New

York spot price at time of pick up. He stated that the current daily purchase price of propane at Selkirk was $.53 per gallon if bought on October 14, 1991.

Mr. Allen stated that projections of a colder winter than last year coupled with potential problems in the Middle East and Russia along with lower than expected inventories in the Gulf Coast has led him to believe that prices will rise. Therefore on schedule B, he has estimated cost of gas at $.65 per gallon for the winter period.

In response to questions from staff, Mr. Allen stated that he had not looked into getting fixed priced volume contracts for Claremont during the summer for delivery this winter, as was done by Keene Gas Corporation because Synergy believes that spot market pricing has, over time, been advantageous to the customers of Claremont. He stated that in two of the last three CGA's the customers have benefited from Synergy's purchases through the spot market because prices were lower than expected.

COMPETITIVE BIDS

Formal written letters of solicitation seeking bids for propane were mailed by Synergy to suppliers on October 10, 1991. Two letters refusing to bid were presented to the commission and are shown as Exhibits 4 and 5. Exhibit 6 has been reserved for a third letter which has been recently received by Synergy.

In response to questions from staff, Mr. Allen stated that Synergy does not want to give Claremont a six month fixed price volume contract as was done for the summer 1990 period. He stated that Synergy lost money on that contract as prices on the spot market increased during the period.

LOST AND UNACCOUNTED FOR GAS

Claremont has been providing monthly reports on its lost and unaccounted for gas. Mr. Allen reported that new residential meters have been replaced, however, he did not know if commercial meters were budgeted as indicated on Synergy's response to DR 90-167, Exhibit 2. The commission reserved Exhibit 7 for a written response from the company as to when this improvement is planned. Mr. Allen stated that capital improvements, other than safety related expenditures, have been put on hold due to the recession.

BILLING ERROR

The company billed customers at the rate of $.3683 per therm for the 1990/1991 winter period as noted on Schedule D of this filing. Per Order No. 19,972 for DR 90-167, the rate was to be $.3754. Mr. Allen agreed that an error was made, and that the rate billed was less than it should have been. As there was an overcollection for the period, the error benefited the customers during the winter 1990/91 period.

COMMISSION ANALYSIS

[1-3] Claremont is to provide the commission with two exhibits. Exhibit 6 was reserved for a letter of bid refusal from an independent supplier which was recently received at Synergy. Exhibit 7 is for a company response as to when new commercial meters are to be replaced as part of their program to reduce lost and unaccounted for gas.

Finally, based on Claremont's projected gas costs, we find the company's proposed CGA rate

of $0.0647, before the franchise tax, to be reasonable.

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 Claremont Gas Corporation, 135th Revision, Page 12-2, N.H.P.U.C. No. 9 — Gas. issued October 15, 1991, providing for a Winter Cost of Gas Adjustment of $0.0647 per therm, before the franchise tax, is approved; and it is

FURTHER ORDERED, that public notice of the Cost of Gas Adjustment be given by one time publication in a newspaper having general circulation in the territories served; and it is

FURTHER ORDERED, that Claremont must submit a letter containing a response to a bid, which was just received, and is to be filed as Exhibit 6; and it is

FURTHER ORDERED, that Claremont file written documentation detailing its plans to replace commercial customers meters as part of the company's effort to reduce lost and unaccounted for.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Corp., Inc., DR 90-167, Order No. 19,972, 75 NH PUC 691, Nov. 1, 1990.

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NH.PUC*10/31/91*[27245]*76 NH PUC 671*Alex Ray

[Go to End of 27245]

Re Alex Ray

DE 91-161
Order No. 20,285

76 NH PUC 671

New Hampshire Public Utilities Commission

October 31, 1991

ORDER granting a license to construct a sewer main across state-owned railroad property.

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1. CERTIFICATES, § 125

[N.H.] Sewer — Main construction — License to cross state-owned property — Public good. p. 671.

BY THE COMMISSION:

ORDER

WHEREAS, on October 4, 1991 Alex Ray (Petitioner) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct a sewer main across state-owned railroad property in the Town of Tilton, New Hampshire; and

WHEREAS, the sewer main is intended to serve a proposed restaurant at the intersection of Routes 3 and 140 in Tilton; and

WHEREAS, the proposed sewer consists of 300 feet of 2-inch PVC force main, the last 20 feet of which enters state railroad property to tie into an existing state-owned 60-inch interceptor sewer, all as shown on plans on file with the Commission; and

WHEREAS, the proposed crossing of railroad property occurs at approximate Valuation Station 1049 + 05, Map V21/55 of the Concord-to-Lincoln Railroad; and

WHEREAS, the petitioner is seeking approval for the crossing prior to closing on the commercial property to be served by this petition, said property being currently owned by Pike Industries, Inc.; and

WHEREAS, the proposed sewer will cross an adjacent lot which is to be retained by Pike Industries; and

WHEREAS, a second adjacent property is proposed as a fuel mart/convenience store site with its own 2-inch sewer force main to run parallel to that of this petition, as addressed in docket DE 91-160; and

WHEREAS, the petitioner expects to close on the proposed restaurant property in the near future; and

[1] WHEREAS, the Commission finds the above construction is necessary to meet the reasonable requirements of the petitioner without substantially affecting the public rights in said

Page 671

state property, thus it is in the public good; and

WHEREAS, the petitioner represents and staff has confirmed that the NHDOT Bureau of Railroads is in agreement with this petition; 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 22, 1991; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an attested copy of this order to be published once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Tilton area, said publications to be no later than November 8, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Tilton town clerk, by first class U.S. mail, postage prepaid, and postmarked on or before November 8, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the Commission on or before November 22, 1991; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq*. to Alex Ray, P.O. Box 581, Ashland, New Hampshire 03217 to construct, use, maintain, repair and reconstruct the aforementioned crossing of a sewer main on public railroad property in Tilton, New Hampshire identified at approximate Valuation Station 1049 + 05, Map V21/55, 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; and it is

FURTHER ORDERED, that such license is conditional upon the petitioner providing this Commission with copies of approval letters from the Town of Tilton and the Department of Environmental Services (DES) and of signed deeds, easements and operating agreements pertaining to the proposed sewer force main; and it is

FURTHERED ORDERED, that this license shall be void if the petitioner does not close on the referenced property; and it is

FURTHER ORDERED, that all construction conform to requirements of the NHDOT Bureau of Railroads, the Department of Environmental Services and others as mandated by the Town of Tilton.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1991.

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NH.PUC*11/04/91*[27246]*76 NH PUC 672*Northern Utilities, Inc. — New Hampshire Division

[Go to End of 27246]

Re Northern Utilities, Inc. — New Hampshire Division

DR 91-153
Order No. 20,290

76 NH PUC 672

New Hampshire Public Utilities Commission

November 4, 1991

ORDER approving a revised cost of gas adjustment (CGA) clause rate for a natural gas local distribution company (LDC), consisting of a credit of $0.0202 per therm, excluding the New

Hampshire state franchise tax. Commission directs its staff and the LDC to report on the advisability of opening a docket to investigate the decision process that led to the LDC's affiliate and sole supplier remaining a sales service customer of Tennessee Gas Pipeline Company, an interstate pipeline.

The gas cost component of the unpaid bills of an interruptible customer are included in the CGA rate.

Commission expresses concern over the allocation of low cost supplies among the three jurisdictions in which the LDC's affiliate and sole supplier operates.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Cost of gas adjustment rate — Revision — Credit — Natural gas local

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distribution company. p. 675.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 32

[N.H.] Purchasing practices — Natural gas local distribution company — Decision to remain sales customer of interstate pipeline — Commission review. p. 675.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect costs — Cost of gas adjustment clause — Bad debts from interruptible sales — Gas cost component — Natural gas local distribution company. p. 675.

4. EXPENSES, § 118

[N.H.] Uncollectibles — Interruptible sales customers — Natural gas local distribution company. p. 675.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 32

[N.H.] Procurement practices — Supplemental supply — Purchase from affiliate — Natural gas local distribution company. p. 675.

6. APPORTIONMENT, § 30

[N.H.] Gas — Allocation of low cost supplies — Jurisdictional allocation. p. 675.

APPEARANCES: Leboeuf, Lamb, Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; James T. Rodier, Esquire, Staff Attorney; and Michael Holmes, Esquire for the Office of the Consumer Advocate (OCA).

BY THE COMMISSION:

REPORT

I. *Procedural Background*

On October 1, 1991 Northern Utilities, Inc., (Northern or Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this Commission Twenty-First Revised Page 24, superseding Twentieth Revised Page 24, N.H.P.U.C., No 7, providing for a Winter 1991/92 Cost of Gas Adjustment (CGA) effective November 1, 1991. The proposed CGA is a credit of ($0.0202) per therm before New Hampshire franchise tax.

An Order of Notice was issued setting the date of the hearing for October 17, 1991, at 10:00 a.m. at the Commission office in Concord, New Hampshire.

During the hearing the following issues were addressed: Tennessee Gas Pipeline's "cosmic settlement", interruptible gas sales, Bay State supplemental gas supplies, and Northern's share of new gas acquisitions.

Tennessee Gas Pipeline's "Cosmic Settlement"

Tennessee Gas Pipeline Company, FERC and a majority of the intervenors entered into a Stipulation and Agreement which resolved, or establishes procedures for resolving, about 20 different Tennessee proceedings. The issues involved in those proceedings may generally be categorized as concerning: (a) Tennessee's general rate increase request, (b) Tennessee's recovery of take-or-pay costs, (c) Tennessee's application for a permanent Gas Inventory Charge (GIC), (d) comparability issues, and (e) scheduling and balancing. The Stipulation and Agreement is currently under consideration by the FERC.

Among other things, implementation of the GIC, concurrent with an overall restructuring of Tennessee's services, would permit Granite State Gas Transmission (Northern's affiliate and sole supplier of natural gas) to choose from an array of services, including conversion of firm sales service to firm transportation. Due to the recent unavailability of a key Northern witness, the Company represented to staff that it could not at this time explain fully to the commission

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its decision in this matter. As a consequence, the staff and Consumer Advocate's Office agreed to defer all questions relating to the Tennessee "Cosmic Settlement" pending the Commission opening a separate docket to examine those issues.

The Company's filing does however reflect the expectation that the "Cosmic Settlement" rate increases will be approved and made effective November 1, 1991. Mr. Ferro explained that while that date was no longer achievable, a revision to the filing was unwarranted since the commonly cited January 1, 1992 effective date is by no means certain and, if used, would only increase the CGA by 1.2 cents per therm.

Interruptible Gas Sales

The profits realized and expected from interruptible sale of gas were reported at about $1.46 million. This sum is less than what firm ratepayers would have received had Northern's largest interruptible customer, Gold Bond, paid its October, 1990 bill comprising about $115,000 of margin and $95,000 of gas costs. According to Mr. Ferro, the October bill became uncollectible when Gold Bond filed for reorganization under Chapter 11 of the Bankruptcy Code. Mr. Ferro further testified that Gold Bond has emerged from the reorganization a much stronger and

financially healthier company and has yielded, in the nine months, over $300,000 of margins. Mr. Ferro also noted that Gold Bond's billing schedule has been shortened from four to two weeks, thus minimizing the financial risk to ratepayers of a similar occurrence.

Mr. Ferro stated that instead of following the normal practice of charging unpaid bills to bad debts, with subsequent recovery through a base rate increase filing, the Company chose simply to book $95,000 to revenues. In order to keep itself whole, this transaction required the $95,000 of gas costs to be recorded in its gas cost account and recovered from ratepayers through the CGA. In short, ratepayers incur the gas costs associated with the interruptible sale but forego the margin.

In response to questions from staff counsel, Mr. Ferro denied that the Company's motivation for recovering the gas costs through the CGA rather than in a base rate case was a concern that the debt in question would be found to be non-recurring in a base rate case and thus disallowed. Mr. Ferro argued that interruptible bad debts should be treated differently from bad debts that result from firm service. In the former case, the Company is prevented from retaining any of the benefits from the sale, while in the latter case a return can be earned on the investments made to provide service. These facts suggest, according to Mr. Ferro, that ratepayers rather that the Company bear the risk of under recovering gas costs associated with interruptible sales. Mr. Ferro conceded, however, that interruptible sales do make the Company more competitive and thus do benefit stockholders. Counsel for the Company also agreed that in order to provide interruptible service to Gold Bond, Northern had to make certain investments on which it was allowed to earn its approved rate of return.

Bay State Supplemental Gas Supplies

To meet winter demands in excess of pipeline and storage gas supplies, Northern contracts with its parent Bay State for liquefied natural gas (LNG) and with propane wholesalers for propane. Most of the LNG purchased is delivered to Northern in vapor form via the Granite State pipeline.

The projected cost of pipeline delivered LNG as reported by Mr Ferro lies within the range $6.10 per MMBtu to $6.25 per MMBtu. Propane, on the other hand, is reported at $5.69 per MMBtu ($5.78 per MMBtu inclusive of fuel and electric processing charges), a differential of about 50 cents. Despite the differential, Northern expects to purchase ten times more LNG than propane.

Mr Sacco, the Company's Vice President for Gas Supply, defended the practice on the grounds that the Bay State supply is much more versatile and cost effective. Because propane supply contracts have take-or-pay volumes, expensive propane-air will be used in lieu of pipeline or storage gas during warm weather conditions. Conversely, in cold weather

conditions, additional spot purchases of propane may need to be purchased, often at higher prices. The Bay State supply does not have minimum take provisions, nor is Northern required to take LNG in lieu of less costly pipeline gas during warm periods.

Allocation of New Gas Supplies

The pre-filed testimony of Mr. Sacco describes how Granite State acquired two new gas supplies and made those available to Bay State and Northern for the upcoming winter season. The Direct Energy Marketing (DEM) project involves firm supplies originating in Alberta and delivered to Granite via the Trans-Canada and Portland pipelines. Granite is proposing to allocate to Northern 13.4% of the additional daily supplies with the remainder going to Bay State. The purchased gas costs associated with the project will be rolled-in with Granite's other gas purchases and recovered through its FERC approved PGA.

In contrast, the supplies and costs associated with the Ellisberg, PA to Agawam Ma, firm transportation/spot gas project are to be directly assigned to Bay State and Northern. Northern's share will be the same 13.4% used in the DEM project.

Mr. Sacco explained that the allocation percentages were determined based on two parameters commonly used by gas companies, therm sales and number of customers weighted equally. On cross examination, Mr. Sacco agreed that the resulting share for Northern is considerably less than the 20% assigned to Northern for the Shell volumes, which is also delivered via the Portland pipeline. He also conceded that the commission staff was not consulted about the new allocation procedure prior to making the FERC filings, although he did note that they received copies. Mr McCluskey responded that Company management had informed him that if the Commission had filed late interventions in these cases the supplies would have been lost for the winter and perhaps forever.

In response to questions from Commissioner Ellsworth, Mr. Sacco explained that Granite had attempted to convene a meeting of the Massachusetts, Maine and New Hampshire staffs to hammer out an allocation formula that would be acceptable to the three commissions. Due to scheduling conflicts, this meeting has yet to take place.

II. *Commission Analysis*

[1-6] The new service options made available as a result of Tennessee's "Cosmic Settlement" are part of a much larger picture currently unfolding at the FERC. If the mandatory unbundling requirements contained in the so-called mega-NOPR are adopted in the Commission's final rule on pipeline restructuring, all open access interstate pipelines will be required to compete with producer/marketers to supply LDC loads or in the alternative revert to transportation. Simply put, these changes will require LDCs to weigh the prospect of lower purchased gas costs against the uncertainties inherent in contracting for firm supplies with new entrants to the merchant business.

Without in any way pre-judging the actions of Northern's management in regard to the Tennessee service options, we are persuaded by the record in DR 91-151 that those options offer the prospect of substantial gas cost savings and thus merit full and complete review. We will therefore direct staff to meet with the company and report to the commission within 30 days on the company's purchasing practices, and on the advisability of opening a docket to investigate the decision processes which led Granite State on behalf of Northern to remain a sales service customer of Tennessee.

With regard to the issue of Gold Bond's reorganization and resulting failure to pay its October 1990 gas bill, we agree with Company witness Ferro that because interruptible gas sales are generally made for the sole benefit of firm ratepayers, any bad debts resulting from those

sales should receive special rate treatment. To do otherwise would require the Company to bear the risk of non-payment without any prospect of reward. We are reminded, however, that Gold Bond is not an ordinary interruptible customer. To supply Gold Bond the Company had to install pipe and metering equipment for a total cost of about $350,000, which was

Page 675

subsequently recovered from ratepayers, along with the associated return, through retained margins. Thus, in this case ratepayers were not the sole beneficiary of the project. Notwithstanding these special circumstances, we will allow Northern to recover the gas cost component of the unpaid bill because the benefit received in no way matches the risk incurred.

The gas companies should not, however, conclude from this decision that all bad debt related gas costs can automatically flow through the CGA. The standard form interruptible contracts employed by Northern and ENGI contain provisions for a deposit to guard against non-payment. The commission will carefully review any further uncollectibles in the context of whether or not other protective covenants, such as deposit requirements, are a preferred mechanism than that employed here.

With respect to the Bay State supplemental supply, the record in this proceeding is clear that non-price factors are important in determining whether LNG is more or less costly than propane. Given the current price differential between LNG and propane, we are not persuaded that Northern's ratepayers are economically disadvantaged by the purchase of supplemental supplies from its parent.

We are concerned, however, that the quantity of supplemental gas (LNG and propane) used by Northern to meet winter loads may be greater than necessary due to the procedure employed to allocate new gas acquisitions. Mr Sacco testified that Northern will receive only 13.4% of the low cost DEM and Ellisberg supplies due November, compared with 20% of the Shell volumes. He also conceded that the Commission staff was not informed of the new allocation prior to Granite making its filings with the FERC. While we understand the task Northern's management faces in attempting to satisfy all three commissions in this matter, that does not relieve the Company of its obligation to consult with the staff on an issue as important as who benefits from low cost gas. We encourage the Company and the various commission staffs to meet and agree on allocation procedure that strikes a balance between the competing interests of all three States. Absent such an agreement, we will require the Company to consult with the staff on all future gas supply allocation issues prior to filings being made at the FERC.

ORDER

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

ORDERED, that the proposed CGA of ($0.0202) per therm is a just and reasonable rate; and it is

FURTHER ORDERED, that the above rate be made effective on November 1, 1991.

By order of the Public Utilities Commission of New Hampshire this fourth day of November, 1991.

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NH.PUC*11/07/91*[27247]*76 NH PUC 676*New England Telephone and Telegraph Company

[Go to End of 27247]

Re New England Telephone and Telegraph Company

DE 91-163
Order No. 20,294

76 NH PUC 676

New Hampshire Public Utilities Commission

November 7, 1991

ORDER nisi authorizing a telephone local exchange carrier to revise the boundary between two of its exchange areas to conform with a municipal boundary. Existing customers in the area subject to revision are given the option of retaining service from their present exchange on a "grandfathered" basis.

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1. SERVICE, § 446

[N.H.] Telecommunications — Exchange areas and boundaries — Revision to conform with municipal boundary — "Grandfathering" — Local exchange carrier. p. 677.

Page 676

BY THE COMMISSION:

ORDER

On October 7, 1991, New England Telephone and Telegraph Company (NET) filed a petition seeking authority to change a portion of the boundary between the Franklin and Canterbury, New Hampshire exchanges.

[1] WHEREAS, the proposed change will make a portion of the exchange boundary between Franklin and Canterbury coterminous with the municipal boundary; and

WHEREAS, the six existing customers currently located in the Franklin exchange will be given the option of retaining service from their present exchange on a "grandfathered" basis or selecting service from the Canterbury exchange, without charge; and

WHEREAS, this change will improve the exchange boundary administration and has no economic impact or revenue effect on NET; 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 December 5, 1991; 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 November 21, 1991 and documented by affidavit to be filed with this office on or before December 5, 1991; and it is

FURTHER ORDERED, that NET file revised tariff pages to NHPUC No. 75 Part A Section 5 Fifth Revision of Sheet 13 and Fourth Revision of Sheet 36, 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 exchanges of Franklin and Canterbury 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 orders prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this seventh day of November, 1991.

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NH.PUC*11/08/91*[27248]*76 NH PUC 677*Clarke and Helen Nickerson

[Go to End of 27248]

Re Clarke and Helen Nickerson

DE 91-145
Order No. 20,295

76 NH PUC 677

New Hampshire Public Utilities Commission

November 8, 1991;
revised and reissued December 17, 1991

ORDER granting a license to construct, use, maintain, repair, and reconstruct a sewer main across state-owned railroad property.

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1. CERTIFICATES, § 125

[N.H.] Sewer main construction — License to cross state-owned property — Public good — Conditions. p. 677.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on September 25, 1991, Clarke & Helen Nickerson (petitioner) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking

license under RSA 371:17 to construct, use, maintain, repair and reconstruct a sewer main on state-owned railroad property in the Town of Tilton, New Hampshire; and

WHEREAS, the proposed sewer main is intended to serve 20 to 25 customers in a proposed industrial park, as well as being available to certain adjacent properties, all in Tilton; and

WHEREAS, the proposed sewer main will cross land owned by others to gain access to the industrial park; and

WHEREAS, the petitioner intends to obtain the required easements from affected property owners and, upon completion of the sewer and the industrial park access road, to turn title of both over to the Town of Tilton, both inside and outside the industrial park; and

WHEREAS, the proposed sewer outside the industrial park consists of approximately 2000 feet of 12-inch sewer main, the last 50 or so feet of which crosses state railroad property, passing beneath the railroad tracks inside an 18-inch diameter steel sleeve to tie into an existing state-owned 60-inch interceptor sewer, all as shown on plans on file with the Commission; and

WHEREAS, the proposed crossing of railroad property occurs at approximate Valuation Station 1070 + 60, Map V21/55 of the Concord-to-Lincoln Railroad; and

WHEREAS, the Commission finds the above construction is necessary to meet the reasonable requirements of the petitioner without substantially affecting the public rights in said state property, thus it is in the public good; and

WHEREAS, the petitioner represents and staff has confirmed that the NHDOT Bureau of Railroads is in agreement with this petition; 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 January 13, 1992; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an attested copy of this order to be published once in a newspaper having general statewide circulation and

once in a newspaper having general circulation in the Tilton area, said publications to be no later than December 30, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Tilton town clerk, by first class U.S. mail, postage prepaid, and postmarked on or before December 30, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the Commission on or before January 13, 1992 and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq*. to Clarke & Helen Nickerson, P.O. Box 276, Tilton, New Hampshire 03276 to construct, use, maintain, repair and reconstruct the aforementioned crossing of a sewer main on public railroad property in Tilton, New Hampshire identified at approximate Valuation Station 1070 + 60, Map V21/55, 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; and it is

FURTHER ORDERED, that all construction conform to requirements of the NHDOT Bureau of Railroads, the Department of Environmental Services and others as mandated by the Town of Tilton; and it is

FURTHER ORDERED, that should the Town of Tilton for any reason not take title to the sewer, both inside and outside the proposed industrial park, the petitioner shall contact this commission concerning the public utility status of said sewer.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1991.

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NH.PUC*11/08/91*[27249]*76 NH PUC 679*Southern New Hampshire Water Company, Inc.

[Go to End of 27249]

Re Southern New Hampshire Water Company, Inc.

DE 91-177
Order No. 20,296

76 NH PUC 679

New Hampshire Public Utilities Commission

November 8, 1991

ORDER granting a water utility a waiver of the thirty day notification provision of N.H. Administrative Rule Puc 201.05 in order to allow it to complete a developer water main extension prior to the end of the construction season.

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1. WATER, § 12

[N.H.] Construction — Main extension — Thirty-day notice requirement — Waiver —

Public interest. p. 679.

BY THE COMMISSION:

ORDER

Southern New Hampshire Water Company, Inc. (SNHW), having filed on October 23, 1991, Form E-22, pursuant to N.H. Admin. Rule Puc 609.07, for a developer water main extension at its Smythe Woods system in Hooksett, New Hampshire; and

[1] WHEREAS, SNHW requests a waiver of the thirty day notification provision of N.H. Admin. Rule Puc 201.05, asserting that the public interest requires that construction commence prior to the expiration of the thirty day notice period in order to complete the main installation in the limited time remaining in the 1991 construction season; and

WHEREAS, SNHW is required under New Hampshire Law to ensure that the work performed in this matter is consistent with its approved tariffs on file with this commission and any resultant expenditures by SNHW are SNHW's own risk, subject to possible commission review in subsequent rate proceedings; it is hereby

ORDERED, that SNHW request for waiver of N.H. Admin. Rule Puc 609.07 is granted pursuant to N.H. Admin. Rule Puc 201.05.

By order of the New Hampshire Public Utilities Commission this eighth day of November, 1991.

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NH.PUC*11/08/91*[27250]*76 NH PUC 679*Meriden Telephone Company, Inc.

[Go to End of 27250]

Re Meriden Telephone Company, Inc.

DF 91-125
Order No. 20,297

76 NH PUC 679

New Hampshire Public Utilities Commission

November 8, 1991

ORDER authorizing a telecommunications utility to borrow up to $802,000 from the Rural Electrification Administration to finance its conversion to digital switching.

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1. SECURITY ISSUES, § 111

[N.H.] Financing methods — Rural Electrification Administration — Telecommunications utility — Loans. p. 680.

2. SECURITY ISSUES, § 48

[N.H.] Authorization — Definite plans and purpose — Construction financing — Conversion to digital switching — Telecommunications utility. p. 680.

BY THE COMMISSION:

ORDER

Page 679

WHEREAS, Meriden Telephone Company, Inc. (Meriden) is a telecommunications utility subject to our jurisdiction having its principal office in Meriden, duly organized and existing under the laws of the State of New Hampshire; and

[1, 2] WHEREAS, on August 20, 1991, Meriden filed a petition requesting authorization and approval from the commission to enter into long term permanent debt financing arrangements pursuant to which it may borrow up to $802,000 from the Rural Electrification Administration (REA); and

WHEREAS, Meriden states that the REA has authorized a loan in the amount of $802,000, to be "drawn down" over a five (5) year period, and paid back over a period not to exceed twenty (20) years; and

WHEREAS, Meriden states by letter dated August 26, 1991, that the interest rate is fixed a five (5) percent for all draw downs, for the life of the loan; and

WHEREAS, Meriden's purpose in issuing this $802,000 note is for the purpose of financing construction over the next five (5) years. The facilities to be constructed are largely comprised by the company's digital switch conversion and a building addition to house the new switch; including miscellaneous outside plant, a digital host switch at the central office and engineering expenses; and

WHEREAS, Meriden proposes to borrow only $425,000 of the authorized $802,000, and use internally generated funds for any remaining construction costs; and

WHEREAS, Meriden had no short term notes outstanding at June 30, 1991, and the capital structure of Meriden as of June 30, 1991 consisted of the levels of debt and equity listed in the following table:

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

Common stock, no par value	$62,761
Retained Earnings	479,083
Total Equity	$ 541,844
Long Term debt	$ 262,986

WHEREAS, Meriden submitted, financial data, and copies of other various documents justifying the terms and amounts of the proposed financing; and

WHEREAS, Meriden states that there is currently no lower cost alternative to the proposed REA financing; and

WHEREAS, Meriden has submitted copies of the Telephone Loan Contract Amendment dated September 27, 1990, Mortgage Note, Supplemental Mortgage and Security Agreement loan documentation for review by the commission; and

WHEREAS, Meriden has requested expeditious approval of the proposal; and

WHEREAS, after investigation by the commission, pursuant to RSA 369:4, it appears that it is consistent with the public good to approve Meriden's petition; it is hereby

ORDERED, that all persons interested in responding to this petition should be notified that they may submit their comments or file a written request for a hearing on the matter before this commission not later than December 6, 1991; and it is

FURTHER ORDERED, that Meriden effect said notification by publication of this order one time in the following newspaper: The Union Leader (Manchester), not later than November 22, 1991, and documented in an affidavit to be made on a copy of this order and filed with this office on or before December 9, 1991; and it is

FURTHER ORDERED, *NISI*, that Meriden be and hereby is authorized under RSA 369:1 to borrow up to $802,000 from REA from time to time, evidenced by notes or other evidences of indebtedness, and to enter into agreements reflecting such indebtedness; and it is

FURTHER ORDERED, *NISI*, that Meriden shall provide copies to this commission of the final Telephone Loan Contract, Mortgage Note, Supplemental Mortgage and Security Agreement, and other related loan documents after consummation of the closing; and it is

FURTHER ORDERED, *NISI*, that Meriden is authorized to do all things, take all steps, and deliver and execute all documents necessary or desirable to implement and carry out the terms of this Order; and it is

FURTHER ORDERED, that on or about January first and July first in each year, Meriden

shall file with this commission a detailed statement, duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of such financing, until the expenditure of the whole of said proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that this Order shall be effective commencing on December 9, 1991, unless the commission provides otherwise in a supplemental order issued prior to the effective date hereof.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1991.

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Re Atkinson Area Waste Water Recycling, Inc.

DE 90-214
Order No. 20,298

76 NH PUC 681

New Hampshire Public Utilities Commission

November 12, 1991

ORDER granting a petition for authority to establish a sewer utility, subject to the terms of a settlement agreement. Commission finds that the petitioner has the requisite financial, managerial, and technical expertise to operate the proposed sewer facilities. Petitioner agrees to prorate customer charges in proportion to system capacity to ease the financial burden to initial customers and to reflect the fact that the system would not be "used and useful" in the initial stages of operation.

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1. CERTIFICATES, § 125

[N.H.] Sewer franchise — Grounds for granting — Public good — Fitness of petitioner — Settlement. p. 682.

2. RATES, § 501

[N.H.] Sewer utility — Special factors — New franchise — Prorated customer charge — Settlement. p. 682.

3. VALUATION, § 213

[N.H.] Sewer — Property used or useful — Capacity for future needs. p. 682.

APPEARANCES: Stephen J. Noury and Kevin L. Camm for Atkinson Area Waste Water Recycling, Inc.; and Eugene F. Sullivan, III, Esq. for staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On December 3, 1990 Atkinson Area Waste Water Recycling, Inc. (petitioner), a New Hampshire corporation established in 1990, filed a petition for authority to establish a sewer utility in a limited area of the Town of Atkinson. The Commission issued an Order of Notice on December 26, 1990, scheduling a prehearing conference on January 22, 1991, and an order on February 12, 1991, adopting a procedural schedule. A settlement conference was held on June 4, 1991, and a hearing on June 18, 1991. There were no intervenors.

II. *Commission Analysis*

Based on the petitioner's testimony and responses to Staff data requests, the Commission finds that the petitioner intends to construct a sewage disposal facility in a limited area of the Town of Atkinson which will ultimately serve approximately 325 housing units in a primarily residential development which will include a golf course. The proposed sewer utility will allow a greater density of housing units within the development and will provide effluent for irrigation of the golf course. The

Town of Atkinson has no objections to the proposed sewer franchise.

The petitioner is corporately related to Lewis Builders (Lewis), which will provide financial backing, management services and technical expertise for the project. Lewis Builders, which has been in business for over thirty years, also provides management services to seven New Hampshire water utilities and manages a condominium association. *See eg., Re Hampstead Area Water Company*, Docket DR 89-047, Report and Order No. 19,717. Lewis has or will have four in-house licensed wastewater plant operators in addition to other relevant expertise among its 45 employees. These specific facts and the entire record support the conclusion that the petitioner has the financial, managerial and technical capability to operate and maintain the proposed sewer utility.

Given this Commission's experience with other sewer utilities the staff and the petitioner entered into a stipulation to attempt to ensure the financial integrity of the sewer utility and to provide notice to potential customers of the cost of sewer services. *See eg., Re Resort Waste Services Corporation*, Docket No. DR 90-035.

[1-3] The agreement states that adequate notice will be given prospective buyers of homes within the development that a separate charge for sewer service will be made; that the petitioner will obtain a line of credit from a financial institution to cover O&M expenses should the petitioner become unable to meet same, until the development has reached 75% build-out; that Lewis Builders, the primary noteholder on the sewage disposal system, will not require payment of interest in times of financial stress to the utility; that all required Department of Environmental Services operating licenses shall be obtained; that customers will not be responsible for costs associated with disposal of the effluent; that the cost of the collection system will be contributed; that a paid-in-advance hookup fee will be required of all developers desiring to construct units in the franchise area; and describes the boundaries of the proposed franchise area. (See Appendix A)

The Petitioner further agreed to prorate customer charges in proportion to system capacity to ease the financial burden to initial customers and to reflect the fact that the system will not be fully "used and useful" in the initial stages of operation.

Based on the above findings the Commission finds the requested franchise to be in the public good. The petitioner has the financial, managerial and technical expertise available through its own employees and its association with Lewis Builders to operate the proposed sewer facilities.

The Commission will accept the Stipulation of the parties in full as attached hereto as it

establishes just and reasonable conditions.

Any long-term lease, line of credit or proration of customer charges, referred to above, will be subject to review in the rate case to follow.

Our order will issue accordingly.

ORDER

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

ORDERED, that authority to establish a public sewer utility in a limited area of Town of Atkinson as delineated in Appendix A is hereby granted to Atkinson Area Waste Water Recycling, Inc. (petitioner); and it is

FURTHER ORDERED, that the stipulation attached hereto is accepted in full; and it is

FURTHER ORDERED, that the petitioner shall submit all filings and reports and pay all assessments levied by this Commission as required by statute and Commission rules; and it is

FURTHER ORDERED, that all issues pertaining to setting rates, including long-term leases, lines of credit and proration of customer charges, shall be the subject of a rate case to follow in the establishment of permanent rates; and it is

FURTHER ORDERED, that the petitioner shall not charge any of its customers for services rendered until the establishment of a rate by this Commission.

By order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1991.

STIPULATION AGREEMENT

Page 682

1.0 This agreement is entered into this 18th day of June, 1991, between Atkinson Area Waste Water Recycling, Inc. ("Atkinson") and the Staff of the New Hampshire Public Utilities Commission ("Staff") for the purposes of and subject to the terms and conditions hereinafter stated.

2.0 *Introduction.* On December 3, 1990, Atkinson filed a petition for a sewer franchise pursuant to RSA 374:22 in a limited area of the Town of Atkinson, New Hampshire. On December 26, 1990, Commission issued an Order of Notice in response to the petition setting a prehearing conference pursuant to RSA 541-A:16 and N.H. Admin. Rules, PUC 203.05 for January 22, 1991. No intervenors appeared at the hearing nor have any petitioned for intervention since the hearing. Staff and Atkinson engaged in discovery and technical conferences over the course of the following months resulting in this settlement.

2.1 The settlement addresses all issues relative to the public good in establishing a sewer franchise in a limited area of the Town of Atkinson excluding the issues of managerial, technical and financial capability to operate a sewer utility. Staff is not implying by its refusal to stipulate to Atkinson's managerial, technical and financial capability that Atkinson does not possess these attributes but that the Commission should make such a decision based on record evidence.

3.0 Staff and Atkinson agree that Atkinson will insure that all deeds for the sale of homes

contained in its franchise area shall contain a disclaimer which notifies all potential purchasers that they will be charged a fee for the sewage service to each lot. The deed will further notify potential purchasers that they may contact the Consumer Assistance Department of the New Hampshire Public Utilities Commission at 1-800-852-3793.

4.0 Staff and Atkinson further agree that Atkinson will obtain a revolving line of credit from a financial institution to cover all operating and maintenance expenses until the development within the franchised area reaches 75% buildout. Said line of credit to cover the costs of operating and maintenance expenses should Atkinson become unable to meet its financial responsibilities. Furthermore, Atkinson will obtain a commitment from Lewis Builders, the primary noteholder on the sewage disposal system, that it will not require payment of interest on the note during any period in which Atkinson is unable to meet its financial responsibilities.

5.0 Staff and Atkinson further agree that the grant of a franchise is contingent on the receipt from the Department of Environmental Services of all operating licenses. This contingency shall not be construed so as to prevent the granting of said licenses.

6.0 Staff and Atkinson agree that the customers shall not pay any of the costs associated with the disposal of the effluent following treatment.

7.0 Staff's stipulation to the above items is based on Atkinson's representations that the total cost of the collection system will be contributed by the developer, and furthermore, that all developers in the franchise area shall pay in advance a so-called "hook up fee" or "availability fee" for the privilege of using the sewage disposal system for homes built in the franchise area.

8.0 Staff and Atkinson stipulate that the requested franchise area is as follows:

BEGINNING at a point common to the Towns of Atkinson and Salem, New Hampshire and the City of Haverhill, Massachusetts; thence Northeasterly along the State Line of New Hampshire and Massachusetts to the centerline of North Broadway; thence Northwesterly along the centerline of North Broadway to the centerline intersection of North Broadway and Providence Hill Road; thence Northwesterly along the centerline of Providence Hill Road to the Salem, New Hampshire town line; thence Southwesterly, easterly, and southeasterly along the Salem and Atkinson town line to the point of beginning. This area containing approximately 1100 acres.

WHEREFORE, Staff and Atkinson's authorized agents have affixed their signatures hereto.

Page 683

ATKINSON AREA WASTE WATER
RECYCLING, INC.
By its Agent

NH PUBLIC UTILITIES COMMISSION
By its attorney

Eugene F. Sullivan, III
Staff Attorney

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Hampstead Area Water Co., Inc., DR 89-047, Order No. 19,717, 75 NH PUC 109, Feb. 15, 1990.

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[Go to End of 27252]

Re MCI Telecommunications Corporation

DR 91-168
Order No. 20,299

76 NH PUC 684

New Hampshire Public Utilities Commission

November 12, 1991

ORDER authorizing a telephone interexchange carrier to revise its intraLATA rates and to introduce service enhancements.

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1. RATES, § 582

[N.H.] Telecommunications — IntraLATA toll — Enhanced services — Interexchange carrier. p. 684.

2. SERVICE § 468

[N.H.] Telecommunications — IntraLATA toll — Enhanced services — Interexchange carrier. p. 684.

3. MONOPOLY AND COMPETITION § 94

[N.H.] Telecommunications — IntraLATA toll — Enhanced services — Interexchange carrier. p. 684.

BY THE COMMISSION:

ORDER

[1-3] On October 14, 1991, MCI Telecommunications Company (MCI) filed a petition seeking to revise the rates for the following products: Prism I, Vision, 800 Service and Vnet; and to introduce the Direct Termination Overflow service enhancement for the Vision product and the Preferred Product; and

WHEREAS, the Direct Termination Overflow feature will permit alternative routing of calls

destined for a specific terminating dedicated truck group when the trunk group is busy; and

WHEREAS, the Preferred Product will offer outbound, card and inbound 800 services to single or multi-location customers using Dial "1" or calling card origination; and

WHEREAS, on October 21, 1991, MCI submitted substitute tariff pages separating the rate change component of its filing from new product offerings; and

WHEREAS, the proposed filings were filed for effect on November 15, 1991; and

WHEREAS, the New Hampshire Public Utilities Commission is interested in encouraging the emergence of competition in the intraLATA toll market on an interim basis; it is hereby

ORDERED *NISI*, that MCI be, and hereby is, authorized to implement the following tariff changes:

PUC Tariff No. 1
First Revised Page No. 1
First Revised Page No. 2
First Revised Page No. 3
First Revised Page No. 3.1
First Revised Page No. 4.
First Revised Page No. 37

Page 684

First Revised Page No. 38
First Revised Page No. 39
First Revised Page No. 42
First Revised Page No. 54
Original Page No. 55
Original Page No. 56
Original Page No. 57
Original Page No. 58
Original Page No. 59;

and it is

FURTHER ORDERED, that Direct Termination Overflow and Preferred Product Services are to be offered subject to the conditions as specified in NHPUC Order No. 20,041, dated January 21, 1991, in Docket DE 90-108; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01 MCI cause 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 Nov. 22, 1991, and is to be documented by affidavit filed with this office on or before the twelfth day of Dec.,1991; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than the ninth of Dec., 1991; and it is

FURTHER ORDERED, that this Order *NISI* will be effective on December 12, 1991, unless

the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twelfth day of November, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re MCI Telecommunications Corp., DE 90-108, Order No. 20,041, 76 NH PUC 59, Jan. 21, 1991.

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NH.PUC*11/12/91*[27253]*76 NH PUC 685*AT&T Communications of New Hampshire, Inc.

[Go to End of 27253]

Re AT&T Communications of New Hampshire, Inc.

DR 91-173
Order No. 20,300

76 NH PUC 685

New Hampshire Public Utilities Commission

November 12, 1991

ORDER authorizing a telephone interexchange carrier to introduce service enhancements and reestablish uniformity between state and interstate tariffs.

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1. RATES, § 582

[N.H.] Telecommunications — IntraLATA toll — Enhancements — Uniformity between state and interstate tariffs — Interexchange carrier. p. 685.

2. SERVICE § 468

[N.H.] Telecommunications — IntraLATA toll — Enhancements — Interexchange carrier. p. 685.

3. MONOPOLY AND COMPETITION § 94

[N.H.] Telecommunications — IntraLATA toll — Enhanced services — Interexchange carrier. p. 685.

BY THE COMMISSION:

ORDER

[1-3] On October 18, 1991, AT&T Communications of New Hampshire filed a petition

seeking to introduce service enhancements for its 56/64 Kbps Switched Digital Service, make additional miscellaneous adjustments and reestablish uniformity between state and interstate

tariffs; and

WHEREAS, the proposed tariff was filed for effect on November 21, 1991; and

WHEREAS, the New Hampshire Public Utilities Commission is interested in encouraging the emergence of competition in the intra-
LATA toll market on an interim basis; it is hereby

ORDERED *NISI*, that AT&T Communications of New Hampshire, Inc., be and hereby is authorized to implement the following tariff changes:

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


PUC No. 2 -56/64 Kbps Switched Digital Service.
Title Page          -1st Revised
Table of Contents   -1st Revised Pages 1 through 4
Tariff Information -1st Revised Pages 1 through 4
Section 1           -Application of tariff
                    -1st Revised Pages 1 through 5
                    -Original Page 6
Section 2           -General Regulations
                    -1st Revised Pages 1 through 16
                    -Original Pages 17 and 18
Section 3           -Rate Determination
                    -1st Revised Pages 1 through 3
                    -Original Pages 4 through 61;
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and it is

FURTHER ORDERED, that the enhancements and amendments to 56/64 Kbps Switched Digital Service be offered subject to the conditions as specified in NHPUC Order No. 20,040, dated January 21, 1991, in Docket DE 90-002; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, the company cause 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 November 22, 1991 and it is to be documented by affidavit filed with this office on or before the twelfth day of December, 1991; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than the ninth day of December, 1991; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective Dec. 12,1991, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twelfth day of November, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 20,040, 76 NH PUC 58, Jan. 21, 1991.

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NH.PUC*11/13/91*[27254]*76 NH PUC 687*EnergyNorth Natural Gas, Inc.

[Go to End of 27254]

Re EnergyNorth Natural Gas, Inc.

Additional movant: Anheuser-Busch Companies, Inc.

DR 90-045
Order No. 20,303

76 NH PUC 687

New Hampshire Public Utilities Commission

November 13, 1991

ORDER denying a motion for rehearing of a prior order that denied (1) a request by an interruptible customer of a natural gas local distribution company to continue to take service under a previously existing special contract notwithstanding the requirements of a 1990 stipulation governing the provision of interruptible gas service; and (2) an alternative request by the customer to take service under a new special contract. Commission grants, in part, a motion for clarification of the prior order, but reiterates its finding that the customer failed to demonstrate special circumstances warranting a special contract. For prior order, see 76 NH PUC 336.

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1. RATES, § 384

[N.H.] Natural gas rate design — Interruptible service — Special contract rates — Grounds for denial — Local distribution company. p. 687.

2. SERVICE § 332

[N.H.] Natural gas — Interruptible service — Special contracts — Grounds for denial — Local distribution company. p. 687.

3. RATES, § 211

[N.H.] Special contract rates — Natural gas — Interruptible service — Grounds for denial — Lack of special circumstances — Local distribution company. p. 687.

BY THE COMMISSION:

REPORT

On May 13, 1991, the commission issued Report and Order No. 20,129 which denied Anheuser-Busch's request for a waiver from the 1990 Stipulation

1(152) and also denied without prejudice Anheuser-Busch's alternate request for approval of a special contract. On June 3, 1991, EnergyNorth Natural Gas, Inc. (ENGI) filed a timely Motion for Clarification. On June 7, 1991, staff filed an objection to the motions of ENGI and Anheuser-Busch. The commission deliberated on this matter at its public meeting held on June 10, 1991.

ENGI Motion for Rehearing

[1-3] In its Motion, ENGI asserts that its Motion is "a result of a factual error that suggests a lack of understanding [by the commission] of the principal issue in these proceedings ... ". ENGI Motion at 1. According to ENGI, the report and order "purports to mischaracterize as a breakdown in communications the fact, central to this litigation, that ENGI does not know and cannot give the price to its interruptible customers when they are required to place their gas orders." ENGI Motion at 3.

We disagree. Contrary to ENGI's perception of the commission's report, the report does accurately identify a breakdown in communication between ENGI and Anheuser-Busch. Anheuser-Busch testified that it does not know how ENGI arrives at the price for interruptible gas. Tr. 61, 62. ENGI subsequently testified that ENGI did not know or understand why Anheuser-Busch does not realize that ENGI arrives at the price for interruptible gas by simply matching Anheuser-Busch's price for No. 6 oil. Tr. 88-90.

Thus, the record does demonstrate that ENGI and Anheuser-Busch have not effectively

communicated with regard to the manner by which ENGI sets the price for interruptible gas under the 1990 Stipulation.

In any event, we note that the breakdown in communication was a relatively minor factor in our denial of Anheuser-Busch's request for a waiver for the 1990 stipulation. The primary basis for our denial, discussed *infra*, was Anheuser-Busch's lack of participation in the discussions that led to the 1990 stipulation.

Anheuser-Busch Motion for Clarification

In its Motion for Clarification, Anheuser-Busch raises a number of issues which we will address in turn.

1. In its Motion, Anheuser-Busch asserts that our report incorrectly states that Anheuser-Busch submitted its posthearing memorandum on December 20, 1990.

We agree. The correct date upon which Anheuser-Busch submitted its posthearing memorandum was December 10, 1990.

2. Anheuser-Busch complains that our report incorrectly states that Anheuser-Busch declined to participate in the discussions that led to the 1990 stipulation and, therefore, asserts that the

commission's criticism of Anheuser-Busch's testimony in this proceeding as untimely is inaccurate.

We disagree. Although Anheuser-Busch contends that it actually participated through ENGI, we assume that ENGI voluntarily and willingly entered into the 1990 Stipulation. If Anheuser-Busch believed that ENGI unsatisfactorily represented it, Anheuser-Busch had the option to participate directly in the discussions as did the other interruptible customers of ENGI. Once a policy is formulated, the burden is higher on any person who has not participated seeking to change that policy or be granted an exception thereto. Anheuser-Busch did not sustain its higher burden through the evidence it presented.

3. Anheuser-Busch asserts that we erred in our report when we found that Anheuser-Busch did not offer any justification for its position other than its size.

We disagree. Through its testimony and in its post-hearing memorandum Anheuser-Busch asserted that there were several justifications for its proposed special treatment, including size, contribution to high ENGI load factors, the competitive challenge that oil poses to gas, the rates for interruptible gas sufficient to cover ENGI's costs, and the impact that the loss of Anheuser-Busch could have on ENGI's firm ratepayers.

Anheuser-Busch fails to note that all of ENGI's duel-fueled interruptible customers contribute to high ENGI load factors, inherently provide gas with a competitive challenge from oil, and constitute a margin that reduces rates for firm customers. Thus, Anheuser-Busch's size is the only possible attribute which clearly distinguishes Anheuser-Busch from ENGI's other much smaller interruptible customers.

4. Anheuser-Busch asserts that our report is unlawful because it does not set forth the basis for our conclusion that there are no special circumstances which warrant a special contract.

We disagree. As discussed *supra*, Anheuser-Busch's only basis for differentiating it from the other interruptible customers is its size. Our report clearly indicates that size alone is not a permissible basis for differential treatment of customers.

5. Anheuser-Busch also joins in ENGI's claim that our report erred in finding that there was a lack of communication between Anheuser-Busch and ENGI. In addition Anheuser-Busch contends that our finding in this matter is irrelevant to the issues in this proceeding.

We disagree. We believe there was a lack of communication for the reasons provided *supra* for our denial of ENGI's Motion for Rehearing. Further, the breakdown in communication is clearly relevant (although not determinative) to the issues in this proceeding. Anheuser-Busch seeks a waiver from the 1990 Stipulation while at the same time admitting that it does not know how ENGI arrives at the price of interruptible gas under that Stipulation.

6. Anheuser-Busch asserts that the statement in our report that Anheuser-Busch would consider burning No. 6 oil if its concerns were not addressed is a misrepresentation of Anheuser-Busch's testimony.

We disagree. We believe that the

characterization of Anheuser-Busch's testimony in this regard in our report is a fair characterization of the following testimony by Anheuser-Busch:

> We are a dual fuel plant, we can use alternate fuel at the plant ... based on its price. And we have done that in the past on occasion.
>
> Without knowing the price in advance of when we are expected to nominate, we could be putting the plant in a position of paying substantially higher costs for energy that we would otherwise normally pay.

Tr. at 18, 19.

Related to this, Anheuser-Busch's Motion for Clarification stresses "the impact of the loss of Anheuser-Busch's on ENGI's firm ratepayers". Motion at 3.

7. Anheuser-Busch asserts that our report at page 7 erred by stating:

> Mr. Orr admitted that he did not know how the new New Hampshire Acid Rain Law or the Federal Clean Air Act would affect the feasibility of burning No. 6 oil.

Anheuser-Busch contends that this sentence ought to be deleted from the report because the matter of compliance with the New Hampshire Acid Rain Law or the Federal Clean Air Act are outside the commission's jurisdiction.

We disagree. The feasibility of burning No. 6 oil and how it would be affected by recent environmental laws is clearly relevant to the issues before us. In the extreme, if Anheuser-Busch could not burn No. 6 oil, it would not even be eligible for interruptible service from ENGI.

8. Anheuser-Busch asserts that our report is not clear regarding the attribution of the statement that the interruptible margin credited to the CGA would be substantially reduced if Anheuser-Busch converted to No. 6 oil.

We disagree. The foregoing statement is properly attributable to Anheuser-Busch. As noted *supra*, Anheuser Busch's Motion for Clarification stresses "the impact of the loss of Anheuser-Busch on ENGI's firm ratepayers."

9. Anheuser-Busch contends that our report erred by stating that Mr. Orr admitted that the margins credited to firm ratepayers through the CGA could be reduced if transportation of off-system gas was available to Anheuser-Busch.

We agree. A review of the transcript clearly indicates that Mr. Orr did not "admit" the subject matter of staff's question at that page. Mr. Orr's answer to staff's question was "Perhaps so".

Our order will issue accordingly.

ORDER

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

ORDERED, that ENGI's Motion for Rehearing is denied; and it is

FURTHER ORDERED, that Anheuser-Busch's Motion for Clarification is granted insofar as it is consonant with the foregoing report and it is otherwise denied.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1991.

FOOTNOTES

[1]Hearings were held in this docket on May 21, 1990, and June 4, 1990 to provide the commission staff an opportunity to investigate: 1) ENGI's pricing of gas to interruptible customers; and 2) whether ENGI was observing the procedures set forth in the 1988 Stipulation regarding ENGI's contracts for interruptible gas service adopted by the commission in Docket DR 88-083. Report and Order No. 19,181 (September 22, 1988). After those hearings, the staff, the Office of the Consumer Advocate ("OCA"), and ENGI entered into a Stipulation dated June 15, 1990, (hereafter the "1990 Stipulation"). The commission approved the 1990 Stipulation in Report and Order No. 19,875 (July 3, 1990).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth, Inc., DR 88-083, Order No. 19,181, 73 NH PUC 374, Sept. 22, 1988.
[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-045, Order No. 19,875, 75 NH PUC 366, July 3, 1990.

[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-045, Order No. 20,129, 76 NH PUC 336, May 13, 1991.

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NH.PUC*11/19/91*[27255]*76 NH PUC 705*New England Telephone Company

[Go to End of 27255]

Re New England Telephone Company

DR 91-178
Order No. 20,305

76 NH PUC 705

New Hampshire Public Utilities Commission

November 19, 1991

ORDER authorizing a telephone local exchange carrier to withdraw its wire use charges tariff.

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1. RATES, § 553

[N.H.] Telecommunications rate design — Wire use charges — Withdrawal of tariff — End

of amortization of embedded wire — Local exchange carrier. p. 705.

BY THE COMMISSION:

ORDER

[1] On October 29, 1991, New England Telephone Company (the Company) filed a petition seeking to withdraw the Wire Use Charges Tariff in the State of New Hampshire; and

WHEREAS, the proposed tariff change was filed for effect on November 30, 1991; and

WHEREAS, the ten year period for amortization of embedded wire ended on December 30, 1990; it is hereby

ORDERED, that New England Telephone, be and hereby is authorized to implement the following tariff changes:

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

NHPUC-NO 75.
Supplement No. 42
Part A- Section 2- Revision of TOC Page 1.
                   Revision of Pages, 11
                   and 15
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By order of the New Hampshire Public Utilities Commission this nineteenth day of November, 1991.

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NH.PUC*11/19/91*[27256]*76 NH PUC 705*Apollo Communications

[Go to End of 27256]

Re Apollo Communications

DE 91-187
Order No. 20,306

76 NH PUC 705

New Hampshire Public Utilities Commission

November 19, 1991

ORDER denying a request for a waiver of N.H. Administrative Rule Puc 408.07, which requires customer-owned, coin-operated telephones to access the network by measured business service.

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1. RATES, § 565

[N.H.] Customer-owned, coin-operated telephones — Access to local network — Measured business service — Local exchange carrier. p. 706.

BY THE COMMISSION:

ORDER

Page 705

[1] On November 14, 1991, Apollo Communications Inc. (Apollo requested a waiver from N.H. Admin. Rule Puc 408.07 which requires COCOTs to access the network by measured business service.

WHEREAS, the Commission determined in Order No. 17,486, dated March 11, 1985, that in the absence of data on local usage from COCOTs, COCOTs would be required to use measured business service to prevent the possibility of subsidization by other ratepayers; and

WHEREAS, no additional data has been provided to determine whether local usage from COCOTs is greater than the expected average volume of usage that the price of flat rate business service is based on; it is hereby

ORDERED, that Apollo's request for waiver from N.H. Admin. Rule Puc 408.07 is denied.

FURTHER ORDERED, that Bretton Woods Telephone Company file a measured business tariff within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Coin Operated Telephone Policies, DE 84-174, Order No. 17,486, 70 NH PUC 89, Mar. 11, 1985.

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NH.PUC*11/19/91*[27257]*76 NH PUC 706*New Hampshire Electric Cooperative

[Go to End of 27257]

Re New Hampshire Electric Cooperative

DR 91-155
Order No. 20,307

76 NH PUC 706

New Hampshire Public Utilities Commission

November 19, 1991

ORDER approving the winter interruptible program of an electric cooperative, subject to the

terms of an oral settlement agreement between the cooperative and commission staff.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Electric cooperative. p. 707.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Winter interruptible program — Electric cooperative. p. 707.

3. PROCEDURE, § 31

[N.H.] Disposal of issues — Oral settlement — Commission acceptance. p. 707.

APPEARANCES: Mark Dean, Esq., of Merrill and Broderick, on behalf of New Hampshire Electric Cooperative; Eugene F. Sullivan III, Esq., for the Staff of the Public Utilities Commission.

BY THE COMMISSION:

REPORT

Page 706

I. *Procedural History*

On September 30, 1991, the New Hampshire Electric Cooperative (NHEC) filed testimony and exhibits supporting its 1991-1992 winter interruptible program. NHEC requested expedited approval of its filing so that it could implement the program by November 22, 1991.

On November 1, 1991, an Order of Notice was issued scheduling a hearing on the merits for November 13, 1991. Prior to the hearing an oral settlement agreement was reached between staff and NHEC on all issues of this year's winter interruptible program.

II. *Positions of the Parties*

A. *NHEC*

NHEC proposes to modify this year's winter interruptible program. NHEC has eliminated the use of regression analysis to estimate the amount of load actually interrupted by a customer during a call by NHEC during a peak alert period. NHEC contends that regression analysis is time consuming and unpopular with participants. Instead, NHEC would prefer to base the interruption credit of $4.24 per Kw on actual measured loads. The demand charge will be based on the customer's usage during NHEC's peak cost periods rather than the maximum monthly peak. NHEC points out that this proposal is similar to past winter interruptible programs and that the ski areas are familiar with this type of winter interruptible program.

NHEC also proposes to decrease the notification period from two hours to one hour. NHEC

asserts that all temperature sensitive loads, *i.e.*, ski areas, are willing to accept a one hour notice period with the structure of this year's program. NHEC asserts that participants with their own generation should be able to comply.

NHEC also proposes to eliminate last year's partial peak period alert because it unnecessarily complicates the program for both NHEC and the participants.

B. *Staff*

Staff expressed its support of a Settlement Agreement as described below.

III. *Settlement Agreement*

At the hearing, NHEC presented an overview of its 1991-1992 proposal and described the two changes incorporated in the oral settlement agreement that was reached between staff and NHEC.[1(153)] Staff and NHEC agreed to make the following changes to the contract as originally filed:

- an increase in the monthly interrupted demand credit from $4.24 per kW to $4.75 per kW;

- a participation incentive credit of $1.00 per kW of designated load for those periods when no peak alert periods occur during the program period and elimination of the off-peak period incentive credit.

III. *Commission Analysis*

[1-3] The Commission recognizes the importance of interruptible load control as a cost effective way to reduce NHEC's wholesale billing demand. Based upon our review of the winter interruptible contract that specifies in writing the oral Settlement Agreement between staff and NHEC, and the record in this proceeding, we find that the public interest is served by our approval of the Settlement Agreement.

Although we understand the interest of NHEC in receiving expedited approval expressing our approval of the Settlement Agreement in order to execute the contracts before the November 22, 1991 starting date, we will direct the parties in the future to meet on settlement discussions in a more timely manner so that a written agreement is available for Commission review.

Our order will issue accordingly.

ORDER

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

ORDERED, that the oral Settlement Agreement as embodied in the winter

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interruptible contract issued by NHEC to customers and appended hereto as Attachment A be, and hereby is, accepted; and it is

FURTHER ORDERED, that NHEC file a report summarizing the results of the 1991-1992 winter interruptible on NHEC's load and purchased power costs within 60 days of the end of the winter period.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1991.

Attachment A

INTERRUPTIBLE LOAD AGREEMENT

This Interruptible Load Agreement details the agreement between hereinafter referred to as the "Member" and New Hampshire Electric Cooperative, Inc., hereinafter referred to as the "Cooperative".

The term of this Agreement is limited to the period of November 22, 1991 through November 25, 1992 (or the nearest respective meter reading dates for wholesale service, if applicable, to the Cooperative's delivery point servicing the Member's load).

PURPOSE

The purpose of the agreement is to assist the Cooperative in lowering its power costs. The Member agrees to assist the Cooperative by interrupting or deferring load upon advance notice from the Cooperative.

CREDIT

The Member will continue to be billed under the Cooperative's tariff provisions as applicable and in effect during the term of this Agreement. For each billing period a credit may be paid to the Member, as specified and determined in accordance with Appendix A.

For the period of February 25, 1992 through November 22, 1992, the Cooperative will not bill the Member for demand charges related to Designated Load for testing and training purposes, provided the Designated Load is operated subject to prior notification and approval of the Cooperative.

OBLIGATIONS

The Member agrees to be responsible for its facilities and/or equipment, and the Cooperative will be held harmless for any damage to equipment, property, persons and/or economic loss due to the implementation of this agreement.

The Member agrees to pay the cost of any equipment and metering required for the implementation of this Agreement beyond that normally furnished by the Cooperative under the applicable tariff. The Cooperative agrees to provide its expertise and stock to minimize this cost.

This Agreement is subject to approval by the New Hampshire Public Utilities Commission, and shall remain in effect for the term specified unless terminated by approval of a superseding agreement or tariff by order of the Public Utilities Commission, by order of the U.S. Bankruptcy Court, or by either party upon written notice to the other party and to the Public Utilities Commission.

II. Designated Load

Customer's Designated Load is _____ kilowatts and shall consist of the following equipment:

III. Notification of Interruption

The Cooperative shall notify at least one hour in advance one of the following persons prior to an upcoming Peak Alert Period:

Primary Contact:

_____ _____

(Name) (Phone)

Secondary Contact:

_____ _____

(Name) (Phone)

FAX Number:_____

New Hampshire Electric Cooperative, Inc.

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by: _____

(Name) (Date)

_____

(Title)

Witness: _____

_____

(Member Name)

by: _____

(Name) (Date)

_____

(Title)

Witness: _____

APPENDIX A

New Hampshire Electric Cooperative
11991/1992 Winter Interruptible
Rate Program

I. Definitions

Peak Alert Period: Specific time periods to be designated by the Cooperative occurring between the hours of 7:00 a.m. to 9:00 p.m. during the period November 22, 1991 through February 25, 1992 during which the Cooperative requests the Member to reduce or postpone their demand via interruption.

Designated Load: An amount of load required to be specified by the Member, to be determined prior to November 22, which the Member agrees to interrupt, if reasonably practicable, and the Cooperative agrees is reasonably achievable. The Designated Load shall consist of specific pieces of equipment or processes which are normally used by the Member, including stand-by generation. The minimum Designated Load that the Member must specify shall be 100 kilowatts, or at least 30 percent of the member's maximum monthly peak demand, whichever is greater.

Demand During Interruption: For each Peak Alert Period, the peak hourly demand during the Peak Alert Period.

Interrupted Demand: The difference between (a) the Metered Peak Demand for the billing period and (b) the average of the Member's Demands during Interruption as defined above, for the billing period.

Participation Incentive Payment: $1.00 per kW of designated load. The Participation Incentive Payment will apply only for those periods when no peak alert periods occur during the period November 22, 1991 through February 25, 1992.

Metered Peak Demand: The billing demand under current tariff provisions.

II. Credit Payments

The Payment of Monthly Interrupted Demand Credits shall be equal to $4.75 times the Interrupted Demand, and will be applied to the Member's account in the month following each billing month under the program.

Payments of the Monthly Interrupted Demand Credits will be reduced by 50 percent for any month in which the member does not achieve an Interrupted Demand of at least 50 percent of the designated load.

The Participation Incentive Payment will be applied, when applicable, to the member's account in the month following each billing month under the program.

FOOTNOTES

[1]A copy of the 1991-1992 winter interruptible contract that specifies the settlement agreement is appended as Attachment A.

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NH.PUC*11/20/91*[27258]*76 NH PUC 690*EnergyNorth Natural Gas, Inc.

[Go to End of 27258]

Re EnergyNorth Natural Gas, Inc.

DR 90-183
Order No. 20,304

76 NH PUC 690

New Hampshire Public Utilities Commission

November 20, 1991

ORDER granting a natural gas local distribution company a permanent rate increase of $684,845 and a temporary rate increase of $264,526, reflecting an authorized rate of return on equity of 11.80% and an overall cost of capital of 10.77%.

Pursuant to a settlement agreement, the temporary rate increase will remain in effect pending the resolution of the issues of rate design, weather adjustments, and charitable contributions, which were left to be litigated in January, 1992.

Commission disallows the costs of an employee discount plan, finding that the discounts gave improper price signals and were not a fair means of compensating employees.

The costs of a customer information package are allocated 95% to operating expenses and 5% to non-utility expense, based upon the actual space occupied in the package.

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1. RATES, § 640

[N.H.] Practice and procedure — Settlements — Grant of both temporary and permanent increase. p. 691.

2. RATES, § 373

[N.H.] Natural gas — Settlement agreement — Temporary and permanent increase. p. 691.

3. RETURN, § 26.1

[N.H.] Reasonableness — Capital structure — Inclusion of short-term debt — Natural gas local distribution company. p. 692.

4. RETURN, § 26.4

[N.H.] Cost of equity capital — Discounted cash flow methodology — Growth rate computations — Log linear regressions — Natural gas local distribution company. p. 693.

5. RETURN, § 26.4

[N.H.] Cost of equity capital — Risk premium method — Capital asset pricing model — Discussion. p. 694.

6. RETURN, § 92

[N.H.] Natural gas local distribution company — Overall return. p. 695.

7. EXPENSES, — 105

[N.H.] Employee discounts — Disallowance — Natural gas local distribution company. p. 695.

8. EXPENSES, — 26

[N.H.] Advertising, promotion, and publicity — Customer information package — Safety and service information — Allocation — Natural gas local distribution company. p. 696.

9. RATES, § 655

[N.H.] Rates pending litigation — Reserved issues — Temporary rates — Natural gas local distribution company. p. 696.

10. RATES, § 630

[N.H.] Temporary rates — Rates pending litigation — Reserved issues — Natural gas local distribution company. p. 696.

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APPEARANCES: Energy Natural Gas Inc. by Jacqueline Lake Killgore, Esquire; for the Consumer Advocate, Michael W. Holmes, Esquire; and Eugene F. Sullivan, III, Esquire, for the Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On December 17, 1990, EnergyNorth Natural Gas, Inc. (ENGI or the Company) filed a petition seeking to increase base rates by 3.47%, resulting in an increase in the Company's annual revenue of $2,428,469.

On January 4, 1991 the Company filed a Petition for Temporary Rates pursuant to RSA 378:27, requesting additional revenues on a temporary basis, effective with bills rendered on January 17, 1991 at existing rate levels. The Commission suspended the Company's filing for investigation by Order No. 20,028 dated January 14, 1991.

On February 27, 1991 the Commission held a duly noticed hearing on the merits of the temporary rate request and procedural matters. By report and Order No. 20,081 issued March 12, 1991 the Commission ordered temporary rates at current levels as proposed by the Staff and the

Company effective for service rendered on or after March 11, 1991.

On May 17, Staff filed testimony in this case to address revenue and expense issues as well as cost of capital, and rate design. On June 7, 1991, Mr. McCluskey submitted revised testimony on his weather adjustment.

On July 19 and 25, 1991 the Company filed the rebuttal testimony of Messrs. Mills and Blaydon addressing Staff's weather and charitable contributions adjustments respectively.

On August 22 and 23, 1991 the Staff and the Office of the Consumer Advocate (OCA), as a result of the Company's rebuttal testimony, respectively moved to amend the procedural schedule to permit litigation of rate design, charitable contributions and the weather adjustment on January 21 through 23, and January 24 through 26, 1992. Staff later amended the request for hearing dates to January 21 through 23, 1992, and January 28 through 30, 1992. In the alternative the Staff and OCA requested that the rebuttal testimony be stricken.

The Commission on September 3, 1991 stated that the rebuttal testimony of the Company would be stricken if the parties could not agree to a procedural schedule to address the testimony within the statutory period. On October 9, 1991, the parties submitted a stipulated procedural schedule that allowed the three issues to be addressed outside of the statutory one year period. The stipulation was approved by the Commission on October 14, 1991.

The Company and Staff met on several occasions in September 1991 to attempt to narrow the issues. Hearings were held on September 19 and 24 to address those issues which were not deferred to January, 1992 and for the presentation of those issues which were settled.

II. *Settlement*

[1, 2] At the hearing on September 19, 1991 the Company and the Staff presented a settlement agreement that would resolve most of the cost of service issues, with the exception the cost of common equity, employee discounts and the advertising cost related to a consumer information pamphlet. The issues of rate design, the weather adjustment and charitable contributions were left to be litigated in January, 1992. The settlement agreement proposed that all of the issues which were addressed in the agreement would be resolved in order to specify a temporary rate level subject to final adjustment pending a final resolution of the case at the conclusion of the January 1992 hearings. EnergyNorth would be allowed to bill a level of temporary rate relief until final resolution of all issues. Although the subject was not addressed in the settlement agreement, the Company, through its attorney, agreed to perform under the agreement until a decision is reached after the January, 1992 hearings.

The Company and the Staff presented witnesses supporting the settlement agreement. The issues resolved by the agreement are the value to be placed on rate base, except for cash working capital, and certain operating expenses.

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Working capital is dependent upon the amount of operation and maintenance expenses, which include the customer information expense which will be addressed later in this decision. The Company's original filing includes a rate base calculation of $60,668,505 excluding cash working capital. Staff testified to a rate base of $60,349,526, excluding cash working capital. As

a result of the settlement agreement, Staff and the Company agreed to a rate base of $60,377,141, excluding cash working capital.

As a result of the negotiations, the Company and Staff agreed to the level of net operating income, excluding the expenses related to employee discounts and the customer information package. Both parties agreed that the temporary rate level would include charitable contributions and the revenue before any adjustment for weather until the final resolution of the case. The settlement resolved the following issues: 1) diesel fuel; 2) electricity for production; 3) sales and new business; 4) health and dental insurance; 5) lobbying expense; 6) public utility assessment; 7) postage; 8) general insurance; 9) demand side management expenditures; 10) expenses related to inactive services; 11) real estate taxes; 12) depreciation; 13) employment taxes; 14) interest on customer deposits; and 15) amortization. (See attached Exhibits.)

III. *Position of the Office of the Consumer Advocate*

The OCA objected to the settlement being presented by the Staff and the Company and to the submittal of rebuttal testimony by the Company. The rebuttal testimony dealt with weather adjustments and charitable contribution issues that had been addressed by Staff in its testimony. The procedural schedule in this case had not addressed the matter of rebuttal testimony. The OCA further stated that it was extremely late in this case to deal with these matters and the issue of rate design and that the Company should have addressed these issues earlier. The Company stated that in its original filing it had intended to have a number of technical sessions to address rate design and then would file a rate design which conformed with the discussions.

IV. *COST OF CAPITAL*

ENGI originally petitioned for a rate of return on equity (ROE) of 13.65% based on the "central tendency" of several methods, including a Discounted Cash Flow (DCF), an adjusted DCF, a payout ratio test, and a risk premium. The Company subsequently revised its requested cost of equity downward to 13.45%.

Staff disagreed with ENGI's methodology of deriving an ROE and proposed an ROE of 11.80% based on the DCF methodology. The OCA also disputed the Company's requested ROE and proposed an ROE of 11.897% based on the DCF methodology.

A. Capital Structure

[3] In its original petition, ENGI filed the following end of test year capital structure:

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

Weighted

	Amount (000)	*Component Ratio*	*Cost Rate %*	*Weighted Cost %*
Common Equity	$28,736,908	0.4546	13.65	6.2053
Preferred Equity	350,000	0.0055	16.19	0.0890
Long Term Debt	34,127,045	0.5399	9.96	5.3774
Short Term Debt	0	0.0000		0.0000
Total	$63,213,953	1.0000		11.6717

Staff disputed this capital structure to the extent that short term debt did not accurately reflect the

Company's short term financial policy.

On July 17, 1991, the Company proposed the following capital structure and component cost rates, based on the April 30, 1991 capital structure, pro formed to include the thirteen month average daily balance of short term debt:

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

Weighted

	Amount (000)	*Component Ratio*	*Cost Rate %*	*Weighted Cost %*
Common Equity	$32,336,399	0.4732	13.45	6.36
Preferred Equity	250,000	0.0037	16.47	0.06
Long Term Debt	33,780,478	0.4943	9.88	4.88
Short Term Debt	1,972,563	0.0289	8.50	0.25
Total	$68,339,440	1.0000		11.55

The Staff accepted this capital structure and its component cost rates, with the exception of the rate of return on common equity. The OCA also contested the rate of return on equity.

The Commission finds that the proposed capital structure as pro-formed to include short term debt is reasonable.

B. Return on Equity

[4] The Company, the OCA, and Staff each employed the DCF methodology in computing a rate of return on common equity. Differences in their applications included sample groups, computation of growth rates over different time periods, methods of computing the expected growth rate, and adjustments to the dividend yield to reflect non-parity of market and book value.

The Company's original application of the DCF yielded an unadjusted average ROE of 11.66% for a sample group and 11.99% for EnergyNorth, Inc. (ENI), and an adjusted ROE of 14.14% and 13.67%, respectively. The OCA estimated a required ROE of 11.9%. Staff's application of the DCF framework produced a rate of return on equity capital recommendation of 11.80%.

With respect to the samples used by the parties in their respective DCF applications, the Commission finds that the choice of sample was not a significant cause of the differences in recommendations and, in fact, was not an issue in contention in this case. We will note, however, that the Company's reliance on inactively traded companies would appear to be less methodologically appropriate for the DCF approach than the sample companies selected by Staff and the OCA.

The Company determined growth rates over the period 1985-90. Both OCA and Staff computed five and ten year growth rates over the time period 1980 through 1990. Staff and the parties agreed that the period over which growth rates are estimated must be long enough to prevent distortions due to short term influences, but short enough to capture investors' current expectations. The Commission finds that the time period over which growth rates were

computed was also not a significant cause of the differences in recommendations and, in fact, was not a contentious issue in this case.

The Company supported a DCF analysis on a sample of nine gas distribution companies. It estimated compound annual growth rates of dividends per share (dps) and of book value per share (bvps) by taking the antilog of the slope coefficients obtained from log-linear regressions, subtracting one, and multiplying the result by 100. These rates, together with the average retention ratio, and the current rate of growth in dps (which received 0.5 weight) were used to determine a weighted average growth rate. Applying this method in prefiled testimony, the Company determined an average required ROE of 11.66% for the sample group, and of 11.99% for ENI. The Company rejected this estimate citing market to book ratios in excess of one. It, therefore, computed an adjusted DCF estimate by multiplying the expected yield by the 1990 average market-to-book ratio before adding it to the estimated growth rate.

The OCA determined compound annual growth rates of dps, eps, and bvps, for a sample group of eight companies, over ten and five year periods, using two different methods: first, employing single initial and terminal values, and second, employing a log linear regression in the same manner as the Company witness. The OCA also computed simple average

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growth rates over five and ten year periods for each series. The three growth rates for each of the three series (*i.e.*, nine growth rates) were averaged to produce the expected growth rate. To this expected growth rate, the OCA added the expected yield, to arrive at a recommended ROE of 11.9%.

The Staff conducted a DCF analysis on a sample of eleven gas distribution companies. Staff calculated historical growth rates over five and ten year periods, using the slope coefficients obtained from log-linear regressions. These two historical growth rates and a forecast growth rate, taken from the *Value Line Investment Survey*, were averaged to produce an expected average growth rate, for each financial series. These growth rates were then weighted, 0.75 dps and 0.25 eps, to produce the growth rate used in the standard DCF equation. Using this methodology, Staff recommended a required ROE of 11.80%.

The Company argued Staff's growth rate computations were incomplete. The Company maintained the slope of a log linear regression does not represent a growth rate, and that the growth rate must be computed as the log of the slope of the log linear regression. Staff contended that the Company and the OCA overstated the investor required ROE by producing compound annual growth rates. Staff explained that log linear regressions are used to compute the DCF growth rates because the slope coefficient represents the constant rate of growth over time required by DCF theory. Staff referenced *Basic Econometrics* (at pages 54-55) by Damodar Gujarati, a source recognized by the Company, and *Utilities' Cost of Capital* (at pages 126-127) by Roger Morin to support Staff's methodology.

On review of the analyses and arguments, the Commission finds that the weight of the evidence indicates that Staff is methodologically correct in its use of a constant rather than compound growth rate, given that DCF is a constant growth model. The Staff maintained that the petitioner was incorrect in its argument that the yield component of the required ROE must be

increased to reflect the excess of market value over book value, and noted that analysts who make such adjustments legitimately do so only when the market price is less than book value in order to prevent dilution of existing shareholders' investment.

We do not believe that the Commission is obligated to adjust the results of the DCF model as proposed by the Company in order to maintain existing market to book ratios. Indeed, in the early 1980's, when these ratios were less than 1.0, companies argued that adjustments should be made, not to preserve the existing market to book ratio, but to move the existing ratio towards 1.0 in order to prevent dilution of existing shareholders' investment. Even under those circumstances, this Commission declined to make such adjustments finding that, over the long run, the market forces themselves will result in market prices tending towards book values. We are not persuaded by any evidence or argument in the instant docket which would cause us to disturb that finding.

The Company criticized Staff's inclusion of eps in calculation of the growth rate. The Staff argued that a Company's ability to pay dividends stems from its ability to generate earnings. Therefore, growth in earnings can be expected to influence the market's dividend growth expectations, and eps should be included in the growth rate computation.

The Commission is persuaded that some acknowledgement of the role of earnings in support of dividends is appropriate in the calculation of the expected growth rate for the reasons stated by Staff. We agree with the Company that the precise weighting (75% dividends/25% earnings) is arbitrary, but we do not find it unreasonable.

[5] In addition to its DCF analysis, the Company also employed the variation of a risk premium method known as the Capital Asset Pricing Model (CAPM) to estimate the investors' required ROE. In this analysis, the Company employed as a risk free rate the then current rate on long term government bonds. A long term analysis by Ibbotson Associates provided the risk premium. The Company then employed a value for ¿SS, a measure of systematic or market risk, obtained from the *Value Line Investment Survey*, representing the average ¿SS, of the twenty-seven gas distribution companies it covers. Applying the CAPM as just described,

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the Company determined a required ROE of 14.26%.

The Staff contended the Company's analysis was flawed due to its inappropriate selection of a Treasury bond with a maturity of 15-20 years to provide the risk free rate. Staff argued that long term Treasuries are not riskless: long term Treasuries are subject to interest rate risk. Staff cited *Utilities' Cost of Capital* (at page 175) by Roger Morin, and asserted that when the yield curve is steep, as it has been for many months, the use of a 3-5 year Treasury note is appropriate. Staff noted that when it made this substitution, using an approximate rate for five year government securities (based on the yield curve published in the *Wall Street Journal* September 19, 1991, Section C, Page 21) of 7.05%, application of the model results in an estimated ROE of 12.31%. This is not inconsistent with the range of results in the Company's original unadjusted analysis and the analyses performed by the OCA, and the Staff.

After a full and careful review of the evidence, the Commission finds that the DCF methodology as performed by Staff is best supported by economic theory, prevailing regulatory

practice, past Commission precedent and widespread professional opinion. As we found in *Re: Southern New Hampshire Water*, DR 89-224, Report and Order No. 20,196 (July 29, 1991) the CAPM approach must be considered with care, and we decline to weight its results, either as prepared by the Company or modified by Staff, with the DCF. The estimated ROEs of the OCA using the DCF and the Company witness applying the unadjusted DCF, which yield a range of estimates from 11.66% to 11.99%, also support the reasonableness of Staff's recommended ROE of 11.80%.

The Commission concludes based on all the evidence that a return on equity of 11.80% as recommended by Staff is a just and reasonable return for EnergyNorth Natural Gas, Inc. and that such a return will allow the Company to maintain and support its credit, to attract capital, is commensurate with returns available to investors in other enterprises of comparable risk, and will assure confidence in the financial integrity of the Company.

C. Weighted Cost of Capital

[6] Based upon the rate of return on equity the overall cost of capital is 10.77%. Staff and the parties have agreed to the capital structure and the cost of preferred stock and debt. Thus, the weighted cost of capital is as follows:

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

	Amount (000)	*Component Ratio*	*Cost Rate %*	*Weighted Cost %*	
Common Equity	$ 32,336,399	0.4732	11.80	5.58	
Preferred Equity	250,000	0.0037	16.47	0.06	
Long Term Debt	33,780,478	0.4943	9.88	4.88	
Short Term Debt	1,972,563	0.0289	8.50	.25	
Total	$ 68,339,440	1.0000		10.77	

V. *Other Issues*

[7] The two remaining issues to be addressed in this portion of the case are the treatment of employee discounts and the costs of a customer information package.

Staff witness Sullivan testified that he made a revenue adjustment of $37,932 to add employee discounts to the revenues of the Company because, in his opinion, employee discounts should not be charged to utility customers. He based his adjustment on the principle that utility employees receive adequate compensation from the utility and that discounts do not encourage conservation and load management. Also, the employee discount is not fair and equitable to all employees. An employee does not receive the benefit, or discount, if he is not a gas customer on the system. Mr. Sullivan further explained that the discount had been eliminated for Concord Natural Gas Company in the early 1980's and the Commission had eliminated discounts for many companies in the past.

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Company witness Chicoine explained that union employees receive the discount pursuant to their union contract and that there is a clause in the contract that would make the employees whole in terms of another employee benefit. She also explained that approximately 100

employees out of 300 employees receive discounts. Of the 100 employees receiving discount, 57 are union employees. Approximately $21,000 of the $37,932 discounts are related to union employees. The witness explained that the Company believes that employees should be customers of EnergyNorth and users of natural gas. Employees would have a better understanding of the product when dealing with customers, a way to train Staff.

The Commission will reject the Company's employee discount plan. It will accept Staff's recommendation to include a revenue adjustment for the employee discounts in the amount of $37,932. In previous decisions, employee discounts have not been allowed because they give improper price signals. We also cannot accept the Company argument that employee discounts are a fair means of employee compensation. It is undisputed the discount does not provide fair and equitable compensation to all classes of employees. Approximately one-third of the employees receive the discounts (100 out of 300). Further, only 57 union employees receive the discount. The only employees who receive the discount are employees who live in the franchise area and use natural gas. Further, we find the argument concerning training to be spurious. The nature of the natural gas industry, and our rules, require employees of gas utilities to be properly trained.

[8] The final issue relates to the costs of a customer information package to be included in operating costs. The Company allocated 5 percent of the expense to non-utility expenses ($750). Staff recommended that one-third of the expense be disallowed ($5,000). Staff's recommendation is based upon the placement of the non-utility portion in the package. The Company argues that its allocation is based upon the actual space occupied in the package. We will accept the Company's allocation of this expense. The customer information package is an appropriate means of informing customers about its services and the safety aspects of the same. While we cannot and do not mandate specific contents in such publications, the Commission would suggest that the Commission's toll-free telephone number be included in any future printings.

VI. *Revenue Requirement*

[9, 10] In consideration of the issues addressed above, the Commission finds that the Company's rates should be increased by $949,371. The revenue requirement is calculated as follows:

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

REVENUE REQUIREMENT

Rate Base	$ 63,645,998
Rate of Return	10.77%
Required Net Operating Income	6,854,674
Adjusted Net Operating Income	6,228,089
Required Increase	626,585
Tax effect (1/1-34%)	× 1.51515
Required Increase	949,371

The increase of $944,371 includes $684,845 which are permanent for the purposes of this decision. The remaining amount is in the form of temporary rates subject to the final decision

after the January 1992 hearings. The weather adjustment is $197,707 and the charitable contribution adjustment is $66,819, a total of $264,526.

VII. *Rate Base and ProForma Income Statement*

The calculation of the rate base and the proforma income statement resulting from the settlement agreement and the resolution of the adjudicated issues are included in the schedules attached to the settlement agreement which are included as an Attachment A to this report and order.

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 stipulation entered into between Staff and ENGI attached hereto as Appendix A, is hereby adopted; and it is

FURTHER ORDERED, that ENGI is granted a permanent rate increase of $684,845 and a temporary rate increase of $264,526 in accordance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 1991.

ATTACHMENT A

PROCEDURAL SCHEDULE AND
TEMPORARY RATE AGREEMENT

This Agreement is entered into this 19th day of September, 1991, by and between EnergyNorth Natural Gas, Inc. (the Company) and the Staff of the New Hampshire Public Utilities Commission (the Staff and the Commission, respectively) with the intent of settling all procedural issues raised in motions filed by Staff and the Company's counter-motion regarding the Company filing supplemental and rebuttal testimony. Further, it is the desire of the Staff and Company in executing this Agreement to resolve all procedural issues raised by this Commission at its September 3, 1991 meeting; to establish a procedural schedule for the duration of this case and to address the Company's request for a Commission order setting a level of temporary rates, the receipt of which will permit it to book revenues from this proceeding in its current fiscal year ending September 30, 1991.

ARTICLE I

INTRODUCTION

1.0 This proceeding originates from the filing by the Company of a Notice of Intent to File Rates on October 24, 1990 and subsequently, on December 17, 1990, of revised pages to Tariff NHPUC No. 1 — Gas for effect January 16, 1991, to generate approximately an additional $2.4 million or 3.47% of total annual revenues on a permanent basis. On January 4, 1991, the Company filed a Petition for Temporary Rates pursuant to RSA 378:27 requesting such

additional revenues on a temporary basis, effective with bills rendered on or after January 17, 1991, in the amount of the permanent rate request. By Order No. 20,028 dated January 14, 1991, the Commission suspended the Company's filing for investigation.

1.1 On January 11, 1991, the Company filed written testimony and exhibits in support of its Petition for Temporary Rates. The Company then responded to data requests.

1.2 On January 31, 1991, the Commission issued an Order of Notice scheduling a hearing on February 27, 1991 at which several issues, including temporary rates, were to be addressed, and requiring related Company, Staff and Intervenor testimony to be filed on or before February 20, 1991.

1.3 During January and February, 1991, representatives and attorneys for the Staff, Company and Consumer Advocate discussed the issues raised by the Company's Petition for Temporary Rates. On February 27, 1991, the Staff and Company agreed to temporary rates at current levels and the Commission determined that they would become effective on a service-rendered basis upon approval of their Agreement by the Commission.

1.4 By Report and Order No. 20,081 and Order No. 20,098, temporary rates at current levels became effective on a service-rendered basis March 11, 1991.

1.5 In testimony submitted May 17, 1991 by Messrs. Sullivan and McCluskey and revised testimony submitted by Mr. McCluskey on June 7, 1991, the Company's previous methods of calculating the revenue effect of weather and charitable contributions, were challenged.

1.6 The Company prefiled the supplemental and rebuttal testimony of Messrs. Mills and Blaydon on July 19, 1991 and July 25, 1991, respectively, addressing the issues of weather adjustment and charitable contributions.

1.7 On August 22 and 23, 1991, the Staff and Consumer Advocate, respectively, filed Motions to Amend the Procedural Schedule. The schedule approved by the Commission in Order No. 20,081 upon the written agreement of the Parties, follows:

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

Through April 1, 1991	Rolling discovery for the PUC Economics Department
April 1, 1991	Staff and Intervenor Data Requests of Company Due
April 15, 1991	Company Responses to Data Requests Due
May 15, 1991	Staff and Intervenor Direct Testimony and Exhibits Due
May 31, 1991	Data Requests on Staff and Intervenor Testimony and Exhibits Due
June 21, 1991	Responses by Staff and Intervenors to Data Requests Due
July 16 and 17, 1991	Off the Record Prehearing Settlement Conference (If DR 90-187 is not heard)
July 23, 1991	Off the Record Prehearing Settlement Conference
July 24, 1991	Off the Record Prehearing Settlement Conference (If DR 90-187 is heard July 16 and 17)
August 12, 1991	Off the Record Prehearing Settlement Conference
September 19, 24, 25 and 26	Permanent Rate Hearings.

1.8 The Staff and the Consumer Advocate proposed to amend the procedural schedule to permit litigation of rate design, charitable contributions and the weather adjustment January 17 through 19, and January 24 through 26, 1992. Staff later amended its request for hearing dates to January 21 through 23 and January 28 through 30, 1992. Additionally, the Commission was petitioned to require the Company to waive its January 16, 1991 statutory right to bill filed rates pursuant to RSA 378:6.

1.9 In the alternative, the Staff and the Consumer Advocate requested that the Company's prefiled rebuttal testimony be stricken from the record.

1.91 At its regularly scheduled weekly meeting on September 3, 1991, the Commission announced that the Company's prefiled rebuttal testimony would be stricken unless the Company, the Staff and OCA could reach agreement to extend the procedural schedule. No Order has been issued regarding these motions.

1.92 Since the above-referenced Commission meeting, the Consumer Advocate, Staff and Company have had several discussions in an attempt to agree upon a procedure for addressing the concerns of Staff and OCA to continue hearings until January, 1992, and the financial reporting concerns of the Company.

1.93 In an affidavit by Michael J. Mancini, Jr., submitted with the Company's Objection to Motions to Amend Procedural Schedule filed August 30, 1991, Mr. Mancini stated that the Company's earnings for the 12 months ended June 30, 1991 were $456,812 compared to $3,515,141 for the similar period the prior year. This represents a reduction in the Company's net earnings of approximately 90%.

1.94 Because temporary rates are presently set at current levels, the Company cannot report any revenues associated with this rate proceeding until this Commission issues a final order or sets a level of temporary rates greater than zero.

1.95 In August, 1991, the Consumer Advocate engaged the Tellus Institute to prepare testimony on issues raised by the Company's proposed rate design. Tellus will not have testimony prepared for filing before early October, 1991.

In consideration of these several issues, the Staff and the Company have agreed to their resolution through the following agreement.

ARTICLE II

SCHEDULE

2.0 The Staff and Company agree that all issues raised or which could have been raised in this case will be litigated at the September 19 and 24 through 26, 1991 originally scheduled hearing dates, with the exception of rate design, charitable contributions and the weather adjustment (rate design, charitable contributions and

the weather adjustment, collectively, Other Issues).

2.1 Other Issues will be litigated at hearings in January, 1992 on the dates 21 through 23 and

28 through 30.

2.2 The Staff and Company will be permitted to file Supplemental, Rebuttal and Surrebuttal testimony in this proceeding, in accordance with a schedule presented to the Commission during the September 19, 24, 25 and 26 hearings.

ARTICLE III

TEMPORARY RATES

3.0 At the conclusion of the hearings scheduled for September, 1991, the Staff and Company agree to submit all issues in this case to the Commission for final determination, with the exception of Other Issues, which the Staff and Company agree will be litigated in January, 1992.

3.1 The Staff and Company agree that upon conclusion of hearings on September 26, 1991, the Commission will issue an Order resolving all such issues, which order shall specify the amount of temporary rate relief to which the Company is entitled.

3.2 The amount of rate relief described in this Article III shall be a final determination on those issues by the Commission, and the Company shall be allowed to bill the rate relief as a temporary rate pending a final resolution of the case at the conclusion of the January, 1992 hearings.

3.3 The Staff and Company understand that in order for the Company to book such temporary revenues in the Company's current fiscal year ending September 30, 1991, as stated in this Article III, the Company must have an order from this Commission by early November, 1991, which the Staff and Company recognize is prior to the expiration of the twelve month statutory deadline, before the books are closed and Arthur Andersen & Co. completes its independent audit.

3.4 The Staff and Company understand that the Company intends to book revenues from such temporary rates in the current fiscal year, which temporary rate revenues shall exclude, without prejudice to the final recoupment calculation, those revenues associated with the Company's weather adjustment and charitable contributions, consistent with its previous authority to implement temporary rates on a service-rendered basis effective March 11, 1991.

3.5 The Staff and Company agree that upon receipt of a final order in this proceeding, recoupment shall be calculated by increasing existing rates proportionately (Across-the-Board) during the recoupment period.

3.6 The amount of revenues booked or billed as a result of such rates pending final resolution of this case by the Commission shall be calculated Across-the-Board.

ARTICLE IV

CONDITIONS

4.0 The Staff and Company agree that charitable contributions and weather adjustment revenues shall be included in such temporary rates in the amounts as shown in the Company's original rate case filing December 17, 1991. The inclusion of revenues relating to these issues in such temporary rates shall be without prejudice to the Staff's proposals to eliminate charitable

contributions or adjust weather-related revenues and it is specifically understood among the Staff and Company that the fact of leaving such revenues, as were proposed in the Company's base case, in temporary rates, is not probative of the appropriate resolution of these issues, which are contested and will be presented to the Commission in January, 1992 for a final determination. Any revenue adjustment required as a result of the Commission's final determination of Other Issues shall be made in the recoupment calculation.

4.1 The Staff and Company shall be bound by the procedural issues addressed in this agreement if approved by the Commission.

4.2 The Staff and Company agree that this Stipulation shall not be deemed a precedent as to any matter of fact or law, nor shall it preclude any party hereto from raising any issue in any

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future ratemaking proceeding.

4.3 The Staff and Company agree that this Stipulation represents full agreement between the Staff and Company and that rejection by the Commission of any part of this Stipulation constitutes rejection of the whole.

4.4 In the event that the Commission does not approve any part of this Stipulation, the entire Stipulation shall be void and neither the Stipulation nor any part thereof shall be offered or introduced as evidence or otherwise in this or any other proceeding.

4.5 In the event that the Commission does not approve this Stipulation by September 19, 1991, the Staff and Company agree that the Stipulation will become null and void.

IN WITNESS WHEREOF, the Staff and Company have caused this Stipulation to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of his principal.

ENERGYNORTH NATURAL GAS, INC.
By: Jacqueline Lake Killgore, Esq.
Legal Counsel

Date: 9-19-91

STAFF OF THE PUBLIC UTILITIES COMMISSION
By: Eugene F. Sullivan, III, Esq.
Staff Counsel

Date: Sept. 19, 1991

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

ENERGYNORTH NATURAL GAS INC.
RATE BASE
FOR THE TWELVE MONTHS ENDED
SEPTEMBER 30, 1990

EXHIBIT 1

GAS PLANT IN SERVICE	94,522,762
LESS: CWIP	738,815
TOTAL PLANT IN SERVICE	93,783,947
LESS: ACCUMULATED DEPRECIATION	25,556,856
LESS: CONTRIBUTION IN AID OF CONST	1,864,073
LESS: CAPITALIZED LEASES	438,278
NET PLANT IN SERVICE	65,924,739
ADD WORKING CAPITAL:	(2,278,741)
RATE BASE	63,645,998

ENERGYNORTH NATURAL GAS INC.
PROFORMA OPERATING
INCOME STATEMENT

EXHIBIT 2

OPERATING REVENUES *PROFORMED*	TEST YEAR AS
REVENUES — FIRM	66,967,894
REVENUES — WHOLESALE	
REVENUES — OTHER	1,609,692
INTERRUPTIBLE REVENUES	1,884,197
UNBILLED REVENUES RECOUPMENT	(387,236)
UNBILLED REVENUES — METER READ CYCLE (CURRENT)	39,877
TOTAL REVENUES	70,114,424
OPERATING EXPENSES	
COST OF GAS — FIRM	37,531,497
COST OF GAS — OTHER	1,884,197
OTHER PRODUCTION	1,748,530
DISTRIBUTION	5,367,352
CUSTOMER ACCOUNTING	3,977,454
SALES AND NEW BUSINESS	285,846
ADMINISTRATIVE AND GENERAL	6,190,519
INTEREST ON CUSTOMER DEPOSITS	118,323
TAXES:	
FEDERAL INCOME TAX	1,065,945
PROPERTY AND PAYROLL	2,288,128
STATE	695,091
OTHER	151,835
DEPRECIATION	3,047,986
AMORTIZATION	45,503
TOTAL REVENUE DEDUCTIONS	64,398,207
NET OPERATING INCOME	5,716,217
OPERATING RENTS — NET	511,872
OTHER UTILITY INCOME	0
NET GAS OPERATING INCOME	6,228,089

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

ENERGYNORTH NATURAL GAS

REVENUE REQUIREMENT

	COMPANY	STAFF	REVISED STAFF	REVISED EXHIBIT 1 DIFFERENCE INCREASE (DECREASE)
RATE BASE	64,182,279	63,604,389	63,645,998	41,609
RATE OF RETURN	11.67%	10.73%	10.77%	0.04%
REQUIRED NET OPERATING INCOME	7,490,585	6,825,374	6,854,674	29,300
ADJUSTED NET OPERATING INCOME	5,887,862	6,793,230	6,228,089	(565,141)
REQUIRED INCREASE	1,602,723	32,143	626,585	594,441
TAX EFFECT	66.00%	66.00%	66.00%	0.00%
REQUIRED INCREASE	2,428,368	48,702	949,371	900,669

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

ENERGYNORTH NATURAL GAS INC.
RATE BASE
FOR THE TWELVE MONTHS ENDED
SEPTEMBER 30, 1990

REVISED

EXHIBIT 2

	COMPANY PER COMPANY	COMPANY ADJUSTMENT	COMPANY ADJUSTED RATE BASE	STAFF'S ADJUSTMENTS PER STAFF	STAFF'S ADJUSTED RATE BASE	STAFF'S REVISED STAFF ADJUSTMENTS	STAFF'S REVISED RATE BASE
GAS PLANT IN SERVICE	94,978,381		94,978,381	(354,483)		94,623,898	(455,620) 94,522,762
LESS: CWIP	738,815		738,815			738,815	738,815
TOTAL PLANT IN SERVICE	94,239,566	0	94,239,566	(354,483)		93,885,083	(455,620) 93,783,947
LESS: ACCUMULATED DEPRECIATION	25,702,150	142,640	25,844,790	(16,543)		25,685,607	(145,294) 25,556,856
LESS: CONTRIBUTION IN AID OF CONST	1,864,073		1,864,073			1,864,073	1,864,073
LESS: CAPITALIZED LEASES	438,278		438,278			438,278	438,278
NET PLANT IN SERVICE	66,235,065	(142,640)	66,092,425	(337,940)		65,897,124	(310,325) 65,924,739
ADD WORKING CAPITAL:	(1,987,678)	77,519	(1,910,159)	(305,058)		(2,292,735)	(109,685) (2,278,741)
RATE BASE	64,247,387	(65,121)	64,182,266	(642,998)		63,604,389	(420,010) 63,645,998

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

ENERGYNORTH NATURAL GAS INC.
CASH WORKING CAPITAL
FOR THE TWELVE MONTHS ENDED
SEPTEMBER 30, 1990

REVISED

EXHIBIT 2

SCHEDULE 1

	COMPANY		*STAFF'S*	*STAFF'S*
			ADJUSTED	*ADJUSTMENTS*
	PER	*COMPANY*	*RATE*	*PER*
	COMPANY	*ADJUSTMENT*	*BASE*	*STAFF*
CASH WORKING CAPITAL	3,436,242	77,519	3,513,761	(181,379)
3,254,863			3,254,863	
BASE GAS	263,996		263,996	
263,996			263,996	
ADD: MATERIALS & SUPPLIES	1,579,571		1,579,571	
1,579,571			1,579,571	
ADD: PREPAYMENTS	700,398		700,398	
700,398			700,398	
ADD: HOLDING COMPANY COSTS	112,648		112,648	(21,114)
91,534	(21,114)		91,534	
ADD: G/L CONVERSION	47,009		47,009	(11,652)
35,357	(11,652)		35,357	
ADD: A/P CONVERSION	2,526		2,526	(2,526)
0	(2,526)		0	
ADD: V/M CONVERSION	13,132		13,132	(2,820)
10,312	(2,820)		10,312	
ADD: RATE CASE EXPENSE	11,945		11,945	(10,239)
1,706	(10,239)		1,706	
ADD: MERGER COSTS	164,411		164,411	(9,672)
154,739	(9,672)		154,739	
ADD: MISCELLANEOUS	51,527		51,527	(51,527)
0	(51,527)		0	
ADD: LONG TERM DEBT	2		2	(2)
0	(2)		0	
ADD: WAREHOUSE	23,645		23,645	(23,645)
0	(23,645)		0	
ADD: M & S INVENTORY SYSTEM	8,034		8,034	23,005
31,039	23,005		31,039	
ADD: MARGINAL COSTS	31,442		31,442	507
31,949	507		31,949	
SUBTOTAL MISC DEFERRED ITEMS	466,321	0	466,321	(109,685)
355,636	(109,685)		356,636	
COMPUTER RELATED COSTS	44,001		44,001	

44,001	44,001						
COMPUTER CONVERSION CIS		119,642		119,642			
119,642	119,642						
ACQUISITION COSTS CONCORD		177,548		177,548			
177,548	177,548						
CORP PLANNING		13,994		13,994	(13,994)		
0	13,994						
LESS: CUSTOMER DEPOSITS		(1,248,102)		(1,248,102)			
(1,248,102)	(1,248,102)						
LESS: INTEREST ON CUSTOMER DEPOSITS		(270,395)		(270,395)			
(270,395)	(270,395)						
LESS: DEFERRED FEDERAL INCOME TAX		(7,173,092)		(7,173,092)			
(7,173,092)	(7,173,092)						
LESS: PRE-1970 INVESTMENT TAX CREDITS		(47,708)		(47,708)			
(47,708)	(47,708)						
LESS: CASUALTY INSURANCE RESERVE		(30,694)		(30,694)			
(30,694)	(30,694)						
LESS: UNCASHED CHECKS		(19,398)		(19,398)			
(19,398)	(19,398)						
LESS: ACCRUED FEDERAL INCOME TAX						0	
0	0						
LESS: ACCRUED FRANCHISE TAX						0	
0	0						
TOTAL WORKING CAPITAL		(1,987,678)	77,519	(1,910,159)	(305,058)		
(2,292,735)	(109,685) (2,278,741)						

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

ENERGYNORTH NATURAL GAS INC.
OPERATING INCOME STATEMENT

REVISED

EXHIBIT 3

	BASE YEAR				*STAFF*	*STAFF*
	TWELVE MONTHS	*COMPANY*	*TEST*		*TEST*	*REVISED*
	ENDED	*PRO-FORMA*	*YEAR AS*	*STAFF*	*YEAR AS*	*STAFF*
OPERATING REVENUES	*SEPT. 30, 1990*	*ADJUSTMENTS*	*PROFORMED*	*ADJUSTMENTS*	*PROFORMED*	*ADJUSTMENTS*
REVENUES — FIRM	66,929,962		66,929,962	555,549		
67,485,511	37,932 66,967,894					
REVENUES — WHOLESALE						
REVENUES — OTHER	1,609,692		1,609,692			
1,609,692	1,609,692					
INTERRUPTIBLE REVENUES	1,884,197		1,884,197			
1,884,197	1,884,197					
UNBILLED REVENUES RECOUPMENT	(387,236)		(387,236)			
(387,236)	(387,236)					
UNBILLED REVENUES — METER READ CYCLE (CURRENT)	39,877		39,877			
39,877	39,877					

TOTAL REVENUES	70,076,492	0	70,076,492	555,549	70,632,041	37,932	70,114,424	
OPERATING EXPENSES								
COST OF GAS — FIRM	37,531,497		37,531,497		37,531,497	0	37,531,497	
COST OF GAS — OTHER	1,884,197		1,884,197		1,884,197		1,884,197	
OTHER PRODUCTION	1,752,291	31,031	1,783,322	(43,459)	1,708,832	(3,761)	1,748,530	
DISTRIBUTION	5,191,381	170,671	5,,362,052	76,763	5,268,144	175,971	5,367,352	
CUSTOMER ACCOUNTING	3,848,206	125,479	3,973,685	124,998	3,973,204	129,248	3,977,454	
SALES AND NEW BUSINESS	400,602	(79,898)	320,704	(129,058)	271,544	(114,756)	285,846	
ADMINISTRATIVE AND GENERAL	5,881,936	501,574	6,383,510	146,270	6,028,206	308,583	5,190,519	
INTEREST ON CUSTOMER DEPOSITS	122,921	3,713	126,634	(4,202)	118,719	(4,598)	118,323	
TAXES:								
FEDERAL INCOME TAX	1,185,600	(270,598)	915,002	171,478	1,357,078	(119,655)	1,065,945	
PROPERTY AND PAYROLL	2,082,413	204,019	2,286,432	197,543	2,279,956	205,715	2,288,128	
STATE	695,091		695,091		695,091		695,091	
OTHER	151,835		151,835		151,835		151,835	
DEPRECIATION	2,932,065	142,640	3,074,705	104,813	3,036,878	115,921	3,047,986	
AMORTIZATION	205,871	5,965	211,836	(160,368)	45,503	(160,368)	45,503	
TOTAL REVENUE DEDUCTIONS	63,865,906	834,596	64,700,502	484,777	64,350,683	532,301	64,398,207	
NET OPERATING INCOME	6,210,586	(834,596)	5,375,990	70,772	6,281,358	(494,369)	5,716,217	
OPERATING RENTS — NET	511,872		511,872		511,872		511,872	
OTHER UTILITY INCOME	58,023	(58,023)	0	(58,023)	0	(58,023)	0	
NET GAS OPERATING INCOME	6,780,481	(892,619)	5,887,862	12,749	6,793,230	(552,392)	6,228,089	

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Nat. Gas, Inc., DR 90-183, Order No. 20,081, 76 NH PUC 147, Mar. 12, 1991. [N.H.] Re EnergyNorth Nat. Gas Co., Inc., DR 90-183, Order No. 20,098, 76 NH PUC 277, Apr. 3, 1991. [N.H.] Re Southern New Hampshire Water Co., DR 89-224, Order No. 20,196, 76 NH PUC 521, July 29, 1991; revised July 31, 1991.

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NH.PUC*11/20/91*[27259]*76 NH PUC 710*EnergyNorth Natural Gas, Inc.

[Go to End of 27259]

Re EnergyNorth Natural Gas, Inc.

DF 91-176
Order No. 20,308

76 NH PUC 710

New Hampshire Public Utilities Commission

November 20, 1991

ORDER authorizing a natural gas local distribution company to retire short-term debt and to issue long-term debt in the amount of $5 million at an interest rate of 8.44%.

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1. SECURITY ISSUES, § 44

[N.H.] Authorization — Long-term debt issuance — Retirement of existing debt — Redemption of securities — Purchase of leased property — Public good — Natural gas local distribution company. p. 710.

2. SECURITY ISSUES, § 94

[N.H.] Kinds and proportions — Long-term debt — Interest — Natural gas local distribution company. p. 710.

BY THE COMMISSION:

ORDER

WHEREAS, on October 25, 1991 EnergyNorth Natural Gas filed a petition pursuant to RSA 369.3 (1990), requesting authority to issue long term debt; and

WHEREAS, the aggregate long term indebtedness as of August 31, 1991, excluding the portion due in one year was $30,984,995; and

WHEREAS, the short term debt and current portion of long term debt due within one year is $5,565,787; and

[1, 2] WHEREAS, EnergyNorth Natural Gas proposes to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its General and Refunding Mortgage Bonds, 8.44%, 17 year maturity in the aggregate principal amount of $5,000,000 (Bond) which bond shall be dated on the date it is issued; and

WHEREAS, the company proposes to use this $5,000,000 to retire all remaining First Mortgage Bonds, to redeem its Preferred Stock, and to exercise its option to purchase property

and equipment currently under lease, the balance of the proceeds will be applied to short term debt of the company and for other corporate purposes; and

WHEREAS, the commission conducted an analysis of the proforma financial statements for the proposed financing filed with the petition; and

WHEREAS, pursuant to RSA 369.4 (1990), the commission may grant permission to issue long term debt if the commission finds after investigation that such issuance would be for the public good; and

WHEREAS, the commission states that it would be for the public good for EnergyNorth Natural Gas to issue long term debt in this case at an interest rate of 8.44% to be paid over seventeen years; it is hereby

ORDERED, *NISI*, that EnergyNorth be and hereby is, granted authorization to issue long term debt in the amount of $5,000,000 at an interest rate of 8.44% paid in seventeen years and to retire any short term debt the company may have acquired; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or a written request to the commission for a hearing not later than 20 days from the date of publication of this order; and it is

FURTHER ORDERED, that no later than November 27, 1991 EnergyNorth shall effect the notification by a single publication of an attested copy of this order in at least 2 newspapers having general circulation in that part of the state in which operations are proposed to be conducted; and it is

FURTHER ORDERED, that the

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publication shall be documented by an affidavit to be made or a copy of this order and filed with this office on or before December 17, 1991; and it is

FURTHER ORDERED, that such authority shall be effective on December 20, 1991, unless a request for a hearing is filed with this commission within 20 days of the date of publication of this order.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 1991.

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NH.PUC*11/20/91*[27260]*76 NH PUC 711*Exeter and Hampton Electric Company

[Go to End of 27260]

Re Exeter and Hampton Electric Company

DE 91-166
Order No. 20,310

76 NH PUC 711

New Hampshire Public Utilities Commission

November 20, 1991

ORDER granting a petition for relicense of electric lines across public waters. Commission finds that the lines are necessary for the continued provision of reliable electric service.

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1. ELECTRICITY, § 7

[N.H.] Transmission lines — Commission authorization — License to cross public waters. p. 711.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on October 9, 1991, the Exeter & Hampton Electric Company (E&H) filed with this Commission its petition under RSA 371:17 seeking relicense to construct, operate and maintain its existing 34,500 volt electric transmission line known as the 3348 line, over and across four public water crossings in the Towns of Hampton and Hampton Falls, New Hampshire; and

WHEREAS, on October 31, 1991, the petitioner filed with this Commission a revised petition indicating that the location of the subject transmission line includes the Town of Seabrook, New Hampshire; and

WHEREAS, in order to serve its customers reliably, it is necessary for the petitioner to maintain its transmission line, located in the Towns of Hampton, Hampton Falls and Seabrook, New Hampshire, now plans maintenance including the replacement of selected poles along the route of the line; and

WHEREAS, a copy of the New Hampshire Department of Environmental Services, Wetlands Board's Posting Permit #91-942, for the repair or replacement of 29 line structures, was issued to the petitioner on August 20, 1991, a copy of which is on file at the Commission; and

WHEREAS, E & H plans to relocate one (1) supporting structure on each side of the Hampton River and resag three (3) other crossings over the Hampton River, Taylor River and the Brown's River, respectively, all as shown on exhibits on file with the Commission; and

WHEREAS, the original license for these river crossings was granted by NHPUC Order No. 6375 in D-E 3308, dated March 26, 1954; and

WHEREAS, in 1974, the line was rebuilt increasing the river crossing clearance to forty five (45) feet as a condition for approval of the New Hampshire Special Board's Dredge and Fill permit; and

WHEREAS, under the 1990 National Electrical Safety Code, the design criteria has changed such that the petitioner is required to resag all crossings at a higher tension in order to ensure

proper clearance under maximum sag conditions; and

WHEREAS, the petition for relicense is intended to clarify the clearance criteria under which all four river crossings will be maintained; and

WHEREAS, the Commission finds no material change in circumstances since the original license was granted which would substantially affect public rights; and

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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 December 17, 1991; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an attested copy of this order to be published once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the local area, said publications to be no later than December 2, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Hampton, Hampton Falls and Seabrook town clerks, by first class U.S. mail, postage prepaid, and postmarked on or before December 2, 1991. Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the Commission on or before December 20, 1991; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted under RSA 371:17 *et seq* to Exeter & Hampton Electric Company for the Construction, Use, Maintenance, Repair and Reconstruction of the 34,500 volt transmission line of which the right-of-way description is given in NHPUC docket D-E 3308, 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; and it is

FURTHER ORDERED, that all construction conform to the requirements of the 1990 revision of the national Electrical Safety Code, and as mandated by the Towns of Hampton, Hampton Falls and Seabrook, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 1991.

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NH.PUC*11/22/91*[27261]*76 NH PUC 712*Hampton Water Works Company

[Go to End of 27261]

Re Hampton Water Works Company

DR 91-023
Order No. 20,311

76 NH PUC 712

New Hampshire Public Utilities Commission

November 22, 1991

ORDER denying rehearing of a prior order that rejected a request by a water public utility for a temporary rate increase during the pendency of its permanent rate case. Commission reiterates its finding that an underearning of only 160 basis points is an insufficient ground on which to grant a temporary rate increase. For prior order, see 76 NH PUC 629, supra.

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1. RATES, § 630

[N.H.] Temporary rates — Grounds for grant or denial — Significance of underearnings — Financial stability. p. 713.

2. RATES, § 651

[N.H.] Practice and procedure — Orders — Rehearing — Grounds for denial. p. 713.

3. RATES, § 656

[N.H.] Practice and procedure — Rates pending investigation — Bond to guarantee refund — Discussion — Rehearing order. p. 713.

APPEARANCES: Ransmeier & Spellman by Dom D'Ambruoso, Esq. for Hampton Water Works Company; Office of Consumer Advocate by Michael Holmes, Esq. for Residential Ratepayers; Susan Chamberlin, Esq. for New Hampshire Public Utilities Commission staff.

BY THE COMMISSION:

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REPORT

I. *Procedural History*

On April 16, 1991, Hampton Water Works Company (Hampton or company) filed a motion with the New Hampshire Public Utilities Commission (commission) requesting authorization for temporary rates, pursuant to RSA 378:27, during the pendency of the permanent rate case before the commission.

The staff of the commission (staff) supported the company's petition to set temporary rates at current levels. The Office of Consumer Advocate (OCA) objected to temporary rates at any level.

The commission, on August 2, 1991, conducted a duly noticed evidentiary hearing on the issue of temporary rates. During the course of the hearing, Hampton's financial expert, Mr. Rod Nevirauskas, testified that the company's earnings were 9.64%, which is below the last commission authorized rate of return of 11.22%.

The commission questioned the company as to the financial effect should Hampton opt to put rates in under bond, pursuant to RSA 378:6,III, as compared to the financial effect if the company receives temporary rates at current levels. Mr. Nevirauskas responded that a bond holder would have assurance that the company would have the opportunity to earn its allowed rate of return if either rate relief were obtained. Mr. Nevirauskas concluded there would be no major difference to the company under either scenario. Neither Hampton's counsel nor Mr. Nevirauskas requested an opportunity to supplement that answer with additional testimony or information.

On September 3, 1991, in its public meeting, the commission announced that it did not find temporary rates to be in the public interest and would deny Hampton's request. The commission did not believe that the evidence would support a finding that the company's current earnings are either inadequate or would adversely affect the company." *See* Minutes of September 3, 1991 commission meeting, page 5.

Commission Order No. 20,262 was issued on October 4, 1991, denying Hampton's temporary rate request. Hampton timely filed a motion for rehearing of Order No. 20,262.

II. *Position of the Parties*

1. Hampton Water Works Company

Hampton argued in its motion, *inter alia*, that the commission had acted unlawfully and unreasonably in denying temporary rates. It contends that the standards applied to Hampton depart from those used in previous cases and result in violations of the company's rights to due process under the New Hampshire and United States Constitutions. Hampton also argues that the commission should not have been entitled to question the company regarding the consequences of placing rates under bond, pursuant to RSA 378:6,III, as there had been no notice stating that the issue would be raised in the course of the proceeding.

2. Office of Consumer Advocate

The Office of Consumer Advocate did not concur in the motion for rehearing, but filed no objection stating its position.

3. Commission Staff

The staff of the commission took no position on the motion.

III. *Commission Analysis*

[1-3] The commission, in Order No. 20,262, recognized that Hampton is earning less than its authorized rate of return. An authorized rate of return, however, is not a guarantee of those earnings, but merely an authorization to earn up to that amount. The right of a utility to receive just and reasonable rates is not a guarantee of net revenues regardless of circumstances. *Public Service Co. v. State of New Hampshire*, 113 N.H. 497, 501 (1973); *see also FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). The commission found underearning of only 160 basis points, particularly in the present economy, to be insufficient grounds on

which to grant the temporary rate increase.

That temporary rates may have been granted in other cases where underearnings were not significantly below the authorized rate of return does not compel the commission to grant Hampton's request. Each case must be evaluated on the evidence presented in accordance with the statutory mandate to act in the public interest. *Public Service Co.*, *supra* at 500-501.

The commission found that Hampton failed to meet its burden of demonstrating how its underearning harmed the company's financial stability or otherwise disadvantaged the company or its ratepayers.

In its motion for rehearing, Hampton argues that putting the rates under bond pursuant to RSA 378:6,III will threaten the financial health of the company, and that testimony to that effect would have been proffered if Hampton had known that bonded rates would become an issue at the hearing. For that reason Hampton requested the opportunity to reopen the record for the purpose of recalling Mr. Nevirauskas to the stand to testify to the consequences of putting rates under bond and to argue further why temporary rates should be granted.

The commission finds Hampton's argument that it had insufficient notice that the issue of bonded rates would be raised to be without merit. There can be no clearer form of notice than one in statute, as is the bonded rate provision. Even if Hampton had not anticipated this issue, the company was given the opportunity to respond to the commission's questions on bonded rates. If Hampton needed additional time to consider the issue and supplement the record, it should have so requested.

The commission finds Hampton's arguments that Order No. 20,262 was unreasonable, arbitrary and capricious and a denial of due process to be without merit. Hampton's motion for rehearing, therefore, will be denied.

Our order will issue accordingly.

ORDER

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

ORDERED, that Hampton Water Works' motion for rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hampton Water Works, DR 91-023, Order No. 20,262, 76 NH PUC 629, Oct. 4, 1991. [N.H.Sup.Ct.] Public Service Co. of New Hampshire v. State of New Hampshire, 113 N.H. 497, 501, 2 PUR4th 59, 311 A.2d 513, Sept. 28, 1973. [U.S.Sup.Ct.] Federal Power Comm'n v. Hope Nat. Gas Co., No. 34, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281, Jan. 3, 1944.

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Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 20,313

76 NH PUC 714

New Hampshire Public Utilities Commission

November 27, 1991

ORDER adopting a stipulation correcting errors in a water rate order, notwithstanding the fact that the stipulation increases rates above the level contemplated in the rate order. Commission finds that the stipulation results in just and reasonable rates based on established rate-making principles, that the new rates are no higher than originally requested by the utility, and that the stipulation did not contravene the rate order. For prior order, see 76 NH PUC 521.

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1. RATES, § 651

[N.H.] Practice and procedure — Orders — Rehearing — Correction of errors. p. 715.

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2. RATES, § 651

[N.H.] Practice and procedure — Orders — Rehearing — Correction of errors — Stipulation. p. 715.

3. RATES, § 595

[N.H.] Water — Rehearing order — Correction of errors — Stipulation. p. 715.

4. PROCEDURE, § 31

[N.H.] Stipulation — Correction of rate order — Water utility. p. 715.

5. PROCEDURE, § 33

[N.H.] Rehearing — Grounds for granting — Correction of errors — Failure to address issues — Water rate order. p. 715.

BY THE COMMISSION:

ORDER

On July 30, 1991, the Commission issued Report and Order No. 20,196 ("Rate Order") making findings of fact, rulings of law and policy, and decisions on Southern New Hampshire Water Company, Inc.'s ("Southern" or the "Company") petition to increase rates; and

[1-5] WHEREAS, the Company subsequently filed a motion for rehearing/ reconsideration

of the Rate Order alleging numerical errors and the failure of the Commission to address certain undisputed issues between Staff and the Company; and

WHEREAS, on August 28, 1991, the Commission announced, at a regularly scheduled duly noticed meeting, that there may be merit to some of the Company's concerns and ordered the Executive Director and Secretary to schedule a settlement conference between the Parties and Staff relative to those concerns; and

WHEREAS, the Executive Director and Secretary notified all Parties that a settlement conference would take place on September 16, 1991; and

WHEREAS, the Commission issued Report and Order No. 20,243 on the morning of September 16, 1991, ratifying its oral decision of August 28, 1991; and

WHEREAS, the Office of the Consumer Advocate ("OCA"), the Company and Staff held a settlement conference on September 16, 1991, which resulted in a stipulation regarding the correction of certain errors in the Rate Order between Staff and the Company which was submitted to the Commission on November 6, 1991 and is attached hereto as Appendix A; and

WHEREAS, the OCA submitted an objection to the stipulation to the Commission on November 15, 1991 in which it states that the revisions to the Rate Order contained in the stipulation are based on the rebuttal testimony filed by the Company prior to the hearings in this matter which was not contemplated in the procedural schedule, and that the Rate Order was based solely on Southern's original filing; and

WHEREAS, the OCA further states that the stipulation changes substantive findings in the Rate Order in contravention to Order No. 20,243; and

WHEREAS, the Commission is sympathetic to the OCA's objection to the stipulation because it does raise rates above the level contemplated in the Rate Order; however, it is our obligation to set just and reasonable rates based on the principles set forth in RSA 378:7 and RSA 378:28; and

WHEREAS, the OCA's assertion that the Rate Order did not rely on Southern's rebuttal testimony in setting rates is incorrect, *See e.g.*, Report and Order No. 20,196 at 11-15; and

WHEREAS, the stipulation results in just and reasonable rates based on established ratemaking principles resulting in rates no higher than originally requested by the Company; and

WHEREAS; the OCA has not specifically identified nor can this Commission identify any changes to the Rate Order contemplated in the stipulation which contravene Order No. 20,243; it is hereby

ORDERED, that the stipulation entered

into between the Staff and the Company, attached hereto as Appendix A, is accepted and incorporated into this order; and it is

FURTHER ORDERED, that the Company may file tariff pages in compliance with this order and the Rate Order.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of November, 1991.

APPENDIX A

STIPULATION ON MOTION FOR REHEARING

The Staff ("Staff") of the New Hampshire Public Utilities Commission ("Commission") and Southern New Hampshire Water Company, Inc. ("Company") hereby agree to the terms of the stipulation ("Stipulation") set forth below.

Procedural Background

On July 30, 1991, the Commission issued its Report and Order No. 20,196 ("Rate Order") making certain findings and rulings regarding the issues litigated in this case and establishing a revenue requirement for the Company based on a test year ended December 31, 1989. Subsequently, the Company submitted a Motion for Rehearing and/or Reconsideration ("Motion") alleging, among other things, that the revenue requirement established by the Rate Order reflected certain numerical errors and failed to take account of certain matters that were not disputed by either the Company or the Staff during the hearings and which were consistent with the Commission's traditional ratemaking methodology.

On August 21, 1991, the Company sent a letter to the Commission and all parties with regard to a mathematical error concerning the duplicate deduction of the so-called Policy Acquisition Adjustment. Specifically, although the Company's rate filing had included the Acquisition in Plant in Service it was deducted in the calculation of Rate Base. *See* Exhibit ("Ex.") 5. However, the Rate Order included schedules which incorrectly deducted the Acquisition Adjustment a Plant in Service balance that did not include the Adjustment. Citations to the record exhibits are referred to in the letter of August 21, 1991.

After consideration of the Company's Motion and the responses of Staff and the Office of the Consumer Advocate ("OCA"), the Commission announced a decision at its duly noticed public weekly meeting on August 28, 1991. The Commission noted that there may be merit to certain of the issues raised by the Company and ordered the Commission's Executive Director and Secretary to schedule a settlement conference at which the parties and Staff could meet to agree on whether and how to correct certain of the issues identified by the Company. A notice was mailed by the Commission to all parties and a settlement conference was held on September 16, 1991. Representatives of the Staff, the Company and the Office of the Consumer Advocate were present at the settlement conference. A written Report and Order ratifying the Commission's oral decision was issued on the morning of the settlement conference and distributed to the parties. *See* Report and Order No. 20,243 ("Rehearing Order").

The Company and the Staff agreed at the Settlement Conference that the Policy Acquisition Adjustment had indeed been erroneously deducted twice from rate base in the Rate Order, but Staff indicated that it was uncertain as to whether the Commission intended that the error be a subject of the Settlement Conference because the error was not specifically referred to in the Rehearing Order. Staff recommended that the Company seek clarification from the Commission on this issue so that the parties would know whether to include it in their discussions.

On September 20, 1991, the Company filed a Motion for Clarification of Report and Order No. 20,243 concerning the Acquisition Adjustment issue. On September 25, 1981, the OCA filed an Objection to Southern's Motion for Clarification. On October 16, 1991 the Commission issued its Report and Order No. 20,269, indicating that the Acquisition Adjustment error should be addressed by the parties in their discussions.

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Resolution of Matters in Rate Order

As a result of the Settlement Conference, the Staff and the Company have agreed to recommend to the Commission that the following changes be made to the Rate Order. Schedules 1-4 attached hereto set forth the proposed changes to the schedules issued by the Commission with the Rate Order. The OCA has not agreed to any proposed corrections, and other intervenors, though duly noticed, did not attend the settlement conference.

I. *OPERATING INCOME STATEMENT*

A. *Amortization of Hydraulic Study*

As is set forth in the Rehearing Order, the cost of the Company's hydraulic study should be amortized over a period of three (3) years. This results in an increase of $8,111 in operating expenses. (*See* Schedule 1)

B. *Known and Measurable Changes*

The Staff and the Company agree that the following corrections should be made to the Company's revenues and expenses for purposes of this case:

1. *Property Taxes*

The Rate Order excluded a pro forma adjustment to operating expenses to account for tax year 1990 increases in property taxes net of abatements received. *See* "Ex." 15 at 7, 21 (DEW-11). The increased property taxes are attributable to the tax year beginning April 1, 1990 and are, therefore, a known and measurable change. *See* Transcript ("Tr.") 4/23/91 at 3. Only that portion of the tax bill attributable to calendar year 1990 should be applied as an adjustment to pro forma test year operating expense. The net *increase* in property taxes from actual test year expense is, therefore, $39,812 rather than a *decrease* of $26,540. This results in an increase of $66,352 ($39,812 ÷ $26,540) in "Other Taxes" over the amount in the Rate Order. (*See* Schedule 1)

2. *DES Fees*

The New Hampshire Department of Environmental Services ("DES") imposed a new Certificate to Operate fee for fiscal year 1990-1991, resulting in an annual expense of $7,160 to the Company. *See* Ex. 15 at 10, 29 (DEW-19). Because six months of the period covered by the new fee is within the twelve months following the end of the test year, the net adjustment to pro forma test year "Production Expenses" should be an increase of $3,580. (*See* Schedule 1)

3. *Fees and Penalties*

The Rate Order stated that test year pro forma revenue should be reduced by $24,510, the amount resulting from increased fees and penalties for which the Company is seeking approval in a separate docket. The Rate Order noted that the other docket, DR 90-004, has not yet been concluded and that therefore the new charges are not a known and measurable change. The schedules appended to the Rate Order, however, inadvertently included a pro forma adjustment for the possible future additional revenues attributable to these fees and penalties. *See* Ex. 39 at 74 (Attachment 3, Schedule 2). Pro forma test year revenue should be decreased by $24,510 to remove these revenues. (*See* Schedule 1)

C. *Test Year Customers*

Staff and the Company agreed during the hearings that the Company's pro forma revenue should be determined using average test year customers rather than the number of customers at year end because the Commission used an average test year rate base rather than a year end rate base. *See* Tr. 4/23/91 at 40-41, 51; Ex. 40 at 5-6; Tr. 4/10/91 at 36-38, 77; Ex. 15 at 11 (DEW-1); Ex. 15 at 8, 24 (DEW-14); Ex. 39 at 74 (Attachment 3, Schedule 2). The Rate Order did not address this issue, however. Staff and the Company agree that pro forma test year revenues should have been decreased by $292,582. (*See* Schedule 1)

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D. *Carrying Charge on Management Fee Disallowance*

The carrying charge calculated for the management fee disallowance required by the Rate Order should reflect the fact that the unrefunded portion of the management fee will have a declining balance over the three year refund period. Although the carrying charge adopted by the Rate Order correctly calculated the carrying charge for the first year of the management fee disallowance, it overstated the carrying charge for years two and three of the refund. Staff agrees with the Company's proposed calculation for the carrying charge. The amount of the carrying charge should be $14,798 for each of the three years of the disallowance resulting in an increase of $9,866 to "Administrative and General Expenses." *See* Appendix A to Motion; Appendix A. (*See* Schedule 1)

E. *Depreciation Expense/CIAC Amortization*

Staff and the Company agree in concept that it is appropriate to amortize the Contributions in Aid of Construction ("CIAC") balance over the life of related assets, and the Company agrees to begin such amortization. In addition, the Company will undertake an analysis of its existing CIAC balance to determine the appropriate current level of CIAC Reserve in order to implement this new accounting procedure. The Company shall complete this analysis and establish the appropriate CIAC reserve by December 31, 1992. The net effect to rate base, the income statement and the revenue requirement as a result of amortizing CIAC should be neutral. *See* Ex. 39 at 9; Tr. 4/4/91 at 31; Tr. 4/18/91 at 222. The pro forma adjustments of $99,807 and $71,756 to "Depreciation Expense" and "Amortization of CIAC," respectively, should therefore be reversed. The CIAC Reserve of $267,411 as shown on the rate base computation in the Rate Order should also be reversed, and Accumulated Depreciation should be increased by $162,681 from $1,027,507 to $1,190,188 as shown on page 15 of Exhibit 15 (DEW-5). (*See* Schedule 4)

II. *RATE BASE COMPUTATION*

A. *Acquisition Adjustment*

The Staff and the Company agree that the Acquisition Adjustment for the Policy Satellite Systems was inadvertently deducted twice from rate base in the Rate Order. The Company's calculation of rate base as set forth on Exhibit 15 at DEW-5 utilized a Plant in Service figure from Exhibit 5 that included the Utility Acquisition Adjustment. The Utility Acquisition Adjustment was then deducted by the Company in its calculation of rate base. The Rate Order, on the other hand, utilized as its starting point, Gross Plant in Service, which did *not* include the Acquisition Adjustment (*See* Ex. 39 at 29, (Attachment 2, Schedule 1 at 1)) and then deducted the Utility Acquisition Adjustment from that figure again.

Staff and the Company agree that Plant in Service as shown on Appendix A (Final Attachment 2) to the Rate Order should be increased by $412,762 in order to properly reflect Plant in Service including the Acquisition Adjustment, which is then separately deducted below on that schedule. (*See* Schedule 4)

B. *Rate Base Disallowances*

Certain capital costs associated with two projects, should not have been disallowed from rate base. In one instance, Larchmont Estates, some of the cost disallowed in the Rate Order was properly incurred by the Company. In the other instance, Hudson Village Shops, the Company received a Customer Advance which it had already included as a deduction in the rate base computation.

With respect to Larchmont Estates, $7,200 of the amount paid by the Company was for the cost of the service connections and utility service lines, which would not have been a CIAC even under the Company's tariff. *See* Ex. 40, RWP-6. The Rate Order incorrectly included the cost of these services in the amount disallowed from rate base. The test year average for this project, therefore, should be increased by $3,600.

With regard to Hudson Village Shops, the

Rate Order incorrectly stated that total contributions received by the Company for this project were $45,000. In fact, the Company received a CIAC of $45,000 plus an additional customer advance of $15,000 for a total of $60,000. *See* Ex. 40, RWP-6. Therefore, the rate base disallowance set forth in the Rate Order should be reduced by $15,000.

The total of these two adjustments to rate base, $18,600, after reflection of the taxes on CIAC, results in an adjustment to CIAC in rate base of $12,276. (*See* Schedule 4)

C. *Accumulated Depreciation*

See Section I.E. above. (*See* Schedule 4)

D. *CIAC Reserve*

See Section I.E. above. (*See* Schedule 4)

E. *Working Capital*

The Cash Working Capital included in the Commission's rate base computation is based upon the 45 day method, or 12.33% of operation and maintenance expense. To the extent that operation and maintenance expenses change as a result of adjustments stipulated herein, Cash Working Capital will vary from that shown in the Rate Order. Consequently, Staff and the Company agree that Cash Working Capital should be $164,155 or an increase of $1,658 above the $162,497 shown in the Rate Order. (*See* Schedule 4)

III. *INCOME TAX COMPUTATION*

A. *Debt Issuance Cost*

The Staff and the Company agree that the Amortization of Debt Issuance Costs should not be included as a deduction when calculating income taxes, since the cost of debt utilized by the Commission in calculating income tax expense was the effective tax rate based upon net proceeds, a figure which already took into account debt issuance costs. If actual test year interest expense is utilized for the purposes of the income tax computation, it would be appropriate to deduct the Amortization of the Debt Issuance Cost in the calculation. Because the Company and the Staff agree that for the purpose of this Stipulation the Commission should utilize actual test year interest expense, net of capitalized interest, as discussed in Section III B below, it is appropriate to deduct the Amortization of Debt Issuance Costs, $21,110, when performing the income tax calculation. (*See* Schedules 2 and 3)

B. *Interest Expense*

For purposes of this proceeding only, and without prejudice to the Company or the Staff in any other proceeding before the Commission, Staff and the Company agree that actual test year interest expense, net of capitalized interest, should be used in calculating income tax expense. This amount is $1,320,898 as shown on Exhibit 42. (*See* Schedules 2 and 3)

IV. *ADDITIONAL REVENUE*

The Company and the Staff agree that the adjustments stipulated to herein result in an increase in the revenue deficiency found by the Rate Order. The Company and the Staff agree that the "Additional Revenue" as a result of the Commission's Rate Order as modified by the stipulated adjustments herein is limited to $1,119,598 as stipulated by the Company, which results in a stipulated test year revenue as pro formed of $4,843,975. The resulting return on rate base does not exceed the weighted average cost of capital of 11.20% determined by the Commission in the Rate Order. The Staff and the Company agree that permanent rates should, therefore, be set at a level of $4,843,975 based upon actual test year billing units. (*See* Schedule 1)

V. *GENERAL CONDITIONS*

This Stipulation is subject to the following conditions:

A. In view of the importance to the parties that they know whether the contents of this Stipulation will be accepted by the

Commission, and because all of the stipulated adjustments to the Rate Order are

based upon information in the record and were the subject of cross-examination by all parties, this Stipulation shall be presented to the Commission for its acceptance and approval without the need for further hearing or discovery.

B. The making of this Stipulation establishes no principles or precedents affecting the Company, Staff or any other person or party in any future proceedings except as expressly stated herein.

C. The Company and Staff agree that their respective obligations hereunder are conditioned upon the Commission's acceptance and approval of all the terms of this Stipulation. In the event the Commission does not accept and approve this Stipulation in its entirety, the Company or Staff has the right to move for rehearing of all matters on which, in the absence of this Stipulation, they would otherwise have been entitled to rehearing.

CONCLUSION

The Staff and the Company request that the Commission find:

1. That the Company's Test Year Revenue as Proformed will be determined as shown on the attached schedules; and

2. That the Company shall be entitled to file tariff pages designed to recover $4,843,975 in revenue based upon test year billing units designed to reflect the rate design set forth in the Commission's Report and Order No. 20,196.

IN WITNESS WHEREOF, the Company and Staff have caused this Stipulation to be duly executed in their respective names by themselves or their agents, each being fully authorized so to do on behalf of its principal.

SOUTHERN NEW HAMPSHIRE WATER
COMPANY, INC.
By its attorneys,

McLANE, GRAF, RAULERSON &
MIDDLETON,
PROFESSIONAL ASSOCIATION
By: Steven V. Camerino, Esq.

Date: November 5, 1991

STAFF OF PUBLIC UTILITIES
COMMISSION
By: Eugene F. Sullivan, III, Esq.
Counsel for New Hampshire
Public Utilities Commission Staff

Date November 6, 1991

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EDITOR'S APPENDIX

Citations in Tex
[N.H.] Re Southern New Hampshire Water Co., DR 89-224, Order No. 20,196, 76 NH PUC 521, July 29, 1991; revised July 31, 1991. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 89-224, Order No. 20,243, 76 NH PUC 608, Sept. 16, 1991.

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NH.PUC*12/02/91*[27263]*76 NH PUC 725*New England Telephone and Telegraph Company

[Go to End of 27263]

Re New England Telephone and Telegraph Company

DE 91-195
Order No. 20,314

76 NH PUC 725

New Hampshire Public Utilities Commission

December 2, 1991

ORDER authorizing a telephone local exchange carrier (LEC) to revise, on a temporary basis, the boundary between two of its exchange areas. Commission finds that the temporary revision would enable the LEC to provide service in a more economical and efficient manner.

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1. SERVICE, § 445

[N.H.] Telecommunications — Exchange areas and boundaries — Temporary revision — Economy and efficiency — Public good — Local exchange carrier. p. 725.

BY THE COMMISSION:

ORDER

[1] On September 23, 1991, the New Hampshire Public Utilities Commission (NHPUC) Staff received a letter from Sterling Moffat whose property is located in the Lyme, New Hampshire, telephone exchange, (the Moffat property) requesting telephone service from the Orford, New Hampshire Locality of the Fairlee, Vermont, telephone exchange.

WHEREAS, the Moffat property is located in the Lyme, New Hampshire telephone exchange; and

WHEREAS, existing telephone facilities in the Lyme exchange would require approximately 1.1 miles of highway construction and would cost approximately $18,000 in tariffed highway construction charges; and

WHEREAS, telephone facilities from the Orford Locality exchange would require less than 3/10 of a mile of highway construction which is available at no charge under the highway construction tariff; and

WHEREAS, telephone service to the Moffat property would be more economically and efficiently provided from the Orford Locality at this time, thus being in the public good; and

WHEREAS, the Orford Locality and Lyme exchange are both in the New England Telephone (NET) Company franchise territory in New Hampshire; and

WHEREAS, service to the Moffat property from the Orford Locality will deviate from exchange boundary maps in NHPUC tariff No. 78 Part A Section 5 page 85; and

WHEREAS, this section of the Orford Locality and Lyme Exchange boundaries is coterminous with the municipal boundaries; and

WHEREAS, NET does not object to serving this property from the Orford Locality exchange until facilities from the Lyme exchange are available, at which time the property will be served by the Lyme exchange; it is hereby

ORDERED, that a temporary boundary change be implemented to serve the Moffat property from the Orford Locality, such boundary extending to the service connection on the Moffat property; and it is

FURTHER ORDERED that NET transfer service at this location to the Lyme exchange when telephone facilities are extended to this portion of the Lyme exchange thereby returning this portion of the exchange boundary to the municipal boundary; and it is

FURTHER ORDERED that a Lyme

telephone number be provided to this location at no cost to the customer upon transfer of service to the Lyme exchange.

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

December, 1991.

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NH.PUC*12/02/91*[27264]*76 NH PUC 726*Public Service Company of New Hampshire

[Go to End of 27264]

Re Public Service Company of New Hampshire

Movant: Shelly Nelkens

DE 91-054
Order No. 20,315

76 NH PUC 726

New Hampshire Public Utilities Commission

December 2, 1991

ORDER, on rehearing, resolving discovery disputes pertaining to the integrated least cost resource plan of an electric utility.

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1. PROCEDURE, § 16

[N.H.] Production of evidence — Discovery and inspection — Commercial information — Protective order — Access to protected data — Integrated least cost resource plan. p. 727.

APPEARANCES: As previously noted.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

A. *PSNH Motion to Limit Discovery and For Protective Order (September 12, 1991)*

On September 12, 1991, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (commission) a Motion to Limit Discovery and for Protective Order (Motion) whereby it sought a protective order limiting public access to three documents requested by staff involving least cost planning. In its Motion, PSNH agreed to provide summaries to the commission staff and all intervenors but agreed to allow only the commission staff access to view the three documents in their entirety, subject to the protective order. The commission staff and all intervenors, with the exception of Shelley Nelkens, concurred with PSNH's Motion. PSNH's Motion was granted by the commission in Order No. 20,279, (October 23, 1991).

B. *Nelkens Motion For Rehearing (October 29, 1991)*

A timely Motion for Rehearing (Rehearing Motion) was filed by Ms. Nelkens on October 29, 1991, re-asserting her request to examine the three documents in their entirety. In the Rehearing Motion, Ms. Nelkens represented that staff did not object and had indicated to her that the summaries of the first and second documents provided by PSNH were "wholly inadequate". All other parties and intervenors, with the exception of PSNH, concurred with Ms. Nelkens' Rehearing Motion.

On November 7, 1991, PSNH filed an objection to Ms. Nelkens' Rehearing Motion, asserting therein that the summaries provided were adequate and that the underlying three documents were of a highly sensitive and commercial nature. In its objection, and in response to an inquiry from staff, PSNH enclosed a copy of an unprotected data response filed by Northeast Utilities Service Company, Inc. (NUSCO) in a Connecticut proceeding which appears to go well beyond the protected information contained in this docket in the third summary pertaining to sulphur dioxide allowance trading.

C. *PSNH Motion to Resolve Discovery and For Protective Order (November 1, 1991)*

On November 1, 1991, PSNH filed a Motion to Resolve Discovery and for Protective Order (Motion to Resolve). All parties either

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concur with or do not object to PSNH's Motion to Resolve.

The data request which is the subject of PSNH's Motion to Resolve was issued by staff on September 30, 1991, with a follow-up request issued on or about October 11, 1991. The data request, in its initial form, asked PSNH to "provide all documents pertaining to statements of PSNH's Marketing Division's objectives, goals, strategies and tactics."

PSNH's initial response filed on October 10, 1991, stated that "PSNH has no annual marketing plan that addresses strategies, objectives, goals, or tactics related to specific customers, market segments or end-use technologies". PSNH's response did indicate, however, that operational goals statements for individual managers within the marketing and sales departments did exist but were not relevant to PSNH's marketing plan. After subsequent discussion with staff, PSNH has, through its Motion to Resolve, agreed to provide the operational goals statements subject to a protective order. As noted above, all parties, concur with PSNH's Motion to Resolve.

PSNH, nonetheless, asserts in its Motion to Resolve that staff's requests for statements of PSNH's marketing objectives, goals and strategies "will not lead to the production of information relevant to this proceeding". Staff disagreed with PSNH's assertion in a letter filed with the commission on November 8, 1991.

II. *COMMISSION ANALYSIS*

[1] Based upon a review of the foregoing motions and arguments, we find it reasonable to grant Ms. Nelkens access to the three underlying studies under the same arrangement agreed to by PSNH for the staff. That is, Ms. Nelkens will not be provided copies of the three documents but will be permitted to view the three documents in their entirety, at a mutually agreeable

location under the terms of Order No. 20,279.

With regard to PSNH's Motion to Resolve the discovery dispute which is supported by all parties, we find it reasonable to grant said motion inasmuch as the operational goals statements to be provided by PSNH purportedly contain information of a confidential and competitive nature. It is neither necessary nor appropriate for us to resolve the question of the relevance of these documents at this time.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Ms. Nelkens' Motion for Rehearing is granted insofar as it is consistent with the foregoing report; and it is

FURTHER ORDERED, that the commission expressly reserves its right to reconsider this order in light of RSA: 91-A on its own motion or the motion of any party during the evidentiary phase of this docket should the documents be proffered as a part of the record.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1991.

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NH.PUC*12/02/91*[27265]*76 NH PUC 727*Northeast Hydrodevelopment Corporation

[Go to End of 27265]

Re Northeast Hydrodevelopment Corporation

DE 89-257
Order No. 20,316

76 NH PUC 727

New Hampshire Public Utilities Commission

December 2, 1991

ORDER adopting a stipulation that transforms a request by a small power producer (SPP) for wheeling service to approval of a front-end loaded, 30-year rate contract between an electric utility and the SPP. The utility agrees to limit the passthrough of the costs of power payments made during the first 20 years to the levelized rate that results from long-term avoided cost projections approved by the commission.

The SPP had originally proposed to repair a dam in the Town of Milford, to install a hydroelectric facility at the dam in return for an agreement by the town to purchase all the

hydroelectric facility's power output for use in its waste water facility, and to require the local electric utility to wheel power from the dam to the waste water facility.

The stipulation provides that (1) the SPP will withdraw its petition for wheeling service; (2) the SPP will sell to the utility the output from the hydroelectric facility, if it is in fact constructed at the dam; (3) the Town will purchase all of its electric requirements from the utility; (4) the Town and the SPP will nullify their purchase power agreement; and (5) the utility will contribute to the cost of reconstructing the dam, whether or not a hydroelectric facility is built at the site.

Commission finds the thirty-year rate contract contemplated under the stipulation to be both just and reasonable and consistent with the intent of its small power policy.

Commission declines to rule on the rate-making treatment of the utility's contribution to the cost of dam repairs, but notes the the utility would bear a heavy burden if it seeks to include dam repair costs in rates.

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1. COGENERATION, § 14

[N.H.] Small power producers — Request for wheeling — Withdrawal — Stipulation. p. 730.

2. COGENERATION, § 20

[N.H.] Contracts — Thirty-year rate order — Front-end loading — Levelized rates — Small power producer — Stipulation. p. 730.

3. COGENERATION, § 25

[N.H.] Rates — Thirty-year rates — Front-end loading — Levelized rates — Small power producer — Stipulation. p. 730.

APPEARANCES: Orr & Reno by Howard Moffet, Esq. on behalf of Northeast Hydrodevelopment Corporation; Sulloway, Hollis and Soden by Margaret Nelson, Esq. and Thomas Getz, Esq. on behalf of Public Service Company of New Hampshire; Lee Mayhew, Town Administrator, on behalf of the Town of Milford; and Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

I. *Procedural History*

On December 18, 1989, Northeast Hydrodevelopment Corporation ("NHC"), a Delaware corporation with its principal place of business in Hudson, New Hampshire and a Limited Electrical Energy Producer as the term is defined by RSA 362-A:1-a, II, filed a purchase power agreement, and a petition to require Public Service Company of New Hampshire ("PSNH") to wheel power to the Town of Milford ("Town") pursuant to RSA 362-A:2-a.

On March 6, 1990, the Commission issued Report and Order No. 19,803 defining the issues and the scope of the proceeding. Hearings on the merits of the petition were held on July 18, October 5, October 8, November 19, and November 21, 1990.

After the close of the hearings NHC, PSNH and the Town entered into settlement

negotiations which eventually involved the Staff. The negotiations culminated with the presentation of a settlement agreement to the Commission on May 7, 1991.

On May 8, 1991, NHC contacted the parties, the Staff and the Commission giving notice of its withdrawal from the settlement agreement. Subsequently, on August 26, 1991 NHC gave notice to the parties, Staff and the Commission that it would accept the settlement agreement presented to the Commission on May 7, 1991.

II. *BACKGROUND*

As was stated above NHC is a Delaware corporation with its principal place of business in Hudson, New Hampshire and a Limited

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Electrical Energy Producer. NHC and the Town entered into a purchase power agreement in March of 1989. Pursuant to the agreement, NHC would repair the McLane Dam, which the Town is under an order from the Water Resources Division of the New Hampshire Department of Environmental Services to repair, and install a hydroelectric facility at the dam. The Town would be required to purchase all of the hydroelectric facility's power output for use at its waste water treatment facility at a price slightly less than PSNH's tariffed "GV" rate. NHC proposed to transmit the power to the waste water treatment facility through PSNH's transmission and distribution system. NHC requested an order from this Commission, requiring PSNH to wheel the power through its transmission and distribution system pursuant to RSA chapter 362-A because PSNH was not willing to enter into a contract with NHC for the wheeling of power.

III. *Stipulation*

The stipulation entered into between the parties and Staff generally provides that NHC will withdraw its petition; NHC will sell its entire output of power from the McLane Dam, should a hydroelectric facility be constructed at the dam, net of service station usage to PSNH; the Town will purchase all of its electrical requirements from PSNH; the Town and NHC will nullify their purchase power agreement; and PSNH will contribute to the costs of reconstructing the dam, whether or not a hydroelectric facility is built by NHC at the site.

A. *Power Purchase Rates*

The essential element of the stipulation from PSNH's and NHC's perspective is the Commission's approval of the rates to be paid NHC contemplated in the settlement agreement and its approval of the pass-through of certain costs to ratepayers, based on PSNH's currently approved long-term avoided costs, via the Energy Cost Recovery Mechanism (ECRM) or the Fuel and Purchased Power Adjustment Clause (FPPAC).

Under the terms of the stipulation, PSNH agrees to pay NHC an amount equal to its "Average GV Rate" or its successor (the Primary General Service Rate), times a "multiplier", then reduced by a Cents/KWH "reduction factor" for NHC's power sales to PSNH until December 31, 2009. The schedule of payments is outlined at P.4 of the Settlement Agreement (Exhibits A, B & C). In 2010, 2011, 2012 and 2013 NHC shall offer to sell PSNH its power at 85% of PSNH'S short term avoided cost as established by this Commission or $.10/KWH whichever is higher. Beginning in 2014 and continuing to 2022 NHC shall offer its power to

PSNH at 85% of the avoided cost rate for small power producers established by this Commission.

This schedule results in estimated payments to NHC by PSNH higher than avoided costs for the first seventeen years of the agreement, and possibly for twenty-one years, and payments below avoided costs for the latter thirteen to nine years. The levelized rate that results from this "front end loaded" agreement is $.09333/KWH.

B. *Recovery from Ratepayers*

Although the stipulated agreement is front end loaded, PSNH has agreed to limit the pass-through via ECRM or FPPAC of the cost of power payments made to NHC during the first twenty years of purchases, or until December 31, 2012 whichever occurs earlier, to $.0796/KWH, the levelized rate that results from the long term avoided cost projections approved by the Commission in DR 90-018, extrapolated for the twenty year period. For the remaining 10 years of power purchases, PSNH will pass through costs at the then established short term avoided cost rates.

C. *Repair of the Dam*

The essential element of the stipulation from the Town's perspective is PSNH's commitment to contribute funds towards the reconstruction of the dam whether or not NHC constructs and operates a hydroelectric facility at the site.

Pursuant to the stipulation PSNH's

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contribution to the repair of the dam may take two different forms dependent on NHC's decision to construct a hydroelectric facility at the site. If NHC decides to construct a hydroelectric facility at the site, PSNH will contribute a maximum of $91,000 in cash or services at NHC's discretion. However, PSNH will incur no subsequent liability for the dam. If NHC elects not to construct a hydroelectric facility at the site, or dam repairs or the construction of a hydroelectric facility have not commenced by January 1, 1993, the Town must notify PSNH by March 1, 1993, and PSNH will be obligated to undertake the repair of the dam for the Town and to contribute $100,000 towards its repair.

D. *Staff's Position*

As the stipulation transformed what was a request for wheeling pursuant to RSA chapter 362-A to a request for approval of a contract between PSNH and a small power producer (NHC) the essential element of the stipulation from the Staff's perspective is that ratepayers bear no greater risk under the stipulation than they would bear under any small power producer contract that would come before the Commission. Following that reasoning, staff expressed its concern that PSNH may seek to recover the costs it has obligated itself to pay NHC or the Town for the reconstruction of the dam in the future and expressed its view that PSNH should not seek, nor be allowed, to recover these costs from ratepayers. Inclusion of the dam repair costs in rates would cause ratepayers to bear more costs than they otherwise would under standard small power purchase arrangements.

Staff believed the stipulation terms, including the costs to be recovered from ratepayers, to be just and reasonable based on the risk sharing principle expressed above, and because it follows the intent of the Commission's policy towards small power producers as outlined in Order No. 19,052 in DR 86-41, *et al.* and is consistent with the most recently approved long-term avoided cost projections developed by PSNH. *See*, Docket DE 91-018.

IV. *Commission Analysis*

[1-3] The only relevant issue for consideration by the Commission is the pass-through of costs to ratepayers under the terms of the stipulation and how they compare to costs that might otherwise be borne by ratepayers. The Commission finds the thirty year contract contemplated under the stipulation and the costs to be recovered from ratepayers to be just and reasonable based on the record. *See* Tr. May 7, 1991, p.19-20.

We reach this conclusion, in part, because of the unique circumstances of NHC, PSNH and the Town in this case. NHC had initially pursued the retail sale option available to it under RSA 362-A. PSNH had then made a business decision to enter into an agreement with NHC and the Town of Milford that left ratepayers no worse off than they would be under any twenty year levelized contract. While Commission policy has moved away from allowing levelization to extend for twenty years on contracts for thirty years, we find that this particular agreement is consistent with the intent of our small power policy as established in Report & Order 19,052. Thus, the Commission will approve the stipulation.

In regard to Staff's concerns that the cost of the dam repairs should not be borne by ratepayers, the Commission will not rule on this issue at this time as PSNH has not sought recovery of the costs either as a capital item, or as a pass-through via ECRM or FPPAC. However, we note that under the stipulation PSNH is obligated to contribute substantially to the cost of dam repairs regardless of its use to produce electricity. In fact, its financial contribution to the dam repairs is higher if it is not used as a hydroelectric facility. Under these circumstances, PSNH would bear a heavy burden to demonstrate that it would be appropriate to include these costs in rates.

Our order will issue accordingly.

ORDER

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

ORDERED, that the stipulation, appended hereto as Appendices A, B and C, is hereby approved; and it is

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FURTHER ORDERED, that PSNH may include in either ECRM or FPPAC the costs as outlined in the substitute for the first paragraph in Article 2, appended hereto in Appendix B.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1991.

APPENDIX A

SETTLEMENT AGREEMENT

1. *General Intention*

This Settlement Agreement is intended to resolve all matters in New Hampshire Public Utilities Commission (NHPUC) Docket No. DE 89-257 among Public Service Company of New Hampshire (PSNH), Northeast Hydrodevelopment Corporation (NHC), and the Town of Milford (Town); (herein the "Parties"). It is the intention of the Parties that this settlement will serve to close Docket No. DE 89-257.

In addition, the purpose of this settlement is to provide, subject to the detailed terms and conditions later set forth, for the following:

- NHC's sale to PSNH of the entire amount of power from NHC's proposed generating facility at the McLane Dam net of NHC's station service use.
- Milford's purchase of its entire amount of electrical requirements from PSNH.
- PSNH's contribution to the repair of the McLane Dam.

2. *NHPUC Approval*

This Settlement Agreement is subject to the approval of the NHPUC and, in particular, the acceptance by the NHPUC of the purchase of NHC output by PSNH at the prices and terms set forth herein and subject to the inclusion of the costs of the purchase of NHC power, as a settlement of a legitimate power purchase dispute, in any rate mechanism to recover PSNH's purchased power costs (such as the Energy Cost Recovery Mechanism or the Fuel and Purchased Power Adjustment Clause).

The Parties agree to jointly support and seek the approval of this settlement by the NHPUC. Commission approval, however, may extend only to acceptance or rejection of this agreement. Any ruling by the Commission as to the issues raised in Docket No. DE 89-257 or imposition of any conditions whatsoever by the Commission will nullify this settlement.

3. *Repair of the McLane Dam*

PSNH agrees to contribute to the repair of the McLane Dam to comply with the requirements of Order #159.03, dated February 5, 1985, of the Department of Environmental Services, Water Resources Division, State of New Hampshire, including any extensions of time previously granted by the Department. PSNH's contribution to the repair of the McLane Dam may take either of two forms dependent on whether NHC constructs a hydroelectric facility at the site.

A. *NHC Constructs A Hydroelectric Facility*

In the event NHC commences dam repairs or construction of a hydroelectric facility by January 1, 1993, PSNH will contribute a maximum value of $91,000 toward repair of the dam by NHC, consistent with the Scope of Work outlined in Section C. The value may be provided in whole or in part as a cash payment, to be rendered after NHC has incurred the expenses of repair and the Town and PSNH have verified the validity of the expenses, or in kind through, for example, engineering or design work performed by PSNH personnel, which will be accounted for in the customary manner employed by PSNH in its dealings with small power producers. Whether and to what extent the value is to be provided in cash shall be at the election of NHC while the provision of value in

kind must be mutually agreed to by NHC and PSNH. PSNH, however, undertakes no responsibility in this instance for the construction work on the dam. Subsequent maintenance or repair will be the exclusive responsibility of the Town.

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B. *NHC Does Not Construct A Hydroelectric Facility*

In the event that NHC has not commenced dam repairs or construction of a hydroelectric facility by January 1, 1993, the Town shall, by March 1, 1993, request PSNH to commence repair of the McLane Dam as required to comply with the February 5, 1985 Water Resources Division Order. Within 90 days of receiving notification from the Town, PSNH shall submit to Milford a schedule for repairing the McLane Dam.

PSNH will undertake the repair of the dam consistent with the Scope of Work outlined in Section C, and shall absorb the risk of cost overruns for that work up to the level of the $100,000 estimate made by the Town's consultant, Dufresne-Henry, Inc., in a letter dated January 2, 1991. Costs in excess of $100,000 are the responsibility of the Town. It is the express intent of the parties that PSNH not be liable for costs related to unforeseen problems associated with repair of the dam. Subsequent maintenance or repair of the dam will be the exclusive responsibility of the Town.

C. *Scope of Work*

The three items associated with the repair of the dam include: (1) construction of a structural shell, that is, a cast-in-place reinforced concrete spillway facing of a maximum 12-inch thickness which will be attached to the existing downstream face of the spillway with steel anchors; (2) brush and tree removal from the east abutment to include repair of masonry or grass restoration after this vegetation has been removed; and, (3) refurbishment of the outlet works on the east abutment power channel by installation of cast iron stop plank grooves together with new stop logs or a repair of differing technology but of equal quality that is concurred with by the Town of Milford.

The Scope of Work shall include all matters reasonably incident to these items, including, without limitation, engineering services, dewatering of the river channel, and preparation of the spillway facing. The Scope of Work shall not include any costs related to the breaching or removal of the dam, should removal of the dam become necessary. Moreover, breaching or removal of the dam is an option that can only be exercised by the Town of Milford.

The Scope of Work is intended to be generally consistent with a report prepared by Dufresne-Henry, Inc. and dated September 11, 1987. (Attached as Exhibit A). The Scope of Work specifically does not include reconstruction of the west abutment, which Dufresne-Henry and the Town agree is unnecessary. To the extent that there may be a discrepancy between the Scope of Work as defined above and the Dufresne-Henry Report, the Scope of Work in this Settlement Agreement is controlling. Moreover, any references to estimated costs in the Dufresne-Henry Report have no bearing on this Settlement Agreement.

4. *Purchase of NHC Generation by PSNH*

A. *Initial Power Purchase Period*

Provided (1) NHC's hydroelectric generation plant at the McLane Dam is generating power by July 1, 1993, or (2) NHC has commenced construction by January 1, 1993, has made substantial progress by July 1, 1993, and proceeds in good faith to complete repair of the dam and construction of its hydroelectric facility so as to begin generating power by (a) December 31, 1993, or (b) any reasonable date thereafter to which two of the three Parties to this Agreement shall agree, then PSNH will purchase the entire electrical output of NHC's hydroelectric generating facility at the McLane Dam, net of station service (based on rated nameplate capacity of 360 kilowatts per hour), for the period beginning with the commencement of power generation at NHC's McLane Dam facility and ending December 31, 2009 (hereafter the "Initial Power Purchase Period"). PSNH shall have the option to continue to purchase power from the NHC facility after December 31, 2009, subject to the provisions

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described in Section 4.B below.

NHC shall be paid for its power sales to PSNH during the Initial Power Purchase Period on the basis of net kilowatt-hour output from the facility. In determining the price per kwh to be paid to NHC (the "NHC Price"), the "Average GV Rate" is to be multiplied by the Multiplier and then reduced by the Cents/KWH Reduction factors set forth in the chart below. The term "GV Rate" is PSNH's Primary General Service Rate GV or its successor rate. The "Average GV Rate" shall be stated in terms of cents per kilowatt-hour and shall be based on the Report of Proposed Rate Changes submitted periodically to the NHPUC. As an example, the Average GV Rate in effect on December 31, 1990 was 8.379¢/kwh, based on the filing made by PSNH on January 4, 1990, which shows Estimated Annual Revenue of $97,945,417 based on Proposed Rates for Primary General Service Rate GV, divided by the total estimated GV load of 1,168,904,521 kwh.

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

ADJUSTMENTS BY YEAR

Calendar Year	*Multiplier*	*Cents/KWH Reduction*
1992 & 1993	0.99	2.250
1994	0.98	2.306
1995	0.97	2.364
1996	0.96	2.423
1997	0.95	2.484
1998	0.94	2.546
1999	0.93	2.610
2000	0.92	2.675
2001	0.91	2.742
2002	0.90	2.811
2003	0.89	2.881
2004	0.88	2.953
2005	0.88	3.027
2006	0.88	3.103

2007	0.88	3.181
2008	0.88	3.261
2009	0.88	3.343

After filing of a Report of Proposed Rate Changes with the NHPUC, changes in the NHC Price related to changes in the Average GV Rate shall take effect the next full billing month after changes to PSNH's Rate GV, or its successor rate becomes effective. Changes in the NHC Price related to changes in the Multiplier and the Cents/KWH Reduction factor, as shown in the above chart, shall take effect with the first full billing month after January 1 of each calendar year, provided that if NHC begins generating power at the McLane Dam prior to January 1, 1993, the Multiplier and Cents/KWH Reduction factor for 1993 shall be applied to determine the NHC Price for all power sold prior to January 1, 1994. (As an example, if the NHC facility were to begin generating power on September 1, 1992, and the Average GV Rate on file with the NHPUC on that date were to be 9.426¢/kwh, then the NHC Price would be 9.426¢/kwh multiplied by .99 minus 2.250¢/ kwh, or 7.082¢/kwh. That NHC Price would remain in effect until the earlier of (a) a change in the Average GV Rate, based on the filing of a new Report of Proposed Rate Changes, or (b) January 1, 1994, when the Multiplier applied to the Average GV Rate then in effect would change to .98 and the Cents/KWH Reduction factor to 2.306¢/kwh, and so on.)

B. *Supplemental Power Purchase Period*

Following the Initial Power Purchase Period, NHC shall offer to sell power to PSNH for a Supplemental Period of up to an additional thirteen years. In the Supplemental Period, NHC, in the first four years, i.e., 2010, 2011, 2012 and 2013, will offer its power at the higher of 85% of avoided cost (defined as the short term avoided cost rate approved by the NHPUC in ECRM, FPPAC or similar proceeding or other short-term rate generally available for PSNH purchases from similarly situated SPPs) or, 10¢ /kwh. Beginning in 2014 and for the remainder of the Supplemental Power Purchase Period the sale rate will be 85% of avoided costs, as determined by the NHPUC.

C. *Interconnection Agreement*

NHC shall execute the standard PSNH

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Interconnection Agreement, which is included as Attachment B. NHC, however, shall only be required to maintain $1 million in general liability insurance under that Interconnection Agreement. The price paid NHC shall change only for the first full Billing Period (of approximately 30 days) after a change in rate is effective. NHC shall be subject to all other customary rules and policies applicable to small power producers, such as interconnection costs.

5. *Waiver of Rent Payments*

The Town of Milford shall waive all rent (or lease) payments required from NHC under section 14 of the September 14, 1987 Lease Agreement between the Town and NHC.

6. *Town Purchase of Requirements Service from PSNH*

The Town of Milford agrees to take and pay for electrical service from PSNH under PSNH's Tariff for Electric Service, as revised from time-to-time, to serve, among other loads, the entire electrical requirements of the Town's Wastewater Treatment Plant in Milford, New Hampshire for at least the 17 year term of the PSNH purchase obligation from NHC. This obligation to purchase from PSNH does not restrict the Town from installing emergency generation to serve the electrical requirements of the Wastewater Treatment Plant during periods when PSNH is physically unable to provide electrical service to the Wastewater Treatment Plant. Neither is the Town precluded from installing conservation and load management devices or negotiating with PSNH a special contract for electric service if circumstances warrant but the Town shall not enter into a retail wheeling transaction nor otherwise seek to purchase alternate sources of generation. In all other respects the Town shall be eligible for the same treatment as other similarly situated customers of PSNH.

7. *Existing Agreements*

The Town of Milford and NHC agree to cancel the May 26, 1989 Electrical Power Purchase and Sales Agreement and any subsequent revisions and to withdraw their request that the NHPUC approve the Agreement.

The Town of Milford and NHC agree to revise the September 14, 1987 Lease Agreement as necessary to implement the provisions of this Settlement Agreement.

As Agreed:

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE

Date: 3/1/91

NORTHEAST HYDROELECTRIC
CORPORATION

Date: 3/1/91

THE TOWN OF MILFORD, NEW HAMPSHIRE

Date: 3/1/91

"EXHIBIT A"

September 11, 1987

Mr. Lee Mayhew, Town Administrator
Town of Milford
Nashua Street
Milford, NH 03055

Re: Recommended Improvements
McLane Dam, Milford, NH
DH 436007

Dear Mr. Mayhew:

As a result of our inspections of McLane Dam and in consideration of the existing New

Hampshire Water Resources Board order, the following four items constitute the recommended improvements to the McLane Dam:

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

Item No.	*Estimated Construction Cost*
1. Construct a cast-in-place concrete spillway facing	$60,000
2. Reconstruct the West (right) abutment and reopen presently plugged waste gate	30,000
3. Remove trees and brush from East (left) abutment	3,000
4. Refurbish "power canal" gates by installing serviceable stop logs	7,000

The total project cost including contingencies, basic engineering services and engineering inspections during construction would amount to $150,000.

The basis for our recommendations and brief description for each item is spelled out in the remainder of this letter. Our inspector's report is attached as an appendix so the detailed observations may be reviewed by all parties concerned.

Item No. 1 — Cast-In-Place Concrete Spillway Facing

The present spillway is almost half submerged at its highest point (Inspector's sketch, p. 1 of 10). In this submerged zone, the ledge foundation is being undercut and some granite blocks have been removed from the dam face. As you go across the dam toward the East, the concrete surface gets poorer and poorer with reinforcing steel and various types of aggregate being proposed. The worst comes with actively eroding concrete spillway section near the extreme East (left) abutment.

The best repair for these problems is a cast-in-place concrete shell. This would be a reinforced concrete shell attached to the existing face with several steel anchors. A cofferdam and pumping would be required to construct those portions which are now in the "submerged zone."

Item No. 2 — West (Right) Abutment Reconstruction

There are four separate but related features which are addressed at this location:

1. The unstable downstream riprap.
2. The need for raising the existing training wall.
3. The streambank upstream of the training wall.
4. The reopening of the existing waste gate.

The downstream riprap is very large and placed in a nearly vertical configuration with very large open joints which allow the sandy soils in the riverbank to pass through. The wrought iron straps used to hold this pile of rock together are gradually falling apart.

For spillway capacity, the concrete wall (training wall) at the end of the spillway needs to be

raised.

The streambank from the Public Works Department parking lot/storage area has filled out into the river and plugged the low-level waste gate of the dam.

It is recommended that a concrete retaining wall be built starting about 24 feet downstream of the dam and extending up to a point about 24 feet upstream of the existing training wall. This retaining wall would be to an elevation three feet above the existing training wall. In the course of constructing this retaining wall, the fill from the DPW parking lot would be excavated and the waste gate reopened. The use of this waste gate would allow the pond above the dam to be completely dewatered.

Item No. 3 — Remove Trees and Brush

This maintenance item would clear the trees and brush from the East (left) abutment. It would include repair of masonry or grass restoration after this vegetation has been removed.

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Item No. 4 — Refurbish "Power Canal" Gates

At present the pond level does not drop any lower than it does due to a large amount debris caught in the gate area. The planks in the "normal waterway" are completely rotted out. The planks appear to be installed by being
nailed into place.

The recommended improvement here is to install some cast iron stop plank grooves together with new stop logs. This would allow easier removal of the stop logs to permit maintenance work on the dam.

Again, the cost summary for the project looks like this:

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

Estimated Construction Cost

Item No. 1 Concrete spillway facing	$60,000
Item No. 2 Reconstruction of the West abutment	30,000
Item No. 3 Brush and tree removal	3,000
Item No. 4 "Power canal" stop logs	7,000
Subtotal Estimated Construction Cost	$100,000
Contingencies	15,000
Total Estimated Construction Cost	$115,000
Basic Engineering Services	20,000
Inspections During Construction	15,000
Project Budget Estimate	$150,000

I would be glad to present this report to the Selectmen. I await your questions.

Sincerely yours,
DUFRESNE-HENRY, INC.
Morris J. Root, P.E.

Associate

"EXHIBIT A"

September 11, 1987

Mr. Lee Mayhew, Town Administrator
Town of Milford
Nashua Street
Milford, NH 03055
Re: Recommended Improvements
McLane Dam, Milford, NH
DH 436007
Dear Mr. Mayhew:

As a result of our inspections of McLane Dam and in consideration of the existing New Hampshire Water Resources Board order, the following four items constitute the recommended improvements to the McLane Dam:

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3. Remove trees and brush from East (left) abutment	3,000
4. Refurbish "power canal" gates by installing serviceable stop logs	7,000

The total project cost including contingencies, basic engineering services and engineering inspections during construction would amount to $150,000.

Page 736

The basis for our recommendations and brief description for each item is spelled out in the remainder of this letter. Our inspector's report is attached as an appendix so the detailed observations may be reviewed by all parties concerned.

Item No. 1 — Cast-In-Place Concrete Spillway Facing

The present spillway is almost half submerged at its highest point (Inspector's sketch, p. 1 of 10). In this submerged zone, the ledge foundation is being undercut and some granite blocks have been removed from the dam face. As you go across the dam toward the East, the concrete surface gets poorer and poorer with reinforcing steel and various types of aggregate being exposed. The worst comes with actively eroding concrete spillway section near the extreme East (left) abutment.

The best repair for these problems is a cast-in-place concrete shell. This would be a reinforced concrete shell attached to the existing face with several steel anchors. A cofferdam and pumping would be required to construct those portions which are now in the "submerged

zone."

Item No. 2 — West (Right) Abutment Reconstruction

There are four separate but related features which are addressed at this location:

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The downstream riprap is very large and placed in a nearly vertical configuration with very large open joints which allow the sandy soils in the riverbank to pass through. The wrought iron straps used to hold this pile of rock together are gradually falling apart.

For spillway capacity, the concrete wall (training wall) at the end of the spillway needs to be raised.

The streambank from the Public Works Department parking lot/storage area has filled out into the river and plugged the low-level waste gate of the dam.

It is recommended that a concrete retaining wall be built starting about 24 feet downstream of the dam and extending up to a point about 24 feet upstream of the existing training wall. This retaining wall would be to an elevation three feet above the existing training wall. In the course of constructing this retaining wall, the fill from the DPW parking lot would be excavated and the waste gate reopened. The use of this waste gate would allow the pond above the dam to be completely dewatered.

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At present the pond level does not drop any lower than it does due to a large amount debris caught in the gate area. The planks in the "normal waterway" are completely rotted out. The planks appear to be installed by being nailed into place.

The recommended improvement here is to install some cast iron stop plank grooves together with new stop logs. This would allow easier removal of the stop logs to permit maintenance work on the dam.

Again, the cost summary for the project looks like this:

Page 737

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

Estimated Construction Cost

Item No. 1 Concrete spillway facing	$60,000
Item No. 2 Reconstruction of the West abutment	30,000

Item No. 3 Brush and tree removal	3,000
Item No. 4 "Power canal" stop logs	7,000
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Contingencies	15,000
Total Estimated Construction Cost	$115,000
Basic Engineering Services	20,000
Inspections During Construction	15,000
Project Budget Estimate	$150,000

I would be glad to present this report to the Selectmen. I await your questions.

Sincerely yours,
DUFRESNE-HENRY, INC.
Morris J. Root, P.E.
Associate

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[Graphic Not Displayed Here]

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APPENDIX C

AMENDMENT TO
SETTLEMENT AGREEMENT

This Amendment to Settlement Agreement is made this 9th day of May, 1991, by and among Public Service Company of New Hampshire (PSNH), Northeast Hydrodevelopment Corporation (NHC) and the Town of Milford, New Hampshire (Town).

WITNESSETH

WHEREAS, PSNH, NHC and the Town, on March 1, 1991, executed a Settlement Agreement among them resolving the outstanding disputes raised in the New Hampshire Public Utilities Commission (NHPUC) Docket No. DE 89-257; and

WHEREAS, NHPUC Staff proposed, and the parties accepted, certain changes to Article 2 of the Settlement Agreement; and

WHEREAS, PSNH, NHC and the Town, with NHPUC Staff support, on May 7, 1991, submitted testimony before the NHPUC explaining the Settlement Agreement and the change proposed by NHPUC Staff; and

WHEREAS, PSNH, NHC and the Town have agreed, by means of this Amendment, to modify the Settlement Agreement in accord with the testimony offered on May 7, 1991.

NOW, THEREFORE, PSNH, NHC and the Town do hereby agree as follows:

The first paragraph of Article 2, *NHPUC Approval*, will be deleted and the following paragraph shall be added in its place.

This Settlement Agreement is subject to the approval of the NHPUC and, in

particular, the allowance by the NHPUC — through the rate mechanism applicable to PSNH's purchased power costs, such as, the Energy Cost Recovery Mechanism or the Fuel and Purchased Power Adjustment Clause — of the recovery by PSNH of the cost of purchases from NHC at the level of 7.96 cents per KWH from the date of commercial operation for a period of twenty years, or until December 31, 2012, whichever occurs earlier, and thereafter, for the remainder of the term of the Settlement Agreement at the short-term avoided cost rate set by the NHPUC.

IN WITNESS WHEREOF, PSNH, NHC and the Town have caused this Amendment to be executed by their duly authorized representative as of the date first written above.

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE

NORTHEAST HYDROELECTRIC
CORPORATION

THE TOWN OF MILFORD,
NEW HAMPSHIRE

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northeast Hydrodevelopment Corp., DE 89-257, Order No. 19,803, 75 NH PUC 247, Apr. 25, 1990. [N.H.] Re Public Service Co. of New Hampshire, DR 86-41, Order No. 19,052, 73 NH PUC 117, Apr. 7, 1988.

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NH.PUC*12/03/91*[27266]*76 NH PUC 740*New England Telephone and Telegraph Company

[Go to End of 27266]

Re New England Telephone and Telegraph Company

DR 91-164
Order No. 20,317

76 NH PUC 740

New Hampshire Public Utilities Commission

December 3, 1991

ORDER granting a motion by a telephone local exchange carrier for a protective order according proprietary treatment to a special contract with the State of New Hampshire.

Page 740

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective order — Proprietary treatment — Special contract and supporting materials. p. 741.

BY THE COMMISSION:

ORDER

[1] WHEREAS, New England Telephone and Telegraph Company (NET), filed with the New Hampshire Public Utilities Commission (commission) on October 8, 1991, a proposed amendment to Special Contract No. 88-1 between NET and the State of New Hampshire, pursuant to RSA 378:18; and

WHEREAS, on October 23, 1991, NET filed a Motion for Protective Order (Motion) requesting that the amendment to the contract and supporting materials be accorded proprietary treatment; and

WHEREAS, the Motion alleges that the materials contain "customer specific, competitively sensitive information" and therefore should be exempt from public disclosure pursuant to RSA 91-A:5, IV; and

WHEREAS, the staff of the commission (staff) concur in the Motion; and

WHEREAS, the commission finds that special contracts which include confidential, commercial and financial information have been accorded proprietary treatment in the past; and

WHEREAS, the commission finds that the public good is served by allowing staff full review of all contract supporting materials, and that proprietary treatment should be accorded if the standards of RSA 91-A:5, IV are met and such treatment will result in greater disclosure of supporting documents for staff review; it is hereby

ORDERED, that the request for proprietary treatment of the proposed amendment to Special Contract 88-1 shall be granted; and it is

FURTHER ORDERED, that such proprietary treatment is conditioned upon the commission's right to reconsider such treatment, in light of the standards of RSA 91-A, upon its own motion or at the request of any party or the public.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1991.

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NH.PUC*12/03/91*[27267]*76 NH PUC 741*New England Telephone and Telegraph Company

[Go to End of 27267]

Re New England Telephone and Telegraph Company

DR 91-174
Order No. 20,318

76 NH PUC 741

New Hampshire Public Utilities Commission

December 3, 1991

ORDER granting a motion by a telephone local exchange carrier for a protective order according proprietary treatment to a special contract and supporting materials.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective order — Proprietary treatment — Special contract and supporting materials. p. 741.

BY THE COMMISSION:

ORDER

[1] WHEREAS, New England Telephone and Telegraph Company (NET), filed with the New Hampshire Public Utilities Commission (commission) on October 23, 1991, Special Contract No. 91-2 between NET and CAMEX, Inc., pursuant to RSA 378:18; and

WHEREAS, on October 23, 1991, NET filed a Motion for Protective Order (Motion) requesting that the contract and supporting materials be accorded proprietary treatment;

and

WHEREAS, the Motion alleges that the materials contain "customer specific information and data of a competitively sensitive nature" and therefore should be exempt from public disclosure pursuant to RSA 91-A:5,IV; and

WHEREAS, the staff of the commission (staff) concur in the Motion; and

WHEREAS, the commission finds that special contracts which include confidential, commercial and financial information have been accorded proprietary treatment in the past; and

WHEREAS, the commission finds that the public good is served by allowing staff full review of all contract supporting materials, and that proprietary treatment should be accorded if the standards of RSA 91-A:5, IV are met and such treatment will result in greater disclosure of supporting documents for staff review; it is hereby

ORDERED, that the request for proprietary treatment of the proposed amendment to Special Contract 91-2 shall be granted; and it is

FURTHER ORDERED, that such proprietary treatment is conditioned upon the commission's right to reconsider such treatment, in light of the standards of RSA 91-A, upon its own motion or at the request of any party or the public.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1991.

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NH.PUC*12/03/91*[27268]*76 NH PUC 742*Pennichuck Water Works

[Go to End of 27268]

Re Pennichuck Water Works

DR 91-055
Order No. 20,319

76 NH PUC 742

New Hampshire Public Utilities Commission

December 3, 1991

ORDER granting a request by a water public utility for temporary rates during the pendency of its permanent rate proceeding. Commission finds that a temporary rate increase of $572,115 (7.36%) is consistent with the public interest and sufficient to yield a reasonable return on the cost of utility property used and useful in the public service less accrued depreciation.

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1. RATES, § 630

[N.H.] Temporary rates — During pendency of permanent proceeding — Grounds for granting — Reasonableness — Water utility. p. 743.

2. RATES, § 655

[N.H.] Rates pending investigation — Temporary rates — Reasonableness — Water utility. p. 743.

BY THE COMMISSION:

ORDER

WHEREAS, in conjunction with its June 28, 1991 petition for a permanent rate increase, Pennichuck Water Works requested the establishment of temporary rates during the pendency of the permanent rate proceeding; and

WHEREAS, Pennichuck requested a temporary rate increase of $1,007,320 (representing an increase of 13%) or in the alternative $572,115 (representing an increase of 7.36%); and

WHEREAS, the Commission, during its November 26, 1991 public deliberations,

granted Pennichuck's petition for temporary rates; and

[1, 2] WHEREAS, for the reasons to be set forth in a report to be subsequently adopted that a temporary rate increase in the amount of $572,115 (representing an increase of 7.36%) is consistent with the public interest and is sufficient to yield a reasonable return on the cost of Pennichuck property used and useful in public service less accrued depreciation; it is hereby

ORDERED, that Pennichuck Water Works' petition for temporary rates is granted at the level of 7.36%.

By order of the New Hampshire Public Utilities Commission this third day of December, 1991.

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NH.PUC*12/03/91*[27270]*76 NH PUC 746*New Hampshire Electric Cooperative.

[Go to End of 27270]

Re New Hampshire Electric Cooperative.

DR 91-156
Order No. 20,322

76 NH PUC 746

New Hampshire Public Utilities Commission

December 3, 1991

ORDER approving a revised fuel adjustment clause rate for an electric cooperative, consisting of a credit of 0.336 cents per kilowatt-hour.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Fuel adjustment clause — Revision — Updated costs — Credit — Electric cooperative. p. 747.

APPEARANCES: Mark Dean, Esq., of Merrill and Broderick for New Hampshire Electric Cooperative; Eugene F. Sullivan, Jr. and Thomas C. Frantz for the staff of the Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On October 1, 1991, New Hampshire Electric Cooperative (NHEC or Coop) filed a request to reduce the fuel component included in its retail rates from a charge of 0.199 cents per kWh to

a credit of 0.179 cents per kWh, effective for the six (6) months beginning

November 1, 1991 and ending April 30, 1992. The October 1, 1991 filing was based on forecast fuel data for September 1991 through April 1992.

On October 30, 1991, based on September 1991 actual fuel data and an improved October 1991 forecast from Public Service Company of New Hampshire (PSNH), the supplier of the majority of NHEC's kWh requirements, NHEC revised its FAC filing to increase the credit from 0.179 cents per kWh to 0.298 cents per kWh.

By Order of Notice issued November 1, 1991, the New Hampshire Public Utilities Commission (Commission) scheduled a hearing for Monday, November 18, 1991, to establish the Coop's Fuel Adjustment Clause (FAC) rate for the November 1991 through April 1992 period.

II. *Positions of the Parties*

A. NHEC

1. Change in Effective Period of FAC. NHEC bases its proposal on forecast fuel data from Public Service Company of New Hampshire (PSNH). Exhibits 4&5. NHEC testified that PSNH provides NHEC with the majority of its kWh requirements and that PSNH has forecast fuel costs only until the end of April 1992. Thus, NHEC proposes a six-month FAC rate in lieu of its normal one year FAC rate.

2. Proposed FAC credit. NHEC originally proposed a FAC credit of 0.179 cents per kWh, which was revised to 0.298 cents per kWh based on updated fuel costs and a revised October 1991 fuel cost forecast from PSNH. At the hearing, NHEC estimated the FAC credit would be approximately 0.33 cents per kWh based on a five-month FAC period beginning December 1, 1991. Exhibit 2A. The proposed rate is intended to reduce an estimated over-recovery through November, 1991, of $345,472 to an ending balance of approximately $1,000 by the end of the period.

NHEC estimates that the proposed credit will result in an overall rate decrease of 5.10 percent on an annualized basis. Exhibit 3A.

B. Staff

Staff did not oppose NHEC's proposal. However, at staff's request, the company has added a tariff page (Original Page 18A) to identify the amount of fuel built into the base rates.

III. *Commission Analysis*

[1] Based upon the record before us, including revised Exhibits 1A, 2A and 3A, we find that a Fuel Adjustment Clause credit of 0.336 cents per kWh, effective December 1, 1991 through April 30, 1992, is just and reasonable. We agree with staff that a tariff page that breaks out the fuel component in NHEC's rates is necessary and will direct NHEC to work with staff and file a tariff page explaining the fuel component in the FAC with its compliance tariff pages.

Our order will issue accordingly.

ORDER

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

ORDERED, that a revised FAC credit of 0.336 cents per kWh shall be applicable to the billing period from December 1, 1991 through April 30, 1992; and it is

FURTHER ORDERED, that NHEC file compliance tariff pages within 20 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1991.

==========

NH.PUC*12/04/91*[27269]*76 NH PUC 743*Hampstead Area Water Company, Inc.

[Go to End of 27269]

Re Hampstead Area Water Company, Inc.

DE 91-144
Order No. 20,320
76 NH PUC 743

New Hampshire Public Utilities Commission
December 4, 1991

ORDER authorizing a water public utility to provide service to a limited area abutting its existing service area at rates equal to those charged existing customers. No other water utility had franchise rights in the area sought; the utility had the requisite administrative, legal, and technical capabilities to provide the service; and the utility had obtained the requisite approvals from the the Department of Environmental Services.

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1. SERVICE, § 210

[N.H.] Extensions — Water service — New territory. p. 743.

2. CERTIFICATES, § 125

[N.H.] Water — Expansion of service territory — Grounds for approval — Fitness of applicant — Public good — Environmental approvals. p. 743.

BY THE COMMISSION:

ORDER

[1, 2] On September 20, 1991, the Commission received a petition from Hampstead Area Water Co., Inc. (Hampstead) to provide water service to a limited area in the Town of Hampstead, New Hampshire, abutting Hampstead's service area known as Woodland Pond, pursuant to RSA 374:22 and, implicitly, to establish rates therefore pursuant to RSA Chapter 378; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, Hampstead intends to charge rates in the area sought equal to those now being charged in Woodland Pond; and

WHEREAS, Hampstead has supplied letters pursuant to RSA 374:22, III from the Department of Environmental Services, Water Supply and Pollution control Division and Water Resources Division granting approvals needed for the proposed franchise extension; and

WHEREAS, Hampstead has the financial, managerial, administrative, legal and technical capabilities to provide water service to the area; and

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

WHEREAS, the public should be offered an opportunity to file comments and/or request an opportunity to be heard before the Commission acts on this petition; it is hereby

ORDERED, *NISI* that Hampstead be granted a franchise in the area bounded and described as follows;

Beginning at the Town Bound common to Hampstead, Plaistow, and Kingston, said bound being a bound of the existing water franchise area;

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

Thence: Southwesterly 7050 feet along the town line of Hampstead and Plaistow to a bound common to Hampstead, Plaistow, and Atkinson;
Thence: Southwesterly 3300 feet along the town line of Atkinson and Hampstead to a town bound;
Thence: Westerly 3250 feet along the town line of Atkinson and Hampstead to a town bound and the existing water franchise area;
Thence: Northeasterly 4000 feet to a point along the existing franchise area line said point being 500 feet from the center line intersection of East Road and Faith Drive;
Thence: Northeasterly 3300 feet along the existing franchise area line, said line being the same bearing as the southeast edge of the Faith Drive right-of-way, to the radius point of Faith Drive;
Thence: Northwesterly 2800 feet along said existing franchise area line to a point in line with the radius point of Evergreen Drive and Faith Drive and 500 feet south of the center line of Route 111;


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Thence: Northeasterly 5000 feet along said existing water
        franchise area line, said line 500 feet from and
        parallel to the center line of Route 111, to a
        point;
Thence: East and southeasterly 1650 feet along said
        existing water franchise area line, said line
        being 500 feet from and parallel to the center
        line of Route 121-A, to a point;
Thence: Northeasterly 525 feet along said water franchise
        area line to the easterly right-of-way of Route
        121-A at Lewis Lane;
Thence: Southeasterly 4950 feet along the existing water
        franchise area line, said line being the easterly
        right-of-way line of Route 121-A to a town bound,
        said bound being the point of beginning.
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This area containing approximately 1350 acres; and it is

FURTHER ORDERED, *NISI* that Hampstead be allowed to charge rates pursuant to those rate schedules approved for Woodland Pond; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the Commission or submit a written request for a hearing no later than January 2, 1992; and it is

FURTHER ORDERED, that Hampstead 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 18, 1991, and 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 18, 1991. The newspaper publication and individual notice shall be verified by an affidavit to be filed with this office on or before January 6, 1992; and it is

FURTHER ORDERED, that Hampstead Area Water Company notify the Town of Hampstead pursuant to RSA 541-A:22 by serving a copy of this order on the Town Clerk by first-class mail on or before December 18, 1991, said notification to be verified by affidavit filed

on or before January 6, 1992; and it is

FURTHER ORDERED, that such authority shall be effective on January 6, 1992 unless a request for a hearing is filed with this commission no later than January 2 ,1992.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1991.

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NH.PUC*12/04/91*[27271]*76 NH PUC 745*New England Telephone and Telegraph Company

[Go to End of 27271]

Re New England Telephone and Telegraph Company

DR 91-174

Order No. 20,321

76 NH PUC 745

New Hampshire Public Utilities Commission

December 4, 1991

ORDER granting a petition by a telephone local exchange carrier (LEC) for approval of a special contract to provide Centrex service, subject to review following the completion of an updated incremental cost study to be supplied by the LEC in 1993.

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1. RATES, § 566

[N.H.] Telecommunications — Centrex service — Special contracts — Cost recovery — Local exchange carrier. p. 745.

2. RATES, § 534

[N.H.] Telecommunications — Special factors — Competition — Pricing flexibility — Relaxed regulatory treatment — Centrex service — Local exchange carrier. p. 745.

3. PUBLIC UTILITIES, § 117

[N.H.] Telecommunications — Relaxed regulatory treatment — Emergingly competitive service — Centrex service — Local exchange carrier. p. 745.

4. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Centrex service — Relaxed regulatory treatment — Pricing flexibility — Competition from private branch exchanges — Local exchange carrier. p. 745.

BY THE COMMISSION:

ORDER

On October 23, 1991, New England Telephone, (NET or the company) petitioned for commission approval of a special contract to provide Camex, Inc with Intellipath Centrex Service; and

WHEREAS, the terms of the contract are for a period of three years; and

[1-4] WHEREAS, the costs contained in this contract are based on the New Hampshire Intellipath Digital Centrex Service filing approved by the commission in docket DR 86-236, Report and Order No. 18,753, dated July 10, 1987 in which the commission found that NET had met its burden of proof that the proposed rates covered the costs of the proposed services and stated that it would reserve judgement on whether the methodology used in DR 86-236 was the most appropriate method for determining NET's costs of service, until completion of the NHPUC investigation into NET's costs of service in Docket DR 89-010; and

WHEREAS, the company chose to omit a re-examination of the costs of Centrex service when submitting its incremental cost study in DR 89-010; and

WHEREAS, in its Report and Order No. 20,082, dated March 11, 1991, the commission required that NET include an analysis of the incremental costs of Centrex service when filing its updated Incremental Cost Study in 1993; and

WHEREAS, Camex has available competitive substitutes for Centrex service in the form of customer owned private branch exchanges; and

WHEREAS, it is likely that the service that is the subject of this special contract will fall

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under the heading of an emergingly competitive service which will receive more relaxed regulatory treatment and pricing flexibility; it is hereby

ORDERDED *NISI*, that New England Telephone's Special Centrex contract with Camex be and hereby is approved; and it is

FURTHER ORDERED, that the rates for this contract be subject to review following the completion of the updated NET Incremental Cost Study to be supplied in 1993; and it is

FURTHER ORDERED, that upon discovery that the rates are below their incremental costs, the parties are hereby put on notice that upon submission and review of the Incremental Cost Study the commission may review the contract and after adequate opportunity for the parties to be heard, may take appropriate action which may include modification or withdrawal of approval; and it is

FURTHER ORDERED, that pursuant to N.H. Admin Rules PUC 203.01, the company cause 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 December 18, 1991 and it is to be documented by affidavit filed with this office on or before January 6, 1992; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than the second day of January, 1992; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on January 6, 1992, unless the commission provides otherwise in a supplemental order prior to the effective date.

By order of the New Hampshire Public Utilities Commission this fourth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 85-182, DR 89-010, Order No. 20,082, 76 NH PUC 150, Mar. 11, 1991. [N.H.] Re New England Teleph. & Teleg. Co., Inc., DR 86-236, Order No. 18,753, 72 NH PUC 293, July 10, 1987.

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Re Apollo Communications, Inc.

Additional party: Bretton Woods Telephone Company

DE 91-187
Order No. 20,323

76 NH PUC 748

New Hampshire Public Utilities Commission

December 4, 1991

ORDER approving a settlement governing the provision of Public line access line service to customer-owned, coin-operated telephones.

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1. RATES, § 565

[N.H.] Customer-owned, coin-operated telephones — Access to local network — Public line access line service — Measured business service — Settlement — Local exchange carrier. p. 748.

BY THE COMMISSION:

ORDER

WHEREAS, on November 9, 1991, Apollo Communications, Inc. (Apollo) requested a waiver from N.H. Admin. Rule Puc 408.07 which requires Customer Owned Coin Operated Telephones (COCOTs) to obtain access to the telephone network by measured business service; and

WHEREAS, Apollo's request was based on the fact that access was to be provided by Bretton Woods Telephone Company (Bretton Woods) and Bretton Woods has no approved tariff offering measured business service; and

WHEREAS, by Order No. 20,306 (November 19, 1991) issued in this docket, the Commission denied Apollo's request for a waiver, but also directed Bretton Woods to file a measured business tariff within ten days; and

WHEREAS, Bretton Woods filed on November 21, 1991 a Motion to Intervene and a Motion for Rehearing and Suspension of Order No. 20,306; and

[1] WHEREAS, on November 26, 1991, Bretton Woods filed a proposed settlement, attached hereto as Attachment A, under which, *inter alia*, Bretton Woods would provide Public Line Access Line Service to COCOTs, including Apollo; and

WHEREAS, the Commission finds that the settlement proposed by Bretton Woods is consistent with the public good and would result in rates which are just and reasonable; it is

ORDERED, that the settlement filed on November 26, 1991, attached hereto as Attachment A, be and hereby is approved.

By order of the New Hampshire Public Utilities Commission this fourth day of December, 1991.

ATTACHMENT A

November 26, 1991

Wynn E. Arnold, Esquire
Executive Director & Secretary
Public Utilities Commission
8 Old Suncook Road, Building 1
Concord, New Hampshire 03301

Re: *Apollo Communications, Inc.*
DE 91-187

Dear Mr. Arnold:

This letter will set forth a proposed settlement which Apollo Communications, Inc. ("Apollo"), Bretton Woods Telephone Company ("BWTC") and the Staff are prepared to recommend to the Commission to resolve the above-referenced docket.

First, BWTC would provide Public Access Line Service ("PAL"), as referenced in the New England Telephone "NET") tariff, for Customer-owned, Coin-operated Telephones ("COCOTS"). BWTC would propose to use NET's tariff on PAL service for COCOTS as the basis for its tariff provisions, in order to accommodate Apollo and our customer, Bretton Woods Ski Area ("BWSA") and reach an

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expeditious resolution consistent with the opening of BWSA. Copies of the relevant tariff pages from NET's tariff are enclosed.

If this proposal is acceptable to the Commission, BWTC would submit its own tariff pages and be in a position to implement service by Wednesday, December 4, 1991.

Second, BWTC would study the results of PAL service for COCOTS, based on Apollo's experience during the months of December, 1991-June, 1992 which includes the winter months of operation and normal seasonal shutdown. BWTC would make the results of this study available to the Commission and the Staff. BWTC would propose meeting with the Staff in the summer of 1992 to discuss whether it would be appropriate for BWTC to pursue further studies on the effect of the implementation of measured business service for all entities in BWTC's service area.

BWTC is unwilling at this time to commit itself to a full incremental cost study relative to the issue of measured business service which could be time-consuming, expensive and of little public benefit. BWTC believes that further discussions of this issue, with the benefit of data derived from Apollo's experience through June, 1992, would better serve the public interest.

I understand that this matter is presently on the agenda of the PUC meeting for November 26, 1991 at 2:00 PM. Given time constraints, it was not possible to submit a formal stipulation for the Commission's review at that meeting. If the Commission approves this proposed settlement, the parties would be prepared to submit a Stipulation embodying this agreement, as well as BWTC's compliance tariff pages, as promptly as possible.

Thank you for your consideration.

Very truly yours,
Margaret H. Nelson

Part A - Section 8
Page 6
Original

PUBLIC TELEPHONE SERVICES

8.4. PUBLIC ACCESS LINE (PAL) SERVICE

8.4.1. GENERAL

A. PAL service for use with Customer-Owned Coin Operated Telephones (COCOT) is a class of main telephone exchange service offered to business customers for use by the general public or the combined use of the customer and his patrons.

B. PAL service is provided from the Telephone Company's central office up to and including the network interface located at the customer's premises or other customer-arranged location and is provided only where suitable central office facilities are available.

C. Curb-A-Charge Service that provides Originating Number Screening* and Terminating Number Screening may be provided at rates and charges specified in Part A, Section 6.

8.4.2. REGULATIONS

A. In addition to tariff regulations as for customer's with one-party measured business service, the customer must conform to any applicable rules and regulations set forth by the Public Utilities Commission.

B. The customer is responsible for all rates and charges originating from or accepted at this service.

C. A telephone number change may be required if a customer changes from Semipublic Telephone Service to PAL service.

D. Telephone equipment used with PAL service must be registered in compliance with Part 68 of the Federal Communications Commission's Registration Program.

E. All customer-owned coin operated telephones must have posted notices of telephone number, ownership, rates, repair reporting numbers, and operational instructions for local and toll calling.

F. The furnishing of PAL facilities is subject to the regulations for Construction Charges as specified in Part A, Section 2. In addition, when facilities are furnished to a location other than a customer premises charges based on full

cost of the installation apply.

8.4.3. RATES AND CHARGES

A. Public access line service rates and charges are *as for one-party measured business* main telephone exchange service in the exchange of connection including the associated message unit allowance or local usage allowance.

B. For business customers with two or more PAL lines, regulations as specified in Part A, Section 5, Paragraph 5.1.2.F. apply.

C. Additional message units or local usage are charged for as specified in Part A. Section 5 for the exchange of connection.

D. Charges for Message Telecommunications Service and for Directory Assistance Service apply to calls originated from PAL service as specified in Part A, Section 9 and 5 respectively for business exchange lines.

FOOTNOTES

*Directly-Dialed Screening is not available with PAL service.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Apollo Communications, DE 91-187, Order No. 20,306, 76 NH PUC 705, Nov. 19, 1991.

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NH.PUC*12/04/91*[27273]*76 NH PUC 750*New England Telephone and Telegraph Company, Inc.

[Go to End of 27273]

Re New England Telephone and Telegraph Company, Inc.

DR 91-164
Order No. 20,324

76 NH PUC 750

New Hampshire Public Utilities Commission

December 4, 1991

ORDER granting a petition by a telephone local exchange carrier (LEC) for approval of an amendment to a special contract to provide digital Centrex service to the State of New Hampshire, subject to review following the completion of an updated incremental cost study to be supplied by the LEC in 1993.

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1. RATES, § 566

[N.H.] Telecommunications — Centrex service — Special contracts — Cost recovery — Local exchange carrier. p. 751.

2. RATES, § 534

[N.H.] Telecommunications — Special factors — Competition — Pricing flexibility — Relaxed regulatory treatment — Centrex service — Local exchange carrier. p. 751.

3. PUBLIC UTILITIES, § 117

[N.H.] Telecommunications — Relaxed regulatory treatment — Emergingly competitive service — Centrex service — Local exchange carrier. p. 751.

4. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Centrex service — Relaxed regulatory treatment — Pricing flexibility — Competition from private branch exchanges — Local exchange carrier. p. 751.

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BY THE COMMISSION:

ORDER

On October 8, 1991, New England Telephone & Telegraph Company, Inc. (the company) petitioned for the New Hampshire Public Utilities Commission (commission) approval of an amendment to a special contract to provide the State of New Hampshire with digital Centrex service; and

[1-4] WHEREAS, under the terms of the amendment the contract provides for (1) flexibility for the state to pay off the commitment amount at any time during the course of the agreement, (2) clarification of the North State Street locations, (3) provision of greater flexibility in growth financing by including 72 and 84 month financing factors, (4) addition of Integrated Services Digital Network(ISDN) line rates, (5) addition of ISDN Network only terminations, and (6) provision for future upgrade to ISDN features for the Centrex system; and

WHEREAS, the accompanying cost support uses the same methodology provided in the New Hampshire Special Contract for Centrex service, which was approved by the commission on December 12, 1988, by Order No. 19,260, in Docket DR 88-172 (72 NHPUC 506); and

WHEREAS, the company has not yet filed a tariff, or the accompanying incremental cost support for ISDN Service in the state of New Hampshire; and

WHEREAS, the commission found in its Report and Order No. 18,753, dated July 10, 1987 (72 NHPUC 293) approving the tariffed Intellipath Digital Centrex Service filing, that while the company had met its burden of proof that the proposed rates covered the costs of the proposed

services the commission would reserve judgement on whether the methodology used in DR 86-236 was the most appropriate method for determining NET's costs of service until completion of the NHPUC investigation into NET's costs of service; and

WHEREAS, the company chose to omit a re-examination of the costs of Centrex service when submitting its incremental cost study in DR 89-010; and

WHEREAS, in its Report and Order No.20,082 dated March 11, 1991, the commission required that NET include an analysis of the incremental costs of Centrex service when filing its updated Incremental Cost study in 1993; and

WHEREAS, the State of New Hampshire has available competitive substitutes for Centrex service in the form of customer owned private branch exchanges; and

WHEREAS, it is likely that the service that is the subject of this special contract will fall under the heading of an emergingly competitive service which pursuant to Order No. 20,149, dated June 10, 1991, will receive more relaxed regulatory treatment and pricing flexibility; it is hereby

ORDERED *NISI*, that New England Telephone's Amendment to its Special Contract with the State of New Hampshire be and hereby is approved; and it is

FURTHER ORDERED, that the rates for this contract be subject to review following the completion of the updated NET Incremental Cost Study to be supplied in 1993; and it is

FURTHER ORDERED, that the parties are hereby put on notice that if review of the Incremental Cost Study and subsequent discovery indicates that the rates are below their incremental costs, the commission may review the contract and, after adequate opportunity for the parties to be heard, will take appropriate action which may include modification or withdrawal of approval; and it is

FURTHER ORDERED, that any subsequent ISDN tariff petition filed by New England Telephone Company be accompanied by service specific ISDN incremental costs that do not rest on any former dated Centrex cost analysis; and it is

FURTHER ORDERED, that pursuant to N.H. Admin Rules PUC 203.01, the company cause 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 December 16, 1991, and it is to be documented by affidavit filed with this office on or before January 6, 1992; and it is

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FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than the second day of January, 1992; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on January 6, 1992, unless the commission provides otherwise in a supplemental order prior to the effective date.

By order of the New Hampshire Public Utilities Commission this fourth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 85-182, DR 89-010, Order No. 20,082, 76 NH PUC 150, Mar. 11, 1991. [N.H.] Re New England Teleph. & Teleg. Co., DR 89-010, Order No. 20,149, 76 NH PUC 393, 123 PUR4th 289, June 10, 1991.

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NH.PUC*12/04/91*[27274]*76 NH PUC 753*LOV Water Company, Inc.

[Go to End of 27274]

Re LOV Water Company, Inc.

DE 89-033
Order No. 20,326

76 NH PUC 753

New Hampshire Public Utilities Commission

December 4, 1991

ORDER granting a franchise to operate as a public water utility and establishing temporary rates.

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1. CERTIFICATES, § 76

[N.H.] Service franchise — Factors affecting grant — Fitness of applicant — Consent of municipal government — Environmental approvals — Water public utility. p. 754.

2. CERTIFICATES, § 125

[N.H.] Water public utility — Franchise — Factors affecting grant — Fitness of applicant — Consent of municipal government — Environmental approvals — Water public utility. p. 754.

3. RATES, § 595

[N.H.] Water — Temporary rates — New franchise — Effective date. p. 755.

4. RATES, § 630

[N.H.] Temporary rates — New franchise — Effective date. p. 755.

5. RATES, § 249

[N.H.] Effective date — New franchise — Temporary rates. p. 755.

APPEARANCES: Dennis A. Sands, President, on behalf of LOV Water Company, Inc. and Eugene F. Sullivan III, Esquire on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

On February 21, 1989 LOV Water Company, Inc. (the Company) filed a petition to provide water service in a limited area in the Town of Freedom, New Hampshire and proceeded to establish rates pursuant to RSA Chapter 378. On March 23, 1989, the Commission issued an Order of Notice scheduling a prehearing conference for April 25, 1989 to establish a procedural schedule and to address matters of intervention.

At the prehearing conference on April 25, 1989 the parties stipulated to a procedural schedule. The matter of a hearing on the temporary rates was not addressed at the prehearing

conference in that the Company had not submitted a temporary rate request. Subsequent to the prehearing conference, the schedule was amended a number of times and by letter dated August 26, 1991 the Commission approved the current procedural schedule governing the pendency of this case. At the temporary rate hearing held at the Commission offices at 8 Old Suncook Road, Concord, New Hampshire on September 12, 1991, the Company testified that it had received the prerequisite approval in letters from the Town of Freedom, Water Supply Pollution Control Division and the Water Resource Division of the Department of Environmental Services. Mr. Dennis A. Sands, President of the Company, testified that he was the operator of LOV Water Company, Inc., certified by the Water Supply and Pollution Control Division of the Department of Environmental Services. This water system has been in operation since 1971.

In accordance with instructions from the Commission, the Company has not been charging rates to any of its customers for approximately one and one half years. The Company agreed to a temporary annual revenue requirement of ten thousand ninety-seven dollars ($10,097.00) per year, to be billed annually in arrears. This rate level is based on operation and maintenance expenses as set forth in Attachment 1 of the stipulated Agreement attached to this report.

II. *Commission Analysis*

A. *Franchise*

[1, 2] RSA 374:22 and RSA 374:26 provide that the Commission shall not issue a franchise unless it be for the public good. The public good standard requires the petitioning utility to demonstrate, *inter alia*, the legal, technical, managerial and financial expertise to operate a public water utility. We also consider the position of the municipality in which the franchise is located. *See*, *Re Pennichuck Water Works Inc.*, 73, NHPUC 279 (1988). In addition, RSA 374:22, III specifically requires approval of the Department of Environmental Services, Water Supply and Pollution Control Division (WSPC) and Water Resource Division (Water Resources).

LOV Water Company, Inc. has supplied the Commission with the required aforementioned documentation indicating support of a grant of a franchise. Regarding the legal, technical,

managerial and financial expertise of the petitioner to own and operate a public water utility, the Commission notes that LOV Water Company, Inc. has been providing water service to its customers, which have grown to 201, since 1971 without complaint or incident.

Based on these facts, the Commission will grant the requested franchise in that area of Freedom known as Lake Ossipee Village, LOV Water Company, Inc., and more particularly described as follows:

Beginning at a point at the intersection of Bennett Road (also known as the Lake Ossipee Road or the Cushing Corner Road) and Berry Bay Road (also known as the Lake Ossipee Road) and running in a general southerly and then easterly direction along Berry Bay Road a distance of 2,919 feet, more or less to a point at land of McClure; thence turning and running in a general northerly direction along land of said McClure approximately 875 feet to a point; thence turning and running in a easterly direction along land of said McClure approximately 300 feet to a point; thence turning and running in a southerly direction along land of McClure approximately 875 feet to Berry Bay Road; thence turning and running in a general easterly direction along Berry Bay Road a distance of 1,027 feet more or less to land now or formerly of Percy Taylor; thence turning and running in a northerly direction along land of

Taylor a distance of approximately 2,721 feet to the southerly side of Bennett Road; thence turning and running in a westerly direction along Bennett Road a distance of approximately 1,326 feet to a point; thence turning and running in a northerly direction across Bennett Road a distance of approximately 50 feet to a point; thence turning and running in a northerly direction approximately 650 feet to a point; thence turning and running in an easterly direction a distance of approximately 1,354 feet to a point at land now or formerly of Lois Taylor; thence turning and running in a northerly direction along land of Taylor a distance of approximately 1,543 feet to a point; thence turning and running in an easterly direction a distance of 531 feet to a point; thence turning and running in a general northerly direction a distance of 2,692 feet to a point; thence turning and running in a general westerly direction a distance of 1,747 feet to a point; thence turning and running in a general southerly direction a distance of 1,625 feet to a point; thence turning and running in a general westerly direction a distance of approximately 358 feet to a point at land now or formerly of Pike; thence turning and running in a general north-westerly direction along land now or formerly of Pike a distance of 989 feet, more or less, to a point at the East Danforth Pond Road Extension; thence turning and running in a general westerly and southerly direction along the East Danforth Pond Road Extension and along the East Danforth Pond Road a distance of approximately 5,200 feet to Bennett Road; thence turning and running in a general southerly direction a distance of 50 feet across Bennett Road to the point of beginning.

B. *Temporary Rates*

[3-5] In regard to the request for temporary rates pursuant to RSA 378:27, Staff, and the Petitioner stipulated (see attached) to a flat fee of fifty dollars ($50.00) per year per customer, to be billed in arrears, effective the date of issuance of this order.

The temporary rates are based on operation and maintenance costs and are subject to

recoupment or refund at the time of a permanent rate order. The Commission will require a reconciliation on any over or under collection of rates for service rendered beginning the effective date of this temporary rate order. See RSA 378:29 and RSA 378:30. The Commission, therefore, approves the stipulated Agreement as the result appears to be just and reasonable.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report and stipulated Agreement which is made a part hereof; it is hereby

ORDERED, that LOV Water Company, Inc. be, and hereby is, awarded a franchise to operate a business as a public water utility in that area of Freedom, New Hampshire described in the foregoing report; and it is

FURTHER ORDERED, that LOV Water Company, Inc. is hereby granted temporary rates in the amount of fifty dollars ($50.00) per year annually, and in arrears, effective the date of this order; and it is

FURTHER ORDERED, that any over or under reconciliation between temporary and permanent rates will be for service rendered on or after the effective date of this temporary rate order; and it is

FURTHER ORDERED, that a copy of this report and order be served to the Town of Freedom by way of first class mail to provide said municipality with notice of this order.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1991.

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NH.PUC*12/05/91*[27275]*76 NH PUC 752*MCI Telecommunications Corporation

[Go to End of 27275]

Re MCI Telecommunications Corporation

DR 91-199
Order No. 20,325

76 NH PUC 752

New Hampshire Public Utilities Commission

December 5, 1991

ORDER authorizing a telephone interexchange carrier to provide directory assistance service at a rate of $0.58 per call.

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1. SERVICE, § 449

[N.H.] Telecommunications — Directory assistance — Interexchange carrier. p. 752.

2. RATES, § 533

[N.H.] Telecommunications — Directory assistance — Interexchange carrier. p. 752.

3. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Directory assistance — Interexchange carrier. p. 752.

BY THE COMMISSION:

ORDER

[1-3] On November 14, 1991, MCI Telecommunications Corporation filed a petition seeking to add Directory Assistance service to MCI's Preferred Product offering at a rate of $0.64 per call, effective January 1, 1992; and

WHEREAS, on November 20, 1991, MCI withdrew the November 14, tariff filing, and

WHEREAS, on November 21, MCI resubmitted its Directory Assistance filing to incorporate a rate of $0.58 per call; and

WHEREAS, the New Hampshire Public Utilities Commission is interested in encouraging the emergence of competition in the intraLATA toll market on an interim basis; it is hereby

ORDERED NISI, that MCI Telecommunications Corporation, be and hereby is authorized to implement the following tariff changes:

MCI Telecommunications Corp NHPUC Tariff No. 1

Third Revised Page No. 1
Second Revised Page No. 3.1
Second Revised Page No. 59

and it is

FURTHER ORDERED, that Directory Assistance service for the MCI Preferred Product is to be offered subject to the conditions as specified in NHPUC Order No. 20,041, dated January 21, 1991, in Docket DE 90-108; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, the company cause 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 December 16, 1991, and is to be documented by affidavit filed with this office on or before the sixth day of January, 1992; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than the second day of January 1992; and it is

FURTHER ORDERED, that this Order Nisi will be effective on January 6, 1991, unless the

commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this fifth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re MCI Telecommunications Corp., DE 90-108, Order No. 20,041, 76 NH PUC 59, Jan. 21, 1991.

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NH.PUC*12/06/91*[27276]*76 NH PUC 755*Deer Cove Water Company, Inc.

[Go to End of 27276]

Re Deer Cove Water Company, Inc.

DE 90-016
Order No. 20,327

76 NH PUC 755

New Hampshire Public Utilities Commission

December 6, 1991

ORDER adopting a stipulation establishing permanent rates for water utility service. The utility is authorized to charge permanent rates one year in arrears based on the fact that the procedural schedule in its rate case had been delayed through no fault of its own. Commission rejects proposal by the utility to bill customers annually in arrears finding that mere ease of administration does not overcome the burden to customers that would result from receiving only one annual bill. The utility is directed to bill quarterly in arrears.

Page 755

1. RATES, § 595

[N.H.] Water — Permanent rates — Effective date — Billing period — Stipulation. p. 757.

2. RATES, § 250

[N.H.] Effective date — Retroactive application — Grounds for permitting — Procedural delays — Stipulation — Water utility. p. 757.

3. PAYMENT, § 20

[N.H.] Billing periods — Factors considered — Ease of administration — Burden on customers — Water utility. p. 757.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On January 19, 1990, Deer Cove Water Company, Inc. ("Company") filed a petition to provide water service to a limited area of the Town of Ossipee and implicitly to establish rates therefore pursuant to RSA Chapter 378. On April 10, 1990, the Commission issued an order of notice scheduling a prehearing conference for July 20, 1990. On October 9, 1990, the Commission issued a revised order of notice providing notice to the public of the Company's intent to set permanent rates, to set a prehearing conference to establish a procedural schedule and address motions to intervene.

At the November 5, 1990 prehearing conference Staff and the company stipulated to a procedural schedule. On January 9, 1991 the Company filed its rate proposal. The Commission held a hearing on January 9, 1991 on the issues of a franchise and temporary rates. The Company stipulated to a rate level of $181.54 per year to be billed quarterly in arrears.

By Report and Order No. 20,242 dated September 11, 1991, Deer Cove Water Company, Inc. was granted a franchise to conduct business as a public water utility in a limited area of Ossipee, New Hampshire and was granted temporary rates in the amount of $181.54 to be billed quarterly in arrears.

On October 9, 1991, a hearing on the merits was held and a stipulation between Staff and the company was presented to the Commission which is attached hereto as Appendix A.

II. *Positions of the Parties*

The Staff and the Company stipulated to the following rate components:

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

Rate Base	$16,594
Rate of Return on Equity	10.65%
Capital Structure	100% Equity
Operation and Maintenance Expense	$1,105
Overall Revenue Requirement (Adjusted to full build out)	$12,345

The resulting rates are $233 per year per customer.

As part of the stipulation, Staff and the Company agreed that the Company would be able to charge permanent rates one year in arrears from the date of the issuance of an order approving the stipulation. Staff stipulated to this unusual condition based on the fact that the procedural schedule in this case was delayed on numerous occasions through no fault of the company. The delays were due to Staff's participation in *Re Southern New Hampshire Water Company, Inc.*, DR 89-224. It is Staff's belief that the Company should not be penalized for delays which it did

not occasion and were solely due to Staff's other obligations.

The only unresolved issue left in the stipulation was one of rate design. The Company seeks to bill annually in arrears and the Staff proposes that the Company bill quarterly and arrears. The Company based its position on ease of administration. The Staff based its position on budgetary concerns for the customers of the utility.

Page 756

III. *Commission Analysis*

[1-3] The first issue the Commission will address is the unresolved issue relative to rate design. The Commission adopts the position of the hearings examiner in this case; that is, the Commission does not believe that mere ease of administration is sufficient to overcome the burden to customers of one annual bill.

In regard to the stipulation, the Commission finds the rates established therein result in just and reasonable rates on the used and useful property of the utility. Given the fact that the Company has not been allowed to charge rates during the past year and that that delay was due to Staff's obligations in Docket DR 89-224, we will approve the stipulated date for implementation of rates; *i.e.*, the Company may bill its customers one year in arrears from the date of this order. *See*, *Appeal of Pennichuck Water Works, Inc.*, 120 N.H. 562 (1980). We note, however, that although the Commission has the constitutional right to set rates in this manner, it is not our policy to do so and we do so here only because of extraordinary circumstances.

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 attached hereto as Appendix A is accepted; and it is

FURTHER ORDERED, that the Company shall bill its customers quarterly in arrears after its initial billing.

By order of the Public Utilities Commission of New Hampshire this sixth day of December, 1991.

APPENDIX A

STIPULATION AGREEMENT

I. *Procedural Background*

On January 19, 1990, Deer Cove Water Company, Inc. ("Company") filed a petition to provide water service to a limited area of the Town of Ossipee and implicitly to establish rates therefore pursuant to RSA Chapter 378. On April 10, 1990, the Commission issued an order of notice scheduling a prehearing conference for July 20, 1990. On October 9, 1990, the Commission issued a revised order of notice providing notice to the public of the Company's intent to set permanent rates and to set a prehearing conference to establish a procedural schedule and address motions to intervene.

At the November 5, 1990 conference Staff and the company stipulated to a procedural schedule. On January 9, 1991 the Company filed its rate proposal. The Commission held a hearing on January 9, 1991 on the issues of franchise and temporary rates. The Company stipulated to a rate level of $181.54 per year to be billed quarterly in arrears. By Report and Order No. 20,242 dated September 11, 1991, Deer Cove Water Company, Inc. was granted a franchise to conduct business as a public water utility in a limited area of Ossipee, New Hampshire and was granted temporary rates in the amount of $181.54 to be billed quarterly in arrears.

II. *Effective Date of Permanent Rates*

Staff and the Company stipulated that the Company would be able to charge permanent rates one year in arrears from the date of the issuance of an order approving this stipulation. Staff entered into this stipulation because the procedural schedule in this case was delayed on numerous occasions through no fault of the Company. The delays were due to Staff's participation in the Southern New Hampshire rate case. Staff does not believe that the Company should be penalized via the delays due to its other obligations.

III. *Rate of Return*

Staff and the Company stipulated to a rate of return of 10.65%.

IV. *Capital Structure*

Staff and the Company stipulated that the Company's capital structure consisted totally of equity.

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V. *Rate Base*

The Staff and the Company stipulated to a rate base of $16,594.

VI. *Operating and Maintenance Expense*

The Staff and the Company stipulated to operation and maintenance expenses of $1,105. (???).

VII. *Overall Revenue Requirement*

Staff and the Company stipulated to an overall revenue requirement of $12,345 reflected in the schedules attached hereto.

VIII. *Customer Charge*

The resulting charge per customer per year is $233 based on the potential build out of the development.

IX. *Unresolved Issue, Rate Design*

Staff and the Company disagree as to the billing periods. The Company seeks to bill annually in arrears and Staff proposes that the Company bill quarterly in arrears. The Company bases its position on ease of administration. Staff bases its position on budgetary concerns for the customers of the utility.

X. *CONDITIONS*

I. This agreement is expressly conditioned upon the Commission's acceptance of all of its provisions without change or condition and if the Commission does not accept it in its entirety without change or condition the agreement may be deemed to be null and void and without effect and shall not constitute any part of the record in this proceeding nor be used for any other purpose upon the call of the Company or Staff.

II. The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement discussions relating thereto are and shall be privileged and shall be without prejudice of position of any party or participant representing any such offer or participating in any such discussion.

III. All of the paragraphs set forth above in this agreement are conditioned upon one another and shall be ineffective unless approved in their entirety.

IN WITNESS WHEREOF, the Company and Staff have caused this agreement to be duly executed in their respective names, by their agents, each being fully authorized to do so on behalf of their principle.

DEER COVE WATER COMPANY, INC.
BY: Dennis Sands

Dated 10-30-91

STAFF OF THE NEW HAMPSHIRE
UTILITIES COMMISSION
BY: Eugene E. Sullivan, III
Senior Hearings Examiner

Dated: 12-01-91

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re U.S. Sprint Communications Co. of New Hampshire, DE 90-127, Order No. 20,042, 76 NH PUC 61, Jan. 21, 1991.

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NH.PUC*12/09/91*[27277]*76 NH PUC 759*Union Telephone Company

[Go to End of 27277]

Re Union Telephone Company

DR 90-220
Order No. 20,328

76 NH PUC 759

New Hampshire Public Utilities Commission

December 9, 1991

ORDER approving a rate case settlement that requires an independent telephone company to reduce rates for basic service and intrastate toll service. The stipulation also requires the refund of temporary rates collected and the disallowance of certain expenses. Commission notes that all parties agreed that the stipulation would not disturb the toll settlements process.

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1. RATES, § 532

[N.H.] Telecommunications — Settlement — Independent telephone company. p. 760.

2. RATES, § 553

[N.H.] Telecommunications — Basic service — Rate reduction — Settlement — Independent telephone company. p. 760.

3. RATES, § 582

[N.H.] Telecommunications — Intrastate toll service — Rate reduction — Settlement — Independent telephone company. p. 760.

4. TELEPHONES, § 14

[N.H.] Connecting companies — Division of revenues — Toll settlements process — Independent telephone company — Discussion. p. 760.

5. REPARATION, § 17

[N.H.] Grounds for allowing — Overcollections under temporary rates — Settlement — Independent telephone company. p. 760.

APPEARANCES: Melinda Butler for Union Telephone Company; John E. Reilly, Esq. for New England Telephone and Telegraph Company; McLane, Graf, Raulerson and Middleton by Steven A. Camerino, Esq. for Wilton Telephone Company; Amy Ignatius, Esq. for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

By Order of Notice dated December 14, 1990, the New Hampshire Public Utilities Commission (commission) opened docket DR 90-220 to investigate the earnings of Union Telephone Company (Union). Wilton Telephone Company (Wilton) and New England Telephone and Telegraph Company (NET) were granted limited intervenor status by Order No. 20,075. By the terms of their intervention, Wilton and NET could not participate in or object to settlement agreements between Union and commission staff (staff) unless the terms of any agreement directly affected the interests of Wilton or NET.

On January 30, 1991, Union filed written testimony in support of temporary rates, pursuant to RSA 378:27, requesting that the temporary rates be set at current levels. After review of the testimony submitted by the parties in the case, the commission, by Order No. 20,075, granted the temporary rates requested by Union.

On May 20, 1991, Union filed written testimony in support of its analysis that it was experiencing a revenue deficiency and that a permanent rate increase might be appropriate, if the commission so concluded. On August 13, 1991, the staff filed written testimony which concluded that Union was not facing a revenue deficiency, but instead was earning well in excess of its last authorized rate of return. The staff further recommended disallowance of many of Union's expenses.

At a hearing on November 20, 1991, Union and staff presented to the commission a Rate Case Stipulation Agreement with

Page 759

supporting schedules regarding rate case matters and a Stipulation and Agreement regarding rate design matters (collectively, settlement agreement which is attached hereto as Appendix A). Melinda Butler and James Sanborn on behalf of Union and ChristiAne G. Mason on behalf of staff testified in support of the settlement agreement.

II. POSITION OF THE PARTIES

A. *Union Telephone Company*

Union argued that the settlement agreement approximates the resolution which would have been reached after litigation, while sparing it and its ratepayers the costs associated with that litigation. Union acknowledged that the stipulated rate reduction for basic service, discount for intrastate toll charges, refund of temporary rates collected, and disallowance for ratemaking purposes of certain expenses are appropriate. Union also believes that the revenue adjustments, while significant, will maintain its financial viability.

Union also argued that the intrastate toll reduction stipulated for Union subscribers will not disturb the toll settlements process between Union and NET. NET will continue to be reimbursed in manner and amount as it has been in the past. Union subscribers, however, will receive a discount in their intrastate toll charges. Union agreed to keep the staff informed as to the details of all reductions and refunds.

Union further agreed as part of the settlement to comply fully with FCC Part 64 (Part X) from this point forward, unless the commission should order otherwise.

As a condition of the rate design Stipulation and Agreement, Union agreed to file with the commission both incremental and embedded cost studies within one year of the date of this order.

B. *Commission Staff*

Staff contended that the agreed upon settlement adjustments approximate the likely results of litigation, given certain adjustments to the staff's audit report and other adjustments made to revenue and expenses after Union's production of necessary documentation. The staff believes

that the reductions in rates and toll charges and the refund of temporary rates constitute significant benefits to Union's ratepayers and result in just and reasonable rates. It is also staff's belief that the intrastate toll reduction will not affect the toll settlements process between Union and NET.

Staff also agreed that Union's agreement to comply fully with the FCC Part 64 (Part X) methodology in the future, unless otherwise ordered by the commission, is an important step in bringing it into the same position as other independent telephone companies. Further, in staff's view the stipulated cost of capital and adjustments for ratemaking purposes of certain expenses are consistent with the treatment of other telephone utilities.

C. *NET*

NET does not object to the settlement agreement, based on its belief that the agreement in no way disturbs the terms of the toll settlements process between Union and NET.

D. *Wilton*

Wilton was made aware of the settlement terms but did not appear at the hearing or otherwise make its position known. The parties agree that the terms of the settlement agreement do not directly affect Wilton's interests.

III. COMMISSION ANALYSIS

[1-5] Having reviewed the settlement agreement and the testimony at the November 20, 1991 hearing, we are persuaded that the terms of the settlement result in just and reasonable rates and are an acceptable resolution of the matters raised in this docket. We determined that commission investigation was necessary based on Union's filed reports of high earnings. We find that the significant reduction in rates and toll charges stipulated in the settlement agreement is an appropriate resolution of this issue. We note that all parties agree that the toll settlements process between Union and NET

will not be disturbed as a result of this settlement.

Further, it is critical that Union fully comply with the terms of FCC Part 64 (Part X) in the future, as do other independent telephone companies.

The stipulated cost of capital and disallowances for ratemaking purposes of certain Union expenses are appropriate and consistent with other commission rulings.

Finally, it is important for the commission to review Union's plan for further developing and improving its telecommunications infrastructure during the coming ten years. We made this request of Union during the course of the November 20, 1991 hearing. Union represented that it could provide such information to the commission within 60 days of the date of the final order in 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 Rate Case Stipulation Agreement and the Stipulation and Agreement, entered into between Union and staff (and attached hereto as Appendix A) are hereby accepted; and it is

FURTHER ORDERED, that all terms of the Rate Case Stipulation Agreement (including supporting schedules) and the Stipulation and Agreement are incorporated by reference and made a part of this order; and it is

FURTHER ORDERED, that Union shall file within 60 days of the date of this order a description of its plans for further developing and improving its telecommunications infrastructure during the coming ten years.

By order of the New Hampshire Public Utilities Commission this ninth day of December, 1991.

APPENDIX A

RATE CASE STIPULATION AGREEMENT

This Agreement is entered into this 15th day of November, 1991, by and between Union Telephone Company (Union or the company) and the staff of the New Hampshire Public Utilities Commission (staff and commission, respectively), with the intent of resolving all of the issues that were raised or could have been raised by the company and staff concerning revenues and rates in the above-captioned case.

ARTICLE I — INTRODUCTION

1.0 This proceeding is an outgrowth of the commission's analysis of earnings by a number of independent telephone companies, including Union, and the commission's directive in its meeting of December 3, 1990, and pursuant to its Order of Notice dated December 14, 1990, that the earnings of the company be further investigated.

1.1 Wilton Telephone Company (Wilton) and New England Telephone (NET) Company sought and were granted intervention in the case. As delineated in Order No. 20,075, however, Wilton and NET's interventions were conditioned on them not contesting or challenging stipulations or agreements reached between Union and staff.

1.2 On January 30, 1991, the company filed written testimony in support of temporary rates, pursuant to RSA 378:27, requesting that the temporary rates be set at current levels. After review of the testimony submitted by the parties in the case, the commission, by Order No. 20,075, dated March 6, 1991, granted the temporary rates requested by Union.

1.3 On May 20, 1991 the company filed written testimony in support of its analysis that the company was experiencing a revenue deficiency and that a permanent rate increase might be appropriate, if the commission so concluded. Staff, on August 13, 1991 filed written testimony which concluded that Union was not facing a revenue deficiency but instead was earning well in excess of its last authorized rate of return and further recommended disallowance of many of its expenses. The parties have been engaged in extensive discovery in anticipation of litigation of all rate case issues on November 19, 20 and 21, 1991.

1.4 On November 12, 13 and 14, 1991,

Union and staff have discussed all rate issues in order to explore the possibility of reaching agreement on some or all of the issues in the case. This Agreement is the result of staff's audit report, the company's rate filing, the testimony, exhibits, data requests and responses produced by the parties and the settlement discussions between the company and staff.

1.5 Union and staff are prepared to present testimony to the commission in support of this Agreement at the hearing scheduled for November 19, 1991.

ARTICLE II — COMPONENTS OF AGREEMENT

2.0 *Cost of Capital* Staff and the company agree on an overall cost of capital of 10.34%, composed of the following capital structure and component cost rates:

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

	Component Ratio	Cost Rate	Weighted Average Cost of Capital
Total Long Term Debt	0.2835	11.03	3.13
Total Common Equity	0.7165	10.07	7.21
Total	1.0000		10.34

where the cost rate of long term debt was determined using an embedded actual annual cost methodology, and the cost of equity, determined using the standard discounted cash flow methodology, is 10.07%.

2.1 *Rate Base* The company agrees to utilize Union's 13 month average rate base as presented in Staff testimony. The rate base has been partially adjusted for PART 64, deregulated customer premise wire and capitalized items. The agreed upon rate base is presented at Exhibit A, Schedule 2 in the amount of $5,597,365.

2.2 *PART 64 Allocation* Staff and Union agree that there must be significant recognition of all nonregulated activities which must be isolated from regulated activities. Staff and the company agree, therefore on an adjustment which recognizes a substantial portion of the amount which would have been reflected utilizing the standard PART 64 allocation. The company further agrees to fully use FCC PART 64 cost allocation procedures for intrastate purposes until such time as any methodology other than that prescribed by PART 64 may be approved by the commission.

2.3 *Depreciation* Staff and the company agree that the currently authorized depreciation rate using a 15 year life for digital electronic switching will be used for the purposes of determination of the proper expense level.

2.4 *Rate Case Expenses* Staff and the company agree that rate case expenses in the amount of $50,000 will be included and amortized over a three year period.

2.5 *Charitable contributions* Staff and the company agree that charitable contributions shall be excluded for ratemaking purposes.

2.6 *Spousal travel* It is agreed that expenses incurred by the company for spousal travel will be removed from the above the line expenses of the company.

2.7 *Employee telephone reimbursements* Staff and the company agree that the expenses incurred by the company for reimbursement of telephone service for certain employees and former employees are disallowed.

2.8 *Lobbying expenses* It is agreed that the lobbying expenses incurred by the company during the test year will be removed for ratemaking purposes.

2.9 *Bonus* Staff and the company agree that the bonus paid to the company President will be adjusted for ratemaking purposes downward by $15,554.

2.10 *Schedules* Staff and the company agree to the schedules attached herewith as Exhibit A, which reflect all adjustments made pursuant to the terms of this Agreement and which shall supersede all schedules previously filed in this case.

ARTICLE III — IMPLEMENTATION
OF AGREEMENT

3.0 *Tariff Pages* Staff and the company

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agree that no later than November 26, 1991, Union will file revised tariffs for lower local service rates for Union subscribers and revised tariffs for intrastate toll which concur with NET's tariffs and which reflect Union's reduction to its customers for intrastate toll charges which result as a consequence of this Agreement.

3.1 *Rate Design and Toll Settlements* It is agreed that the adjustments stipulated to herein result in a substantial decrease in the revenues of the company. It is further agreed that the revenue decrease shall be applied across the board to all Union tariffed rates, including intrastate toll. Future intrastate toll settlements (payments and receipts) shall be unchanged by this Agreement.

3.2 *Refund* Staff and the company agree that the temporary rates authorized by the commission during the pendency of this case result in the need for refund of excess amounts collected. It is agreed that the refund amount shall have interest applied using the rate as stated in the Rules and Regulations at Puc 403.04 (b) (2). It is further agreed that the refund plus interest shall be applied across the board for all Union tariffed rates, including intrastate toll, over a four month period by means of a credit to customers.

ARTICLE IV — CONDITIONS

4.0 The making of this Agreement shall not be deemed in any respect to constitute an admission by any party but instead is entered into for the purpose of resolving matters efficiently and without resort to litigation.

4.1 Signed concurrently with this Agreement is a Stipulation between staff and the company, attached herewith as Exhibit B. The Stipulation includes, *inter alia*, a commitment on the part of the company to produce a cost of service study based on an embedded cost methodology and a

cost of service study based on an incremental cost methodology within one year of the commission's final approval of this Agreement or resolution of this case by final order.

4.2 This Agreement is expressly conditioned upon the commission's acceptance of all of its provisions, without change or condition. If the commission does not accept it in its entirety, the Agreement shall be deemed to be null and void and without effect, and shall not constitute any part of the record in the proceeding and shall not be used for any other purpose.

IN WITNESS WHEREOF, Union Telephone Company and the Public Utilities Commission staff have caused this Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so.

UNION TELEPHONE COMPANY

Dated: 11/15/91

PUBLIC UTILITIES COMMISSION
STAFF

Dated: 11/15/91

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

Exhibit A

Union Telephone Company
Computation of Revenue Deficiency
Test Year Ending 12/31/90
Schedule 1

(1) Rate Base	5597365
(2) Cost of Capital	10.34%
(3) Allowable Return (1 × 2)	578824
(4) Net Operating Income	721840
(5) Deficiency (3 - 4)	-143016
(6) Net to Gross Multiplier	1.6469
(7) Revenue Deficiency (5 × 6)	-235534
(8) Actual Rate of Return (4/1)	12.90%

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[Graphic Not Displayed Here]

Page 764

[Graphic Not Displayed Here]

Page 765

[Graphic Not Displayed Here]

Page 766

[Graphic Not Displayed Here]

Page 767

[Graphic Not Displayed Here]

Exhibit B

STIPULATION AND AGREEMENT
BETWEEN NHPUC STAFF AND
UNION TELEPHONE COMPANY

Union Telephone Company (Union) and the Staff of the New Hampshire Public Utilities Commission (Staff) stipulate and agree as follows:

1. On December 10, 1990 the New Hampshire Public Utilities Commission issued an ORDER OF NOTICE to open this docket to investigate the reasonableness of rates charged by Union under its tariff.

2. The parties to this matter are Union, Staff of the Commission (Staff), New England Telephone Company (New England) and Wilton Telephone Company (Wilton).

3. Under the terms of the interventions of New England and Wilton, they may not object to or oppose stipulations and agreements between the Staff and Union.

4. Union shall not provide a fully allocated cost of service study as a part of this proceeding.

5. Union shall participate in the Staff's development of a manual designed to apply the incremental cost methodology to small independent telephone companies.

6. Within one year after the completion of DR 90-220 via the issuance of a final order,

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Union shall file a cost of service study based on an embedded cost methodology and a cost of service study based upon an incremental cost methodology. Consideration of any rate design changes for Union based upon these studies will be in a Union rate case subsequent to the filing of the studies unless otherwise requested by the Commission, Staff or Union.

7. For any new service that needs a tariff prior to the completion of the studies referred to in paragraph 6, Staff shall develop a position supporting an interim rate based upon comparable components in the Union current tariff or, the best other information that is available prior to completion of the cost of service studies described in paragraph 6. Any interim rates in effect as a result of this process shall be adjusted, if appropriate, after the studies referred to in paragraph 6 have been analyzed, at which time permanent rates may be established.

8. If any tariffed rate changes are ordered as a result of the proceedings in this docket, all

Union tariffed rates, including toll rates, shall be changed on a proportional basis, with the exception noted herein. For example, if the exception does not apply and revenues from tariffed rates are to change by 1%, each tariffed rate would change by 1%. As an exception to the rule, Staff and Union reserve the right to agree to exceptions to the foregoing, whereby certain rates would not change due to the administrative cost or other problems involved in making the rate change. Based on information available at this time, Union and Staff believe that this rate design will provide reasonable results.

9. The Staff supports the draft language of the Union pay-per-call blocking service tariff provided by Union, pursuant to PUC Rule No. 410 and attached hereto as Exhibit A. The Staff, however, reserves its right to evaluate the language to be included in the interim tariff for this service upon Union's submission of any supporting documentation for this service. The interim tariff for this service shall be reviewed once the studies referred to in paragraph 6 have been analyzed, at which point a permanent tariff may be established.

10. Staff and Union also recommend that the Commission issue an order within 30 days of the filing of this stipulation adopting this stipulation as a resolution of all rate design issues in this proceeding — thereby clarifying what issues, if any, remain in this proceeding.

11. The parties hereto regard stipulations and agreements as integral and necessary parts of the regulatory process. This Stipulation and Agreement contains terms that, except for paragraph 10, are interdependent with the others and essential in their own right to the signing of this Stipulation and Agreement. If any modification is made to the terms (other than paragraph 10) of this Stipulation and Agreement, the signatory parties must each be given the right to be placed in the position in this proceeding that they were in before the Stipulation and Agreement was entered into.

Respectfully submitted,

Staff of the New Hampshire
Public Utilities Commission

By: Amy L. Ignatius, Esq.
General Counsel

Dated: 11/15/91

Union Telephone Company

By: Richard P. Thayer

Dated: 11/15/91

Exhibit A of Exhibit B

NHPUC No. 7
Part II
Section 6
Page 1
Original

Union Telephone Company

SELECTIVE BLOCKING SERVICE

I. GENERAL

A. Selective Blocking Service is an arrangement that allows customers to prevent use of their telephones for calls placed to information services with a 900 area code. This arrangement recognizes and blocks any attempt to dial a number with a 900 area code.

B. Selective Blocking is available to one-party residence service customers and single line business service customers, is provided only from Stored Program Control (SPC) central offices and is provided only when sufficient facilities exist.

C. This arrangement will be available upon the request of the first customer.

D. For a 90 day period customer(s) will be able to have Selective Blocking Service activated free of charge, after this period the applicable rates and charges as detailed in Section II. below will apply.

E. After the 90 day period any request for new basic exchange service will have a 60 day period from the date of installation to have Selective Blocking Service activated free of charge, after this period the applicable rates and charges as detailed in Section II. below will apply.

II. RATES AND CHARGES

Service Charges as specified in Part VI do not apply to the provisioning of Selective Blocking Service. No charge applies for the initial activation of a customer's blocking arrangement. Nonrecurring charges as specified below apply to all subsequent charges in Selective Blocking Service.

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

	Nonrecurring Charges	
	Residence	*Business*
Selective Blocking Service changes per line equipped, per request ...	$8.00	$8.00

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Union Teleph. Co., DR 90-220, Order No. 20,075, 76 NH PUC 131, Mar. 6, 1991.

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NH.PUC*12/10/91*[27278]*76 NH PUC 770*Generic Discounted Rates Docket

[Go to End of 27278]

DR 91-172
Order No. 20,329

76 NH PUC 770

New Hampshire Public Utilities Commission

December 10, 1991

ORDER establishing the scope of a generic investigation of policy considerations and procedural questions raised by discounted utility rates. Commission limits scope to firm contracts for electric, gas, and water utility service.

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1. RATES, § 211

[N.H.] Special contract rates — Discounts — Generic investigation — Scope. p. 771.

2. RATES, § 124

[N.H.] Reasonableness — Discount rates — Generic investigation — Scope. p. 771.

APPEARANCES: Thomas B. Getz, Esq. for Public Service Company of New Hampshire, Inc.; Rath, Young, Pignatelli and Oyer by Eve H. Oyer, Esq. for Northeast Utilities Service Company, Inc.; LeBoeuf, Lamb, Leiby and MacRae by Scott J. Mueller, Esq. for Northern Utilities, Inc.; LeBoeuf, Lamb, Leiby and MacRae by Paul B. Dexter, Esq. for Concord Electric Company and Exeter and Hampton Electric Company; David J. Saggau, Esq.

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for Granite State Electric Company; Jacqueline Lake Killgore, Esq. for EnergyNorth Natural Gas, Inc.; John E. Reilly, Esq. for New England Telephone and Telegraph Company; Ransmeier and Spellman by Dom D'Ambruoso, Esq. and Scott Alexander, Esq. for Anheuser-Busch Companies, Inc.; Shelley A. Nelkens, *pro se*; Kenneth A. Colburn for Business and Industry Association of New Hampshire; Rudolph Cartier, Jr. for Energy Services Group, Inc.; Office of Consumer Advocate by Michael W. Holmes, Esq. for Residential Ratepayers; Amy Ignatius, Esq. for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

By Order of Notice dated October 21, 1991, the New Hampshire Public Utilities Commission (commission) opened docket DR 91-172 to commence a generic investigation into the policy considerations and procedural questions raised by discounted utility rates for certain customers. The matter came to commission concern as a result of testimony filed by staff of the commission (staff) in DR 90-187, in connection with a special contract proposed between EnergyNorth

Natural Gas, Inc. (ENGI) and Hadco Corporation (Hadco) as part of ENGI's rate case.

At a meeting of the parties to DR 90-187 (which is still pending) it was agreed that the issues raised by the Hadco contract should be addressed as part of a generic proceeding, with notice to all utilities and other potential intervenors. At the meeting, the parties and staff agreed to an expedited procedural schedule, calling for discovery, testimony and hearings in February, 1992. The full procedural schedule is contained within the Order of Notice.

The Order of Notice made clear that parties to DR 90-187, would automatically become parties to the generic discounted rates docket, without the need to file new motions to intervene, while those seeking intervention were to file motions to intervene no later than November 8, 1991. The Order of Notice also ordered parties and those seeking intervention to file memoranda proposing the scope of the docket and the treatment to be accorded special contracts during the pendency of the generic docket no later than November 8, 1991.

II. *INTERVENTION*

The following utilities, individuals and organizations filed motions to intervene: Business and Industry Association of New Hampshire (BIA); Concord Electric Company and Exeter and Hampton Electric Company (Exeter); Granite State Electric Company (Granite State); and Shelley A. Nelkens. At the prehearing conference on November 14, 1991, the commission granted intervention to the above listed parties, there being no objection.

III. *SCOPE OF THE PROCEEDING*

Parties and those seeking intervention filed written memoranda on scope of the docket, types of utilities to be made parties to the investigation, circumstances in which discounted rates should be granted, whether both firm and interruptible service rates should be included in the investigation and, in the case of Northern Utilities, whether such an investigation was even appropriate.

III. *COMMISSION ANALYSIS*

[1, 2] Having reviewed the pleadings and transcript of the arguments put forth at the November 14, 1991 hearing, we are of the view that all utilities are to be included within this proceeding with the exception of telecommunications utilities. We make this determination on the basis that the telecommunications utilities are already extensively involved in DE 90-002 (the competition docket) and DR 91-084 (the collaborative docket), both of which address issues of rates, incentives and policy questions in telecommunications regulation.

We find that in the interest of keeping the scope manageable and targetted to the most pressing issues, only firm contracts for services should to be considered within this docket.

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Interruptible service contracts will be excluded from the scope.

We agree with the recommendation of many of the parties that during the pendency of the generic docket, treatment of special contracts filed pursuant to RSA 378:18 should be unchanged. Special contracts should not be held in abeyance during this proceeding, neither should they be accorded expedited treatment.

Finally, we are not willing at this time to rule on whether our standards should distinguish between new and existing customers. We seek the input of the parties on this issue, in the form of testimony filed in accordance with the procedural schedule previously established.

Our order will issue accordingly.

ORDER

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

ORDERED, that DR 91-172, the generic discounted rates docket shall be applicable to all electric, gas and water utilities, shall apply only to firm service contracts, and that during the pendency of this generic investigation, special contracts filed pursuant to RSA 378:18 shall be accorded the same treatment as they are customarily accorded; and it is hereby

FURTHER ORDERED, that the parties are encouraged to address in testimony the issue of new versus existing customers and whether different standards should apply in the case of discounted rates.

By order of the New Hampshire Public Utilities Commission this tenth day of December 1991.

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NH.PUC*12/11/91*[27279]*76 NH PUC 772*Eastman Sewer Company, Inc.

[Go to End of 27279]

Re Eastman Sewer Company, Inc.

DR 90-170
Order No. 20,330

76 NH PUC 772

New Hampshire Public Utilities Commission

December 11, 1991

ORDER authorizing a sewer public utility to increase its rates. Commission finds that the utility is undercapitalized as a result of contributed plant and authorizes it to establish and include in rates a capital reserve account to fund future plant investment and repairs.

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1. RATES, § 501

[N.H.] Sewerage — Capital reserve account — Funding mechanism. p. 773.

2. EXPENSES, § 69

[N.H.] Maintenance and replacements — Contributed property — Capital reserve account — Sewer utility. p. 773.

3. EXPENSES, § 138.1

[N.H.] Sewer — Contributed property — Capital reserve account — Funding. p. 773.

BY THE COMMISSION:

ORDER

WHEREAS, the New Hampshire Public Utilities Commission ("Commission") finds that staff's recommendations with respect to rate base and rate of return in this docket result in rates for Eastman Sewer Company, Inc. ("Eastman" or "the Company") which are just and reasonable; and

WHEREAS, the Commission finds that the

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sewer plant of the Company, has been largely paid for by Eastman customers as Contributions in Aid of Construction ("CIAC"); and

[1-3] WHEREAS, the Commission also finds that the Company is undercapitalized as a result of the contributed plant; and

WHEREAS, the Commission has determined that a form of capital reserve account is necessary to fund future plant investment and repairs as may become necessary and to ensure sufficient cash flow to ensure the long term financial viability of the Company; and

WHEREAS, the Commission accepts that the Company's initial investment in the plant was $2,335,581 which, when reduced by the 50% tax benefit, accumulated depreciation of $367,020, and the 70/30 split proposed by Eastman, results in a basis for funding the account of $240,231; and

WHEREAS, the Commission has determined that the amount of funding should be $240,231 divided by the depreciable life of the plant, or twenty-four years, resulting in an after-tax amount of $10,010 of annual funding to said capital reserve fund; and

WHEREAS, the Company will have a total revenue requirement for ratemaking purposes, including the capital reserve amount, of $103,051; and

WHEREAS, the Commission will be issuing a Report in the coming weeks fully detailing the procedural history, positions of the parties, Commission analysis, and findings and conclusions; it is hereby

ORDERED, that consistent with the forthcoming Report, Eastman Sewer Company, Inc. is authorized, effective November 1, 1991, to increase its rates to collect the revenue requirement of $103,051 from its 450 existing customers; and it is

FURTHER ORDERED, that the Company deposit $2,502 each quarter into a separate capital reserve fund to be used solely for the purposes outlined herein and in the forthcoming Report; and it is

FURTHER ORDERED, that the Company provide notice to this Commission at least 30 days before making any expenditures from the above described capital reserve account; and it is

FURTHER ORDERED, that the Company file revised tariff pages indicating rates to be charged which reflect the annual revenue allowed in this proceeding as well as supporting documentation used in the calculation of those rates.

By order of the New Hampshire Public Utilities Commission this eleventh day of December, 1991.

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NH.PUC*12/11/91*[27280]*76 NH PUC 773*Cold Spring Resort/White Mountain Country Club

[Go to End of 27280]

Re Cold Spring Resort/White Mountain Country Club

DE 90-113
Order No. 20,331

76 NH PUC 773

New Hampshire Public Utilities Commission

December 11, 1991

ORDER adopting a stipulation placing a public water utility in receivership for the duration of a proceeding to review its petition for a franchise. Commission finds that the utility's failure to employ a certified operator justified placing it under receivership.

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1. RECEIVERS, — 3

[N.H.] Jurisdiction and powers — State commissions — Statutory authority. p. 775.

2. RECEIVERS, — 1

[N.H.] Water utility — Stipulation. p. 775.

3. WATER, — 13

[N.H.] Operation — Receivership — Stipulation. p. 775.

APPEARANCES: Allen I. Dublin, Esq., for Cold Spring Resort/White Mountain

Country Club; Ford, Ford and Weaver by Edmund J. Ford, Esq. for Cold Spring Properties and Townhouse Association; Wadleigh, Starr, Peters, Dunn and Chiesa by Anne R. Clark, Esq. for the Ropewalk West Townhouse Association; and Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural Background*

On July 6, 1990 Cold Springs/White Mountain Country Club (Cold Springs) petitioned for an exemption from the provisions of RSA 362:4 for service provided to five "customers" in the Town of Ashland, New Hampshire.

By order *NISI* dated July 30, 1990, the Commission granted Cold Spring an exemption from Public Utility status. Order No. 19,896. Ropewalk West Townhouse Association and Cold Spring Properties Townhouse Association (the Associations) requested to be heard on the exemption on August 17, 1990 and August 27, 1990 respectively. The Commission scheduled the hearing by Order of Notice issued September 26, 1990, for November 1, 1990 and subsequently continued the hearing to November 26, 1990.

At the hearing the parties requested an extension of four weeks from the date of the Commission order during which the Associations would review information on Cold Springs facilities and projected operating and maintenance expenses in order to assess whether, in their view, the granting of a waiver from Commission regulation would be in the public good. Staff did not object to the four week extension.

On December 3, 1990, the Commission issued Report and Order No. 19,995, granting a temporary waiver to Cold Springs from the provisions of Title XXXIV pursuant to RSA 362:4. On August 16, 1991, letters were received by the Commission from Willis Newton, Vice President and Sarah Hobart, Secretary, of Ropewalk West Townhouse Association Dated August 13, 1991, commenting on water quality and availability in the Cold Spring's service area.

The Commission received a letter from Marilyn Newton dated August 15, 1991 requesting a hearing concerning the quality of the drinking water and negative health effects to residents of Ropewalk West Townhouse Association.

On August 19, 1991, the Commission received a letter from Corrine Morrison, General Manager of Cold Spring Properties Townhouse Association, dated August 15, 1991 commenting on the water system and urgently requesting that the Commission establish a hearing to address these concerns.

On August 21, 1991, the Commission received a letter from Ropewalk West Townhouse Association requesting that the Commission notify the US Bankruptcy Court of concerns about the status of the water system in order that the court may take them into account in its decision of the Chapter 11 proceedings concerning the water company.

On October 4, 1991, the Commission set a hearing for October 14, 1991 in response to the Association's requests. The hearing was subsequently continued to October 28, 1991.

On October 14th, Order No. 20,257 was issued by the Commission, ordering that Joseph L. Hyde appear before the Commission for the purpose of showing cause why Cold Springs Property, Inc., White Mountain should not be fined or placed in receivership.

On October 29, 1991, a hearing was held before the Commission at its offices in Concord on the show cause order. Both associations provided witnesses which testified as to why a franchise should not be granted and the utility should be placed in receivership pending investigation by

the Commission into the franchise request of Cold Springs pursuant to RSA 374:47-a.

The October 29, 1991 hearing was continued to November 4, 1991. At that time the parties and Staff entered into a stipulation which provided that the utility be placed in receivership.

II. *Stipulation*

Page 774

The stipulation provides, in substance, that the public water utility operated by Cold Springs be placed in receivership for the duration of the franchise proceeding. The stipulated receiver is Ropewalk West Townhouse Association who would be authorized to charge rates of $7,745 per year ($60 per unit per year) and conduct all the necessary functions of a water utility. The stipulation further provides that the receiver will be exempt from the reporting requirements of the Commission to reduce costs and facilitate the operation of the utility by a homeowners association. However, the receiver shall keep its books in accordance with the Chart of Accounts for Water Utilities and will notify the Commission on all issues relative to water quality and adequacy. See Attachment A.

The parties further stipulated to the following procedural schedule to govern the request for a franchise filed by Cold Springs:

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

Company & Intervenor Testimony
  and Exhibits                  12/20/91
Data Requests to Petitioner     02/14/92
Data Responses from Petitioner  03/06/92
Staff & Intervenor Testimony
  Due                           04/03/92
Data Requests to Staff and
  Intervenors                   04/17/92
Data Responses from Staff and
  Intervenors                   05/01/92
Settlement Conference           05/08/92
Hearing Dates                   05/21/92
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III. *Commission Analysis*

[1-3] RSA 374:47-a provides, in pertinent part, as follows;

> Receiver for Water Utilities. In addition to the procedure in RSA 374:41-47, whenever the commission finds that a water utility ... is failing to provide adequate and reasonable service to its customers ... the commission may appoint a receiver ...

The stipulation does not contain a provision indicating that Cold Springs is providing inadequate or unreasonable service to its customers. The record discloses; however, that Cold Springs does not currently have a contract with a certified water operator and that the Associations (the proposed receiver) do have a certified water operator under contract. Because of Cold Springs failure to employ a certified water operator the Commission finds that it is not currently providing adequate and reasonable service to its customers. Therefore, we will accept the stipulation of the parties and staff and place the utility under the receivership of Ropewalk West Townhouse Association.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is incorporated herein; it is hereby

ORDERED, that the public water utility located in the Town of Ashland at a resort commonly known as Cold Springs and operated by Cold Spring Properties, Inc. be placed under the receivership of the Ropewalk West Townhouse Association for the duration of the franchise proceedings in this docket; and it is

FURTHER ORDERED, that the stipulation appended hereto as Attachment A is accepted and incorporated herein for the reasons set forth in the forgoing report; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report is adopted.

By order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1991.

Attachment A

STIPULATION AGREEMENT

The Parties stipulate to the following:

A. Ropewalk West Townhouse Association be appointed as receiver for the water system presently operated by Cold Spring Properties, Inc., known as Cold Spring Properties, Inc., known as Cold Spring Resort/White Mountain Country Club water system.

B. That the receiver be authorized to charge and collect the water fees from each user of the system.

i) The users of the system includes each of the following people, entities, or kinds of people or entities: Cold Spring Properties Townhouse Association, Ropewalk West Townhouse Association, Cold Spring Properties, Inc., a mortgagee in possession, whether for foreclosure or otherwise, or any residential units served by the Cold Spring Resort/White Mountain Country Club water system, and the "White Mountain Country Club" (including the restaurant therein).

ii) The total number of units may be computed as follows: each residential unit, whether owned in whole ownership or in timeshare ownership, shall be counted as one unit. In addition thereto, there shall be counted ten (10) units for the White Mountain Country Club (including the restaurant, maintenance shed and pro shop), one unit for the recreation building owned by Cold Spring Properties Townhouse Association, one unit for the maintenance shed, and five units for the pool, so that the total number of units, excluding units owned by mortgagees in possession, or foreclosed units, are one hundred twenty-six (126).

iii) The total annual budget of the receiver shall be as follows:

$3,000 for general operations;
$2,000 for accountant fees of the receiver;

$2,374 for the repayment of the Water
Industries bill relating to the replacement of
one of the two pumps in the system;
$7,745 Total Budget.

iv) Against that budget, there shall be assessed a usage fee of $60.00 per unit per year.

v) The receiver may collect said assessments monthly in advance or quarterly in advance in the receiver's discretion.

vi) The receiver may borrow from either Cold Spring Properties Townhouse Association or from Ropewalk West Association, or from such other sources it deems appropriate in amounts not in excess of $1,000; provided, however, that should there be an emergency, in the receiver's sole judgment, that requires such borrowing the receiver may borrow such additional funds as may be required to respond to such emergency; and provided that the receiver may and shall borrow sufficient funds from Cold Spring Properties Townhouse Association and Ropewalk West Association to pay or repay the above cited accountant's fees and Water Industries bill. Any such borrowing shall be unsecured and may bear interest at no more than 8% per annum and shall be repayable in twelve equal monthly installments unless the Commission shall order otherwise. Any such borrowing shall be the obligation of the water system and shall be paid by such person as is ultimately awarded a franchise with respect to the service area presently served by the Cold Springs Water System.

vii) The receiver shall pay Cold Spring Properties Townhouse Association for services rendered by its employees at the rate of $18.00 an hour. Cold Spring Properties Townhouse Association anticipates that it should provide to the said receiver the services of Neil McDonald, a certified water operator, and its master electrician, Mr. John King. In the event either individual is unable to perform such services, the receiver shall have the authority to hire another certified water operator or electrician. Fees for the services provided by these individuals shall be paid monthly in arrears. Cold Spring Properties Townhouse Association shall maintain an accurate record of the time expended by said persons on the business of the receiver. Cold Spring Properties Townhouse Association and Ropewalk West Association, are authorized to pay the invoice of Water Industries, Inc. (for the repair and replacement of a certain pump in the system), and shall be reimbursed by the receiver, and any successor to the receiver, as

provided above, in equal monthly installments over a period of twelve (12) months without interest, the first such installment to commence on December 1, 1991.

C. That said receiver be authorized to undertake the management of the system; that all records with respect thereto be turned over to the receiver; that all keys, tools and other personal property associated with the water system be turned over to the receiver; that all cash, deposit accounts, bank accounts, etc., presently held by Cold Spring Properties, Inc., on behalf of the water system be accounted for and turned over to the receiver; that said receiver be authorized to enter into the usual and ordinary contracts for the operation of the water system of this size, including: contracts of insurance, contracts of operation and maintenance, contracts with respect to the sampling and other matters; that the receiver be indemnified by the water system, its

owner and any successor utility operating the water system, from all liability arising from its acts as receiver hereunder; that the receiver be authorized to establish a temporary tariff consistent with the terms of the paragraph preceding this and to bring it before the Commission on a shortened notice to all parties.

D. That the receiver be appointed for the duration of the franchise proceedings, subject to the right of the receiver to request a status hearing before the Commission.

E. That this Commission retain jurisdiction to extend the terms of the appointment of said receiver for such times as it may deem appropriate.

F. That the receiver comply with the uniform system of accounts for water utilities.

G. That the receiver be exempt from all reporting requirements except for reports of any deficiencies by the N. H. Department of Environmental Services.

H. Conditions.

a. This agreement is expressly conditioned upon the Commission's acceptance of all of its provisions without change or condition, and if the Commission does not accept it in its entirety without material change or condition, the agreement may be deemed to be null and void and without effect upon the call of the Cold Springs Properties, Inc., Cold Springs Properties Townhouse Association, Ropewalk West Association or Staff within five days of receipt of an order in reference to this matter by the Commission.

b. The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement relating hereto are and shall be excluded from evidence and shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion.

c. The rates and provisions of this receivership settlement shall be non-precedential and shall not be used for any purpose whatsoever.

IN WITNESS WHEREOF, the parties and staff have caused this agreement to be duly executed in the respective names, by their agents, each being fully authorized to do so on behalf of their principal this Fourth day of November, 1991.

Cold Springs Properties, Inc.

Ropewalk West Townhouse
Association

Cold Spring Properties Townhouse
Association

Staff of the New Hampshire
Public Utilities Commission

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Cold Spring Resort/White Mountain Country Club, DE 90-113, Order No. 19,896, 75 NH PUC 491, July 30, 1990. [N.H.] Re Cold Spring Resort/White Mountain Country Club, DE

90-113, Order No. 19,995, 75 NH PUC 743, Dec. 3, 1990. [N.H.] Re Cold Spring Resort/White Mountain Country Club, DE 90-113, Order No. 20,257, 76 NH PUC 624, Oct. 1, 1991.

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[Go to End of 27281]

Re Manchester Water Works

DR 91-113
Order No. 20,332

76 NH PUC 778

New Hampshire Public Utilities Commission

December 12, 1991

ORDER authorizing a water utility to revise its tariff to allow it to assess its Merrimack Source Development Charge (MSDC) to all new customers, including those within the City of Manchester and other pre-1987 franchise areas. The MSDC is a one-time charge to fund the cost of constructing facilities necessary to develop the Merrimack River as a source of water supply.

Commission conditions authorization for the revised tariff on prospective prudence review procedures. The utility must provide detailed notice to the commission of proposed expenditures related to the development of a new source of water supply together with justification of those expenditures in terms of consumer need and other economic considerations.

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1. SERVICE, § 191

[N.H.] Burden of cost — Charges to new customers — Development of new water supply — Merrimack Source Development Charge — Allocation — Water utility. p. 779.

2. RATES, — 597

[N.H.] Water — Cost of new supply — Apportionment — Merrimack Source Development Charge. p. 779.

3. EXPENSES, — 145

[N.H.] Water — Cost of new supply — Apportionment — Merrimack Source Development Charge — Prudence — Prospective review. p. 779.

4. VALUATION, — 69

[N.H.] Ascertainment of cost — Prudent or imprudent expenditures — Prospective review. p. 779.

5. VALUATION, — 286

[N.H.] Water — New source development — Construction of facilities — Prudence —

Prospective review. p. 779.

APPEARANCES: Richard Samuels, Esq. of McLane, Graf, Raulerson & Middleton, for Manchester Water Works; Larry Eckhaus, Esq. for Southern New Hampshire Water Company; James T. Rodier, Esq., for the staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

In DR 86-080, the New Hampshire Public Utilities Commission (commission) authorized Manchester Water Works (MWW) to assess the Merrimack Source Development Charge (MSDC), in franchise areas added after May, 1987, located outside the City of Manchester. Report and Order No. 18,628 (April 6, 1987).

In January, 1990 in DR 89-196, MWW filed a revised tariff page that, if accepted by the commission, would expand the area in which the MSDC is assessed to include all areas outside the City of Manchester where MWW operates as a public utility. That tariff filing was rejected by the commission in its Report and Order No. 20,123, dated May 6, 1991.

On August 7, 1991, MWW filed *inter alia*, a proposed tariff page amending the MSDC. The proposed tariff change would expand the area in which the MSDC may be applied, and would authorize collecting funds from all new customers for the development, including land acquisition, planning and construction, of a facility for the purpose of utilizing the Merrimack River as a supplemental source of water supply for MWW.

Page 778

An Order of Notice was issued on September 5, 1991, setting a pre-hearing conference for September 23, 1991.

A Petition to Intervene was filed by Southern New Hampshire Water Company on September 9, 1991, and was granted at the prehearing conference on September 23, 1991.

A hearing on the merits was held on October 4, 1991.

II. *Issue Presented*

A. *Manchester Water Works*

As noted *supra*, MWW seeks approval from the commission to expand the area in which the Merrimack Source Development Charge is assessed. Receipts from the MSDC will be used to develop an additional source of water supply from the Merrimack River to supplement the Lake Massabesic system.

By vote of the Board of Water Commissioners, MWW placed the MSDC into effect on August 1, 1991, for all new connections within the City of Manchester. With this vote, the only areas in which the MSDC is not currently being assessed are the pre-1987 franchise areas.

According to MWW, the issue in this proceeding is whether all new connections causing the

demand for a new source of supply will contribute to its development, or if only some of them will contribute to its development. MWW contends that fairness and equity justify the charge being assessed against all new customers in all service areas, including the pre-1987 franchise areas and those within the City of Manchester.

B. *Staff*

Staff filed its position with the commission by letter dated October 28, 1991. Staff recommends that if the MSDC is approved by the commission, it should be applied to all new customers, because most of the customer growth has been and is continuing to occur within the City of Manchester and the pre-1987 franchise area.

Staff asserts that the record is clear that MWW presently forecasts adequate current resources in terms of safe yield to accommodate growth inside and outside of the City of Manchester until the year 2005. Staff notes that the utilization rate of MWW's 40 million gallon/day water treatment plant built in 1974 will not approach its capacity during its useful life.

Consequently, staff recommends that if the commission approves MWW's petition to apply the MSDC to all new customers, said approval should be made contingent on MWW's willingness to seek NHPUC approvals before funds are expended with regard to the size and construction schedule for the Merrimack River Source Development Project. According to staff, these advance approvals will help ensure that ratepayer funds collected through the MSDC are ultimately prudently expended.

III. *Commission Analysis*

[1-5] Based upon our review of the record in this proceeding, we find that it is just and reasonable, subject to the condition specified *infra*, to assess the MSDC on all new customers, including those within the City of Manchester and in the pre-1987 franchise areas. If any additional source of water supply from the Merrimack River is needed in the future, it is clear that all new customers will create that demand. Our decision in DR 86-80 was premised upon MWW's representations in that proceeding that most of the customer growth would occur in the post-87 franchise area.

Prior to the time MWW makes significant expenditures on a new source of supply, MWW should provide detailed notice to the commission regarding its proposed expenditures and justification of those expenditures in terms of consumer need and other engineering or economic/accounting considerations. If the commission concludes that construction of the new source is not prudent and MWW wishes to go forward at its own risk, it will be entitled to do so.

Moreover, if the commission should conclude that construction is prudent, but facts and circumstances change, MWW would be at risk in this instance as well.

The commission, therefore, will not

require pre-approval to commence construction, but will make evidentiary findings and conclusions based on a contemporary record. To the extent that the commission makes a finding of prudency based on record facts and those record facts do not change, some protection would

be afforded to MWW.

Our order will issue accordingly.

ORDER

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

ORDERED, that Manchester Water Works' proposed amendment to the Merrimack Source Development Charge is approved subject to the prospective prudence review outlined in Section III of the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Manchester Water Works, DR 86-80, Order No. 18,628, 72 NH PUC 138, Apr. 6, 1987. [N.H.] Re Manchester Water Works, DR 89-196, Order No. 20,123, 76 NH PUC 327, May 6, 1991.

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NH.PUC*12/12/91*[27282]*76 NH PUC 780*New England Telephone Company

[Go to End of 27282]

Re New England Telephone Company

DE 91-080
Order No. 20,333

76 NH PUC 780

New Hampshire Public Utilities Commission

December 12, 1991

ORDER authorizing a telephone local exchange carrier (LEC) to own and maintain telephone cables over and across public waters. Commission finds the water crossings necessary for the LEC to meet its obligation to serve.

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1. CERTIFICATES, § 123

[N.H.] Telephone — Crossing public waters — Cable — Local exchange carrier. p. 780.

BY THE COMMISSION:

ORDER

On, June 7, 1991 New England Telephone (Net or petitioner) filed with the New Hampshire Public Utilities Commission (Commission), a petition pursuant to RSA 371:17 to license five existing telephone cables over and across certain public waters in the State of New Hampshire; and

WHEREAS, in order to meet the requirements of service to the public, the petitioner must maintain telephone cables over and across certain public waters; and

WHEREAS, the petitioner has reviewed its installations of lines across public water in compliance with Order No. 19,679, dated January 24, 1990; and

WHEREAS, the review has disclosed instances where crossings have not been initially licensed; and

WHEREAS, the location, construction and design of the crossings the petitioner is seeking to license are specifically identified in the petition; and

[1] WHEREAS, the Commission finds such water crossings necessary for the petitioner to meet its obligation to serve customers within its authorized franchise area, thus it is in the public good; and

WHEREAS, the public should be offered the 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 be notified that they may submit their comments or file a written request for a hearing on the matter before this Commission no later than December 31, 1991; and it is

FURTHER ORDERED, that said petitioner effect said notification by causing an

Page 780

attested copy of this order to be published once in a newspaper having general statewide circulation and once in a newspaper having general circulation in the Concord, New Hampshire area, said publications to no later than December 17, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order to the Concord City Clerk, by first class U.S. mail, postage prepaid, and postmarked on or before December 17, 1991.
Compliance with these notice provisions shall be documented by affidavit(s) to be filed with the Commission on or before January 6, 1992; and it is

FURTHERED ORDERED, *NISI* that authority be granted, pursuant to RSA 371:17 et seq, to NET, to maintain and operate telephone cables over and across public waters of the State of New Hampshire at the following locations which have been described in this docket:

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

Location	*Pole#*	*From Pole#*	*To Drawing#*
Turkey Pond, Concord	76/67	76/66	42-5
Contoocook River, Concord	101A/2	101A/1	35-22
	10A/1	10/76	35-23
	10B/1	10/87	35-18
	10U/1	10/93	35-17

and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided herein or the Commission otherwise orders prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DE 89-134, Order No. 19,679, 75 NH PUC 46, Jan. 24, 1991.

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NH.PUC*12/12/91*[27283]*76 NH PUC 781*Deer Run Water System

[Go to End of 27283]

Re Deer Run Water System

Additional petitioner: Lakes Region Water Company, Inc.

DF 91-147
Order No. 20,334

76 NH PUC 781

New Hampshire Public Utilities Commission

December 12, 1991

ORDER granting a joint petition to transfer the franchise and water works of Deer Run Water System to Lakes Region Water Company, Inc.

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1. CERTIFICATES, § 123

[N.H.] Transfer of franchise — Matters considered — Public good — Fitness of transferee — Rate considerations — Water utility. p. 782.

BY THE COMMISSION:

ORDER

On September 26, 1991, Deer Run Water System ("Deer Run") and Lakes Region Water Company, Inc. ("Lakes Region"), both of which are franchised public water utilities in the State of New Hampshire, filed joint petitions to transfer Deer Run's franchise and water works located in Campton, New Hampshire to Lakes Region; and

WHEREAS, Deer Run had been granted a one year conditional franchise to assess the managerial, technical and financial expertise of its owner because he resides in Florida, *See, Re Deer Run Water System,* Docket DR 89-165, Report and Order No. 20,076 (March 7, 1991); and

WHEREAS, the Commission has previously found that Lakes Region has the managerial, technical and financial capability to operate a public water utility, *See, Re Lakes Region Water Company, Inc.,* Docket DF 90-152, Report and Order No. 20,144 (June 5, 1991); and

WHEREAS, Lakes Region operates numerous public water utilities in the northern area of the State; and

WHEREAS, Lakes Region has requested to charge Deer Run's tariffed rates as temporary rates for an undeterminable period of time; and

WHEREAS, the Staff of the Commission has conducted an investigation of the purchase and sale agreement and found no apparent problems; and

WHEREAS, the Commission finds pursuant to RSA 374:22 and RSA 374:28, respectively, that it would in the public good for Lakes Region to commence business in that area of Campton, New Hampshire franchised to Deer Run and for Deer Run to discontinue service in said area; and

WHEREAS, the Commission does not believe it would be just and reasonable for the current rates to be charged as temporary rates because Deer Run's permanent rates were set on March 7, 1991, upon a finding that the rates were just and reasonable; it is hereby

ORDERED *NISI*, that the joint petitions of Lakes Region Water Company, Inc. and Deer Run Water System to transfer the franchise and water works of Deer Run Water System to Lakes Region Water Company, Inc. be granted; and it is

[1] FURTHER ORDERED *NISI*, that the rates to be charged by Lakes Region Water Company, Inc. shall be those approved by this Commission in *Re Deer Run Water System*, Docket DR 89-165, Report and Order No. 20,076 (March 7, 1991); and it is

FURTHER ORDERED, that Lakes Region Water Company, Inc. shall file revised tariff pages for the franchise area; 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 January 8, 1992; and it is

FURTHER ORDERED, that Deer Run Water System and Lakes Region Water Company, Inc, effect said notification by mailing a copy of this order first class mail to each of the customers in Campton and by publication of an attested copy of this order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than December 23, 1991, and designated in an

affidavit to be made on a copy of this order and filed with this office on or before January 13, 1992; and it is

FURTHER ORDERED, that such authority shall be effective 20 days from the publication 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 twelfth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Deer Run Water Co., DR 89-165, Order No. 20,076, 76 NH PUC 134, Mar. 7, 1991.
[N.H.] Re Lakes Region Water Co., Inc., DF 90-152, Order No. 20,144, 76 NH PUC 387, June 5, 1991.

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NH.PUC*12/12/91*[72835]*77 NH PUC 14*STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

[Go to End of 72835]

STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Order No. 20,371

77 NH PUC 14

New Hampshire Public Utilities Commission

December 12, 1991

Granite State Electric Company Cooperative Interruptible Service

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OFFER OF SETTLEMENT

I. Introduction

This Offer of Settlement is jointly submitted by the New Hampshire Public Utilities Commission Staff ("Staff") and Granite State Electric Company ("Granite State" or "Company") togerther the "Parties," and resolves all issues among the Parties in this proceeding. A summary of the Company's proposal in this proceeding, Staff's position, and terms of settlement are contained herein. The Parties request that the Commission adopt this settlement as final resolution of this proceeding.

II. Company's Proposal

On October 1, 1991, Granite State filed with this Commission proposed revisions to tis currently effective Cooperative Interruptible Service ("CIS") Program which provides credtis to large and medium-sized commercial and industrial customers who agree contractually to

interrupt their load when called upon during peak periods.

The current CIS program was approved by this Commission in Order No. 19,998, issued December 4, 1990. Customers receiving credits under the current and proposed program can choose from two different types of credits, the "committed" CIS-1 credit, or the "uncommitted" CIS-2 credit. Under each credit, there are three (3) options which differ in the frequency, duration and notification period for interruptions. A summary of the three (3) options available under each type of credit is provided in Attachment 1. Credits paid to customers under these six (6) options are currently based on the short-run value of capacity as determined by the estimated avoided costs during 1991 of Granite State's wholesale supplier, New England Power Company ("NEP").

Granite State has three (3) customers receiving credits under the CIS-2 program. One of these customers is taking interruptible service under the "group load curtailment" option which allows a group of customers to participate as one entity under the program. No customers currently participate in the CIS-1 credit. In total, Granite State's CIS program currently provides up to 1,016 kilowatts of interruptible capacity.

Granite State has proposed three (3) main revisions to its CIS program. First, the Company proposes to base credits offered under the program on the long-run value of capacity as determined by NEP's long-run avoided costs. Second, Granite State proposes to revise the contracts under which customers participate in the program by 1) requiring up to two test interruptions per year, and 2) revising the term of the CIS-2 rate contract to be automatically renewable from year to year, with a 12-month notice of termination provision. Finally, Granite State proposes to eliminate the currently effective customer charge required under the CIS-1 credit.

A. Use of Long-Run Avoided Cost

Because NEP currently has sufficient supplies of capacity to meet its NEPOOL Capability Responsibility, there is little value in the short-term of being able to deduct interruptible kilowatts from its total peak load. However, in the long run, NEP's peak load is reduced by the number of interruptible kilowatts it can claim for Capability Responsibility purposes. When load is reduced, the need for additional capacity is decreased by that amount plus any reserve capacity and line losses which would be needed to serve the load. Thus, to the extent that NEP can rely upon interruptible kilowatts for the future, interruptible loads can reasonably be assigned a value representing NEP's long- run incremental capacity. In addition, notwithstanding the current excess capacity situation in New England and the

corresponding low value for short-term avoided costs, interruptions have value as demonstrated by the three interruptions which were called for in the summer of 1991.

B. Changes to Contracts

Granite State proposes two (2) basic modifications to the contracts under which customers receive credits for participation in the CIS program. First, the Comapny proposes to add a provision to both the CIS-1 and the CIS-2 contracts to allow up to two (2) interruptions per year

for the purpose of testing the customers' ability to interrupt under the notification period chosen by the customer under the CIS options. In order for NEP to claim interruptible loads as a deduction from its NEPOOL Capability Responsibility, NEPOOL rules require periodic testing of interruption capability. These tests may not be required in the event that interrrupt during the Capability Period. Secondly, the Company proposes to revise the term of the CIS- 2 contract so it is automatically renewed from year to year, with a 12-month notice of terminaiton provision. This chnage is proposed to encourage long-term commitment to the program and to reduce administrative burdens of renewing contracts on an annual basis.

C. Elimination of Customer Charge

The Company proposes to eliminate the customer charge currently required under the CIS-1 credit. This revision is proposed pursuant to Staff's concern that the customer charge discourages participation in the CIS-1 credit. The costs of metering and communicaiton equipment associatd with customer installations which, in the past, justified the presence of the customer charge in the CIS-1 program will be incorporated as part of the total program expense.

III. Staff's Position

Staff agrees to the use of NEP's real levelized first-year long-run avoided cost as a basis for determining credits under the CIS program. Further, Staff supports the elimination oif the custoerm charge for the CIS-1 credit and the automatic renewal provision under the CIS-2 contract. However, Staff is concerned that the credit offered in CIS-1 option 2, which is a 20% increase over the credit available in CIS-1 option 1, is excessive by 10%. The Company's rationale for the 20% increase in the credit offered under option 2, from 8 hours to 12 hours, and the increased maximum number of interruptions allowed under option 2, from 26 to 74 interruptions. While staff agrees that the longer duration of interruptions provides increased value to the Company, thus justifying an increase in the credit offered in option 2, Staff does not believe that the increased frequency of interruptions adds value to the Company's program at this time. Accordingly, Staff believes that the credit offered under option 2 of CIS-1 should be increased by only 10% over the credits offered in option 1 to reflect the current capacity situation.

IV. Settlement

On December 6, 1991, the Parties met for the purposes of discussing a settlement in this proceeding. As a result of that meeting, the Parties agree to the following terms as a final resolution among them of the issues raised in this docket: (1) The credits offered under the CIS program shall be based upon NEP's real levelized first-year long-run value of capacity as determined annually by NEP's long-run avoided costs. For 1992, the long-run value of capacity is shown in Attachment 2. (2) On or before October 1 of each year, Granite State shall submit updated long-run avoided cost information upon which credits for the following year's program is to be based. In addition, the Company shall submit a report summarizing the previous year's activity under the program, including number of interruptions called, duration of interruptions, compliance factors, amount of credits paid, and number of participating customers. (3) Granite State shall offer the three (3) options under both the CIS-1 and CIS-2 credits

as shown in Attachment 1 hereto. Option 2 under CIS-1 shall provide a 10% increase over the credit offered in option 1 of CIS-1 to reflect the added value of the longer duration of interruptions. The revisions ot both the CIS-1 and CIS-2 contracts shall be adopted as proposed by the Company and described herein, reflecting the elimination of the customer charge in CIS-1, and the automatic renewal provision in the CIS-2 contract. Copies of the revised form contracts for both CIS-1 and CIS- 2 are shown in Attachment 3. (4) NOthing in this settlement shall preclude Staff or the Company from proposing changes to the design of the CIS program; however, until such changes are proposed, the prgram shall remain in effect as updated annually to reflect changes in the long0run avoided cost calculations.

V. Miscellaneous Provisions

(1) Other than as expressly stated herein, this settlement establishes no principles and shall not be deemed to foreclose any Party from making any 8contention in any future proceeding or investigation. (2) Other than as exprssly stated herein, the approval of this settlement by the Commission shall not in any respect constitute a determination as to the merits of any issue in any subsequent prceeding. (3) This settlement is the product of settlement negotiations. All offers of settlement shall be. without prejudice to the position of any Party or participant presenting such offer. (4) This settlement is submitted on the condition that t be approved in full by the Commission, and on further condition that if the Commission does not approve this settlement in its entirety, this settlement shall be deemed withdrawn and shall not constitute a part of the record in this or any proceeding or used for any purpose.

Dated this twelth day of December, 1991.2

New Hampshire Public Utilities
Commission Staff

Granite State Electric Company

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

GRANITE STATE ELECTRIC COMPANY
NHPUC #91-154
Attachment 1
Page 1 of 11

INTERRUPTION CREDIT
SCHEDULE FOR CIS-1

	Total Annual $ per kW of Credited Interruptible Load	Monthly $ per kW of Credited Interruptible Load
CIS-1		
Option 1 (26 interruptions limit/l hr. notice)	$41.00	$3.42
Option 2 (74 interruptions limit/1 hr. notice)	$45.00	$3.75
Option 3 (26 interruptions limit/Previous day		

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

GRANITE STATE ELECTRIC COMPANY
NHPUC #91-154
Attachment 1
Page 2 of 11

NON-COMPLIANCE CHARGE
SCHEDULE FOR CIS-1

Daily $ per kW of Non-Compliance Load	
CIS-1	
Option 1 (26 interruption day limit/1 hr. notice)	$4.10
Option 2 (74 interruption day limit/1 hr. notice)	$4.50
Option 3 (26 interruption day limit/Previous business day notice)	$3.10

Non-Compliance Load is the average 15 minute load during the interruption period, if it is above the Firm Power Level, minus the Firm Power Level.

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GRANITE STATE ELECTRIC COMPANY NHPUC #91-154 Attachment 1 Page 3 of 11

GRANITE STATE ELECTRIC COMPANY

COOPERATIVE INTERRUPTIBLE SERVICE TERMS AND CONDITIONS FOR CIS-1

The Non-Compliance Charge shall not be less than zero.

The Non-Compliance Charge shall be assessed to the Customer by the second succeeding month after the month in which it was incurred. Any unpaid charges shall be deducted from monthly interruptible credits.

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

INTERRUPTIBLE CREDIT SCHEDULE

SELECTED OPTION	TOTAL ANNUAL INTERRUPTIBLE CREDIT PER KW	MONTHLY INTERRUPTIBLE CREDIT PER KW
1	$41.00	$3.42
2	$45.00	$3.75
3	$31.00	$2.58

NON-COMPLIANCE RATE SCHEDULE

SELECTED OPTION	EACH INTERRUPTION NON-COMPLIANCE CHARGE PER KW

1 $4.10

2 $4.50

3 $3.10

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

FILENAME: CISGS.WK1 GRANITE STATE ELECTRIC
RANGENAME: PAGE3 N.H.P.U.C. #91-154
EDITED BY: MSB Attachment 1
Page 4 of 11

CREDIT CALCULATION FOR CIS-1 OPTION 1

1. NEP TOTAL MARGINAL CAPACITY COST = $58.22

2. FACTOR FOR DISTRIBUTION LOSSES x 1.13 = $65.79

3. FACTOR FOR NON-COMPLIANCE RISK x 0.8727 = $57.41

4. FACTOR FOR ACTUAL RELIEF ACHIEVED x 0.83 = $47.65

5. PROGRAM EXPENSES ($ PER KW) - 6.95 = $40.70

6. ANNUAL CREDIT ROUNDED TO WHOLE DOLLAR FOR MARKETING = $41.00 /KW YEAR

7. MONTHLY PAYMENT (LINE 6 DIVIDED BY 12) = $3.42 /KW YEAR

NON COMPLIANCE CHARGE CALCULATION

8. TOTAL ANNUAL CREDIT (LINE 6) = $41.00 /KW YEAR

9. PER INTERRUPTION DAY (LINE 8 DIVIDED BY 20) = $2.05

10. FACTOR FOR COMPANY RISK (LINE 9 TIMES 2) = $4.10 /KW DAY

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

FILENAME: CISGS.WK1 GRANITE STATE ELECTRIC
RANGENAME: PAGE4 N.H.P.U.C. #91-154
CREATED BY: MJB Attachment 1
EDITED BY: MSB Page 5 of 11

CREDIT CALCULATION FOR CIS-1 OPTION 2

1. NEP TOTAL MARGINAL CAPACITY COST = $58.22

2. FACTOR FOR DISTRIBUTION LOSSES x 1.13 = $65.79

3. FACTOR FOR NON-COMPLIANCE RISK x 0.8727 = $57.41

4. FACTOR FOR ACTUAL RELIEF ACHIEVED x 0.83 = $47.65

5. PROGRAM EXPENSES ($ PER KW) - 6.95 = $40.70

6. PREMIUM FOR 74 INTERRUPTIONS @ 12 HOURS DURATION x 1.10 = $44.77

7. ANNUAL CREDIT ROUNDED TO WHOLE DOLLAR FOR MARKETING = $45.00 /KW YEAR

8. MONTHLY PAYMENT (LINE 7 DIVIDED BY 12) = $3.75 /KW MONTH

NON COMPLIANCE CHARGE CALCULATION

9. TOTAL ANNUAL CREDIT (LINE 7) = $45.00 /KW YEAR

10. PER INTERRUPTION DAY (LINE 9 DIVIDED BY 20) = $2.25

11. FACTOR FOR COMPANY RISK (LINE 10 TIMES 2) = $4.50 /KW DAY

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

FILENAME: CISGS.WK1 GRANITE STATE ELECTRIC
RANGENAME: PAGE5 N.H.P.U.C. #91-154
CREATED BY: MJB Attachment 1
EDITED BY: MSB Page 6 of 11

CREDIT CALCULATION FOR CIS-1 OPTION 3

1. NEP TOTAL MARGINAL CAPACITY COST = $58.22

2. FACTOR FOR DISTRIBUTION LOSSES x 1.13 = $65.79

3. FACTOR FOR NON-COMPLIANCE RISK x 0.8727 = $57.41

4. FACTOR FOR ACTUAL RELIEF ACHIEVED x 0.83 = $47.65

5. PROGRAM EXPENSES ($ PER KW) - 6.95 = $40.70

6. FACTOR FOR PREVIOUS DAT NOTIFICATION x 0.75 = $30.53

7. ANNUAL CREDIT ROUNDED TO WHOLE DOLLAR FOR MARKETING = $31.00 /KW YEAR

8. MONTHLY PAYMENT (LINE 7 DIVIDED BY 12) = $2.58 /KW MONTH

NON COMPLIANCE CHARGE CALCULATION

9. TOTAL ANNUAL CREDIT (LINE 7) = $31.00 /KW YEAR

10. PER INTERRUPTION DAY (LINE 9 DIVIDED BY 20) = $1.55

11. FACTOR FOR COMPANY RISK (LINE 10 TIMES 2) = $3.10 /KW DAY

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

GRANITE STATE ELECTRIC COMPANY
NHPUC #91-154
Attachment 1
Page 7 of 11

INTERRUPTION CREDIT SCHEDULE FOR CIS-2

	Monthly $ per kW Expected Annual $ per kW	Monthly $ per kW for Standby	for Performance
		Credit	Credit
CIS-2			
Option 1 (26 interruption day limit/1 hr. notice)	$15.20	$1.27	$4.53
Option 2			

(74 interruption day
limit/1 hr. notice) $16.80 $1.40 $5.00

Option 3
(26 interruption day
limit/Previous business
day) $11.60 $0.97 $3.46

GRANITE STATE ELECTRIC COMPANY

NHPUC #91-154
Attachment 1
Page 8 of 11

GRANITE STATE ELECTRIC COMPANY

COOPERATIVE INTERRUPTIBLE SERVICE TERMS AND CONDITIONS FOR - CIS-2

INTERRUPTIBLE CREDIT SCHEDULE

SELECTED OPTION	MONTHLY STANDBY CREDIT PER KW	MONTHLY PERFORMANCE CREDIT PER KW
1	$0.43	$1.54
2	$0.47	$1.67
3	$0.30	$1.07

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

FILENAME: CISGS.WK1 GRANITE STATE ELECTRIC
RANGENAME: PAGE6 N.H.P.U.C. #91-154
CREATED BY: MJB Attachment 1
EDITED BY: MSB Page 9 of 11

CREDIT CALCULATION FOR CIS-2 OPTION 1

1. NEP TOTAL MARGINAL CAPACITY COST = $58.22

2. FACTOR FOR DISTRIBUTION LOSSES x 1.13 = $65.79

3. FACTOR FOR NON-COMPLIANCE RISK x 0.8727 = $57.41

4. FACTOR FOR ACTUAL RELIEF ACHIEVED x 0.83 = $47.65

5. PROGRAM EXPENSES ($ PER KW) - $9.45 = $38.20

6. ANNUAL CREDIT ROUNDED TO WHOLE DOLLAR FOR MARKETING $38.00 /KW YEAR

7. ANNUAL STANDBY CREDIT (LINE 6 TIMES .40) = $15.20

8. MONTHLY STANDBY CREDIT (LINE 7 DIVIDED BY 12) = $1.27 /KW MONTH

9. ANNUAL PERFORMANCE CREDIT (LINE 6 TIMES .60) = $22.80

10. MONTHLY PERFORMANCE CREDIT (LINE 9 DIVIDED BY 7 PLUS LINE 8) = $4.53 /KW MONTH

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


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FILENAME: CISGS.WK1     GRANITE STATE ELECTRIC
RANGENAME: PAGE7      N.H.P.U.C. #91-154
CREATED BY: MJB     Attachment 1
EDITED BY: MSB      Page 10 of 11

CREDIT CALCULATION FOR CIS-2 OPTION 2

1. NEP TOTAL MARGINAL CAPACITY COST     = $58.22

2. FACTOR FOR DISTRIBUTION LOSSES   x 1.13  = $65.79

3. FACTOR FOR NON-COMPLIANCE RISK   x  0.8727  = $57.41

4. FACTOR FOR ACTUAL RELIEF ACHIEVED   x 0.83  = $47.65

5. PROGRAM EXPENSES  ($ PER KW)  - $9.45  = $38.20

6. PREMIUM FOR 74 INTERRUPTIONS @ 12 HOURS   x 1.10  = $42.02

7. ANNUAL CREDIT ROUNDED TO WHOLE DOLLAR FOR MARKETING   $42.00 /KW YEAR

8. ANNUAL STANDBY CREDIT  (LINE 7 TIMES .40)   = $16.80

9. MONTHLY STANDBY CREDIT  (LINE 8 DIVIDED BY 12)  = $1.40 /KW MONTH

10. ANNUAL PERFORMANCE CREDIT (LINE 7 TIMES .60)   = $25.20

11. MONTHLY PERFORMANCE CREDIT (LINE 10 DIVIDED BY 7 PLUS LINE 9) = $5.00 /KW MONTH
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[Graphic(s) below may extend beyond size of screen or contain distortions.]

FILENAME: CISGS.WK1     GRANITE STATE ELECTRIC
RANGENAME: PAGE8      N.H.P.U.C. #91-154
CREATED BY: MJB     Attachment 1
EDITED BY: MSB      Page 11 of 11

CREDIT CALCULATION FOR CIS-2 OPTION 3

1. NEP TOTAL MARGINAL CAPACITY COST     = $58.22

2. FACTOR FOR DISTRIBUTION LOSSES   x  1.13  = $65.79

3. FACTOR FOR NON-COMPLIANCE RISK   x 0.8727  = $57.41

4. FACTOR FOR ACTUAL RELIEF ACHIEVED   x  0.83  = $47.65

5. PROGRAM EXPENSES  ($ PER KW)  -  $9.45  = $38.20

6. FACTOR FOR PREVIOUS DAY NOTIFICATION   x  0.75  = $28.65

7. ANNUAL CREDIT ROUNDED TO WHOLE DOLLAR FOR MARKETING        $29.00 /KW YEAR

8. ANNUAL STANDBY CREDIT  (LINE 7 TIMES .40)   = $11.60

9. MONTHLY STANDBY CREDIT  (LINE 8 DIVIDED BY 12)  = $0.97  /KW MONTH

10. ANNUAL PERFORMANCE CREDIT (LINE 7 TIMES .60)   = $17.40

11. MONTHLY PERFORMANCE CREDIT (LINE 10 DIVIDED BY 7 PLUS LINE 9) = $3.46  /KW MONTH
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[Graphic(s) below may extend beyond size of screen or contain distortions.]
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NEW ENGLAND POWER COMPANY
MARGINAL GENERATION DEMAND COST

ATTACHMENT 2
FILENAME: W92MGEN.WK NEW ENGLAND POWER COMPANY
RANGENAME CAPACITYRATE
CREATED: 21-May-86
LAST REV: 24-Jul-91
MARGINAL GENERATION DEMAND COST

(1)	(2)	(3)	(4)	(5)	(6)	(7)
PLUS:	REAL					
MARGINAL	TOTAL	LEVELIZED				
TRANSMISSION REQUIRED	PLUS:	MARGINAL	MARGINAL			
PRES VAL CAPABILITY	LOSSES @	RESERVE	RESERVE	CAPACITY	CAPACITY	
FACTOR	COSTS	4.50% MARGIN	MARGIN	COST	COST	
($/KW)	($/KW)	($/KW)	($/KW)	($/KW)		
1991 1.0000						
1992 0.9147	$0.00	$0.00	26.6%	$0.00	$0.00	$58.22
1993 0.8366	$0.00	$0.00	25.8%	$0.00	$0.00	$60.55
1994 0.7652	$0.00	$0.00	25.5%	$0.00	$0.00	$62.97
1995 0.6999	$0.00	$0.00	24.8%	$0.00	$0.00	$65.49
1996 0.6402	$0.00	$0.00	24.8%	$0.00	$0.00	$68.11
1997 0.5855	$0.00	$0.00	24.8%	$0.00	$0.00	$70.83
1998 0.5356	$0.00	$0.00	24.8%	$0.00	$0.00	$73.67
1999 0.4899	$0.00	$0.00	24.8%	$0.00	$0.00	$76.61
2000 0.4481	$179.38	$8.07	24.8%	$46.49	$233.94	$79.68
2001 0.4098	$172.76	$7.77	24.8%	$44.77	$225.31	$82.87
2002 0.3749	$167.04	$7.52	24.8%	$43.29	$217.85	$86.18
2003 0.3429	$161.74	$7.28	24.8%	$41.92	$210.93	$89.63
2004 0.3136	$156.81	$7.06	24.8%	$40.64	$204.51	$93.21
2005 0.2868	$152.23	$6.85	24.8%	$39.45	$198.53	$96.94
2006 0.2624	$147.90	$6.66	24.8%	$38.33	$192.89	$100.82
2007 0.2400	$143.68	$6.47	24.8%	$37.24	$187.38	$104.85
2008 0.2195	$139.51	$6.28	24.8%	$36.16	$181.94	$109.05
2009 0.2008	$135.39	$6.09	24.8%	$35.09	$176.57	$113.41
2010 0.1836	$131.31	$5.91	24.8%	$34.03	$171.25	$117.94
2011 0.1680	$127.29	$5.73	24.8%	$32.99	$166.01	$122.66
2012 0.1536	$123.31	$5.55	24.8%	$31.96	$160.82	$127.57
2013 0.1405	$119.39	$5.37	24.8%	$30.94	$155.70	$132.67
2014 0.1285	$115.52	$5.20	24.8%	$29.94	$150.66	$137.98
2015 0.1176	$112.28	$5.05	24.8%	$29.10	$146.43	$143.50
2016 0.1075	$110.31	$4.96	24.8%	$28.59	$143.86	$149.24
2017 0.0984	$109.02	$4.91	24.8%	$28.25	$142.18	$155.21
2018 0.0900	$107.80	$4.85	24.8%	$27.94	$140.59	$161.42
2019 0.0823	$106.65	$4.80	24.8%	$27.64	$139.09	$167.87
2020 0.0753	$105.58	$4.75	24.8%	$27.36	$137.69	$174.59
2021 0.0688	$104.61	$4.71	24.8%	$27.11	$136.43	$181.57
2022 0.0630	$103.73	$4.67	24.8%	$26.88	$135.28	$188.83
2023 0.0576	$102.92	$4.63	24.8%	$26.67	$134.22	$196.39
2024 0.0527	$104.48	$4.70	24.8%	$27.08	$136.26	$204.24
TOTAL 10.1535						
TOTAL NET PRESENT VALUE (NPV)	$676.61	$30.45	$175.35	$882.40	$882.40	

(1) DISCOUNT RATE @ 9.33%
(2) 1992-1999 = VALUE OF CAPACITY FOR LONG RUN COMMITMENTS, 2000-2024 = FIXED COST REVENUE REQUIREMENT OF 2000 GAS TURBINE PEAKING UNIT
(3) DETERMINATION OF REAL ANNUITY (1992-2024)

A=NPV/PV/(R^W)-1)/(R-1) PV = 0.9147

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R=(1+i)/(1+d)   NPV = $882.40
i=4.00%   R =   0.9512
d=9.33%   R^N =  0.1922
N=33 YEARS   A =   $58.22
^=SYMBOL FOR EXPONENT
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ATTACHMENT 3A Page 1 of 3

THE GRANITE STATE ELECTRIC COMPANY CIS-1 Service Agreement

This Service Agreement is entered into by and between the Granite State Electric Company (Company) and the _____(Customer) with respect to Customer's facilities located at .

This Service Agreement uses terms that are defined in Appendix A hereto, which are incorporated herein by reference and shall be deemed to be a part hereof. The Company and the Customer hereby agree that Customer shall purchase electricity from the Company on the following specified terms:

1.Rate Schedule

Customer shall pay for electricity purchases from the Company according to and subject to the terms and conditions of an available rate tariff except as explicitly modified by the terms of this agreement, including Appendix A.

The Company shall credit Customer's electric bill for performance under the terms of this Service Agreement as follows:

(a) For each interruption requested by the Company, the Company shall credit Customer's bill with the appropriate amount determined in accordance with the terms and conditions of Appendix A for the option specified in Paragraph 3 of this Service Agreement.

(b) Credits will be paid by the second succeeding month after the month in which credits are earned.

2. The Customer's Firm Power Level, Nominal Peak Period Load and Peak Period Load Factor will be updated annually as set forth in Schedule I. of this agreement which is made a part hereof.

3. Interruption Schedules

The maximum number of interruptions per year, the maximum number of interruptible hours per day, and the minimum hours of notification shall be as specified for CIS- 1 Option _____ in Appendix A.

4. Limitation of Liability

The Company will not be liable to the Customer or any individual or third party for any damages or injury caused by or relating to any actions taken by the Customer to reduce its load under this CIS Service.

5. Term

This Service Agreement shall emain in effect until terminated by either party. a party may terminate this agreement upon one-year's notice.

6. Effective Date

This Service Agreement shall become effective upon execution by the Company.

In Witness Whereof, the Company and the Customer have caused this Service Agreement to be executed by their duly authorized representatives.

The Granite State Electric Company

By: By:

Title: Title:

Date: Date:

SCHEDULE I.

For the purposes of the Agreement, the following Interruptible Rate Load definitions shall apply from November 1, 1991 through October 31, 1992:

Special term, other than those shown below:

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Month/day/year through Month/day/year _____ _____

All-Year Winter Summer (Nov-Oct) (Nov-Apr) (May-Oct)

The Customer's:

Peak Period Load is _____ _____ _____

Firm Power Level is - _____ _____ _____

Nominal Interruptible Load is =

Peak Period Load Factor is X

Credited Interruptible Load is =

_____ Name of Customer

_____ Customer Account Number

_____ C&LM Services Representative

_____ Date Schedule I Completed

Appendix A

GRANITE STATE ELECTRIC COMPANY

COOPERATIVE INTERRUPTIBLE SERVICE TERMS AND CONDITIONS FOR CIS-1

AVAILABILITY

Cooperative Interruptible Service - 1 (CIS-1) is available only to Customers who can

designate as Nominal Interruptible Load the larger of either 100 kilowatts or twenty percent (20%) of their Nominal Peak Period Load.

Cooperative Interruptible Service is not available to a Customer who participates in the Company's standby or emergency generator program.

Each Cooperative Interruptible Service Customer must execute a CIS Service Agreement, subject to Company approval, which sets forth the choices and specific requirements of that Customer.

The Company reserves the right to restrict the availability of Cooperative Interruptible Service to new Customers if and when the amount of Nominal Interruptible Load in aggregate exceeds 10 megawatts.

DEFINITION OF TERMINOLOGY

Firm Power Level (FPL) - the specified level of demand in kilowatts that the Customer agrees not to exceed on average during each Interruption.

Interruption - a particular day chosen by the Company or its designated agent during which the Customer, after proper notification by the

Company via the established communication system, agrees that the metered KW load will not exceed their FPL. Each Interruption will have specified hours.

Nominal Peak Period Load (NPPL) - the average of the maximum Peak Period demands, measured in kilowatts or 90% of kilovolt- amperes, whichever is larger, during each of the seven Peak Months prior to the current Program Year or prior to the time of executing the CIS Service Agreement.

Nominal Interruptible Load (NIL) - the difference between Nominal Peak Period Load and the Firm Power Level. This quantity is recalculated prior to and will be fixed for each Program Year.

Credited Interruptible Load (CIL) - the product of Nominal Interruptible Load and the Peak Period Load Factor.

Program Year - the 12 month period from November of a given calendar year through October of the succeeding calendar year.

Peak Months - the seven billing months for June, July, August, September, December, January and February.

Peak Period - non-holiday weekdays during the hours of 8 am to 9 pm in June, July, August, September, December, January and February.

Peak Period Load Factor (PPLF) - the decimal, rounded off to four places, derived from the following formula:

(Total KWH consumed during Peak Periods of Peak Months.)
---------- (NPPL x Hours in Peak Periods of Peak Months.)

In calculating PPLF, the most recent Program Year shall be used. The Company may, at its discretion, choose some other period of time to calculate PPLF, as well as NPPL. All days on which interruptions were called shall be deleted from the record of Customer loads used to calculate PPLF.

Interruption Period Load (IPL) - the average of the 15- minute integrated load, as measured by the Company's metering equipment in kilowatts or as 90% of kilovolt-amperes, whichever is larger, during the specified hours of each Interruption.

RATE FOR SALES

The Customer shall pay for electricity actually used each month under the filed rate applicable to the Customer.

METHOD OF INTERRUPTION NOTIFICATION

Advance notice of interruption will be provided by the Company to the customer by means of a notification device which will be provided by the Company and owned and maintained by the Company, except as above provided.

The required notification period is shown on the Interruption Schedule.

INTERRUPTION SCHEDULE

The shedding of contractual Interruptible Load will be in accordance with the following schedule:

Page 29

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

CIS-1	Option 1	Option 2	Option 3
Maximum Number of Interruption days/Program Year*	26	74	26
Maximum Number of Continuous Interruption Hours/Day	8	12	8
Minimum Period of Notification	1 hour	1 hour	Previous Business Day

* Includes up to two interruptions for testing purposes.

These limits may be adjusted and options added or deleted from time to time to conform with the requirements for Type 2 Pool Controlled Dispatchable Load - Operating Procedure #4, which are described in the New England Power Pool's Criteria, Rules and Standards No. 16. Under Option 3, each time an interruption is requested on the previous business day, the Customer will receive a minimum interruption credit of eight (8) hours.

Seasonally Differentiated Service Agreement ---------- Subject to mutual agreement between the Company and the Customer, a Customer selecting either CIS-1 Option 1, 2 or 3 may set the Firm Power Level at different levels in the program winter season, which is November through April, and the program summer season, which is May through October. In this situation, all customer data used to determine Credited Interruptible Load (CIL) will be segregated by the two program seasons and the CIL will be calculated seasonally. Credits

for months during each program season will be based on the seasonal CIL. NEPOOL acceptance of the seasonally differentiated interruptible load is required under Options 1 and 2. The interruption schedule for the Option chosen will remain unchanged.

INTERRUPTIBLE CREDIT CALCULATION

The Total Interruptible Credit earned annually is determined by the following formula:

IC = A x CIL; where

IC is the Interruptible Credit earned,

A is the Total Annual Credit per KW for the option selected,

CIL is the Customer's Credited Interruptible Load, and

The IC is payable on the following terms. The interruptible credit will be paid within sixty (60) days of each interruption. The monthly additional customer charge for CIS will be added to each monthly bill.

NON-COMPLIANCE CHARGE CALCULATION

For each Interruption where the Interruption Period Load is greater than the Firm Power Level, a Non-Compliance Charge shall be determined by the following equation:

NCC = N X (IPL - FPL); where

NCC is the Non-Compliance Charge assessed on each Interruption

N is the Non-Compliance Charge per kW applicable to the option

selected

IPL is the Customer's Interruption Period Load, and

FPL is the Customer's Firm Power Level.

The Non-Compliance Charge shall not be less than zero.

The Non-Compliance Charge shall be assessed to the Customer by the second succeeding month after the month in which it was incurred. Any upaid charges shall be deducted from monthly interruptible credits.

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

INTERRUPTIBLE CREDIT SCHEDULE

SELECTED OPTION	TOTAL ANNUAL INTERRUPTIBLE CREDIT PER KW	MONTHLY INTERRUPTIBLE CREDIT PER KW
1	$41.00	$3.42
2	$45.00	$3.75
3	$31.00	$2.58

NON-COMPLIANCE

SELECTED	EACH INTERRUPTION NON-COMPLIANCE CHARGE

OPTION	PER KW
1	$4.10
2	$4.50
3	$3.10

The Company shall request up to two (2) interruptions per Program Year for testing purposes.

Failure of performance by the Customer during Interruptions shall, at the Company's discretion, be sufficient cause for an adjustment of the Customer's Firm Power Level commitment or termination of this Agreement by the Company under the provisions hereof.

Effective November 1, 1992

THE GRANITE STATE ELECTRIC COMPANY CIS-2 Service Agreement

This Service Agreement is entered into by and between the Granite State Electric Company (Company) and the _____ (Customer) with respect to Customer's facilities located at .

This Service Agreement uses terms that are defined in Appendix A hereto, which are incorporated herein by reference and shall be deemed to be a part hereof. The Company and the Customer hereby agree that Customer shall purchase electricity from the Company on the following specified terms:

1. Rate Schedule

Customer shall pay for electric service purchased from the Company according to and subject to the terms and conditions of an available rate tariff except as explicitly modified by the terms of this agreement, including Appendix A.

The Company shall credit Customer's electric bill for performance under the terms of this Service Agreement as follows:

(a) For each Interruption requested by the Company, the Company shall credit Customer's bill with the appropriate amount determined in accordance with the terms and conditions of Appendix A for the option specified in Paragraph 3 of this Service Agreement.

(b) For any month that the Company does not call for an Interruption, the Company shall credit Customer's bill with the appropriate Standby Interruptible Credit as set forth in the CIS-2 Terms and Conditions for the option specified in Paragraph 3 of this Service Agreement.

(c) Credits will be paid by the second succeeding month after the month in which credits are earned.

2. The Customer's Firm Power Level, Nominal Peak Period Load and Peak Period Load Factor will be updated annually as set forth in Schedule I. of this agreement which is made a part hereof.

3. Interruption Schedules

The maximum number of interruptions per year, the maximum number of interruptible hours per day, and the minimum period of notification shall be as specified for CIS- 2 Option _____ in the CIS-2 terms and ocnditions.

4. Limitation of Liability

The Company will not be liable to the Customer or any individual or third party for any damages or injury caused by or relating to any actions taken by the Customer to reduce its load under this CIS Service.

5. Term

This Service Agreement shall remain in effect until terminated by either party. A party may terminate this agreement upon one-year written notice.

6. Effective Date

This Service Agreement shall become effective upon execution by the Company.

In Witness Whereof, the Company and the Customer have caused this Service Agreement to be executed by their duly authorized representatives.

The Granite State Electric Company

By: By:

Title: Title:

Date: Date:

SCHEDULE I.

For the purposes of the Agreement, the following Interruptible Rate Load definitions shall apply from November 1, 1991 through October 31, 1992:

Special term, other than those shown below:

Month/day/year through Month/day/year

---------- ----------

All-Year Winter Summer (Nov-Oct) (Nov-Apr) (May-Oct)

The Customer's:

Peak Period Load is ------ ------- -------

Firm Power Level is - ------ ------- -------

Nominal Interruptible Load is = ------ ------- -------

Peak Period Load Factor is X ------ ------- -------

Credited Interruptible Load is = ------ ------- -------

_____ Name of Customer

_____ Customer Account Number

_____ C&LM Services Representative

_____ Date Schedule I Completed

Appendix

GRANITE STATE ELECTRIC COMPANY COOPERATIVE INTERRUPTIBLE SERVICE TERMS AND CONDITIONS FOR - CIS-2

AVAILABILITY

Cooperative Interruptible Service - 2 (CIS-2) is available only to Customers of the Company who (i) can designate as Nominal Interruptible Load the larger of either 100 kilowatts or twenty percent (20%) of their Nominal Peak Period Load.

Cooperative Interruptible Service is not available to a Customer who participates in the Company's standby or emergency generator program.

Each Cooperative Interruptible Service Customer must execute a CIS Service Agreement, subject to Company approval, which sets forth the choices and specific requirements of that Customer.

The Company reserves the right to restrict the availability of Cooperative Interruptible Service to new Customers if and when the amount of Nominal Interruptible Load in aggregate exceeds 10 megawatts.

DEFINITION OF TERMINOLOGY

Firm Power Level (FPL) - the specified level of demand in kilowatts that the Customer agrees not to exceed on average during each Interruption.

Interruption - a particular day chosen by the Company or its designated agent during which the Customer, after

proper notification by the Company via the established communication system, agrees that their metered KW load will not on average exceed their FPL. Each Interruption will have specified hours.

Nominal Peak Period Load (NPPL) - the average of the maximum Peak Period demands, measured in kilowatts or 90% of kilovolt- amperes, whichever is larger, during each of the seven Peak Months prior to the current Program Year or prior to the time of executing the CIS Service Agreement.

Nominal Interruptible Load (NIL) - the difference between Nominal Peak Period Load and the Firm Power Level. This quantity is recalculated prior to and will be fixed for each Program Year.

Credited Interruptible Load (CIL) - the product of Nominal Interruptible Load and the Peak Period Load Factor.

Program Year - the 12 month period from ovember of a given calendar year through October

of the succeeding calendar year.

Peak Months - the seven billing months for June, July, August, September, December, January and February.

Peak Period - non-holiday weekdays during the hours of 8 am to 9 pm in June, July, August, September, December, January and February.

Peak Period Load Factor (PPLF) - the decimal, rounded off to four places, derived from the following formula:

(Total KWH consumed during Peak Periods of Peak Months.)
---------- (NPPL x Hours in Peak Periods of Peak Months.)

In calculating PPLF, the most recent Program Year shall be used. The Company may, at its discretion, choose some other period of time to calculate PPLF, as well as NPPL. All days on which interruptions were called shall be deleted from the record of Customer loads used to calculate PPLF.

Interruption Period Load (IPL) - the average during each month of the 15-minute integrated load, as measured by the Company's metering equipment in kilowatts or as 90% of kilovolt-amperes, whichever is larger, during the specified hours of all Interruptions called in the month. If no Interruptions are called in a month, IPL is defined as zero (0).

Performance Credited Interruptible Load - the value determined by taking Credited Interruptible Load minus Non-Compliance Load.

RATE FOR SALES

The Customer shall pay for electricity actually used each month under the filed rate applicable to the Customer.

METHOD OF INTERRUPTION NOTIFICATION

Advance notice of interruption will be provided by the Company to the customer by means of a notification device which will be provided by the Company and owned and maintained by the Company.

The required notification periods for each option are shown on the following tables.

INTERRUPTION SCHEDULE

The shedding of contractual Interruptible Load will be in accordance with the option selected by the Customer from the following schedule:

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

CIS-2	Option 1	Option 2	Option 3
Maximum Number of Interruption days/Program Year*	26	74	26
Maximum Number of Continuous Interruptible Hours/Day	8	12	8


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Minimum Period of
Notification  1 hour 1 hour Previous
Business
Day
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*Includes up to two interruptions for testing purposes.

These limits for Options 1 and 2 may be adjusted and options added or deleted from time to time to conform with the requirements for Type 2 Pool Controlled Dispatchable Load - Operating Procedure #4, which are described in the New England Power Pool's Criteria, Rules and Standards No. 16. Under Option 3, each time an interruption is requested on the previous business day, the Customer will receive a minimum interruption credit of eight (8) hours.

Seasonally Differentiated Service Agreement

Subject to the mutual agreement between the Company and the Customer, a Customer selecting either CIS-2 Option 1, 2, or 3 may set the Firm Power Level at different levels in the program winter season, which is November through April, and the program summer season, which is May through October. In this situation, all customer data used to determine Credited Interruptible Load (CIL) will be segregated by the two program seasons and the CIL will be calculated seasonally. Credits for months during each program season will be based on the seasonal CIL. NEPOOL acceptance of the seasonally differentiated interruptible load is required under Options 1 and 2. The interruption schedule for the Option chosen will remain unchanged.

INTERRUPTIBLE CREDIT CALCULATION

The Standby Interruptible Credit earned in zero interruption months is determined by the following formula:

SIC = A X CIL; where

SIC is the Standby Interruptible Credit earned monthly,

A is the Standby Monthly Credit per kW for the option selected, and

CIL is the Customer's Credited Interruptible Load.

The Standby Interruptible Credit is paid only in months in which zero interruptions are called.

The Performance Interruptible Credit earned monthly is determined by the following formula:

PIC = B x PCIL; where

PIC is the Performance Interruptible Credit

B is the Performance Monthly Credit per kW for the option selected,

PCIL is Performance Credited Interruptible Load.

The amount PIC will be paid in the second succeeding month after it is earned.

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[Graphic(s) below may extend beyond size of screen or contain distortions.]
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GRANITE STATE ELECTRIC COMPANY
COOPERATIVE INTERRUPTIBLE SERVICE TERMS AND CONDITIONS FOR -
CIS-2

INTERRUPTIBLE CREDIT SCHEDULE

MONTHLY SELECTED OPTION	MONTHLY STANDBY CREDIT PER KW	PERFORMANCE CREDIT PER KW
1	$1.27	$4.53
2	$1.40	$5.00
3	$0.97	$3.46

The Company shall request up to two (2) interruptions per Program Year for testing purposes.

Failure of performance by the Customer during any Interruption shall, at the Company's discretion, be sufficient cause for the adjustment of the Customer's Firm Power Level Commitment or termination of this Agreement by the Company under the provisions hereof.

Effective November 1, 1991

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NH.PUC*12/16/91*[27284]*76 NH PUC 783*Granite State Telephone, Inc.

[Go to End of 27284]

Re Granite State Telephone, Inc.

DR 91-183
Order No. 20,335

76 NH PUC 783

New Hampshire Public Utilities Commission

December 16, 1991

ORDER requiring an independent telephone company to modify its proposal to offer selective blocking service, replacing the filed $20.00 charge for all changes to selective blocking with an interim $10.00 nonrecurring charge, subject to review following completion of an incremental cost study. Selective blocking service allows one-party residence and single-line business customers to block calls to information services prefixed by a 900 area code.

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1. RATES, — 553

[N.H.] Telecommunications — Audiotex — 900 area code — Selective blocking service — Interim charges — Independent telephone company. p. 783.

2. SERVICE, § 449

[N.H.] Telecommunications — Audiotex — Selective blocking — Independent telephone company. p. 783.

BY THE COMMISSION:

ORDER

[1, 2] On November 8, 1991 Granite State Telephone, Inc., (the company), filed with the New Hampshire Public Utilities Commission (commission), a petition seeking approval of its Selective Blocking Service, whereby one party residence and single line business customers would be able to block calls to information services prefixed by a 900 area code; and

WHEREAS, this petition was filed for effect on December 8, 1991; and

WHEREAS, the company proposed to allow customers a 90 day period after the date of this order for customers to take this service without incurring non-recurring charges, and proposed a non-recurring charge of $20.00 per equipped line for every subsequent change in selective blocking service; and

WHEREAS, both the company and the staff are in agreement that the cost support filed with this service is inadequate; and

WHEREAS, the company and staff have agreed that pending an Incremental Cost of Service study, a non-recurring charge of $10.00 should be the only cost associated with each subsequent change in selective blocking service on an interim basis in order to recover the incremental costs of providing this service; and

WHEREAS, the company has agreed to file with the commission a complete incremental cost study no later than December 31, 1992; it is hereby

ORDERED, that the company modify its Selective Blocking Service Petition, replacing the filed $20.00 charge for all subsequent changes to selective blocking with a $10.00 nonrecurring charge; and it is

FURTHER ORDERED, that the company submit a compliance tariff incorporating this change no later than thirty days following the issuance of this order; and it is

FURTHER ORDERED, that the rates for this service be subject to review following the completion of the incremental cost study in December 1992.

By order of the New Hampshire Public Utilities Commission this sixteenth day of December, 1991.

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NH.PUC*12/16/91*[27285]*76 NH PUC 784*Granite State Telephone, Inc.

[Go to End of 27285]

Re Granite State Telephone, Inc.

DR 91-184
Order No. 20,336

76 NH PUC 784

New Hampshire Public Utilities Commission

December 16, 1991

ORDER requiring an independent telephone company to modify its proposal to offer screened one-party service, replacing the filed monthly recurring charge with an interim, $10.00 nonrecurring charge, subject to review following completion of an incremental cost study. Screened one-party service allows one-party residence and single-line business customers to effect a dial "1" outward toll restriction and a collect and third number inward toll restriction.

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1. RATES, — 553

[N.H.] Telecommunications — Toll restrictions — Screened one-party service — Interim charges — Independent telephone company. p. 784.

2. SERVICE, § 464

[N.H.] Telecommunications — Restriction of use — Toll restriction — Screened one-party service — Independent telephone company. p. 784.

BY THE COMMISSION:

ORDER

[1, 2] On November 8, 1991, Granite State Telephone Inc., (the company), filed with the New Hampshire Public Utilities Commission (commission), a petition seeking to introduce Screened One Party Service, whereby all one party residence and business customers would be able to effect a dial "1" outward toll restriction and a collect and third number inward toll restriction; and

WHEREAS, this petition was filed for effect on December 8, 1991; and

WHEREAS, the company proposed to waive any non-recurring service charges associated with the service in order to assist customers who are having difficulty in paying their telephone bills; and

WHEREAS, the company proposed to charge a monthly recurring charge of $2.00 for this service; and

WHEREAS, both the company and commission staff (staff) are in agreement that the cost support filed with this service is inadequate; and

WHEREAS, the company and staff have agreed that pending an Incremental Cost of Service study, a non-recurring charge of $10.00 should be the only cost associated with this service on an interim basis, which should recover the incremental costs of providing this service; and

WHEREAS, the company has agreed to file with the commission a complete incremental cost study no later than December 31, 1992; it is hereby

ORDERED, that the company modify its Screened One Party Service Petition to replace its monthly charge of $2.00 per subscriber with a one time activation charge of $10.00; and it is

FURTHER ORDERED, the company submit a compliance tariff incorporating this change no later than thirty days following the issuance of this order; and it is

FURTHER ORDERED, that the rates for this service be subject to review following the completion of the incremental cost study in December 1992.

By order of the New Hampshire Public Utilities Commission this sixteenth day of December, 1991.

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NH.PUC*12/16/91*[27286]*76 NH PUC 785*Granite State Telephone, Inc.

[Go to End of 27286]

Re Granite State Telephone, Inc.

DR 91-185
Order No. 20,337

76 NH PUC 785

New Hampshire Public Utilities Commission

December 16, 1991

ORDER authorizing an independent telephone company to revise its low use measured residence service to expand its availability, subject to review following the completion of an incremental cost study.

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1. RATES, — 539

[N.H.] Telecommunications — Low use measured residence service — Availability — Independent telephone company. p. 785.

2. SERVICE, § 433

[N.H.] Telecommunications — Low use measured residence service — Availability — Independent telephone company. p. 785.

BY THE COMMISSION:

ORDER

[1, 2] On November 8, 1991, Granite State Telephone, Inc., (the company) filed with the New Hampshire Public Utilities Commission (commission), revisions to its existing Low Use

Measured Residence Service expanding its availability to Hillsboro Upper Village and Washington exchange customers effective December 8, 1991; and

WHEREAS, the proposed tariff revision is in compliance with Commission Order No. 19,057, dated April 11, 1988, in Docket DR 86-297; and

WHEREAS, the company has agreed to file with the Commission a complete incremental cost study no later than December 31, 1992; it is hereby

ORDERED, that the following tariff pages:

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

Tariff NHPUC No. 6 - Telephone
Section 2, -         15th Revised Sheet 1A
                     4th Revised Sheet 1B
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be and hereby are approved: and it is

FURTHER ORDERED, that the rates for this service be subject to review following the completion of the incremental cost study in December 1992.

By order of the New Hampshire Public Utilities Commission this sixteenth day of December, 1991.

EDITOR'S APPENDIX

Citations in Case

[N.H.] Re Granite State Teleph., Inc., DR 86-297, Order No. 19,057, 73 NH PUC 152, Apr. 11, 1988.

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NH.PUC*12/18/91*[27287]*76 NH PUC 785*Southern New Hampshire Water Company, Inc.

[Go to End of 27287]

Re Southern New Hampshire Water Company, Inc.

DF 91-182
Order No. 20,340

76 NH PUC 785

New Hampshire Public Utilities Commission

December 18, 1991

ORDER authorizing a water utility to increase and extend its short-term debt limit to allow it time to complete its pending rate case before pursuing additional long-term debt financing.

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1. SECURITY ISSUES, § 44

[N.H.] Authorization — Extension of short-term debt limit — Public good — Water utility.

p. 786.

BY THE COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. is authorized to operate as a public utility with a principal place of business in Londonderry, Rockingham, County, New Hampshire; and

WHEREAS, Southern New Hampshire Water Company, Inc., pursuant to R.S.A. 369:7, filed with this Commission, on November 6, 1991, a Petition for Authority to Extend its Short-Term Debt Limit; and

[1] WHEREAS, Southern New Hampshire Water Company, Inc. has a current Short-Term Debt limit of $6,550,000 authorized by Commission Order Number 20,158 in Docket DF 91-082; and

WHEREAS, Southern New Hampshire Water Company, Inc. Short-Term Debt limit is extended at or near the $6,550,000, which limit expires December 31, 1991; and

WHEREAS, Southern New Hampshire Water Company, Inc.'s requests that this Short-Term Debt limit be extended until June 30, 1992 in order for it to have sufficient time to complete its pending rate case proceeding Docket DR 89-224 and receive permanent rates in order to pursue additional Long-Term Debt financing; it is hereby

ORDERED, that the New Hampshire Public Utilities Commission, pursuant to R.S.A. 369:7, finds that the continuation of the Short-Term Debt limit as proposed in the petition is consistent with the public good; and it is

FURTHER ORDERED, that the petition of Southern New Hampshire Water Company, Inc. for authority to extend its Short-Term Debt limit until June 30, 1992 be, and hereby is, approved; and it is

FURTHER ORDERED, that the Southern New Hampshire Water Company, Inc. pursue the Long-Term Debt financing as quickly after the issuance of a final order in DR 89-224 so that it may complete its Long-Term Debt financing while the interest rates are low, and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. 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; and it is

FURTHER ORDERED, that this Order shall be effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re Southern New Hampshire Water Co., Inc., DF 91-082, Order No. 20,158, 76 NH PUC 433, June 24, 1991.

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[Go to End of 27288]

Re New England Telephone and Telegraph Company

DE 91-163
Order No. 20,341

76 NH PUC 786

New Hampshire Public Utilities Commission

December 18, 1991

ORDER nisi providing for additional notice of a prior order nisi that authorized a telephone local exchange carrier to revise the boundary between two of its exchange areas to conform with a municipal boundary. For prior order, see 76 NH PUC 676.

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1. SERVICE, § 446

[N.H.] Telecommunications — Exchange areas and boundaries — Revision to conform with municipal boundary — "Grandfathering" — Local exchange carrier. p. 787.

BY THE COMMISSION:

Page 786

ORDER

On November 7, 1991, the New Hampshire Public Utilities Commission (Commission or NHPUC) issued Order No. 20,294 authorizing New England Telephone and Telegraph Company (NET) to change the Franklin-
Canterbury telephone exchange boundary.

[1] WHEREAS, Order No. 20,294 required NET to notify each customer in the area who would be located in a different telephone exchange as a result of Order No. 20,294, no later than November 21, 1991; and

WHEREAS, said notification was not provided to the affected customers due to an administrative oversight of NET; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in

opposition to NET's petition to change the franchise boundary; it is hereby

ORDERED, that all persons interested in responding to the petition submit their comments or file a written request for a hearing on this matter before the commission no later than January 15, 1991; and it is

FURTHER ORDERED, that the petitioner mail one copy of this Order and Order No. 20,294, by first class mail, to each customer in the area who will be located in a different telephone exchange as a result of these orders, no later than December 31, 1991. In addition, pursuant to RSA 541-A:22, the petitioner shall serve a copy of this order and Order No. 20,294, to the Franklin and Canterbury Town Clerks, by first class U.S. mail, postage prepaid, and postmarked on or before December 31, 1991. Compliance with these notice provisions shall be documented by affidavit (s) to be filed with the Commission on or before January 13, 1992; 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 approved in Order No. 20,294, in the exchanges of Franklin and Canterbury New Hampshire; and it is

FURTHER ORDERED, that such authority shall be effective January 15, 1992, unless a hearing is requested as provided above or the commission otherwise orders prior to the proposed effective date; and it is

FURTHER ORDERED, that NET file revised tariff pages to NHPUC No. 75 Part A Section 5 Fifth Revision of Sheet 13 and Fourth Revision of Sheet 36, effective January 15, 1992, reflecting the changes in service areas brought about by this revision in exchange boundaries; and specifying thereon that the maps are effective January 15, 1992, by authority of this NHPUC order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DE 91-163, Order No. 20,294, 76 NH PUC 676, Nov. 7, 1991.

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NH.PUC*12/19/91*[27289]*76 NH PUC 787*Granite State Gas Transmission

[Go to End of 27289]

Re Granite State Gas Transmission

DR 91-210
Order No. 20,342

76 NH PUC 787

New Hampshire Public Utilities Commission

December 19, 1991

ORDER denying an objection by an interstate gas pipeline to the assessment imposed upon it by the commission for fiscal year 1992. Commission rejects claim that its power to make assessments against wholesale gas utilities is preempted by federal regulation.

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1. COMMISSIONS, § 58

[N.H.] Assessments against utilities — Interstate business — Wholesale gas utilities — Jurisdiction — Preemption claim. p. 788.

Page 787

2. GAS, § 3

[N.H.] Jurisdiction and powers — State commissions — Assessments against wholesale utilities. p. 788.

BY THE COMMISSION:

ORDER

Granite State Gas Transmission (GSGT), having objected on September 6, 1991, to the assessment by the New Hampshire Public Utilities Commission (commission) pursuant to RSA Chapter 363-A for Fiscal Year 1992; and

[1, 2] WHEREAS, GSGT asserts in support of its objection, *inter alia*, that commission regulation of GSGT is preempted by federal regulation and that the assessment relates to wholesale activity under the jurisdiction of the FERC; and

WHEREAS, the utility assessment pursuant to RSA 363-A:2 is calculated by using the gross utility revenue of all public utilities in allocating the expenses of the commission to each utility, "in direct proportion as the revenues relate to the total utility revenues as a whole;" and

WHEREAS, consistent with RSA 363-A:2, utilities such as GSGT with interstate business, have an assessment assigned to them which is based upon the ratio of their New Hampshire assets to the total assets of the company multiplied by the total revenues of the company. Allocations have also been assessed in this manner against the Portland Pipeline, the New England Transmission Corp. and the New England Power Company, all of which are wholesale utilities; and

WHEREAS, this assessment methodology is designed to provide an administratively efficient way of reimbursing the State of New Hampshire for expenses relating to the regulation of the activities of utilities under its jurisdiction including, but not limited to such activities as:

1. reviewing and auditing monthly and annual reports;

2. analyzing FERC filings and participating in FERC dockets;

3. conferences with utility officials to keep the commission informed on utility planning issues including site and facility plans, gas supply projections and related matters;

4. related pipeline cases and generic gas supply issues;

5. related issues before the National Association of Regulatory Commissioners (NARUC);

6. site and facility reviews pursuant to RSA 162-H regarding expected applications for constructing additional transmission pipelines in New Hampshire and upgrading of New Hampshire facilities;

and;

WHEREAS, the utility assessment, being a method of recovering the costs of the commission in the regulation of public utilities, is not a tax, *Appeal by the Association of New Hampshire Utilities*, 132 N.H 770 (1982); and

WHEREAS, the GSGT assertion that it is subject to double assessment is erroneous in that all New Hampshire public utilities are similarly assessed based on gross revenues, including wholesale revenues which fall under FERC regulation, thereby providing each utility with a proportionate share of the regulatory expenses incurred by this agency; and

WHEREAS, FERC has allowed recovery of RSA 363-A assessments in that FERC has included in wholesale rates the amounts assessed by this commission; and

WHEREAS, GSGT is a New Hampshire public utility as defined by RSA 362:2 which provides that:

The term "public utility" shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court ... owning or operating any pipeline, including pumping stations, storage depots and other facilities for the transportation, distribution or sale of gas ... "

Page 788

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and

WHEREAS, all public utilities as defined in RSA 362:2 are subject to the assessment provisions of RSA Chapter 363-A; and

WHEREAS, the GSGT objection appears to raise only the legal issue of whether RSA 363-A applies to it as a wholesale gas utility rather than the calculation of the amount assessed, and no facts appear to be in dispute; and

WHEREAS, RSA 363-A:4 only requires a hearing when a utility challenges the calculation of the amount assessed; it is hereby

ORDERED, that the objection by Granite State Gas Transmission Corp. to the utility assessment for Fiscal Year 1992 pursuant to RSA Chapter 363-A is denied; and it is

FURTHER ORDERED, that this denial is without prejudice to GSGT to request a hearing if it is challenging the calculation of the assessment or alleging a material dispute of facts.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1991.

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NH.PUC*12/23/91*[27290]*76 NH PUC 789*Public Service Company of New Hampshire

[Go to End of 27290]

Re Public Service Company of New Hampshire

Movants: Campaign for Ratepayers Rights and Shelley Nelkens

DR 91-011
Order No. 20,343

76 NH PUC 789

New Hampshire Public Utilities Commission

December 23, 1991

ORDER denying a joint motion for rehearing of a prior order that revised the fuel and purchased power adjustment clause (FPPAC) rate of Public Service Company of New Hampshire (PSNH). Commission finds that the motion for rehearing contained no facts or arguments not already fully considered. For prior order, see 76 NH PUC 645.

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1. PROCEDURE, — 34

[N.H.] Rehearings and reopenings — Time limitations — Extensions — Waivers. p. 790.

2. PROCEDURE, — 32

[N.H.] Rehearings and reopenings — Denial — Defective filing — Failure to state adequate grounds — Statutory requirements. p. 791.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Replacement power costs — Nuclear plant outages — Prudence. p. 791.

APPEARANCES: As previously noted.

BY THE COMMISSION:

REPORT

On October 25, 1991, the New Hampshire Public Utilities Commission (commission) issued Report and Order No. 20,280 in this proceeding which, *inter alia*, approved a revised FPPAC

rate of 0.361¢/kwh applicable to the billing period from September 1, 1991, through April 30, 1992. The Campaign for Ratepayers Rights and Ms. Shelley Nelkens filed a timely Joint Motion for Rehearing (hereinafter the CRR/Nelkens Joint Motion or Joint Motion) on November 14, 1991. On November 21, 1991, Public Service Company of New Hampshire, Inc. (PSNH) and Northeast Utilities Service Company, Inc. (NUSCO) filed a Joint Objection to the CRR/Nelkens' Joint Motion and also filed a Joint Motion for Extension of Time To File Objection.

I. *PSNH/NUSCO Motion for Extension of Time To File Objection*

As noted *supra*, the Campaign for Ratepayers Rights and Ms. Shelley Nelkens filed a Joint Motion for Rehearing with respect

to Report and Order No. 20,280 on November 14, 1991. Pursuant to N.H. Admin. Rules, Puc 203.04 (c), PSNH and NUSCO were required to file their objection within three days from the time the motion for rehearing was filed. As November 17, 1991 fell on a Sunday, any objection would have been due on Monday, November 18, 1991.

[1] N.H. Admin. Rules, Puc 202.16 (b) requires motions for rehearing to be served on all parties on the day the motion is filed. According to PSNH, Ms. Nelkens served the CRR/Nelkens Joint Motion by mail which was received by PSNH on November 18, 1991. Counsel for PSNH also received a copy of the CRR/Nelkens Joint Motion by telefax from the commission staff on the afternoon of November 18, 1991.

In their Joint Motion for Extension, PSNH and NUSCO sought an extension of three days from the date of their receipt of the CRR/Nelkens Joint Motion or until November 21, 1991 because, they argued, service of said Motion was not made in accordance with the commission's rules.

Upon reviewing the foregoing representations contained in the Joint Motion for Extension of PSNH and NUSCO, we will grant the three day extension for filing an objection until November 21, 1991, because the intent of our rules is to allow an objecting party three days from receiving a motion for rehearing to file an objection.

In the future, we will require CRR/Nelkens to comply with the provisions of N.H. Admin. Rules, Puc 202.16 (b) for serving motions for rehearing, unless a timely waiver is sought from and granted by the commission.

II. *Disposition of CRR/Nelkens Joint Motion for Rehearing*

In their Joint Motion for Rehearing, CRR/Nelkens assert the following:

1) The commission erred in its order on the timing of BA changes.

2) The commission erred in its order on the reasonableness of the NUSCO/PSNH Swap.

3) The commission erred in its order allowing PSNH to recover full replacement power costs for outages and/or reductions in power caused by defective products furnished by vendors, suppliers or manufacturers.

4) The commission erred in its order limiting the disallowance for the costs of replacement power due to outages attributable to PSNH imprudency.

5) The commission erred in its order changing the semiannual FPPAC adjustment period from January through June and July through December billing periods.

6) The commission erred when it failed to address whether a portion of the proceeds from the sale of Seabrook power should be reserved to offset the future costs of storing and disposing of the low level radioactive waste created in the process of making that electricity.

7) The commission erred when it failed to address the prudency of the costs associated with all of the Seabrook outages and power reductions.

8) The commission order embraces a modification of the rate plan and exhibits approved in DR 89-244 that increases rates. The impact of the order will be to add 20-25 million dollars to the bills of PSNH customers over the next 7 years while giving a windfall to PSNH investors. The commission erred in not requiring approval of the legislature for the rate increase that resulted from its order as required by RSA 362-C:9.

The standards governing motions for rehearing are set out in RSA 541. A motion to rehear a commission decision must specify the grounds for the motion, and "the commission may grant such rehearing if, in its opinion, good reason therefor is stated in said motion." RSA 541:3. "Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." RSA 541:4. The CRR/Nelkens Joint Motion fails to set forth any reason for granting a rehearing or any grounds by which the commission's order could be found to be unlawful or unreasonable. The Joint Motion

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simply asserts and concludes that the commission erred with respect to eight of its findings and rulings. The Joint Motion, therefore, must be denied. Re *Pennichuck Water Works, Inc.*, 73 NH PUC 51 (1988) (a motion for rehearing and reconsideration of prior orders was denied where the motion requested that the commission make the exact determinations made in the prior order and failed to state any reason requiring rehearing or reconsideration).

[2] The Joint Motion fails to apprise the commission of any grounds for how it erred, why its order is unjust or unreasonable, or what the order should provide to cure its defects; accordingly it fails to comply with the statutory requirements of RSA 541:3 and 541:4. Re *Salmon Falls Hydro Co., Inc.*, 72 NH PUC 36 (1987); Re *Coos Power Corp.*, 72 NH PUC 33 (1987) (motions for rehearing which contained no facts or arguments not already fully considered were denied).

Consequently, we do not find it necessary or appropriate to address the unsupported assertions and conclusions in the Joint Motion with the exception of the assertion that "[t]he commission erred where it failed to address the prudency of the costs associated with all of the Seabrook outages and power reductions". Joint Motion at 2.

[3] We disagree. Our Report analyzed at length the "two outages at Seabrook, within the scope of this proceeding, addressed by staff which involved the conduct of [New Hampshire

Yankee] as distinguished from the conduct of third parties such as a manufacturer or vendor". Report at 25. All other outages that were raised by any party during the proceeding were either not within the reconciliation period (i.e., January 1, 1991 through May 15, 1991) and were not otherwise expressly determined by the commission to be properly within the scope of the proceeding, or were not alleged by any party to involve the conduct of New Hampshire Yankee. In the latter regard, we ruled that, under present circumstances, PSNH "is entitled to recover its full replacement power costs in the absence of its own imprudence". Report at 29. Thus, it was not necessary to analyze or make findings of fact with regard to outages not directly caused by New Hampshire Yankee.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Joint Motion for Rehearing of the Campaign for Ratepayers Rights and Ms. Shelley Nelkens is hereby denied.

By order of the New Hampshire Public Utilities Commission this twenty-third day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 91-011, Order No. 20,280, 76 NH PUC 645, Oct. 25, 1991.

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NH.PUC*12/24/91*[27291]*76 NH PUC 791*AT&T Communications of New Hampshire, Inc.

[Go to End of 27291]

Re AT&T Communications of New Hampshire, Inc.

DR 91-211
Order No. 20,346

76 NH PUC 791

New Hampshire Public Utilities Commission

December 24, 1991

ORDER authorizing a telephone interexchange carrier to introduce an enhancement to its Plan K service — switched service permitting 800 number calling from stations located in the state to a station associated with a customer's local exchange telephone number. The enhancement enables lower volume users to realize savings.

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1. RATES, § 593.1

[N.H.] Telecommunications — 800 service — Enhancement — Low volume users — Interexchange carrier. p. 792.

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2. SERVICE, 468

[N.H.] Telecommunications — 800 service — Enhancement — Low volume users — Interexchange carrier. p. 792.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — IntraLATA toll — 800 service — Enhancement — Interexchange carrier. p. 792.

BY THE COMMISSION:

ORDER

[1-3] On December 2, 1991, AT&T Communications of New Hampshire, Inc. (the company) filed a petition seeking to revise its existing PUC Tariff No 1, Custom Network Services, by the introduction of Option B, Block-of-Time, as an enhancement to the current AT&T Plan K Service; and

WHEREAS, Plan K is a switched telecommunications service permitting 800 number calling from stations located in the state to a station associated with a customer's local exchange telephone number; and

WHEREAS, the proposed Option B is a new feature available to Plan K customers, enabling them to subscribe to a thirty minute segment at a price lower level than existing Plan K service thereby enabling lower volume users to realize savings; and

WHEREAS, the proposed service was filed for effect on January 3, 1992; and

WHEREAS, the New Hampshire Public Utilities Commission is interested in encouraging the emergence of competition in the intraLATA toll market on an interim basis; it is hereby

ORDERED *NISI*, that AT&T Communications of New Hampshire, Inc, be and hereby is authorized to implement the following tariff changes:

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

PUC Tariff No 1, -CUSTOM NETWORK SERVICES.
Section 10       -AT&T 800 Plan K
                 -1st Revised Page 4
                 -Original Page 5;
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and it is

FURTHER ORDERED, that Option B, of Plan K is to be offered subject to the conditions as specified in NHPUC Order No. 20,040, dated January 21, 1991, in Docket DE 90-002; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, the Company

cause 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 January 6, 1992, and it is to be documented by affidavit filed with this office on or before January 23, 1992; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than January 21, 1992; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on January 23, 1992, unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AT&T Communications of New Hampshire, DE 90-002, Order No. 20,040, 76 NH PUC 58, Jan. 21, 1991.

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NH.PUC*12/30/91*[27292]*76 NH PUC 793*Northern Utilities, Inc.

[Go to End of 27292]

Re Northern Utilities, Inc.

DF 91-134
Order No. 20,348

76 NH PUC 793

New Hampshire Public Utilities Commission

December 30, 1991

ORDER authorizing a gas distribution utility to increase and extend its short-term debt limit to meet working capital needs during the winter season and to fund its capital improvements until regulatory approvals are obtained for proposed additional long-term debt. Authorization terminates at such time as the commission authorizes, and the utility issues, additional long-term debt.

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1. SECURITY ISSUES, § 44

[N.H.] Authorization — Increase in short-term debt limit — Factors considered — Working capital requirements — Funding of capital improvements — Termination upon issuance of long-term debt — Gas distribution utility. p. 793.

BY THE COMMISSION:

ORDER

WHEREAS, on December 18, 1991, Northern Utilities, Inc. ("Northern") filed a motion to amend its petition to request authority to sell additional short-term debt to a level not to exceed $15,000,000; and

WHEREAS, the short-term debt level of $13,000,000 was approved by Order No. 20,273 issued on October 21, 1991; and

[1] WHEREAS, Northern claims that the higher short-term debt level is required due to typical working capital needs during the winter heating season and to fund its capital requirements until regulatory approvals are obtained for its proposed additional long-term debt; it is

ORDERED, that the authority to issue short-term debt at a level not to exceed $15,000,000 is consistent with the public good; and it is

FURTHER ORDERED, pursuant to RSA 369:7 that this authorization will terminate at such time as the Commission approves, and the Company issues, additional long-term debt.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DF 91-134, Order No. 20,273, 76 NH PUC 642, Oct. 21, 1991.

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NH.PUC*12/30/91*[27293]*76 NH PUC 793*New Hampshire Electric Cooperative, Inc.

[Go to End of 27293]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Black Mountain Development Corporation

DR 91-201
Order No. 20,349

76 NH PUC 793

New Hampshire Public Utilities Commission

December 30, 1991

ORDER approving a special contract for electric service under the voluntary interruptible load program of an electric cooperative.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Special contract — Electric cooperative. p. 794.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible

Page 793

service — Winter interruptible program — Special contract — Electric cooperative. p. 794.

3. RATES, § 211

[N.H.] Special contracts — Grounds for approval — Statutory standard. p. 794.

4. RATES, § 250

[N.H.] Retroactive effect — Special contracts — Interruptible electric service. p. 794.

BY THE COMMISSION:

ORDER

[1-4] On November 22, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC), filed Special Contract No. 95 between the NHEC and Black Mountain Development Corporation (Black Mountain); and

WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed to reduce NHEC's wholesale billing costs for purchased power, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 95 provides for 1500kw of interruptible load that Black Mountain has designated for interruption under NHEC's voluntary interruptible load program in accordance with Report & Order No. 20,307, dated November 19, 1991, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 95 with Black Mountain are consistent with the public interest; it is hereby

ORDERED *NISI*, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 95 effective November 25, 1991, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 10, 1992, said publication to documented by affidavit filed with this office on or before January 31, 1992; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that Special Contract No. 95 will be retroactively effective as of November 25, 1991; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the publication date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., DR 91-155, Order No. 20,307, 76 NH PUC 706, Nov. 19, 1991.

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NH.PUC*12/30/91*[27294]*76 NH PUC 795*New Hampshire Electric Cooperative, Inc.

[Go to End of 27294]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Hart's Turkey Farm Restaurant

DR 91-202
Order No. 20,350

76 NH PUC 795

New Hampshire Public Utilities Commission

December 30, 1991

ORDER approving a special contract for electric service under the voluntary interruptible load program of an electric cooperative.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Special contract — Electric cooperative. p. 795.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Winter interruptible program — Special contract — Electric cooperative. p. 795.

3. RATES, § 211

[N.H.] Special contracts — Grounds for approval — Statutory standard. p. 795.

4. RATES, § 250

[N.H.] Retroactive effect — Special contracts — Interruptible electric service. p. 795.

BY THE COMMISSION:

ORDER

On November 22, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC), filed Special Contract No. 99 between the NHEC and Hart's Turkey Farm Restaurant (Hart's Turkey); and

[1-4] WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed to reduce NHEC's wholesale billing costs for purchased power, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 99 provides for 100kW of interruptible load that Hart's Turkey has designated for interruption under NHEC's voluntary interruptible load program in accordance with Report & Order No. 20,307, dated November 19, 1991, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 99 with Hart's Turkey are consistent with the public interest; it is hereby

ORDERED *NISI*, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 99 effective November 25, 1991, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 10, 1992, said publication to documented by affidavit filed with this office on or before January 31, 1992; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c),

that requires Special Contracts to be filed at least 15 days in advance of the effective

date, so that Special Contract No. 99 will be retroactively effective as of November 25, 1991; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the publication date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., DR 91-155, Order No. 20,307, 76 NH PUC 706, Nov. 19, 1991.

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NH.PUC*12/30/91*[27295]*76 NH PUC 796*New Hampshire Electric Cooperative, Inc.

[Go to End of 27295]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Highlands Ski Area

DR 91-203
Order No. 20,351

76 NH PUC 796

New Hampshire Public Utilities Commission

December 30, 1991

ORDER approving a special contract for electric service under the voluntary interruptible load program of an electric cooperative.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Special contract — Electric cooperative. p. 796.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Winter interruptible program — Special contract — Electric cooperative. p. 796.

3. RATES, § 211

[N.H.] Special contracts — Grounds for approval — Statutory standard. p. 796.

4. RATES, § 250

[N.H.] Retroactive effect — Special contracts — Interruptible electric service. p. 796.

BY THE COMMISSION:

ORDER

On November 22, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC), filed Special Contract No. 101 between the NHEC and Highlands Ski Area (Highlands); and

[1-4] WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed to reduce NHEC's wholesale billing costs for purchased power, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 101 provides for 350kW of interruptible load that Highlands has designated for interruption under NHEC's voluntary interruptible load program in accordance with Report & Order No. 20,307, dated November 19, 1991, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the

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terms of the proposed Special Contract No. 101 with Highlands are consistent with the public interest; it is hereby

ORDERED *NISI*, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 101 effective November 25, 1991, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 10, 1992, said publication to documented by affidavit filed with this office on or before January 31, 1992; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that Special Contract No. 101 will be retroactively effective as of November 25, 1991; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the publication date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., DR 91-155, Order No. 20,307, 76 NH PUC 706, Nov. 19, 1991.

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NH.PUC*12/30/91*[27296]*76 NH PUC 797*New Hampshire Electric Cooperative, Inc.

[Go to End of 27296]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Highview Church Farms

DR 91-204
Order No. 20,352

76 NH PUC 797

New Hampshire Public Utilities Commission

December 30, 1991

ORDER approving a special contract for electric service under the voluntary interruptible load program of an electric cooperative.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Special contract — Electric cooperative. p. 798.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Winter interruptible program —

Special contract — Electric cooperative. p. 798.

3. RATES, § 211

[N.H.] Special contracts — Grounds for approval — Statutory standard. p. 798.

4. RATES, § 250

[N.H.] Retroactive effect — Special contracts — Interruptible electric service. p. 798.

BY THE COMMISSION:

ORDER

On November 22, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC),

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filed Special Contract No. 100 between the NHEC and Highview Church Farms (Highview); and

[1-4] WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed to reduce NHEC's wholesale billing costs for purchased power, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 100 provides for 250kW of interruptible load that Highview has designated for interruption under NHEC's voluntary interruptible load program in accordance with Report & Order No. 20,307, dated November 19, 1991, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 100 with Highview are consistent with the public interest; it is hereby

ORDERED *NISI*, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 100 effective November 25, 1991, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 10, 1992, said publication to documented by affidavit filed with this office on or before January 31, 1992; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that Special Contract No. 100 will be retroactively effective as of November 25, 1991; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the publication date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., DR 91-155, Order No. 20,307, 76 NH PUC 706, Nov. 19, 1991.

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NH.PUC*12/30/91*[27297]*76 NH PUC 798*New Hampshire Electric Cooperative, Inc.

[Go to End of 27297]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Loon Mountain Recreation Corp.

DR 91-205
Order No. 20,353

76 NH PUC 798

New Hampshire Public Utilities Commission

December 30, 1991

ORDER approving a special contract for electric service under the voluntary interruptible load program of an electric cooperative.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Special contract — Electric cooperative. p. 799.

Page 798

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2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Winter interruptible program —

Special contract — Electric cooperative. p. 799.

3. RATES, § 211

[N.H.] Special contracts — Grounds for approval — Statutory standard. p. 799.

4. RATES, § 250

[N.H.] Retroactive effect — Special contracts — Interruptible electric service. p. 799.

BY THE COMMISSION:

ORDER

On November 22, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC), filed Special Contract No. 97 between the NHEC and Loon Mountain Recreation Corp. (Loon); and

[1-4] WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed to reduce NHEC's wholesale billing costs for purchased power, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 97 provides for 2250kW of interruptible load that Loon has designated for interruption under NHEC's voluntary interruptible load program in accordance with Report & Order No. 20,307, dated November 19, 1991, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 97 with Loon are consistent with the public interest; it is hereby

ORDERED *NISI*, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 97 effective November 25, 1991, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 10, 1992, said publication to documented by affidavit filed with this office on or before January 31, 1992; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that Special Contract No. 97 will be retroactively effective as of November 25, 1991; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the publication

date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., DR 91-155, Order No. 20,307, 76 NH PUC 706, Nov. 19, 1991.

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NH.PUC*12/30/91*[27298]*76 NH PUC 800*New Hampshire Electric Cooperative, Inc.

[Go to End of 27298]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Mount Attitash Lift Corporation

DR 91-206
Order No. 20,354

76 NH PUC 800

New Hampshire Public Utilities Commission

December 30, 1991

ORDER approving a special contract for electric service under the voluntary interruptible load program of an electric cooperative.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Special contract — Electric cooperative. p. 800.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Winter interruptible program — Special contract — Electric cooperative. p. 800.

3. RATES, § 211

[N.H.] Special contracts — Grounds for approval — Statutory standard. p. 800.

4. RATES, § 250

[N.H.] Retroactive effect — Special contracts — Interruptible electric service. p. 800.

BY THE COMMISSION:

ORDER

On November 22, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC), filed Special Contract No. 94 between the NHEC and Mount Attitash Lift Corporation (Mount Attitash); and

[1-4] WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed to reduce NHEC's wholesale billing costs for purchased power, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 94 provides for 2000kw of interruptible load that Mount Attitash has designated for interruption under NHEC's voluntary interruptible load program in accordance with Report & Order No. 20,307, dated November 19, 1991, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 94 with Mount Attitash are consistent with the public interest; it is hereby

ORDERED *NISI*, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 94 effective November 25, 1991, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 10, 1992, said publication to documented by affidavit filed with this office on or before January 31, 1992; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that Special Contract No. 94 will be

retroactively effective as of November 25, 1991; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the publication date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., DR 91-155, Order No. 20,307, 76 NH PUC 706, Nov. 19, 1991.

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NH.PUC*12/30/91*[27299]*76 NH PUC 801*New Hampshire Electric Cooperative, Inc.

[Go to End of 27299]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Mount Cranmore, Inc.

DR 91-207
Order No. 20,355

76 NH PUC 801

New Hampshire Public Utilities Commission

December 30, 1991

ORDER approving a special contract for electric service under the voluntary interruptible load program of an electric cooperative.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Special contract — Electric cooperative. p. 801.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Winter interruptible program — Special contract — Electric cooperative. p. 801.

3. RATES, § 211

[N.H.] Special contracts — Grounds for approval — Statutory standard. p. 801.

4. RATES, § 250

[N.H.] Retroactive effect — Special contracts — Interruptible electric service. p. 801.

BY THE COMMISSION:

ORDER

On November 22, 1991, the New Hampshire Electric Cooperative, Inc. (NHEC), filed Special Contract No. 96 between the NHEC and Mount Cranmore, Inc. (Mount Cranmore); and

[1-4] WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed to reduce NHEC's wholesale billing costs for purchased power, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 96 provides for 1418kW of interruptible load that Mount Cranmore has designated for interruption under NHEC's voluntary interruptible load program in accordance with Report & Order No. 20,307, dated November 19, 1991, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the

terms of the proposed Special Contract No. 96 with Mount Cranmore are consistent with the public interest; it is hereby

ORDERED *NISI*, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 96 effective November 25, 1991, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 10, 1992, said publication to documented by affidavit filed with this office on or before January 31, 1992; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that Special Contract No. 96 will be retroactively effective as of November 25, 1991; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the publication date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., DR 91-155, Order No. 20,307, 76 NH PUC 706, Nov. 19, 1991.

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NH.PUC*12/30/91*[27300]*76 NH PUC 802*New Hampshire Electric Cooperative, Inc.

[Go to End of 27300]

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Waterville Valley Company, Inc.

DR 91-208
Order No. 20,356

76 NH PUC 802

New Hampshire Public Utilities Commission

December 30, 1991

ORDER approving a special contract for electric service under the voluntary interruptible load program of an electric cooperative.

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1. RATES, § 322

[N.H.] Electric rate design — Demand and load — Winter interruptible program — Special contract — Electric cooperative. p. 803.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Winter interruptible program — Special contract — Electric cooperative. p. 803.

3. RATES, § 211

[N.H.] Special contracts — Grounds for approval — Statutory standard. p. 803.

4. RATES, § 250

[N.H.] Retroactive effect — Special contracts — Interruptible electric service. p. 803.

BY THE COMMISSION:

ORDER

On November 22, 1991, the New

Hampshire Electric Cooperative, Inc. (NHEC), filed Special Contract No. 98 between the NHEC and Waterville Company, Inc. (Waterville); and

[1-4] WHEREAS, this Special Contract is intended to provide service under a new interruptible program designed to reduce NHEC's wholesale billing costs for purchased power, thereby providing benefits to all customers; and

WHEREAS, proposed Special Contract No. 98 provides for 1300kW of interruptible load that Waterville has designated for interruption under NHEC's voluntary interruptible load program in accordance with Report & Order No. 20,307, dated November 19, 1991, that approved a temperature sensitive winter interruptible program and a stand-by generation program; and

WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the Commission finds the terms of the proposed Special Contract No. 98 with Waterville are consistent with the public interest; it is hereby

ORDERED *NISI*, that NHEC be, and hereby is, authorized to implement the above-described Special Contract No. 98 effective November 25, 1991, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order to be published once in a paper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 10, 1992, said publication to documented by affidavit filed with this office on or before January 31, 1992; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be
filed at least 15 days in advance of the effective date, so that Special Contract No. 98 will be retroactively effective as of November 25, 1991; 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 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the publication date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text
[N.H.] Re New Hampshire Electric Co-op., DR 91-155, Order No. 20,307, 76 NH PUC 706, Nov. 19, 1991.

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[Go to End of 27301]

Re Northern Utilities, Inc.

DF 91-134
Order No. 20,357

76 NH PUC 803

New Hampshire Public Utilities Commission

December 30, 1991

ORDER authorizing a gas distribution utility to issue and sell at par value one or more unsecured notes in an aggregate principal amount not to exceed $13 million at an interest rate of 9.70% and with a maturity of 40 years. Commission finds the proposed financing reasonable notwithstanding the fact that interest rates had fallen since the commitment by the utility to its lender.

Page 803

1. SECURITY ISSUES, § 44

[N.H.] Authorization — Factors considered — Improvement of capital structure — Funding capital expenditures — Additions and betterments — Gas distribution utility. p. 805.

2. SECURITY ISSUES, § 107

[N.H.] Notes — Sale price and interest rate — Gas distribution utility. p. 805.

APPEARANCES: Northern Utilities, Inc. by Scott J. Mueller, Esq.; Office of Consumer Advocate by John Rohrbach; Staff of the Public Utilities Commission by Eugene F. Sullivan, Jr. Finance Director.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On September 6, 1991 Northern Utilities, Inc. ("Northern" or "Company"), a New Hampshire

corporation having its principal place of business in Portsmouth, New Hampshire, filed a petition for authority to issue and sell at par value one or more unsecured notes in an aggregate principal amount not to exceed $13,000,000 pursuant to RSA 369:1, and 4, through a placement with First Colony Life Insurance Company, at a rate of 9.70% and with a maturity of 40 years. Northern also requested the authority to issue and sell short-term debt to a level of $10,000,000 until all necessary regulatory approvals with respect to the Notes have been received and all required appeal periods have expired.

On October 16, 1991, Northern filed a motion to amend its petition to request authority for a higher short-term debt at a level not to exceed $13,000,00; and by Order No. 20,273 dated October 21, 1991, Northern was granted authority to issue short-term debt at a level not to exceed $13,000,000 until all necessary approvals had been received for the proposed unsecured notes.

On December 18, 1991, Northern again filed a motion to amend its petition requesting authority to sell additional short-term debt to a level not to exceed $15,000,000 to meet its typical working capital requirements. By Order No. 20,348 dated December 30, 1991, the Commission approved the modified petition.

The Commission held a hearing on the long-term debt petition on October 23, 1991, at which time one witness for the Company testified and thirteen exhibits were introduced into evidence. The Company witness was its Treasurer, James J. Flanagan, III.

II. *Summary of the Petition*

In its Petition, Northern is seeking authority pursuant to RSA 369: 1 and 4 to issue and sell at par value one or more unsecured Notes in an aggregate principal amount not to exceed $13,000,000 at an interest rate of 9.70% and with a maturity of 40 years.

The terms of the new securities for which Northern seeks authorization to issue are described as follows:

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

Issue:         First Colony Life Insurance
Amount:        $13,000,000
Average Life:  40 years
Maturity:      40 years
Interest Rate: Payable semiannually in arrears
Issue Price:   100%
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III. *Findings of Fact*

Northern stated that the proceeds from these funds will be used by the Company to refinance a portion of the principal amount outstanding under the Revolving Credit Agreement authorized by this Commission in Order No. 19,313 (DF 88-180), to reduce outstanding short-term debt and fund capital expenditures incurred for additions, extensions and betterment to the Company's utility property, plant and equipment.

Northern also stated that the debt will be paid with semi-annual interest payments and

with principal due in 40 years. The notes will be non-callable for 10 years, and callable in whole or in part, beginning in the eleventh year at the option of the Company at a price of par plus a premium beginning at 50% of the coupon in the eleventh year and declining ratably to par at the end of year twenty. Northern asserted that after completion of the refinancing, the Company expects its capital structure to be composed of about 49 percent Common Equity and 51 percent Long-term Debt with minimal Short-term Debt. Issue expenses are expected to amount to about $110,000.

The Company testified that it had considered alternatives to the proposed financing. Specifically, a public issue of first mortgage bonds was rejected because the higher issue expenses were expected to more than offset any possible interest rate benefits available for an issue of this size and maturity.

Concurrent with its application to this Commission, Northern applied for regulatory approval before the Maine Public Utilities Commission. Its petition before that Commission, to issue and sell at par its unsecured notes in a sum not to exceed $13,000,000 at a rate of 9.70 percent per year through the First Colony Life Insurance Company, was approved by Order dated October 15, 1991.

At the hearing staff questioned the propriety of the transaction in light of other financings filed at the Commission since July, 1991 at lower interest rates. The Company responded by pointing out that the ten and thirty-year low at the time that the Company commitment was made on July 12, 1991. The Company also filed post-hearing exhibits which presented rates and terms available from other institutions.

The Company further claimed that the forty-year maturity was extremely rare and attractively priced at 125 basis points over the thirty-year treasury. Finally, the Company argued that the wrong signals would be sent to the financial community if this transaction was disapproved because interest rates have fallen since the commitment by the Company to its lender.

IV. *Commission Analysis*

[1, 2] The Commission will approve this financing based upon the data that was filed during and after the hearing. Traditionally, for larger utilities the interest rate is set based upon pricing which occurs at a date after approval is granted. The market, however, is restricted for smaller issues and it was reasonable under the instant circumstances for the Company to enter into a commitment when funds are available based upon information available at the time.

The Commission finds that the proposed financing is reasonable under the circumstances and is, therefore, consistent with the public good.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report which is made a part hereof: it is hereby

ORDERED, that Northern is hereby authorized, pursuant to RSA 369:1 and 4 to issue and sell at par its unsecured notes in a sum not to exceed $13,000,000 to be used solely for the purposes described in this Report, and at a rate of 9.70 percent per year through the First Colony

Life Insurance Company for a term of 40 years; and it is

FURTHER ORDERED, that Northern is hereby authorized pursuant to RSA 369:7 to issue short-term debt at a level not to exceed ten percent (10%) of the Company's net fixed capital account upon the closing of the note transaction; and it is

FURTHER ORDERED, that Northern, within 10 days of closing, submit a copy of the Note Agreement; and it is

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

FURTHER ORDERED, that on or before the First of January and the First of July 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 notes payable herein authorized, until the accounting is complete.

By order to the Public Utilities

Commission of New Hampshire this thirtieth day of December, 1991.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DF 91-134, Order No. 20,273, 76 NH PUC 642, Oct. 21, 1991. [N.H.] Re Northern Utilities, Inc., DF 91-134, Order No. 20,348, 76 NH PUC 793, Dec. 30, 1991.

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NH.PUC*12/30/91*[27302]*76 NH PUC 80676 NH PUC 806*Concord Electric Company

[Go to End of 27302]

Re Concord Electric Company

DR 91-197
Order No. 20,358

76 NH PUC 806

Re Exeter and Hampton Electric Company

DR 91-198
Order No. 20,358

76 NH PUC 806

New Hampshire Public Utilities Commission

December 30, 1991

ORDER revising the fuel adjustment charge, purchased power adjustment clause, and qualifying facility power purchase rates of two electric utilities.

Commission permits the utilities to include in purchased power adjustment clause rates their proportional shares of settlement costs arising from a contract dispute with a small power producer.

Short-term avoided capacity rates are set at $0.00 per kilowatt-year due to weakness in the economy, a capacity surplus, and the expectation that the utilities would not be making any short-term purchases or sales in the next six-month period.

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1. COGENERATION, § 28

[N.H.] Rates — Avoided costs — Energy rates — Electric utility. p. 807.

2. COGENERATION, § 28

[N.H.] Rates — Avoided costs — Capacity rates — Electric utility. p. 807.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Fuel adjustment charge — Revision — Electric utility. p. 807.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchased power costs — Inclusion of legal expenses — Settlement of purchased power contract dispute — Prudence — Electric utility. p. 808.

APPEARANCES: LeBoeuf, Lamb, Leiby & MacRae by Scott Mueller, Esquire for Concord Electric Company and Exeter & Hampton Electric Company; Edwin P. LeBel and Thomas Frantz for the Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On November 27, 1991, Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") filed revised Fuel Adjustment Clause (FAC) rates and Purchased Power Adjustment Clause (PPAC) rates for the period January through June 1992. The FAC rate request was $(0.00987) for Concord and $(0.00973) for Exeter & Hampton. The PPAC rate request for Concord was $0.02999 per KWH and $0.03027 per KWH for Exeter & Hampton. The companies filed testimony and exhibits supporting the proposed revisions to

their respective FAC and PPAC.

[1, 2] The companies also filed revised tariffs for Short-term Power Purchase (short term avoided capacity and energy) rates for Qualifying Facilities (QF) as follows:

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

Energy Rates  On Peak   3.31 cents per KWH
              Off Peak  2.72 cents per KWH
              All Hours 2.89 cents per KWH
Capacity Rate           $0.00 per KW year
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The calculation of the companies' short term avoided energy rates was based on the use of an average of a 5 megawatt increment and a 5 megawatt decrement to load. This is in accordance with the methodology specified in the settlement agreement in DR 86-41, *et al*., Phase I, as revised in DR 89-225 and DR 89-227.

The short term avoided capacity rate, $0.00 per KW-year, reflects, the continuing weakness in the economy, the current surplus of capacity in the New England market and the companies' expectation that they will not be making any short-term purchases or sales in the next six-month period.

The New Hampshire Public Utilities Commission (commission) held a duly noticed hearing at its office in Concord on December 20, 1991 to review the Fuel Adjustment Clause and Purchased Power Adjustment Clause and short-term Power Purchase rates filings of the companies. Concord Electric and Exeter & Hampton Electric presented two witnesses, Karen M. Asbury, and Paul Weiss.

II. *Positions of the Parties*

[3] The instant filing covers the six month period from January through June 1992. Witness Asbury explained the calculations of the fuel adjustment clauses and the purchased power adjustment clauses for Concord Electric and Exeter & Hampton Electric. She indicated that the FAC rate was being increased from the prior period from ($0.02110) to ($0.00987) per KWH or by $0.01123 per KWH for Concord and from ($0.02050) to ($0.00973) per KWH or by $0.0107 per KWH for Exeter & Hampton. The PPAC would be decreased over the prior period from $ 0.03891 to $ 0.02999 per KWH or by $0.00892 per KWH for Concord and from $0.03941 to $0.03027 per KWH or by $0.00914 per KWH for Exeter & Hampton. Mr. Weiss explained the derivation of the UNITIL Power wholesale rates, and the increase in the demand and energy charges and the decrease in the fuel charge. The increase in the demand charge rate is due to the forecasted increase in demand costs from the companies' wholesale supplier, UNITIL Power, transmission costs and unbilled prior amounts. The increase in the unbilled prior costs was the most significant cause of the $2.062 million increase.

Fuel cost increases are due to an increase in the unbilled prior cost and estimated increases in production costs for the period January to June 1992.

The companies filed revised calculations on December 20, 1991 to calculate the FAC and PPAC rates to include actual November 1991 data. The rates for the companies' PPAC and FAC are as follows: for Concord the PPAC would be $0.02993 per KWH and for Exeter it would be $0.03026 per KWH. The rates for the companies FAC would be ($.00986) per KWH for Concord and ($.00964) per kwh for Exeter and Hampton.

The staff raised the issue of the pass-through to ratepayers of the expenses incurred by UNITIL to prevent a hostile takeover by Eastern Utilities Associates (EUA) through the purchased power costs of UNITIL Power. Staff questioned whether any of these costs were included in the January through June 1992 data. The companies state they are not included in the PPAC nor in the FAC. In response to staff inquiries as to whether any of the costs associated with the merger of Fitchburg Gas and Electric Company are included in the costs of the present filings, the companies responded that they are not included.

The companies were also asked about the methodology used to correct the accounting changes that were involved with the amounts the commission required the companies to return to ratepayers for uncollectible accounts and unbooked revenue adjustments in docket nos. DR 91-059 and DR 91-060. The staff questioned the companies as to the reason that they

Page 807

did not adjust their books back to December 1990 when the commission issued its order in July of 1991. The companies stated that the method used was to correct one seventh of the amount for each month for the period June to December 1991. This is the companies' preferred method. The amount to be corrected with interest was equal under both methods.

[4] The final issue addressed by staff was the increase in legal expenses projected on UNITIL Power's books, for the period of January through June of 1992. The companies explained that at the time the filing was put together for 1992, the companies expected that there would be a need to litigate a case filed in late 1989 by Unicord, a small power producer which had a contract to sell purchase power to UNITIL Power. In the summer of 1989, the companies cancelled the power contract with Unicord after it had missed three financing dates. At the time of cancellation the companies stated that their customers would see a savings from cancelling the Unicord contract of $8.5 million. The companies have recently reached a settlement with Unicord in which the companies agree to pay $650,000 to Unicord to settle the case. The companies further state that though they believe they were legally entitled to terminate the contract, the complexity of the case and the fact that Unicord had requested a jury trial, support their position that it was in their customers best interest to settle the case. The projected increased cost of $350,000 now plus the companies' legal expenses to litigate the case, in the companies' opinion, outweigh the possibility of liability to Unicord of $8.5 million if the jury found for Unicord. UNITIL Power is therefore requesting that it be allowed to charge Concord and Exeter their proportional share of the $650,000 over calendar 1992, $350,000 in the first half of 1992, the remainder in the second half of 1992.

III. *Commission Analysis*

The commission finds that the companies sustained their burden with respect to the prudency of the Unicord Settlement. In light of the companies' representations that their fuel costs will be less in the second half of 1992, we grant recovery over calendar year 1992.

The commission will accept the revised filings of the companies as shown in the exhibits. The commission finds that the FAC for the January through June 1992 period will be ($0.00986) per KWH for Concord Electric and ($0.00964) per KWH for Exeter & Hampton. The PPAC for Concord Electric will be $0.02993 per KWH and for Exeter & Hampton will be $0.03026 per

KWH for the same period.

The commission also finds the proposed short term avoided capacity rates to be just and reasonable, and calculated in accordance with the methodologies outlined in previous commission orders. We also find the short term avoided energy rates to be just and reasonable. Concord Electric and Exeter & Hampton Electric will be expected to correct their previous adjustment for uncollectible and billing corrections to agree with our previous findings.

Our order will issue accordingly.

ORDER

Based upon the foregoing report which is incorporated by reference herein, it is hereby

ORDERED, that Concord Electric Co. Fuel Adjustment Charge for the period of January through June 1992 shall be ($0.00986) per KWH; and it is

FURTHER ORDERED, that for the period of January through June 1992 Concord Electric Co. Purchased Power Adjustment Clause (PPAC) shall be $.02993 per KWH; and it is

FURTHER ORDERED, that for the period January through June 1992 Exeter & Hampton Electric Co. Fuel Adjustment Charge (FAC) shall be ($0.00964) per KWH; and it is

FURTHER ORDERED, that for the period of January through June 1992 Exeter & Hampton Electric Co. Purchased Power Adjustment Clause (PPAC) shall be $0.03026 per KWH; and it is

FURTHER ORDERED, that for the same period, Concord Electric Co. and Exeter & Hampton Electric Co. short-term power purchase (short-term avoided capacity and energy) rates for Qualifying Facilities (QF) shall be as follows:

Page 808

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

Energy Rates	On Peak	3.31 cents per KWH
	Off Peak	2.72 cents per KWH
	All Hours	2.89 cents per KWH
Capacity Rate		$0.00 per KW-year

and it is

FURTHER ORDERED, that Concord Electric Co. and Exeter & Hampton Electric Co. file Revised Tariff Pages to comply with this order and bearing the appropriate annotations.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1991.

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NH.PUC*12/31/91*[27303]*76 NH PUC 809*Connecticut Valley Electric Company, Inc.

[Go to End of 27303]

Re Connecticut Valley Electric Company, Inc.

DR 91-024
Order No. 20,359

76 NH PUC 809

New Hampshire Public Utilities Commission

December 31, 1991

ORDER authorizing an electric utility to implement conservation and load management programs. Commission finds that the utility failed to prove that grossing up incentives to cover tax expense or allowing for recovery of incentives on a prospective basis would be in the public good.

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1. CONSERVATION, § 1

[N.H.] Electric — Program implementation — Cost recovery — Incentive payments — Grossing up for tax expense. p. 809.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on March 1, 1991, the Connecticut Valley Electric Company, Inc. ("CVEC") filed with the New Hampshire Public Utilities Commission (the "commission") a petition Requesting Approval of Conservation and Load Management ("C&LM") Programs; and

WHEREAS, on October 9, 1991 and December 4, 1991 the commission held hearings to determine whether implementing the programs, cost recovery method and incentive payments were in the public good; and

WHEREAS, the parties entered into a stipulation (Attachment A) addressing all but three outstanding issues, these issues being (1) the grossing up of incentives to cover income tax expense; (2) the retention of a maximizing incentive component; and (3) the recovery of incentives on a prospective basis; and

WHEREAS, CVEC raised the issue of antitrust liability and requested specific findings from the commission; and

WHEREAS, the commission finds, consistent with the analysis contained in the forthcoming Report, that the programs and conditions described in the stipulation and CVEC's filing are in the public good; and

WHEREAS, the commission finds that CVEC has not shown that grossing up incentive payments for tax expense is in the public good, nor has CVEC shown that the commission should allow it to receive incentive payments on a prospective basis where CVEC has no proven record of experience in implementing these programs; and

WHEREAS, the commission finds that allowing a maximizing incentive of 3.5% is in the public good; and

WHEREAS, the commission makes certain findings regarding the antitrust issues raised by CVEC as enumerated in the forthcoming Report; and

WHEREAS, the commission will be issuing a Report in the coming weeks fully detailing the procedural history, positions of the parties, commission analysis, and findings and conclusions; it is hereby

ORDERED, that CVEC implement its programs as described in the testimony and the stipulation.

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

Page 809

December, 1991.

ATTACHMENT A

STIPULATION

This Stipulation sets forth the agreement among the New Hampshire Public Utilities Commission Staff ("Staff"), the Office of the Consumer Advocate ("OCA") and Connecticut Valley Electric Company Inc. ("Connecticut Valley" or the "Company") regarding Connecticut Valley's conservation and load management ("C&LM") programs.

PROCEDURAL HISTORY

1. On March 1, 1991, Connecticut Valley filed with the New Hampshire Public Utilities Commission (the "Commission") its "Petition of Connecticut Valley Electric Company Inc. Requesting Approval of Conservation and Load Management Programs" ("Programs Filing" or "Petition").

2. On July 10, 1991, Connecticut Valley filed with the Commission its prefiled testimony supporting the programs filed in the Petition.

3. On August 22, 1991, Staff filed with the Commission its prefiled testimony addressing its concerns and recommendations relating to Connecticut Valley's programs and testimony.

4. On August 28, 1991, Staff, Connecticut Valley and OCA met to discuss Staff's and OCA's concerns and recommendations.

5. On October 9, 1991, a hearing was held before the Commission to present testimony and evidence regarding issues remaining in dispute following the August 28, 1991, meeting.

6. On October 30, 1991, and November 8, 1991, Staff, OCA and the Company met to discuss and resolve outstanding issues and stipulated agreements. At these meetings, several of the issues litigated at the October 4, 1991, hearing were also resolved.

7. As a result of such meetings and discussions subsequent thereto, the parties hereto have agreed to enter into this Stipulation addressing the issues outlined in the following paragraphs. Three issues not contained and resolved in this Stipulation were presented to the Commission on October 9, 1991 for decision. These three issues awaiting Commission resolution are: (1) grossing up incentives to cover income tax expense; (2) retaining a maximizing incentive

component; and (3) recovery of incentives without deferral to following year.

RESOLUTION OF ISSUES

8. INFORMATION REQUESTS.

Connecticut Valley has filed missing program details and agrees to provide additional information as available in quarterly reports. Where such information affects program delivery, Staff agrees to review the information within ten (10) working days of filing and indicate whether it supports the Company or believes there are issues which require Commission review. In the latter instance, Staff will consult with the Company to establish a schedule for such review. (Reference: Prefiled testimony of Elaine O. Planchet, pp. 3-7.)

9. CUSTOMER FINANCING PACKAGES.

Connecticut Valley agrees to file details of proposed financing packages for customers participating in its C&LM programs by March 1, 1992. Connecticut Valley agrees to initiate promptly or accelerate discussions with New Hampshire and other financial institutions to arrange financing packages for customers participating in its programs. Connecticut Valley agrees to file details of its proposed financing packages with the Commission 30 days prior to offering the first customer a loan under any such package. Connecticut Valley's intention is to avoid incurring risks that may adversely affect ratepayers and to seek ways in which the financial institutions will undertake such risks. Connecticut Valley will explore financing options that are less risky than guaranteeing loans. If loan guarantees are proposed or required by the financial institutions, Connecticut Valley will seek liens or equivalent security from customers. Connecticut Valley and Staff acknowledge that if funds for C&LM participants are not available, this may lower

participation rates for certain customers or measures and may require adjustments in participation, recovery and incentive formulas and levels; Connecticut Valley has not made such adjustments at this time. (Reference: Planchet, pp. 4, 5.)

10. SCREENING TOOLS.

Connecticut Valley has revised the threshold for evaluating C&LM measures in its screening tool from a benefit/cost ratio of 1:1 to 1.5:1 for commercial and industrial programs and from 1:1 to 1.2:1 for residential programs. Such recalculation included, where appropriate, adjustment factors for the inclusion of variable administrative costs particular to each installation (such as audit fees) and free rider estimates. In addition, this recalculation for field screening purposes will also include a calibration by program of the screening tool to the Company's more accurate integrated planning model, UPLAN. Staff agrees that measures which fall below such revised threshold levels may be included in program designs because of lost opportunities or if Connecticut Valley demonstrates that the programs as a whole pass the established threshold levels. (Reference: Planchet, pp. 5, 6; Prefiled testimony of Janet Gail Besser, p. 13.)

11. MONITORING AND EVALUATION PLANS.

Connecticut Valley has provided and will file as Exhibits Central Vermont's monitoring and

evaluation plan with the Commission (as filed with the Vermont Public Service Board), and a summary of Connecticut Valley-specific adaptation of such plan. By June 1, 1992, Connecticut Valley will develop a sample tracking system output, an outline for quarterly reports, and submit any subsequent updates to the Company's Evaluation Plan for measurement of actual savings. Staff agrees to work with Connecticut Valley to further develop the formats for the monthly and quarterly reports, which are anticipated to be similar to Granite State Electric Company's formats. Connecticut Valley will file sample formats by January 1, 1992. (Reference: Planchet, p. 3; Besser, pp. 13, 14.)

12. CUSTOMER INCENTIVES.

Connecticut Valley has provided greater detail regarding its criteria for providing incentives under its commercial and industrial C&LM programs. Connecticut Valley will pay no incentives to customers who do not install measures with a two-year or less payback (1.5-year or less for small commercial retrofit measures), unless such failure is due to reasonable concerns of the customer (such as lost production or sales time or planned future plant acquisitions). See Responses to Staff Data Requests 1 and 4, filed May 31, 1991, and Follow-up Responses to Staff Data Requests 1 and 4, filed June 20, 1991. (Reference: Planchet, pp. 9-11.)

13. COMMERCIAL AND INDUSTRIAL EVALUATION.

Connecticut Valley will monitor and compare the results of Central Vermont's programs utilizing a 1.5 year payback threshold to Connecticut Valley's commercial and industrial programs with a 2.0 year payback. Connecticut Valley will provide a report of these such results as part of its annual reconciliation report due November 15 of each year. (Reference: Planchet, pp. 10.)

14. MARKETING AND OUTREACH.

Connecticut Valley will file a report on its revised marketing and outreach plan for commercial and industrial new construction customers by June 1, 1992. The plan will include methods for reaching such customers outside of Sullivan County. (Reference: Planchet, pp. 11, 12.)

15. MAJOR APPLIANCE PROGRAM.

Connecticut Valley and Staff agree that Connecticut Valley will defer implementation of its major appliance component of its Residential Energy Efficiency Products Service due to start up costs involved for a limited test period. Connecticut Valley will closely monitor the results of Central Vermont's program and efforts to

implement a coordinated statewide program in Vermont, and will engage in discussions with other New Hampshire utilities to assess the feasibility of a statewide program for New Hampshire. Connecticut Valley will file its findings and recommendations with its June 1, 1992, filing. (Reference: Planchet, pp. 14, 15.)

16. NEW RESIDENTIAL CONSTRUCTION WORKSHOPS.

Connecticut Valley and Staff agree that the residential new construction workshops are

expected to be Company presentations on electricity efficiency measures at industry-level seminars sponsored by non-utility industry participants (builders, suppliers, factory representatives, etc.). It is expected that these non-utility participants will address thermal envelope and air filtration issues. In the event Connecticut Valley's programs are modified in the future such that thermal measures become relevant, Connecticut Valley will include information on such measures in its presentations. (Reference: Planchet, p. 15.)

17. ENERGY EFFICIENCY THROUGH LENDING PRACTICES.

Connecticut Valley agrees to contact banks within its service territory regarding possible lending practices to encourage energy efficiency in new construction. Staff agrees that Connecticut Valley is not required or expected to change the lending practices of New Hampshire banks. Connecticut Valley will provide details of its discussions with banks in its quarterly reports. (Planchet, p. 16.)

18. EFFECT OF MEASURES ON LOW INCOME RESIDENTS.

The parties will work together to review Connecticut Valley's present programs and consider dedicating a larger percentage of expenditures to low-income housing, subject to the Commission's approval. Connecticut Valley has included low-income monitoring capabilities in its monitoring and evaluation plans. Specific low-income residential expenditures/revenues monitoring will be included in such plans when the Company's general ledger system is functional. (Reference: meeting of 8-28-91.)

19. USE OF CONTRACTORS.

In light of anti-trust concerns of Connecticut Valley and the Commission, Connecticut Valley agrees to use competitively-selected contractors to deliver services under Connecticut Valley's programs. Connecticut Valley and Staff will file memoranda discussing anti-trust concerns by December 6, 1991. (Reference: Besser, pp. 7-9.)

20. MEASURE LIFE CRITERIA.

Connecticut Valley has adjusted measure lives to the levels recommended by Staff (20-year life for lighting fixtures and 7-year life for energy efficient light bulbs). Connecticut Valley has adjusted its criteria for offering such products only to where actual anticipated hourly usage per day will conform to such levels. These adjustments required corresponding adjustments in participation levels, customer incentive levels, and program savings and impact, as reflected in the exhibits presented to the Commission on December 4, 1991. (Reference: Besser, pp. 9-13.)

21. EXPENDITURE/RATE ALLOCATIONS.

Connecticut Valley will allocate program cost recovery pursuant to a formula based upon program expenditures by rate class grouping and will collect incentives by an across-class percentage. The parties agree that such an expenditure/cost allocation is not supported or contradicted by available evidence relating to benefits received by each rate class, but is fair and reasonable considering all factors. Connecticut Valley agrees to continue its studies regarding equitable allocation of costs by rate class, and to work with Staff and OCA to implement changes as warranted by such studies. This agreement resolves one issue presented to the Commission on October 9, 1991. See Exhibits CJF-3 and CJF-4. (Reference:

meetings of 8-28-91, 10-30-91, and 11-8-91.)

22. FUTURE DEVELOPMENT COST ALLOCATIONS.

Connecticut Valley is developing its general ledger system, which will provide a more quantitative system for allocation of development and other common C&LM costs. As this system will not be functional until 1993, Connecticut Valley agrees to confer with Staff and propose an interim system by June 1, 1992. (Reference: Besser, p. 15.)

23. PAYROLL COST RECOVERY.

Connecticut Valley agrees that it will recover all definable incremental C&LM-specific costs in the C&LMPA and will not attempt to recover such expensed costs as part of general marketing costs in any future request for a base rate increase without concurrently reflecting such expensed costs in the Base C&LM Charges used in the C&LMPA. (Reference: Besser, p. 15.)

24. FILING FORMATS.

Connecticut Valley agrees to meet with Staff on a quarterly basis to report on program progress and develop program filing formats. Connecticut Valley will propose program formats by June 1, 1992. Future filings of testimony and exhibits shall be concurrent with the program filing. (Reference: Besser, pp. 15-16.)

25. FORMULA FOR CALCULATING LOST REVENUES.

The parties agree that the factor (CHG*CUST) may remain in Connecticut Valley's lost revenue formula and that this factor has a current value of zero. Such factor may be used in the future to calculate lost or increased revenues, as circumstances dictate. Connecticut Valley agrees to keep such value at zero in future calculations unless circumstances change and Connecticut Valley notifies Staff of the change in this factor and the reasons therefor. (Reference: Besser, pp. 17, 18.)

26. C&LMPA EFFECTIVE DATE.

Connecticut Valley agrees to implementation of the C&LMPA effective January 1, 1992. The parties agree that recovery during the period January 1, 1992 through September 30, 1992 will include a nine-months' portion of a two-year, nine-month amortization of amounts deferred, with interest, from January 1, 1991 through September 30, 1991, and amounts incurred during the period from October 1, 1991 through September 30, 1992. Annual C&LMPA adjustments will occur on October 1 of each year. Connecticut Valley has not delayed program implementation even though recovery and Commission approval have been delayed. (Reference: Besser, pp. 18-20; 34-36.)

27. INCENTIVE REVISION.

Connecticut Valley has revised the maximizing and efficiency incentives proposals to reflect that gross savings include customer costs. See Exhibits BWB-3 (customer costs) and JCC-3 (incentives). (Reference: Besser, pp. 22, 31.)

28. LINKING OF INCENTIVE THRESHOLDS.

The parties agree that because Connecticut Valley has allocated cost recovery based upon program expenditures by class grouping, linking of incentive thresholds is unnecessary. (Reference: Besser, pp. 32, 33.)

29. RECOVERY OF UTILITY COSTS.

Connecticut Valley has calculated incentives using $290,349 in utility costs, rather than $249,000. As part of such calculation, Connecticut Valley removed all negative incentives resulting therefrom by substituting a zero factor. The parties agree that this calculation promotes administrative ease and results in different incentives than those originally proposed by Connecticut Valley. See Exhibit JCC-3. (Reference: Besser, pp. 29-31.)

30. PROGRAM FILING DATES.

Connecticut Valley agrees to file its next program filing by June 1, 1992, for a revised C&LMPA effective October 1, 1992. The parties agree that the report on the first year's programs is due November 15, 1992 (45 days after the end of the program year). (Besser, p. 36.)

31. INTEREST ON C&LMPA COLLECTIONS.

The parties agree that Connecticut Valley may compound interest on an annual basis (nine months for the initial recovery period ending September 30, 1991) on C&LMPA over-and undercollections. Connecticut Valley has included appropriate references on its tariff pages. This agreement resolves one issue presented to the Commission on October 9, 1991. See revised tariff pages. (Reference: Besser, p. 37.)

32. RECOVERY PERIOD FOR PRIOR COSTS.

Connecticut Valley agrees to recovery of prior direct costs, plus interest, over a period of two years, nine months, beginning January 1, 1992. (Reference: Besser, pp. 37, 38.)

33. COST ALLOCATION STUDIES.

Connecticut Valley agrees to provide the results of its cost allocation studies by June 1, 1992. To the extent the parties agree that the studies warrant modifications to the current allocations (including, but not limited to, allocations to rate classes ML and SL), such modifications shall be applicable to the C&LMPA for service rendered after October 1, 1992, and shall not be applicable to allocations used to true-up costs in C&LMPA reconciliations before October 1, 1992. (Reference: Besser, p. 38.)

34. TARIFF REVISIONS.

Connecticut Valley has made appropriate changes and has filed its revised illustrative tariff pages. See revised tariff pages. (Reference: Besser, pp. 39, 40.)

35. PRE-OCTOBER, 1991 INCENTIVES.

Connecticut Valley agrees to not seek recovery of any incentives for pre-October 1, 1991 C&LM activities. This agreement resolves one of the issues presented to the Commission on

October 9, 1991. (Reference: Besser, pp. 23, 24.)

36. The parties agree that this Stipulation relates only to these parties and should not be construed by any party or tribunal as having precedential or other impact on proceedings involving other utilities. The parties made compromises on specific issues to reach this Stipulation. The parties reserve the right in any future proceeding to advocate positions that differ from positions in this Stipulation. The parties agree that this Stipulation, or portions hereof, shall be effective, and shall bind the parties hereto, only upon approval of the Commission.

DATED this 4th day of December, 1991.

CONNECTICUT VALLEY ELECTRIC
COMPANY INC.
77 Grove Street
Rutland, Vermont 05701

NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION STAFF
8 Old Suncook Road
Concord, New Hampshire 03301

OFFICE OF THE CONSUMER ADVOCATE
8 Old Suncook Road
Concord, New Hampshire 03301

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NH.PUC*12/31/91*[27304]*76 NH PUC 815*Connecticut Valley Electric Company

[Go to End of 27304]

Re Connecticut Valley Electric Company

DR 91-190
Order No. 20,360

76 NH PUC 815

New Hampshire Public Utilities Commission

December 31, 1991

ORDER revising the fuel adjustment charge, purchased power adjustment clause, and qualifying facility power purchase rates of an electric utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Fuel adjustment charge — Revision — Energy cost — Sales forecast — Electric utility. p. 815.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchased power costs — Revision — Method of calculation — Electric utility. p. 815.

3. COGENERATION, § 28

[N.H.] Rates — Avoided costs — Capacity rates — Electric utility. p. 816.

4. COGENERATION, § 28

[N.H.] Rates — Avoided costs — Energy rates — Electric utility. p. 816.

APPEARANCES: Kenneth Picton, Esquire for Connecticut Valley Electric Company; James J. Cunningham Jr. and Thomas C. Frantz for Staff.

BY THE COMMISSION:

REPORT

Background

On November 27, 1991, Connecticut Valley Electric Company ("CVEC" or company) filed revisions to its currently effective tariff pages. The company filed the 5th Revised Page 18, 4th Revised Page 50 and 51 (including the company's testimony and exhibits on this subject) and 7th Revised Page 17. On December 6, 1991, the company filed the testimony and exhibits in support of its revisions to the Fuel Adjustment Clause (FAC) and Purchased Power Cost Adjustment (PPCA). The 5th Revised Page 18 shows the company's proposed FAC to be applied to bills rendered during 1992. The 4th Revised Page 50 and 51 shows the company's proposed Short Term Qualifying Facility (QF) Purchase Power Rates that will apply to energy generated during 1992. The 7th Revised Page 17 shows the company's proposed PPCA to be applied to bills rendered during 1992. On December 11, 1991, an Order of Notice was issued setting a hearing date for December 19, 1991.

In support of its 1992 FAC, PPCA and QF proposals, the company presented the following witnesses: Robert J. Amelang, to address the derivation of the QF rates; Charles W. Friedland, to address the company's KWH sales forecast used in the calculation of the FAC and the PPCA; and Stephen W. Page, to address the Small Power Producer Forecast and the RS-2 Energy Charges used in the calculation of the FAC. In addition, with regard to the company's PPCA, Mr. Page addressed the Central Vermont Purchase Capacity Cost and the Transmission of Electricity by Others used in the FERC filing which yields the RS-2 Capacity Charges to the company. The Company presented C.J. Frankiewicz to address the calculation of the proposed FAC and PPCA rates.

Proposed FAC and PPCA Rates

[1, 2] The initial proposed FAC rate increased company revenues by $304,184 or 2.1 percent on an annual basis. On December 19, 1992, in response to previous questions

raised by staff pertaining to the company's forecast of 1992 Kwh Sales and its estimated November 1991 RS-2 costs, the company revised its initial proposal. First, the company added roughly 10 million KWH's to its sales forecast and; second, it reduced its November 1991 RS-2 energy costs to reflect actual November results. At this time, the company also increased its November 1991 SPP energy costs to reflect actual November obligations. As a result of these changes, the company's new proposed FAC rate would increase revenues by only $178,474 or 1.2 percent on an annual basis (a reduction of $125,710 from its initial proposal). This FAC corresponds to a revised Fuel Adjustment rate of ($.0034) per Kwh to be effective on bills rendered on or after January 1, 1992. The FAC rate is determined by adding the forecasted 1992 RS-2 energy costs of $2,103,917 from Central Vermont Public Service (CVPS) and SPP energy costs of $3,427,430, adjusting for interest of $4,299, for a total estimated cost to recover in 1992 of $5,535,646. The 1991 undercollection of $173,806 is added to that amount for a net estimated cost to recovery of $5,709,452. The net estimated cost recovery is divided by the estimated Kwh sales for 1992 of 162,249,000 KWH to yield a unit energy charge of $0.0352. The base energy charge of $0.0386 is subtracted from $0.0352 to arrive at the $(0.0034) per Kwh FAC rate for 1992.

The initial proposed PPCA rate increased
company revenues by $1,049,434 or 7.1% on an annual basis. On December 19, 1992, in response to previous questions raised by staff pertaining to the company's forecast of 1992 KWH sales, the company revised its PPCA rate. The company's new proposed PPCA rate would increase revenues by only $1,022,170 or 6.9% (a reduction of $27,264 from its initial proposal). The revised PPCA corresponds to a revised PPCA rate of $0.0072 per KWH to be effective on bills rendered on or after January 1, 1992. The revised company estimate of total cost is $7,546,648 which includes small power producer capacity costs of $7,800 and an interest overcollection amount of $(12,973). These costs were adjusted to include the 1991 undercollection of $70,802 for a net estimated recovery amount of $7,617,450. The net estimated cost recovery is reduced by base capacity revenues to yield the PPCA amount of $1,171,432. That amount is then divided by the 1992 forecasted sales of 162,249,000 KWH and results in the PPCA rate of $0.0072 per KWH.

Short-term QF Rates

[3, 4] The company's proposed short-term avoided capacity rate for qualifying facilities for 1992 is $17.33 per KW-year or $1.44 per KW-month. The company reflected 1991 transmission costs and a general inflation rate of 4.5% in its calculations.

The short-term energy rates for qualifying facilities for 1992 proposed by CVEC are:

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

For Billings Rendered:	*January-April*	*May-October*	*Nov.-December*
Peak Hours	$.0293/KWH	$.0247/KWH	$.0292/KWH
Off Peak Hours	$.0220/KWH	$.0189/KWH	$.0222/KWH
Average All Hours[1]	$.0255/KWH	$.0217/KWH	$.0255/KWH

[1]If interval data are not available.

Commission Analysis

Based on the evidence provided and the revisions filed on December 19, 1991, reflecting a higher KWH sales forecast for 1992 and a lower 1991 November RS-2 energy cost, the commission finds the proposed FAC rate of $(.0034) per KWH and the proposed PPCA rate of $.0072 per KWH effective January 1, 1992, to be just and reasonable and accordingly, will allow these rates to become effective January 1, 1992.

Based on the evidence provided, the commission finds that the proposed Short-Term

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Qualifying Facility Purchased Power rates are just and reasonable and, accordingly, will allow these rates to become effective January 1, 1992.

Our order will issue accordingly.

ORDER

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

ORDERED, the Connecticut Valley Electric Company's fuel adjustment charge of $(0.0034) per KWH for the twelve month period January through December, 1992, be and hereby is, approved effective January 1, 1992; and it is

FURTHER ORDERED, that Connecticut Valley's purchased power cost adjustment of $0.0072 per KWH for the twelve month period January through December, 1992, be and hereby is, approved effective January 1, 1992; and it is

FURTHER ORDERED, that the short-term avoided capacity and energy rates for the twelve month period January through December 1992, be and hereby are, approved effective January 1, 1992; and it is

FURTHER ORDERED, that Connecticut Valley file compliance tariff pages NHPUC No. 5, 5th Revised Page 18, 7th Revised Page 17, 4th Revised Page 50 and 4th Revised Page 51 reflecting the approved rates and the date and number of this order.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1991.

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NH.PUC*12/31/91*[27305]*76 NH PUC 817*Concord Electric Company

[Go to End of 27305]

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 91-158
Order No. 20,361

76 NH PUC 817
New Hampshire Public Utilities Commission
December 31, 1991

ORDER adopting a stipulation governing the implementation of electric conservation and load management programs. Commission finds it appropriate to allow for recovery of all reasonable, direct costs incurred to implement the programs.

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1. CONSERVATION, § 1

[N.H.] Electric — Program implementation — Cost recovery — Stipulation. p. 818.

APPEARANCES: LeBoeuf, Lamb, Leiby & MacRae by Paul B. Dexter, Esq. on behalf of Concord Electric Company and Exeter and Hampton Electric Company; Michael W. Holmes, Esquire on behalf of the Office of the Consumer Advocate; and Janet Gail Besser on behalf of the Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On October 1, 1991, Concord Electric Company and Exeter and Hampton Electric Company (UNITIL or the UNITIL Companies) filed a conservation and load management (C&LM) program and cost recovery proposal with the New Hampshire Public Utilities Commission (Commission) which included provisions for a financial incentive. An Order of Notice was issued October 9, 1991 setting a prehearing conference for October 29, 1991.

At the prehearing conference, the parties proposed a procedural schedule which was modified by letter dated November 7, 1991. The modified procedural schedule was approved by Commission order no. 20,309, dated November 20, 1991.

In compliance with the procedural schedule, the UNITIL Companies proposed an interim settlement on November 8, 1991 and filed testimony on November 15, 1991. The Office of Consumer Advocate (OCA) and Staff issued data requests during November and December to which the Companies are now responding.

A Stipulation and Agreement was filed by the parties on December 13, 1991. A hearing on the merits of this stipulation was held on December 20, 1991.

II. *BACKGROUND*

In satisfaction of Commission order no. 20,094 in docket no. DF 89-085, UNITIL submitted a complete C&LM development and implementation plan on October 1, 1991. According to that

filing, and in compliance with the Commission's order no. 20,094, UNITIL planned to begin implementation of its C&LM programs on January 1, 1992. However, given the complexities of the C&LM programs and cost recovery method proposed, the parties did not believe that review of UNITIL's proposal in time for full program implementation by January 1, 1992 was practicable. Therefore, UNITIL agreed to propose, on or before November 8, 1991, a stipulation establishing a January 1, 1992 implementation date and method of cost recovery for an initial set of C&LM programs for which UNITIL is seeking Commission approval. The stipulation was filed with the Commission on December 13, 1991, a copy of which is appended hereto as Attachment A. It was marked as Exhibit 1 at the hearing.

III. *COMMISSION ANALYSIS*

[1] The parties propose to have UNITIL implement three programs beginning January 1, 1992: the Residential Energy Efficient Lighting Program, the Utilities Facilities Program and the Residential Water Heater Wrap-Up Program. The first two of these programs were begun in 1991 and will be moving to full implementation in 1992. Paragraph 3, Exhibit 1 at 2. UNITIL indicates that all three programs are clearly cost-effective and are modeled on other utility programs that have been proven in the field.

The parties further propose to allow UNITIL to recover all reasonable direct costs that are incurred to implement these initial programs, either through the cost recovery mechanism that the Commission may approve for cost recovery for the full UNITIL C&LM program or a cents/kilowatthour surcharge commencing July 1, 1992 through December 31, 1992, should the Commission not approve the full program. The parties note that direct costs do not include lost revenues or incentive payments to the Companies. Paragraphs 4-6, Exhibit 1 at 2.

The Commission finds that the stipulation is just and reasonable and in the public good. Implementation of an initial set of programs will be a positive first step toward development and implementation of a comprehensive package of C&LM programs for the UNITIL Companies and their ratepayers. The Commission views UNITIL's implementation of these programs as bringing it into compliance with our order no. 20,094 with respect to the timing of C&LM implementation.

The Commission further finds that allowing for recovery of all reasonable direct costs that are incurred to implement these initial programs is appropriate. We note, however, that the Commission is not ceding its authority or responsibility to determine the reasonableness of any costs UNITIL incurs to implement the proposed initial programs.

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 appended hereto as Exhibit A be, and hereby is, accepted.

By order of the Public Utilities Commission of New Hampshire this 31st day of December, 1991.

STIPULATION AND AGREEMENT

On October 29, 1991, at a pre-hearing conference at the Commission's offices, UNITIL Service Corp., on behalf of Exeter and Hampton Electric Company and Concord Electric Company ("UNITIL"), the Staff of New Hampshire Public Utilities Commission ("staff") and the Consumer Advocate ("OCA") recommended a procedural schedule in the above-captioned proceeding to the Commission. As set forth on the schedule, UNITIL agreed to propose, on or before November 8, 1991, a stipulation establishing the implementation date and method of cost recovery for the residential demand-side management ("DSM") programs for which UNITIL is seeking Commission approval.

UNITIL made such a proposal and the Parties stipulate as follows:

1. In satisfaction of the Commission Order No. 20,094 dated April 1, 1991, in DF 89-085 UNITIL submitted a complete DSM development and implementation plan on October 1, 1991. According to that DSM plan, implementation was scheduled to begin on January 1, 1992, as required by the Order.

2. Given the complexities and comprehensiveness of the DSM programs proposed, review of UNITIL's DSM proposal in time for full program implementation by January 1, 1992 can not be practically achieved.

3. The Parties acknowledge that partial implementation of the Residential Energy Efficient Lighting Program and the Utilities Facilities Program has begun and that full implementation of these programs and the Residential Water Heater Wrap-Up Program should begin as scheduled on January 1, 1992. These three programs will hereinafter be referred to as "the Initial Programs."

4. All reasonable direct costs that are incurred to implement the Initial Programs shall be approved for recovery in rates, but recovery will be deferred until the Commission issues an order in this proceeding. At that time, the reasonable direct costs incurred to implement the Initial Programs will be recovered through the cost recovery mechanism established for all programs.

5. If the Commission does not establish a cost recovery mechanism in this proceeding, or ultimately disapproves the DSM plan or the Initial Programs, these deferred costs will be recovered, commencing July 1, 1992, in a separate ¢/KWH factor where the reasonable direct costs of the initial programs are divided by the projected KWH retail sales for July 1, 1992 through December 31, 1992.

6. Direct costs do not include lost revenues or incentive payments.

7. The making of this Stipulation and Agreement ("Agreement") shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in these proceedings is true or valid.

8. This Agreement is expressly conditioned upon the Commission's acceptance of all of its provisions, without change or condition. If the Commission does not accept the Agreement in its entirely, without change or condition, the Agreement shall be deemed to be null and void and without effect, and shall not constitute any part of the record in this proceeding nor be used for

any other purpose.

9. The Commission's acceptance of this Agreement does not constitute continuing approval of, or precedent regarding, any particular issue in this proceeding. Such acceptance does, however, constitute a determination that, as the parties believe, the provisions set forth herein are just and reasonable.

10. The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, and shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding, any future proceeding or otherwise.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of their principal.

CONCORD ELECTRIC COMPANY

Dated December 12, 1991

Page 819

EXETER & HAMPTON ELECTRIC COMPANY

Dated December 10, 1991

STAFF OF THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Dated December 5, 1991

OFFICE OF THE CONSUMER ADVOCATE

Dated December 5,1991

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Eastern Utilities Associates, DF 89-085, Order No. 20,094, 76 NH PUC 236, 121 PUR4th 441, Apr. 1, 1991.

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NH.PUC*12/31/91*[27306]*76 NH PUC 820*Granite State Electric Company

[Go to End of 27306]

Re Granite State Electric Company

DR 91-128

Order No. 20,362

76 NH PUC 820

New Hampshire Public Utilities Commission

December 31, 1991

ORDER revising the conservation and load management (C&LM) adjustment factor of a retail electric utility.

Ratepayer benefits resulting from the C&LM programs of the utility are found sufficient to warrant the opportunity for the utility to earn a financial incentive on its programs.

Commission adopts a stipulation that provides for a 1992 C&LM budget of $3.197 million and sets the 1992 adjustment factor as a uniform charge of $0.00805 cents per kilowatthour. The charge does not include incentives for the 1992 program, as the parties agreed that incentives would be collected during the 1993 program year.

Commission addresses concerns about the equity of recovering CL&M costs through a uniform cents per kWh factor when program expenditures vary by customer class.

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1. CONSERVATION, § 1

[N.H.] Electric — Program cost recovery — Uniform adjustment factor — Equity of allocation. p. 823.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 34

[N.H.] Conservation and load management — Cost recovery — Uniform adjustment factor — Equity of allocation. p. 823.

3. RATES, § 332

[N.H.] Electric rate design — Special charges — Conservation and load management adjustment factor — Equity of allocation. p. 823.

4. RATES, § 262

[N.H.] Cost elements — Conservation and load management programs — Adjustment clause recovery — Equity of allocation — Electric rate design. p. 823.

5. CONSERVATION, § 1

[N.H.] Electric — Program design — Customer contributions — Effect on participation. p. 824.

6. CONSERVATION, § 1

[N.H.] Electric — Cost-effectiveness — Evaluation — Monitoring — Calculation of savings. p. 824.

7. CONSERVATION, § 1

[N.H.] Electric — Incentives — Maximizing incentive — Efficiency incentive. p. 824

APPEARANCES: David J. Saggau, Esq. on behalf of Granite State Electric Company; Robert H. Russell, Esq. and Armond Cohen, Esq. on behalf of the Conservation Law Foundation; Michael W. Holmes, Esq. on behalf of the Office of the Consumer Advocate; and Susan W. Chamberlin, Esq. on behalf of the Commission staff.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

By letter dated August 27, 1991, Granite State Electric Company (GSEC or the Company) requested from the New Hampshire Public Utilities Commission (Commission) an extension in the filing date for its 1992 conservation and load management (C&LM) program and cost recovery factor from September 1, 1991 to September 6, 1991. By secretarial letter dated August 27, 1991, the extension was granted.

On September 6, 1991, GSEC filed its 1992 C&LM program and cost recovery factor, including provisions for a financial incentive. An Order of Notice was issued on September 10, 1991 setting a prehearing conference for September 26, 1991 and a hearing for December 12, 1991.

On September 26, 1991, a prehearing conference was held at which a procedural schedule was proposed. No ruling was made on the Conservation Law Foundation's (CLF) motion to intervene. The proposed procedural schedule was approved by Commission order no. 20,291 dated November 7, 1991. On October 2, 1991, the CLF filed an amended petition to intervene which was granted by order no. 20,276 dated October 22, 1991.

A series of technical sessions with GSEC, Staff, the CLF and the Office of Consumer Advocate (OCA) were held on October 1, November 1 and November 22, 1991. The CLF filed testimony on November 15, 1991 and Staff and the OCA filed testimony on November 22, 1991.

Settlement discussions among the parties were held on December 5 and 10, 1991 during which settlement was reached. A hearing on the merits was held December 12, 1991 where the parties presented a comprehensive offer of settlement.

II. *OFFER OF SETTLEMENT*[1(154)]

The offer of settlement was presented to the Commission by a panel of GSEC witnesses including Ronald J. Boches, Peter G. Flynn and Elizabeth G. Hicks. The other parties made witnesses available for cross-examination: Cort Richardson for the CLF, Kenneth E. Traum for the OCA and Janet Gail Besser for Staff. The offer of settlement responds to several concerns raised by Staff and the OCA in their pre-filed testimony and is summarized below.

A. Overview

The parties agree that GSEC's 1992 C&LM budget

2(155) shall be $3,197,800, reflecting an increase over the Company's proposed $3,041,100 budget due to increased spending in the Home Energy Management and Residential Space Heating programs and a downward adjustment of $20,000 due to the elimination of certain administrative expenses. This budget amount includes $220,000 for the carry-over of approved 1991 Energy Initiative projects into 1992 based on GSEC's estimate at the time of the program filing. At the time of hearing, the actual carry-over was estimated to be approximately $840,900. The parties agree that the Energy Initiative budget will be increased by the amount that the actual carry-over exceeds $220,000. This carry-over represents a shifting of expenditures from 1991 to 1992, not an increase.

The parties agree that GSEC should be allowed to collect a uniform, cents per kilowatthour (kWh) charge of $.00805 on all kWh sold, effective for usage on or after January 1, 1992. This factor includes the 1992 C&LM program expenses as adjusted, the reconciliation of the projected 1991 balance between actual revenues and actual expenses including the earned 1991 maximizing incentive and the expected 1991 efficiency incentive.

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The factor does not include incentives for the 1992 program as the parties agree that they will be collected after the fact, during the 1993 program year.

B. The Equity Issue

To respond to the OCA's and Staff's concerns about the equity and reasonableness of recovering C&LM costs and incentives through a uniform, cents per kWh factor when program expenditures vary by class, GSEC and the parties have agreed to the following:

1) GSEC's proposal to have separate incentives for residential and commercial and industrial (C&I) programs and separate thresholds set at 50% of the estimated value (savings multiplied by the avoided costs) shall be adopted.

2) Any overspending in 1992 C&I programs shall be collected in 1993 from C&I customers only along with any increased incentives earned as a result of this spending. GSEC shall also implement the spending controls described in its original proposal and the Offer of Settlement.

3) If total spending on residential programs is 90% of the budgeted amount or less, GSEC shall refund the excess directly to residential ratepayers. If total residential spending in 1992 is higher than 90% of the budgeted amount but less than 100%, the unspent amount shall be added to GSEC's 1993 residential program budget.

4) GSEC shall increase its budgets for the Home Energy Management and Residential Space Heating programs by $33,800 and $149,900, respectively. Except for Energy Crafted Homes, GSEC will market its residential programs to attain the programs' budgets. If GSEC elects not to make a second round of mailing in the Residential Lighting program, the Company will promote the program with customers' bills every other month during the second half of 1992.

5) The equity issues regarding the allocation of C&LM costs between residential and C&I customers shall be addressed in GSEC's currently pending marginal cost of service proceeding, DR 90-013. In that proceeding, GSEC agrees to address the issue of rolling a base level of

C&LM expenses into base rates and to explore further the issue of the allocation of C&LM costs by rate class.

6) GSEC will conduct a study to determine the cause(s) for low benefit/cost ratios experienced in residential C&LM programs. Specifically, GSEC will study whether conservation measures installed by residential customers on their own have resulted in lower benefit/cost ratios for residential C&LM programs.

C. Program Design

To respond to Staff recommendations regarding C&LM program design, GSEC has agreed to the following:

1) GSEC will analyze the likely effects of requiring a customer contribution in its Small C&I program. In addition, GSEC shall analyze the relative cost-effectiveness of independent contractors installing conservation measures as opposed to the utility's installation. The Company will consult with independent contractors on the analysis.

2) GSEC will address the issue of a customer contribution for the Residential Space Heating program in its 1993 program filing and report on the results of requiring such a contribution in Narragansett Electric Company's 1992 program.

3) GSEC shall conduct an analysis of the cost-effectiveness of a conservation program for mobile homes and present the results in its 1993 program filing.

4) The parties agree that the Company's revised Design 2000 and Energy Initiative programs shall be implemented effective February 24, 1992.

D. Cost-effectiveness and Evaluation

To respond to Staff recommendations regarding the calculation of savings and monitoring and evaluation, GSEC has agreed to the following:

1) GSEC shall use a 7-year life expectancy for bulbs in the Residential Lighting and Small C&I programs.

2) GSEC's proposed value parameters, its

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methodology for value calculations and its evaluation efforts shall be adopted as proposed.

3) GSEC shall conduct a comparison of 1991 and 1992 program results for the Energy Initiative program focusing on the effects on program participation of requiring a customer contribution in the 1992 program.

E. Incentives

To respond to Staff concerns about the structure of the incentive mechanism, and in part concerns of both the OCA and Staff regarding the equity issue, GSEC has agreed to collect a 5% maximizing incentive and a 10% efficiency incentive on its 1992 residential C&LM programs and a 3.5% maximizing and 10% efficiency incentive on its 1992 C&I C&LM programs. The maximizing and the efficiency incentives for both residential and C&I programs shall be collected only after the results have been achieved.

F. Procedural

1) The parties have agreed that as in 1991, GSEC shall report monthly to the Commission on the status of the C&LM fund. On or about 45 days following the end of each quarter, the Company shall submit a narrative description of the status of each program. GSEC shall also submit to the Commission on or about August 15, 1992 and February 15, 1993 a summary of value created in the first and second half of 1992.

2) GSEC will propose a multi-year approval for program design in its 1993 C&LM filing.

3) GSEC shall file its 1993 C&LM proposal on or before September 1, 1992.

III. *COMMISSION ANALYSIS*

A. Equity

[1-4] In order no. 20,186, the Commission required GSEC to address a number of issues regarding the equity of recovering C&LM program costs through a uniform cents per kWh charge when program expenditures are not uniform across classes. We also asked the company to address inter-generational equity issues regarding the timing of C&LM cost recovery and when the benefits or savings from C&LM programs accrue to customers.

One consequence of C&LM as a resource option is that customers who participate directly in C&LM programs not only share in the system benefits these programs provide, but also benefit directly through their individual participation. To ensure that all customers have the opportunity to benefit equally, the Commission has encouraged the utilities to offer a broad range of C&LM programs. The OCA raised the concern in docket no. DR 90-142, that the opportunity to participate in GSEC's C&LM program was not equal and that GSEC's residential customers were being treated inequitably.

In order no. 20,186, the Commission gave GSEC the option to address the equity considerations that had been raised in either its 1992 C&LM program filing (the instant proceeding) or its ongoing marginal cost of service proceeding, DR 90-013. GSEC has begun to address the equity issues raised by the OCA and Staff in this proceeding. GSEC has agreed to a number of procedures to ensure that residential customers will have a greater opportunity to participate in its 1992 C&LM programs. GSEC has also agreed to some safeguards to ensure that if program spending for C&I customers exceeds budgeted levels, the additional expenditures will be recovered from C&I customers only.

In addition, GSEC has agreed to explore the equity and cost allocations issues further in its marginal cost of service proceeding. The Commission reiterates its view that retail rate design issues must be addressed in concert with C&LM and that as one of the leading companies in the area of C&LM, GSEC should devote the resources of its innovative thinkers to this question. Report and Order no. 20,186 at 17. Specifically, the Company should address how rate design can be used to ensure the equity of C&LM cost recovery methods. In addition, the Company should explore how marginal cost of service-based rates can be used to enhance the effectiveness, both in terms of costs and delivery, of its C&LM program offerings. Again, the Commission expects that Staff and the OCA

will provide input in this area as well.

The Commission finds that GSEC has complied with the requirements of order no. 20,186 regarding the equity issues that have been raised and that the settlement offer in this proceeding reasonably addresses them.

B. Program Design, Cost-effectiveness and Evaluation

[5-7] GSEC's commitment to study the effects of requiring customer contributions on program participation and cost-effectiveness for the Small C&I and Residential Space Heating programs should provide insight into whether C&LM savings can be achieved more cost-effectively than they are now being achieved and whether customer commitment to proper usage of energy efficient measures is encouraged when customers pay a portion of the costs of such measures. The Commission is pleased to see that these questions are being explored. The evaluation of the 1991 and 1992 Energy Initiative program results should also prove helpful.

C. Incentives

The Commission finds that the parties' agreement that the maximizing incentive for C&I programs will be reduced and that all incentives will be paid after the fact to be just and reasonable and in accordance with the Commission's policy that performance be demonstrated before incentives are paid.

D. Procedural

The Commission finds the parties' proposals regarding reporting and filing deadlines to be reasonable.

E. Summary

The Commission finds that GSEC's 1992 C&LM program appears to be a cost-effective resource option for the utility. With the more mature residential program offerings, the spending controls, and measures to ensure that residential ratepayers do not pay for expenditures over budget in the C&I programs, GSEC has acted to improve upon its prior year programs and has begun to address the equity issues that have been raised. GSEC's 1992 program continues to focus appropriately on the long term benefits and costs of C&LM as a resource option and that, along with its improved depth, leads the Commission to find that it meets the standard of "extraordinary benefits" to ratepayers over the long term established in *Re Incentives for Conservation and Load Management*, 75 NH PUC 527 (1990). The Commission finds that these benefits are sufficient to warrant the opportunity for GSEC to earn a financial incentive on its C&LM program. We therefore find that GSEC's proposed 1992 C&LM adjustment factor of $.00805 is just and reasonable and in the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Offer of Settlement appended hereto as Attachment A be, and hereby is, accepted; and it is

FURTHER ORDERED, that pursuant to said Offer of Settlement Granite State Electric Company's conservation and load management adjustment factor of $.00805 per kilowatthour be, and hereby is, approved effective January 1, 1992; and it is

FURTHER ORDERED, that Granite State Electric Company file tariff pages in compliance with this order on or before December 31, 1991.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1991.

Attachment A

OFFER OF SETTLEMENT

I. *Terms of Settlement*

This Offer of Settlement is jointly submitted by the New Hampshire Public Utilities Commission Staff ("Staff"), the Office of the Consumer Advocate ("OCA" or "Consumer Advocate"), the Conservation Law Foundation

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("CLF") and Granite State Electric Company ("Granite State" or "Company"), together the "Parties," and resolves all issues among the Parties in this proceeding, including the budget, program design, incentive, and rate recovery for Granite State's 1992 Conservation and Load Management ("C&LM") Program filed with the Commission on September 6, 1991.

Specifically, the Parties agree as follows:

(1) Granite State's 1992 C&LM budget shall be $3,197,800, reflecting an increase over the Company's proposed budget related to increased spending in the Home Energy Management and Residential Space Heating programs and a downward adjustment of $20,000 related to the elimination of certain administrative expenses. Individual budgets for each of the seven (7) programs to be implemented by the Company in 1992, including a summary of energy savings, and winter and summer peak capacity savings, and cost/benefit ratios, are included in Attachment 1. This budget amount includes $220,000 for the carry-over of approved 1991 Energy Initiative projects into 1992. The actual carry-over is estimated to be approximately $840,900, but the final amount will not be known until early 1992. However, the 1992 Energy Initiative budget will be increased by the amount that the actual carry-over exceeds $220,000. The carry-over of Energy Initiative projects results in a shifting of costs from 1991 to 1992 and does not increase the original proposed 1992 C&LM adjustment factor.

(2) The Company's proposal to have separate incentives for residential and C&I customers and separate thresholds set at 50% of estimated value shall be adopted. Granite State shall be required to achieve 50% of 1992 projected value in its residential program before it can earn either the maximizing or efficiency incentive on its 1992 residential programs. Granite State shall be required to achieve 50% of 1992 projected value in its C&I program before it can earn the maximizing or efficiency incentive on its 1992 C&I programs.

(3) Granite State shall collect a 5% maximizing incentive and a 10% efficiency incentive on its 1992 C&LM residential programs. Granite State shall collect a 3.5% maximizing incentive and a 10% efficiency incentive on its 1992 C&LM C&I programs. The maximizing and efficiency incentives for both the C&I and residential programs shall be collected only after the results have been achieved. The projected incentive to be earned is developed in Attachment 2.

(4) Granite State shall be allowed to collect a uniform, cents-per-kWH C&LM adjustment factor of $.00805 per kWh on all kWh sold, effective for usage on or after January 1, 1992. This factor includes the 1992 C&LM program expenses as adjusted pursuant to paragraph (1) of this Agreement, the reconciliation of the projected 1991 balance between actual revenues and actual expenses including the earned 1991 maximizing incentive, and the expected 1991 efficiency incentive. A final reconciliation of 1991 and a firm estimate of 1992 expenses including 1991 Energy Initiative carry-over will be known in early 1992. To the extent that this information may change the proposed factor by more than 10%, any party may request that the factor be revised effective July 1, 1992. The calculation of the 1992 C&LM adjustment factor and the impact on customers is shown in Attachment 3.

(5) Any overspending in 1992 C&I programs shall be collected in 1993 from C&I customers only along with any increased incentives earned as a result of this overspending. Granite State shall implement the spending controls proposed by the Company as described in the Company's position included as a part of this Settlement.

(6) If total spending on residential programs in 1992 is 90% of the budgeted amount or less, Granite State shall refund the excess directly to its residential ratepayers. If total residential spending in 1992 is higher than 90% of the budgeted amount but less than 100% of the budgeted amount, the unspent amount shall be added to Granite State's 1993 residential budget. If total spending on residential programs in 1992 exceeds budgeted levels, the excess along with any additional incentives earned shall be collected from all customers. If residential spending is projected to exceed total residential budgeted levels by more than 25%, Granite State shall report to the Commission and

propose an appropriate course of action.

(7) For purposes of determining the appropriate refunds or additional charges due to differences between actual conservation funds expended and revenues collected, normalizing sales adjustment back to forecast sales levels will be allowed in accordance with paragraph 4 on Original Page 67 of the Company's tariff NHPUC No. 13.

(8) Granite State will increase its budgets for the Home Energy Management Program and the Residential Space Heating Program by $33,800 and $149,900, respectively. Except for Energy Crafted Homes, Granite State will market its residential programs to attain the programs' budgets. If Granite State elects not to make a second round of mailings in the Residential Lighting program due to budget concerns, the Company will include messages promoting the program with customers' bills every other month during the second half of 1992.

(9) No customer contribution shall be required in Granite State's 1992 Small C&I program.

However, the Company shall analyze the likely effects of requiring a customer contribution in its Small C&I Program, and shall address the results of the analysis in its 1993 C&LM filing. Specifically, Granite State agrees to conduct market surveys for determining the effects of a customer contribution on participation levels, disaggregated by customers below 25 kW and those between 25 and 50 kW. In addition, Granite State shall analyze the relative cost-effectiveness of independent contractors installing conservation measures as compared to the installation of measures under the Small C&I Program. The Company will consult with independent contractors on the analysis.

(10) No customer contribution shall be required in Granite State's 1992 Residential Electric Space Heating Program. However, Granite State will address the issue of customer contributions for the Residential Electric Space Heating Program in its 1993 C&LM filing. Granite State shall report on the results of the Narragansett Electric Company's 1992 customer contribution in its Residential Electric Space Heating Program. The Parties agree with the CLF that the Residential Electric Space Heating Program is a valuable program which constitutes an important part of Granite State's residential programs.

(11) The equity issue regarding the allocation of C&LM costs between residential and C&I customers shall be severed from this docket and addressed in Granite State's currently pending marginal cost of service proceeding, Docket No. DR90-013. In that proceeding, Granite State agrees to address the issue of rolling a base level of C&LM expenses into base rates and explore further the issue of the allocation of C&LM costs by rate class. The Parties agree to make best efforts to ensure that Docket No. DR90-013 is concluded before Granite State's 1993 C&LM filing.

(12) Granite State will conduct a study to determine the cause or causes for low benefit/cost ratios experienced in residential programs. The results of this study shall be submitted to the Commission and the Consumer Advocate in conjunction with Granite State's 1993 C&LM program proposal filing. Specifically, Granite State shall study whether conservation measures installed by residential customers on their own have resulted in lower overall benefit/cost ratios for residential C&LM programs.

(13) Granite State shall conduct at analysis of the cost-effectiveness of a conservation program for mobile homes. The results of this analysis shall be presented to the Commission in Granite State's 1993 C&LM filing.

(14) Granite State shall use a 7-year life expectancy for bulbs in the Residential Lighting and Small C&I programs. Revised value calculations and benefit/cost ratios for both programs are reflected in Attachment 1.

(15) Granite State's proposed value parameters, its methodology for value calculations, and its evaluation efforts shall be adopted as proposed.

(16) As in 1991, Granite State shall report monthly to the Commission on the status of the C&LM fund. On or about forty-five (45) days following the end of each quarter, the Company shall submit a narrative description of the status of each program. Granite State shall also submit to the Commission on or about August 15, 1992 and February 15, 1993 a summary of value created in the first and second half of 1992.

(17) Granite State shall conduct a comparison of 1991 and 1992 program results for the Energy Initiative program focusing on the effects of program participation in light of the requirements of a customer contribution. This study shall be included in Granite State's 1993 C&LM filing.

(18) The Parties agree that the Company's revised Design 2000 and Energy Initiative programs shall be implemented effective February 24, 1992.

(19) Granite State will propose a multi-year approval for program design in its 1993 C&LM filing.

(20) Granite State shall file its 1993 C&LM proposal on or before September 1, 1992.

Miscellaneous Provisions

(1) Other than as expressly stated herein, this settlement establishes no principles and shall not be deemed to foreclose any Party from making any contention in any future proceeding or investigation.

(2) Other than as expressly stated herein, the approval of this settlement by the Commission shall not in any respect constitute a determination as to the merits of any issue in any subsequent proceeding.

(3) This settlement is the product of settlement negotiations. All offers of settlement shall be without prejudice to the position of any Party or participant presenting such offer.

(4) This settlement is submitted on the condition that it be approved in full by the Commission, and on further condition that if the Commission does not approve this settlement in its entirety, this settlement shall be deemed withdrawn and shall not constitute a part of the record in this or any proceeding or used for any purpose.

The Parties request the Commission to adopt this settlement as a final resolution of all issues in this proceeding.

Dated this 12th day of December, 1991.

Respectfully submitted,
NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION
Susan Chamberlin, Esq.
OFFICE OF THE CONSUMER
ADVOCATE
CONSERVATION LAW FOUNDATION
Armond Cohen, Esq.
GRANITE STATE ELECTRIC COMPANY
David J. Saggau, Esq.

II. *Granite State's Position*

A. *Program Design and Budget*

In 1992, the Company proposes to implement seven (7) individual C&LM programs,

including four (4) residential programs[1(156)] , and three (3) commercial and industrial ("C&I") programs.[2(157)] The Company proposes a budget of approximately $3 million for its 1992 C&LM program. The Company states that this package of programs would produce annual energy savings of approximately 6.1 million kWh, winter peak capacity savings of 1,600 kW and summer peak capacity savings of 1,700 kW. The proposed budget of $3 million results in a proposed 1992 C&LM factor of $.00931 per kWh.

1. *Increased Residential Program Results*

The Company stated that it is making progress in attaining residential program results. In 1990, residential results consisted of eight water heater rebates. However, the Company expects to achieve in excess of 70% of its 1991 residential program spending, and anticipates that the trend toward increased residential spending will continue as the programs mature. In 1992, for the first time, the Company will be beginning a program year with all of its proposed residential programs already operating and achieving results.

2. *Enhanced Spending Controls*

In an effort to control spending in its 1992 C&LM programs, the Company proposed several actions. First, with regard to the Energy

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Initiative program, the Company proposes to reduce rebates, cap the budget, institute a vendor participation procedure, and enhance the application tracking system. Second, the Company proposes a significant increase in the Design 2000 program budget to reduce the potential for spending overruns. Whereas the 1991 budget was $100,000, the Company proposes a 1992 design 2000 budget of approximately $1.5 million. In preparation of the Design 2000 budget, the Company developed a complete listing of all known projects for which it expected to pay rebates during 1992. The listing included eleven projects totaling approximately $870,000 in rebates. On December 9, 1991, the Company updated its list of known projects for which it expects to pay rebates in 1992. The current list consists of twenty-two projects totaling approximately $1.3 million in rebates. The Company does not propose to adjust its Design 2000 budget based on the expanded list. It recognizes, however, the need to monitor throughout 1992 the aggregate amount of Design 2000 rebate requests relative to the program budget. The Company proposes to closely monitor Design 2000 spending on an on-going basis, and to notify the Commission when budgeted amounts have been spent. The Company will not approve any applications for Design 2000 rebates in excess of the budget without first consulting with the Commission. The customer rebate application for Design 2000 will state that the Company is not obligated to approve any rebates in excess of the annual budget. In addition, customers will be required to refund rebates to the Company if they move their businesses out of Granite State's service territory within a specified time after receiving the rebate. Further, if the amount of the rebates that the Company pays to a non-governmental customer exceed $50,000, either on a single project or cumulatively on several projects within a twelve-month period, rebates will be reduced below incremental cost to require the customer to contribute an amount equal to a six-month payback.

The revised Design 2000 program is scheduled for introduction on February 24, 1992. Until

that time, the Company proposes that the program continue to operate in its current form.

3. *Market-Driven Opportunities*

The Company's proposed increase in its Design 2000 budget reflects its goal to shift spending away from retrofit measures provided under the Energy Initiative program, to so-called "market-driven" opportunities. The term "market-driven" refers to the times when customers, independent of conservation programs, are planning to spend their own money to purchase equipment. Examples include new construction, renovations, remodeling and replacement of failed equipment. It is more cost-effective, in most cases, to intervene in the market at this time, since the customer is purchasing equipment anyway. The opportunity exists to influence customers to install efficient equipment by paying the incremental cost only. In retrofit situations, rebates in excess of incremental cost are typically required to persuade customers to install efficient equipment.

4. *Evaluation*

To measure the results of its 1992 C&LM programs, Granite State proposes to compile a count of all of the installations in each program. The value assigned to each installation will be based on measure life, hours of use of the measure, diversity and percentage of free riders. These data are derived from a number of sources including evaluation of prior year experiences, engineering estimates, survey data, and on-site data collection.

5. *Research and Development Activities*

The NEES System currently has a wide range of research and development ("R&D") activities underway. Most notably, the first phase of the Multi-Family Retrofit program is in progress in Massachusetts and Rhode Island. This program provides conservation services to both public and private multi-family dwellings including weatherization, high efficiency lighting and appliance upgrades. At this point, the program appears to be marginally cost-

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effective. Implementation of a full scale program is being tested in Massachusetts in 1992. If the results indicate that the program will be cost-effective, the Company will consider offering it in New Hampshire in 1993.

Other major R&D activities include:

1) monitoring of heat pump hot water heater performance, 2) load control of electric space heat and heat pumps, 3) demand limiters, 4) a project to improve residential energy awareness, and 5) continued monitoring of the performance of selected photovoltaic sites. New projects include a solar water heater pilot program and a residential thermal storage pilot program. The Company will also conduct research into whether or not a mobile home conservation program would be cost-effective. Finally, an appliance recycling program is being tested in Massachusetts and Rhode Island in 1992. This program consists of picking up and disposing of customers' second refrigerators and, if it proves cost-effective, the Company will consider proposing it in New Hampshire in 1993.

B. *Cost Recovery and Incentive*

Granite State proposed a C&LM cost recovery mechanism similar to the ones that have been previously approved by the Commission in Docket Nos. DR89-154 and DR90-142. The Company is seeking to recover the direct cost of its C&LM program along with a financial incentive in a cents-per-kWh factor to be collected over all Kwh sold. The proposed financial incentive has two components: a maximizing incentive equal to 5% of the value of the savings achieved by the 1992 program[3](158) , and an efficiency incentive equal to 10% of the difference between the value of the savings and the cost of achieving them. The Company proposed to collect the maximizing incentive on a current basis and the efficiency incentive on an after-the-fact basis.

1. *Threshold Levels*

The Company proposed to modify the minimum performance threshold applicable to its 1992 program. In 1991, the Commission approved the Company's program with a minimum performance threshold set at 50% of the estimated value of the program. Upon meeting this threshold, the incentive is earned on Granite State's entire C&LM program. For 1992, the Company proposed to establish two (2) separate thresholds for the earning of incentives. First, the Company proposed that it achieve 50% of 1992 projected value in its residential programs before it can earn either the maximizing or the efficiency incentive on its 1992 residential programs. Second, the Company proposed that it be required to achieve 50% of the 1992 projected value in its C&I programs before it can earn the maximizing or the efficiency incentive on its C&I programs. Under this proposal, it would be possible for the Company to earn an incentive on either residential or C&I programs, or both, depending on whether the independent thresholds were met. The only way for the Company to earn its full incentive on all of its 1992 C&LM programs is to exceed both the residential and C&I threshold.

The purpose for proposing a separate minimum performance threshold for its residential and C&I programs is to address the concerns raised by Staff and the Consumer Advocate that the Company has not concentrated enough of its efforts to promote its residential C&LM programs in 1991. The separate performance threshold proposal gives the Company a financial incentive to implement its residential programs to the fullest extent possible.

2. *Cost Recovery of C&LM Expenses*

The Company proposed to recover the costs associated with its 1992 C&LM programs on a uniform cents-per-kWh basis across all customer classes. The Company believes that such a cents-per-kWh charge fairly allocates C&LM costs across customer classes. In reaching this conclusion, the Company states that the focus is not on which class of customers receive the saving device or direct benefits of the individual program, but rather the focus is on the sharing of the total avoided cost benefit. Just as the cost of new sources of generation would be allocated to all customers, the Company believes that C&LM costs should also be allocated similarly to all customers.

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The Commission, in Docket No. DR90-142, ordered the Company to address the equity and reasonableness of a cents-per-kWh recovery method and to present alternative approaches which

may be more appropriate. The Company provided three (3) alternative cost recovery methodologies, which, according to the Company, had distinct disadvantages outweighing any advantage they may provide. These alternative recovery approaches include 1) direct allocation to rate classes with the opportunity to participate, 2) direct allocation based on value achieved, and 3) a participants-pay methodology. A comparison of the three (3) alternative cost recovery methodologies with the cents-per-kWh methodology proposed by the Company is contained in the testimony of Mr. Boches, pages 7-11.

C. *1992 C&LM Adjustment Factor*

The Company proposed four (4) components of the 1992 C&LM adjustment factor which, based on the proposed 1992 C&LM program budget of $3 million, would result in a C&LM factor of $.00931. These four (4) components include 1) the 1992 C&LM program expenses, 2) the reconciliation of the projected 1991 balance between actual revenues and actual expenses and the earned 1991 maximizing incentive, 3) the proposed 1992 maximizing incentive, and 4) the expected 1991 efficiency incentive. A C&LM factor of $.00931 per kWh results in an increase of $0.96 to the average 500 kWh residential customer, an increase of 1.9%.

III. *Staff's Position*

A. *Program Design and Budget Levels*

Staff supports the $3 million budget proposed by Granite State for its 1992 C&LM program. Staff believes that the alternative budget proposed by Granite State of $2.2 million will severely limit the Company's ability to capture potential lost opportunities and to serve new customers in its retrofit programs. Similarly, Staff believes that the alternative budget proposed by Granite State of $3.8 million is unnecessary because the increased budget would capture retrofit opportunities now which could be captured in the future. Staff believes it may be more cost-effective to wait to capture these retrofit savings at a time when capacity need is greater.

B. *Spending Controls*

Staff generally supports the Company's plan to manage its 1992 C&LM program to the proposed budget of $3 million and, in particular, supports the budget management steps the Company proposes to take with the Energy Initiative program. However, with regard to residential programs, Staff recommends that the Company take more of a "market-driven" or "open offer" approach to residential programs. Staff believes that all residential customers that are interested in participating in one of the four residential programs being offered in 1992 should have an opportunity to do so as long as the programs remain cost-effective. Staff recognizes that this could result in spending above budgeted levels in residential programs and may result in an increase in the C&LM cost recovery factor. However, Staff believes that, given past experience with residential programs, any increased costs are not likely to be large and, in recognition of residential customers' contribution to the recovery of C&I program over-expenditures, would be warranted. Staff believes that if residential programming expenditures are running 25% or more above budgeted levels, the Company should notify the Commission and a decision could be made as to what actions, if any, are necessary to control residential spending.

C. *Program Design Changes*

Staff generally supports the program design proposed by the Company for the 1992 program. However, Staff recommends the following changes to specific programs:

1. *Residential Space Heating Program* — Staff believes the Company should require a customer contribution equivalent to a six-month payback from all participants in the Residential

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Space Heating Program, except low income customers. Staff believes that requiring a customer contribution for the Residential Space Heating Program is appropriate for two (2) reasons. First, requiring a customer contribution will make the program similar to the residential lighting program where rebates on bulbs are offered but customers usually have to pay some of the costs themselves. Second, some small customer contribution may allow more customers to be served under the current program budget. In addition, Staff believes that customers may value the measures more and use them properly if they are required to contribute a portion of the costs.

2. *Residential Lighting Program* — Staff suggests a revision to the calculation of savings from light bulbs in the Residential Lighting Program. Staff recommends that Granite State assume a maximum bulb life of seven (7) years, as opposed to ten (10) years, in its calculation of savings. Staff believes that seven (7) years is the longest period of time that is reasonable to expect a bulb to remain in place and unbroken.

3. *Energy Initiative Program* — Staff does not have any suggested revisions to the Energy Initiative Program itself, however, Staff recommends that Granite State conduct a comparison of the 1992 and 1991 program results focusing on the effects of program participation in light of the 1992 requirement of a customer contribution.

4. *Small C&I Program* — Staff recommends that Granite State modify the Small C&I Program to include a rebate equal to only the full incremental cost of the measures being installed (i.e., make the program market-driven) or to require a customer contribution equivalent to a one-year payback (i.e., similar to the Energy Initiative Program customer contribution for non-lighting measures). Because the Company believes that such a change in the Small C&I Program would delay implementation, Staff recommends an implementation date of April 1, 1992 for the redesigned small C&I program.

In further support of its recommendation that Granite State require a customer contribution in Small C&I Program, the Company has indicated that it was planning to study the impacts of a customer contribution on a small C&I program. Staff believes that the study should be conducted in Granite State territory. Staff does not believe that a customer contribution in the Small C&I Program will necessarily reduce cost-effectiveness or participation levels since the advertising budget for the Small C&I Program is the smallest of all 1992 C&LM programs and the program performed well in 1991. However, Staff was willing to reconsider its position if Granite State provided evidence that a customer contribution in the small C&I program would severely inhibit participation.

Staff further suggests that the same revision to the calculation of savings from light bulbs be implemented in the Small C&I Program as in the Residential Lighting Program. That is, Staff recommends that Granite State assume a maximum bulb life of seven (7) years in its calculation

of savings.

D. *Cost Recovery and Incentive*

Staff supports Granite State's proposal for use of a uniform cents-per-kWh allocation of costs across all customer classes. Staff acknowledges the concerns expressed by the Commission in Order No. 20,186 that residential ratepayers, under a cents-per-kWh allocation of C&LM costs, will pay more for C&LM programs than is spent in the residential classes. (This concern has commonly been referred to as the "equity" issue.) An in-depth analysis of the equity issue is contained in the testimony of Janet Besser, pages 13-23. Staff believes that, at this point, no one cost recovery approach is clearly more correct or more appropriate than another. Staff also believes that the administrative costs of changing to a more complex mechanism for cost allocation may outweigh any benefits provided. However, Staff recommends that the issue of equity in the allocation of costs be addressed in Granite State's currently pending marginal cost of service study proceeding, Docket No. DR90-013. Staff believes that the allocation of C&LM program costs, and the equity concerns involved in a cents-per-kWh charge, should be addressed along with the other factors which affect customers' bills.

Because of the complexity of the issue, the

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lack of analysis to date, the fact that there is little difference in the results between a cost of service and the cents per kWh method, and because Staff rejects for the moment the direct class allocation for Granite State's C&LM costs since there is a prospect of improved opportunity for all customers to participate in its 1992 program, Staff recommends that the cents-per-kWh allocation be retained, with the following five (5) conditions:

* The rate design proceeding currently pending, Docket No. DR90-013, be completed before Granite State makes its 1993 C&LM program proposal filing on September 1, 1992;
* In the rate design proceeding, the Company must consider rolling some level of C&LM costs into base rates and address the issues regarding shifting cost responsibilities;
* Dollars currently budgeted for residential programs in 1992, but unspent in 1992, be returned to residential customers only;
* Any dollars spent on C&I programs above those currently budgeted for will be charged to the C&I class only; and
* Any dollars spent on Residential programs above those currently budgeted will be allocated to all classes, including C&I customers, in the interests of fairness given the overspending in C&I programs in 1991.

E. *Research and Development*

Staff strongly urges the Company to go forward with its study of the feasibility and cost-effectiveness of a conservation program for mobile homes. Staff recommends that Granite State provide the results of this study in its next C&LM program filing in September, 1992. The desire for going forward with this research project is based on the fact that mobile homes tend to use a high proportion of electricity and are inhabited by lower income customers. Staff believes that a C&LM program for mobile homes may offer an opportunity to achieve significant savings

for both the Company and the participating customers.

F. *Incentive Calculation*

Staff believes that the Company should earn a maximizing and efficiency incentive as proposed by the Company on its residential programs. However, Staff believes that the Company should only earn an efficiency incentive on its C&I programs. Staff asserts that ratepayers want the Company to pursue the most cost-effective C&I C&LM programs first. To make up for the elimination of the maximizing incentive on C&I programs, Staff recommends allowing Granite State to adjust the efficiency incentive for its C&I programs to ensure that the efficiency incentive encourages the Company to pursue C&I conservation measures. Staff recognizes that the maximizing component for the C&I program incentive may be necessary in the future when the benefit cost ratios for C&I programs approach 1:1.

G. *Program Overview*

Staff believes that Granite State's 1992 C&LM program proposal will provide extraordinary benefits to ratepayers and, therefore, warrants a financial incentive. Staff stated that this program reflects the experience and knowledge the Company has gained over the last several years of C&LM program implementation and that the Company's ratepayers are benefiting significantly from Granite State's expertise in and commitment to conservation.

Staff cautions that its concerns with the appropriate treatment of C&LM cost recovery are not in any way concerns with the quality of Granite State's C&LM program itself. Staff recognizes the difficulty in designing cost-effective residential programs and believes that Granite State is attempting to develop and deliver such programs to its residential customers.

IV. *Consumer Advocate Position*

The Consumer Advocate supports conservation within the context of least cost planning. However, the Consumer Advocate believes that a showing must be made that residential customers' bills will not be increased in the long-

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term as well as the short-term due to C&LM activities, all other things remaining equal.

The Consumer Advocate believes that the Company's proposal has an unacceptable probability of resulting in net increases in residential bills now and in the future. One suggestion offered by the Consumer Advocate is to limit the present billings to the residential class to a level equal to the expenditures (and related incentives earned) made on their behalf. A second step offered by the Consumer Advocate is to recognize the avoided kwh and Kw on a class basis in determining cost-of-service allocations for the life of the conservation measures. The Consumer Advocate believes that this reduces the risk that any class can be harmed in the long-run.

The Consumer Advocate would support an allocation methodology whereby residential customers pay more for conservation measures than are installed through residential programs if there is a showing that conservation programs retain or increase employment in the State of New Hampshire. However, the Consumer Advocate notes that no such offer of proof has been made

in this proceeding.

4(159) In addition, the Consumer Advocate notes that under the Company's proposed 1992 C&LM program, residential customers will incur approximately 41% of the total costs of conservation programs, while approximately 20% of the total 1992 C&LM budget will be spent on residential customers. Further, the Consumer Advocate is concerned that as more C&I customers participate in conservation, their need for electricity is decreased disproportionately to the decreases in the residential class. The Consumer Advocate believes that this results in residential ratepayers incurring a larger proportion of the future total cost of service for the Company.

Overall, the Consumer Advocate supports C&LM and agrees that properly calculated benefit/costs ratios in excess of 1.0 will result in a lower revenue requirement for the Company as a whole. If Granite State could show that a cost allocation method results in the least cost planning route for the residential class as well as the commercial and industrial class, and for the utility's total revenue requirement, the Consumer Advocate could support such an approach.

V. *Conservation Law Foundation Position*

The CLF strongly supports Granite State's proposed 1992 C&LM program. The CLF believes that these programs exhibit improvements in several important areas as a result of lessons learned from delivering 1991 programs and also as a result of the Company's willingness to collaborate with the CLF and other interested parties. The CLF believes that Granite State has made substantial progress in 1991 in improving program effectiveness, getting new residential programs into the field, and implementing a state-of-the-art evaluation and monitoring system.

The CLF acknowledges that it will be difficult for the Company to capture many market-driven opportunities in its Design 2000 program. These new markets are limited in any given year and much smaller than the total retrofit market that could be targeted by open offer programs like the Energy Initiative program. In addition, these markets are time critical in that there is only a very limited time period when a utility has the opportunity to intervene and influence customer decisions. CLF encourages the Company to work with different trade allies to fully capture these markets. The CLF believes that while the shift to market-driven conservation opportunities will be difficult to implement, they will substantially improve the value of savings required per ratepayer dollar vested in large C&I customer facilities.

The CLF supports Granite State's proposed $3 million budget, but believes that a higher budget could be achieved in 1992. However, the CLF cautions that any consideration of substantial increases beyond the $3 million budget should be approached carefully as such increases might constrain Granite State's ability to implement important program changes scheduled for 1992 that are expected to result in considerably higher value for ratepayer investments. The CLF believes that Granite State's 1992 C&LM program should be awarded the incentive treatment proposed by the Company.

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FOOTNOTES

Report

[1]The Offer of Settlement is attached hereto as Attachment A.

[2]GSEC proposes to offer four residential and three commercial and industrial (C&I) programs in 1992. The proposed residential programs are 1) Residential Space Heating, which installs weatherization and other conservation measures in the homes of customers with electric heat; 2) Residential Lighting, which sells efficient compact fluorescent lamps at reduced prices; 3) Home Energy Management, which cycles customers' water heaters to shift load to off-peak hours; and 4) Energy Crafted Homes, which promotes efficiency in the design and construction of new homes.

The proposed C&I programs include: 1) Design 2000, which encourages efficiency in new construction, renovation, remodeling and replacement of failed equipment; 2) Energy Initiative, which encourages the replacement of existing equipment with more efficient equipment; and 3) the Small C&I program, which installs conservation measures in the facilities of C&I customers with average monthly demands of less than 50 kilowatts (kW) or annual energy use less than 150,000 kilowatthours (kWh).

Offer Of Settlement

[1]The proposed residential programs are 1) Electric Space Heating, which installs weatherization and other conservation measures in the homes of customers with electric heat; 2) Residential Lighting, which sells efficient compact fluorescent lamps at reduced prices; 3) Home Energy Management, which cycles customers water heaters to shift load to off-peak hours; and 4) Energy Crafted Homes, which promotes efficiency in the design and construction of new homes.

[2]Granite State's proposed C&I programs include: 1) Design 2000, which encourages efficiency in new construction, renovation, remodeling and replacement of failed equipment; 2) Energy Initiative, which encourages the replacement of existing equipment with more efficient equipment; and 3) the Small C&I program, which installs conservation measures in the facilities of C&I customers with average monthly demands of less than 50 kilowatts (kW) or annual energy use of less than 150,000 kilowatthours (kWh).

[3]The value is based on the wholesale rates that the Company pays to its wholesale supplier,

New England Power Company, adjusted for evaluation and customer costs.

[4]The Company and the CLF are close to finalizing a study of this issue. Preliminary results indicate that Granite State's 1992 C&LM program will create thirty (30) new jobs in the Company's service territory. A copy of the report will be filed with the Commission when completed.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 90-142, Order No. 20,186, 76 NH PUC 495, July 23, 1991.

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Endnotes

1 (Popup)

[1]See attached settlement for complete detail.

2 (Popup)

[1]See attached settlement for complete detail.

3 (Popup)

[1]For example, the rate plan did not provide that the write off percentage for the turbine would be different from that of the containment structure, which, in turn, would be different from that of the AFUDC, etc.

4 (Popup)

[2]We have used the $2.9 billion investment number because that was the figure proffered by Northeast Utilities and accepted by the Commission in *Re NU/PSNH, supra*.

5 (Popup)

[3]PSNH projected that under the levelized approach rates would increase by 6.4% if the First Effective Date is March 1, 1991. This calculation was made without the benefit of the commission's disallowance of approximately 50% of the company's recoverable nuclear fuel costs. If included in the calculation, we expect that our nuclear fuel adjustment would further reduce the rate increase contemplated on the First Effective Date.

6 (Popup)

[3]PSNH projected that under the levelized approach rates would increase by 6.4% if the First Effective Date is March 1, 1991. This calculation was made without the benefit of the commission's disallowance of approximately 50% of the company's recoverable nuclear fuel costs. If included in the calculation, we expect that our nuclear fuel adjustment would further reduce the rate increase contemplated on the First Effective Date.

7 (Popup)

[1]The majority opinion recognizes the rate stability rationale of ECRM as set forth in the above cited Orders, but observes that the intent was to have

stability for only a six-month period. This begs the question. I agree that ECRM is designed to provide stability for a six-month rather than a twelve-month period. However, the issue in this case is whether rates will be stable for the period January 1, 1991 to June 30, 1991, not whether rates will be the same as those that existed on December 31, 1990. As discussed below, the record is compelling that rates will excessively fluctuate in the six-month ECRM period under a "traditional" methodology, while there will be relative stability over that same period under the "levelized" approach.

8 (Popup)

[2]For example, a March 1, 1991 first effective date results in a 8.5% decrease on January 1, 1991, a 15.4% increase on March 1, 1991, and a 4.6% increase on July 1, 1991. (Exh. 21 at 5). Similarly, the Commission's ruling on nuclear fuel valuation, which lowers the PSNH proposed ECRM rate, has the effect of exacerbating the fluctuation.

9 (Popup)

[3]The projected scenario under a March 1, 1991 first effective date is the same, except that rates increase 5.3% on March 1, 1991, instead of 4.4% on April 1, 1991. *Id.*

10 (Popup)

[4]The record reflects that fossil fuel cost projections were based on the assumption that there would be no change in the Persian Gulf situation during the six-month ECRM period; an assumption that is probably not realistic.

11 (Popup)

[4]The record reflects that fossil fuel cost projections were based on the assumption that there would be no change in the Persian Gulf situation during the six-month ECRM period; an assumption that is probably not realistic.

12 (Popup)

[1]Subject of 1990 winter CGA reconciliation.

13 (Popup)

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14 (Popup)

[1]In *Re NHEC*, DR 90-169, Report and Order No. 19,987 (November 19, 1990), the commission reduced the Cooperative's fuel adjustment rate by approximately 15% to reflect the company's actual projected wholesale fuel costs. The commission refused the company's request to retain the previous year's fuel rate because it found the company's statements relative to possibility of bankruptcy represented a risk that any overcollection in fuel costs may not be refunded. The commission determined that the risk to ratepayers of not being able to recover overcollected fuel costs far outweighed any benefit that they may receive from rate continuity. Report at 8.

The cooperative's current petition requests that we increase the level of rates to their pre-November levels plus an additional 8%. In order to raise current rates to this level, base rates must be increased by approximately 27%.

15 (Popup)

[2]31 U.S.C. Sec. 3713 provides as follows:

> (a)(1) A claim of the United States Government shall be paid first when — (A) a person indebted to the Government is insolvent and — (i) the debtor without enough property to pay all debts makes a voluntary assignment of property; (ii) property of the

debtor, if absent, is attached; or (iii) an act of bankruptcy is committed; or (B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor. (2) This subsection does not apply to a case under title II.

(b) A representative of a person or an estate (except a trustee acting under title II) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

16 (Popup)

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17 (Popup)

[3]*See, e.g.*, 55 Fed. Reg. 38,649 (September 19, 1990) (final rule of the REA pertaining to federal preemption in ratemaking in connection with REA borrowers in bankruptcy) (to be codified at 7 CFR secs. 1717.350 *et seq*.); *but see, e.g., Wabash Valley Power Association, Inc. v. REA*, 903 F.2d 445 (7th Cir. 1990).

18 (Popup)

[4]We realize that our finding that the REA intends to carry out its threat to take action that will lead the Cooperative to bankruptcy is made without benefit of an appearance by the REA. In view of the REA's obvious interest in the Cooperative's filing, it is unfortunate that the agency chose to absent itself from our hearing. We hope that in the future the REA will act as a full participant in a process in which it

has such a substantial interest.

19 (Popup)

[5]Attached to the Attorney General's Comments on the behalf of the State was an October 11, 1990, letter from Mr. Bellgowan to Mr. Gary Byrne at the U.S. Department of Agriculture. The Cooperative objected to our consideration of the letter because *inter alia* it was not a part of the record. We sustain the Cooperative's objection only to the extent that it seeks to have us disregard material which is *de hors* the record in the instant order. We do this partially because the January 21, 1991 emergency "deadline" would not allow us sufficient time to permit all

parties to address the letter and the proper inferences to be drawn therefrom. We note, however, that on its face the letter raises serious concerns over the possible complicity of the NHEC in the REA's actions. We expect that these concerns will be addressed in future phases of these or related proceedings.

20 (Popup)

[6]During the hearing Mr. Bellgowan testified that revenues collected as a result of the rate increase are not specifically earmarked to pay off the NHEC's existing federal debt. Mr, Bellgowan explained that the Cooperative will resume payment on the defaulted loans once its cash reserves reach $10 million. By granting emergency relief, we are not intending to direct the Cooperative to recommence payment on its loans. This is a decision that belongs in the first instance with the NHEC Board and management. We note, however, our surprise that the Cooperative defaulted on both its Seabrook and non-Seabrook related loans. At a minimum, we expect that the NHEC will articulate its reasoning in declining to make payment on the financing it received for the distribution system because that financing is wholly unrelated to the Seabrook issue.

21 (Popup)

[7]By granting the rate increase at the level demanded by the REA, we mean only to address the emergency. Our decision can be construed neither as a determination that there is sufficient evidence to find underlying cost support for the level of rates approved herein, nor that the level of the emergency increase is consistent with appropriate enabling authority. Indeed, we note our substantial concern that a permanent rate increase that incorporates the emergency level exceeds the authority granted to us in RSA 362-C. We expect the parties to address this concern in the context of their settlement discussions and, if necessary, in subsequent commission proceedings.

22 (Popup)

[8]We emphasize that our General Counsel's role is that of an observer. As an agency of the State, our substantive representation, if any, must be by the Office of the Attorney General. RSA 21-M:11, II.(a), which enjoys the full confidence of the commission.

23 (Popup)

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24 (Popup)

[1]Pursuant to the easement Patricia A. and Theodore J. Setlang, Jr., Frances A. and John R. Conner, Ella S. and N. Thomas Brown, Margaret E. and John C. McCarthy, Elizabeth A. and John F. Cepaitis, Diane K. and Antonio J. Rizzo, Louis Mattioli, Mary Jo and Johnny F. Tedder, Kathleen and Peter Schuler, Pamela and Walter Merrill, Sarah S. and George J.

Katis, Patricia F. and Fred L. Hummell, Alice H. and Warren E. Webber, Helen R. and David N. Rasmassen, and JoAnn and Dale H. Munk were granted an equitable servitude on the subject land creating a so called "buffer zone" or "green belt" where no construction could take place. See *Petition of Pennichuck Water Works, Inc.*, Exhibit B.

25 (Popup)

[2]Thomas Flatley and the "additional respondents" (See Footnote 1).

26 (Popup)

[3]There is currently a smaller tank located adjacent to the property sought to be condemned herein on Shakespeare Hill. Exhibit 24. Any other tank constructed to serve the SWHPZ must be constructed at the same elevation as the existing tank. Tr. Day III, p. 442-443.

27 (Popup)

[1]On January 4, 1990, AT&T Communications of New Hampshire filed a petition to commence business as a public utility within New Hampshire. In an order issued on June 7, 1990, the commission determined that it would simultaneously investigate AT&T's petition and pursue on a generic basis the issue of whether and in what form intrastate long distance competition is in the public good. DE 90-002, Order No. 19,853. The commission now has granted on an interim basis AT&T's petition and similar requests of Long Distance North, Inc. (DE 87-249, Order No. 20,039), U.S. Sprint (DE 90-127, Order No. 20,042) and MCI (DE 90-108, Order No. 20,041) in order that it may monitor the potential effects of toll competition on rates and services. Final hearings and completion of the generic proceeding should occur by the end of this calendar year.

28 (Popup)

[2]Atlantic's assertion that our finding that resellers of long distance are public utilities is inconsistent with our decision in *Motorola* is meritless. In that proceeding the commission only deregulated resale of cellular telecommunication service. Resellers of cellular service do not compete with NET for long distance traffic. Rather, cellular owners use the service in addition to their normal phone lines. Thus, the commission deregulated the resale of cellular on the basis of findings that it was a new and competitive service. In so ruling, the commission explicitly reserved the right to revisit the issue of whether regulation was appropriate if competition did not develop. *Id*. at 244. Resale of traditional toll service was not deregulated in *Motorola*. Moreover, in contrast to the resale of cellular service, substantial evidence supports the finding that the deregulation of traditional long distance toll service will not necessarily produce a competitive toll market.

29 (Popup)

[3]Dedicated circuits are either intraexchange or interexchange transmission facilities that are dedicated to the use of the carrier's customer. The testimony at the hearing was that high monthly subscription rates that NET and other carriers charge for dedicated circuits means that only high volume users find them more economical then the public switched network.

30 (Popup)

[4]The NET FX tariff explicitly prohibits resale of FX in competition with NET. (NHPUC

Tariff #75, Part A85, p.30, Paragraph 5.2.2, A,3). During the hearing Atlantic asserted that it was unaware of this prohibition and further, that the restriction is an illegal restraint on competition. In response, NET claimed that as a matter of policy the company favors competition and does not enforce its tariffs against competitors because of antitrust concerns.

The record reflects and the commission finds that NET knew or should have known that Atlantic was violating its tariff. Under the circumstances NET's failure to enforce the tariff was at best negligent and at worst collusive. At the same time, the commission does not intend to engage in micro-management of

NET and will not direct the company enforce its tariffs. It is up to NET to decide whether it will take action to obtain compliance with its existing tariffs or seek to amend them. To the extent, however, that NET chooses not to enforce its tariffs, the company is on notice that in future rate cases any revenue loss attributable to its failure to seek compliance with its tariffs will not be compensated by ratepayers.

31 (Popup)

[5]Although the Atlantic customer must dial two telephone numbers — Atlantic's and that of the ultimate recipient of the call — it is undisputed that the result is a standard telephone conversation between the Atlantic customer and the recipient.

32 (Popup)

[6]We note that in contrast to long distance resellers companies that provide radio-paging do function as electronic answering services. Radio-paging is accomplished via two separate "calls". The first call is the call made by the individual seeking to contact the subscriber to the service to the radio-pager's switch. The individual delivers the message to the switch and the call terminates. The second "call" is the radio beep between the switch and the subscriber's pager. In contradistinction to long distance resellers, radio-pagers do not establish two way communications for their subscribers and do, in fact, use telephone lines in a manner that is tangential to the actual service they are providing ... radiopaging. See discussion, *infra*, *Omni Communications, Inc*., 122 N.H. 860, 451 A. 2d 1289 (1982), of the regulatory treatment of radio-paging devices.

33 (Popup)

[7]An access charge is a charge which a local exchange company assesses against an interexchange carrier for access to the local network.

34 (Popup)

[8]We similarly find no merit to Atlantic's suggestion that our assertion of jurisdiction over resellers is contrary to the approach taken in other states. Except when specifically exempted by statute, the vast majority of state commissions have interpreted their regulatory jurisdiction to extend to long distance resale. We recognize, however, that many jurisdictions subject resellers to a form of "relaxed" regulation. See, *NARUC Annual Report on Utility and Carrier Regulation*,

p. 699-700 (1989).

35 (Popup)

[9]We do not address here the issue of whether additional fines may be appropriate for Atlantic's defiance of our cease and desist order subsequent to its January 15, 1991, effective date.

36 (Popup)

[10]We note that in its sales literature Atlantic makes similar claims to its customers that it does not displace NET. Thus, to the extent Atlantic's customers sustain injury from these representations they may have an opportunity to seek judicial relief.

37 (Popup)

[1]On December 19, 1991, Birchview requested two minor modifications to the settlement agreement. The first modification modifies the rate Birchview will charge to the hotel located in its service territory to reflect accurately that 22% of the company's power costs are being allocated to the hotel. The result of the allocation is to increase the hotel's annual rate from $4,177.23 to $5,011.28. The second modification is to delete a reference to a 1974 agreement between the hotel and the company from the settlement. Staff concurred in both of these requests. (Attachment B).

38 (Popup)

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39 (Popup)

[1]We equate "the interests of the regulated utilities" specified in RSA 363:17-a with those of the debt and equity investors in that utility because management has a fiduciary duty to serve those investors.

40 (Popup)

[2]With respect to ratemaking, the law is clear that investors are not guaranteed a return; rather are guaranteed the *opportunity* to earn a return. *See e.g., Bluefield W. W. & Imp. Co. v. West Virginia P.S.C.*, 262 U.S. 679, P.U.R. 1923D 11 (1923).

41 (Popup)

[3]For example, it is possible, albeit highly improbable, that in the absence of a compelling state interest the legislature could prohibit the acquisition of a public utility by persons who are members of a suspect class as defined by the United States Supreme Court.

42 (Popup)

[4]1990 Laws 113:1 amended RSA 374:33 *inter alia* to include public utility holding companies within the terms of the statute. The inclusion of public utility holding companies as an addition to the utility subsidiaries of such holding companies is not material for the purposes of a commerce clause analysis.

43 (Popup)

[5]AFUDC is a non-cash item representing the estimated composite, cost of debt and a return on equity of funds used to finance construction.

44 (Popup)

[6]The commission recognizes EUA's commitment that this would not happen absent commission approval. This does not, however, entirely remove risk. EUA management has an incentive to structure transactions to provide it with a market for Seabrook capacity. The burden will be on the commission to examine each transaction to ensure that the interests of UNITIL's ratepayers are protected. Because any contract between UNITIL and EUA Power will not be at arm's length, there is a risk that the record will not be sufficiently developed to allow proper adjudication of all of the issues. The mere devotion of the resources of the commission and parties necessary to either the successful or unsuccessful adjudication of such a proposal also has attendant costs.

45 (Popup)

[7]We recognize that EUA Power's debt is non-recourse and thus the possibility of adverse financial consequences to the parent corporation resulting from a default are limited. The consequences do exist, however. Even if it is assumed that a bankruptcy court would not disturb the "non-recourse" term of the notes, EUA's equity investment of more than $93.4 million is at risk.

46 (Popup)

[8]On February 28, 1991, EUA Power filed a

voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code. In a press release, EUA Power stated that at current market prices it will be selling power below its cost and the result would be a negative impact on its earnings. While the Chapter 11 filing of EUA Power is consistent with our analysis, it has not affected it. We recognize that our decision must be based upon the record and cannot be based on facts which have occurred after its closure unless the proper procedural steps are taken to include those facts in the record.

47 (Popup)

[9]QF stands for Qualifying Facilities under the Public Utility Regulatory Policies Act of 1978 (PURPA) and the New Hampshire Limited Electrical Energy Producers Act (LEEPA), RSA 362-A.

48 (Popup)

[10]IPP stands for Independent Power Producer. An IPP provides non-utility power, but does not meet the technical requirements necessary to be defined as a QF.

49 (Popup)

[11]We, of course, recognize that the commission has the authority to compel EUA to comply with this obligation.

50 (Popup)

[12]We note that as a result of our order approving UNITIL's first attempt at a least cost plan, the commission similarly required UNITIL to provide a detailed demand side assessment as part of its next least cost plan filing. *Re UNITIL Service Corp.*, 74 N.H.P.U.C. 357 (1989). Thus, the company was previously aware of the commission's belief that DSM should be integrated with supply side options.

51 (Popup)

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52 (Popup)

[1]Customers will be adversely affected because UNITIL's failure to meet commission requirements will mean that they will not be entitled to the superior resource planning and service offered by EUA under that contingency. Investors will be adversely affected because their ability to sell their shares will be restricted.

53 (Popup)

[2]In this context, it is important that we are not engaging in an inquiry of whether UNITIL's resource planning and service are or are not adequate under the *absolute* standards of our regulatory requirements. In a RSA 374:33 proceeding, we must engage in a *relative* inquiry of how UNITIL's resource planning and service compare to EUA's. Thus, a finding that UNITIL's resource planning and service are deficient when compared to EUA does not necessarily mean that UNITIL's resource planning and service fail to cross the threshold of meeting commission standards.

54 (Popup)

[3]On this record, the commission is not confronted with a situation where there is a lack of harm, but no net benefit to customers. Thus, we need not now define what the statute requires under such a circumstance. Here, either UNITIL remedies comparative deficiencies and there is net harm or UNITIL fails to remedy comparative deficiencies and there is net benefit.

55 (Popup)

[4]For example, I do not believe the majority adequately recognized how the non-recourse nature of the EUA Power debt limits risk. In addition, I would not have cited or relied upon the testimony of Dr. Perl, whose overconfidence in his own prescience undermined the credibility of

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56 (Popup)

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57 (Popup)

[1]The crux of NET's argument is that if NET must charge itself the same rate for Centrex loop as it charges for PBX trunk, Centrex will be "competitively disadvantaged". To avoid this "competitive disadvantage", NET contends that it is appropriate to price Centrex services in a manner to recover their incremental costs as well as the contribution the company would have received had the customer chosen the PBX system instead. As support for this pricing standard, NET relies on a recent Maryland decision in which a Maryland Commission Hearing Examiner similarly concluded that the Chesapeake and Potomac Telephone Company were not engaging in discriminatory pricing of Centrex services because the contribution supplied by Centrex as a whole equaled the contribution level of PBX. *Re Investigation By The Commission On Its Own Motion Into The Chesapeake and Potomac Telephone Company of Maryland's Rates for Network Access for Centrex Services*, Case No. 8150 (November 23, 1990).

The pricing standard of equal levels of contribution is fundamentally flawed. In a competitive arena, prices should reflect standards of efficiency. Thus, for example, if there is a comparative advantage in the provisioning of PBX trunks relative to Centrex loops, this advantage should be reflected in price. To the extent any price differential causes a customer to choose PBX over Centrex, the customer's conduct is the natural result of economic competition.

58 (Popup)

[1]Commissioner Ellsworth will be dissenting in a separate opinion attached to the full report and order. Thus, he is not signing the instant summary order.

59 (Popup)

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60 (Popup)

[1]In its brief, the Cooperative noted its continuing objection to the commission's assertion of jurisdiction over the sellback agreement. The commission acknowledges that the Cooperative's right to challenge the commission's jurisdiction is preserved for appeal.

61 (Popup)

[2]A NEPOOL year runs from November 1 through October 31.

62 (Popup)

[3]We recognize that the Cooperative takes service from PSNH under a "partial requirements" agreement. We understand this to mean that the Cooperative is free to continue to purchase power at certain discrete interconnection points where it has historically been

impractical to purchase power from PSNH.

63 (Popup)

[4]The Cooperative recently entered into a wholesale purchase power agreement with New England Power Company. The Cooperative maintains that under the 1981 wholesale power agreement it has with PSNH, it retains the unilateral right to cease taking power from PSNH immediately upon becoming an independent participant of NEPOOL. PSNH contends that its agreements with the Cooperative require

the NHEC to give PSNH ten and alternatively a minimum of five years notice before it ceases to be a customer. As we discuss *infra* at 25-28, issues concerning the Cooperative's obligations as a PSNH customer are subject to the FERC's jurisdiction and are currently pending before the FERC in proceedings involving the three utilities as well as the State and this commission. Thus, our order cannot address the Cooperative's obligations as a PSNH customer; rather, we only set forth the circumstances under which the Cooperative may sell Seabrook power to PSNH.

64 (Popup)

[5]The Cooperative's share equaled about 25 megawatts of power from each unit. Now that Unit II is canceled, the Cooperative's entitlement is limited to the 25 megawatts from Unit I.

65 (Popup)

[6]Mr. Eicher is a Vice President of Power System Engineering, the firm which also assisted the Cooperative in its preparation of a February 22, 1991 "Message" and ballot to its members relative to the effect on retail rates of its agreement with New England Power Company (Exh. OCA 1). While the patent inaccuracy of Exh. OCA 1 relative to the rate increases Cooperative members can expect if the commission authorizes rate parity with PSNH is not an issue that is relevant to our consideration of the sellback, the commission shares the OCA's concern about the document. We find the Cooperative's management particularly remiss in failing to correct the inaccuracy before publication. Because, however, none of Mr. Eicher's testimony was determinative of the issues in this proceeding, we do not need to determine the effect of his firm's poor showing with respect to its preparation of the ballot on the credibility of his pre-filed and oral testimony.

66 (Popup)

[7]Mr. Anderson has been the Cooperative's Director of Finance and Administration since January of 1988 — after the closure of DR 83-360. Prior to that time, Mr. Anderson was the Cooperative's Assistant Director of Budgets and Finance. NHEC Exh. 22 at 2.

67 (Popup)

[8]*AEP Generating Company*, 32 FERC para. 61,364 (1985), cited by the NHEC, is inapposite. Therein, the FERC observed that it has primary jurisdiction to interpret the terms and conditions of contracts subject to its exclusive authority. Because this Commission has

jurisdiction over the sellback and the FERC lacks such authority, the legal principle in *AEP* does not apply.

68 (Popup)

[9]Because of the NHEC's structure as an electric cooperative, it has no equity invested in Seabrook. Thus, its investment is coincident with its Seabrook related debt.

69 (Popup)

[1]The project proposes to run a pipeline from the Merrimack River to Lake Massabesic and thereby supplement the supply of water by pumping water out of the Merrimack River and into Lake Massabesic for treatment and distribution to customers. The slow-down in growth, however, has not totally negated the need for additional supplies as growth in existing franchise areas may also result in the over-utilization of Lake Massabesic.

70 (Popup)

[2]A hypothetical example of the planning issue may be where a new water main is required in an area experiencing growth. The present demand supports

Page 329

only a 4 inch main, which could be constructed for a cost of $100,000. Reasonably anticipated growth in the foreseeable future would require a 6 inch main which would cost $110,000. The cost of constructing a 4 inch main now and then reopening the trench and replacing the 4 inch main with 6 inch main in the foreseeable future would be $210,000. Under this circumstance, prudent utility management would elect to spend the $110,000 to construct initially the 6 inch main. Indeed, any other decision may be imprudent, subjecting the utility to the risk of disallowances of investment in excess of $110,000.

71 (Popup)

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72 (Popup)

[1]Tennessee's rates were approved by the Federal Energy Regulatory Commission. *See, Tennessee Gas Pipeline Company*, 53 FERC para. 61,379 (1990).

73 (Popup)

[2]GSGT is an affiliate of Northern and is its direct pipeline supplier.

74 (Popup)

[3]This section will present a summary of the factual development of the take-or-pay issue. It is derived *inter alia* from the thorough discussion contained in the FERC's Order No. 500-H, reported at III FERC Statutes and Regulations para. 30,867 at 31,509-31,524 (1989).

75 (Popup)

[4]*Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954).

76 (Popup)

[5]As correctly asserted by the Companies, this open access requirement allowed the LDCs, including the Companies, to secure lower cost, competitively priced natural gas. The benefit of this lower cost gas has been directly passed through to ratepayers.

77 (Popup)

[6]ENGI Witness Fleming disputed the assertion that the producers assumed any portion of the take-or-pay burden. Mr. Fleming claimed that real economic burdens would not be shouldered by producers because the take-or-pay liability was for gas retained by the producers. Mr. Fleming believed that the producers' opportunity to sell the gas that was not taken eliminates any harm caused by a settlement of take-or-pay liability. *See e.g.*, DR 91-042, Tr. at 50-56. We cannot accept Mr. Fleming's view because it ignores the fact that the settlement process reduced and compromised the pipelines' *liability* to the producers; liability that represented a property interest. That property interest was substantial. The FERC noted: "... [B]y mid-1987, pipelines had resolved nearly $14 billion of take-or-pay exposure through settlements which in no year averaged more than 17 cents on the dollar. ... The take-or-pay exposure so resolved was about 56 percent of the over $24 billion take-or-pay liability incurred by pipelines through the middle of 1987. Pipelines received additional take-or-pay relief through release credits. By mid-1987 pipelines had released 1,831 TBtu of gas in return for such credits." (Citation omitted) III FERC Statutes and Regulations para. 30,867 at 31,513. We also reject Mr. Fleming's assertion that the compromises did not cause economic hardship to the producers. The FERC stated: "The loss of revenue to producers during the mid- and late 1980's as a result of falling gas prices, falling sales, and few take-or-pay payments, combined with a simultaneous decrease in oil prices, has had serious adverse effects not only on producers, but on the entire economies of the producing regions of the nation. Many producers, particularly small producers, went bankrupt, defaulting on loans from banks secured in part on the basis of minimum revenue levels provided by the take-or-pay clauses in their sales contracts. This in turn caused numerous banks in the producing regions to fail, with the result that the Federal Deposit Insurance Corporation (FDIC), through foreclosures of producer properties, is now a substantial oil and gas lease owner. As the effects of producers' loss of revenue spread through the economies of the producing regions of the nation, the unemployment levels in those regions rose significantly above the national average." *Id*. at 31,514-31,515 (footnotes omitted); *see also*, DR 91-042, Tr. at 52-54, *quoting Mechanisms*

for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs, 54 FERC para. 61,095 (1991) (Order 528-A) at 61,298.

78 (Popup)

[7]The filed rate doctrine provides *inter alia* that a utility may charge only the rate on file with the FERC for service during the period in question and rates can only be changed on 30 days notice to the FERC. *See e.g., Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981). The *Associated Gas Distributors* appellants argued successfully that the purchase deficiency take-or-pay charges were in effect charges for past purchases.

79 (Popup)

[8]ENGI claims approximately $12 million in customer benefits (DR 91-042, Exh. 4 at 5), while Northern claims New Hampshire division customer benefits of approximately $4.7 million (DR 91-045, Exh. 3 at 2-3).

80 (Popup)

[9]Although the "filed rate doctrine" line of cases almost exclusively pertains to Federal Power Act interstate electricity transactions, for the purposes of this Report we accept that the doctrine is equally applicable to FERC approved rates on interstate sales of natural gas. *See e.g., Arkansas Louisiana Gas Co. v. Hall*, *supra* at n. 7.

81 (Popup)

[10]The *Sinclair* exception to the filed rate doctrine has been partially codified in statute. RSA 374:57.

82 (Popup)

[11]In this context, we disagree with the analysis of the Court in *General Motors v. Illinois Commerce Commission*, 547 N.E.2d 1299 (Ill.App.4 Dist. 1989) which held that the Order 500 language creates a filed rate doctrine exception. *But see, General Motors Corporation v Maryland Public Service Commission*, 117 PUR4th 173 (Md.Cir.Ct. Harford Cty. 1990) (holding that the Order 500 language does not create an

exception to the filed rate doctrine). Both cases were decided before the FERC issued Order 528.

83 (Popup)

[12]Northern argues that the Order 528-A phrase "... in accordance with federal and state law ..." refers to the filed rate doctrine limitations on state power, thus preempting state disallowances of take-or-pay costs included in the pipeline's wholesale rates. We reject this argument because it would render meaningless the FERC's explicit reservation of the states' right to "... require partial absorption of those [take-or-pay] costs by LDCs ..." Inasmuch as the "partial absorption" language was a response to the filed rate doctrine argument and represented the major thrust of the FERC's statement, it is not rational to view a requirement that such

absorption be in accordance with federal and state law — which must always be the case — as nullifying the FERC's primary intent

84 (Popup)

[13]The FERC order essentially adopted in part the position of the New England Customer Group (NECG) which was an intervenor. The Companies were members of the NECG. The NECG presented the testimony of Charles J. Cicchetti who addressed pipeline testimony that the lack of a margin on gas justifies a full allocation of take-or-pay costs to customers. Mr. Cicchetti articulated and refuted the pipelines' position as follows: "... [Tennessee Witness] Clark seems to feel that Tennessee's zero profit position with respect to gas sales is consistent with zero risk in the operation of Tennessee's gas business. He suggests that because Tennessee should face zero risk in the gas business. Tennessee should, of course, accept none of the responsibility for the accumulated take-or-pay liabilities. This logic is flawed ... . All one has to do to demonstrate this flaw is to compare pipeline capital costs with riskless capital costs to see that neither investors, nor regulators, nor the pipelines themselves, believe that they operate a riskless enterprise ... . Pipelines face business risks, defined as the basic risk inherent in a firm's operations, just like everyone else in the gas business. Just because they are limited to a fair, risk-adjusted return on their capital base, and not permitted a markup on their purchased gas costs, does not mean that they are, or should be, insulated from any business risks whatsoever." DR 91-042, Tr. at 82-83.

85 (Popup)

[14]Thus, the FERC's principle of allocating to current ratepayers only the costs of providing service to them would appear to be inconsistent with its determination to accept an AQL methodology for allocating take-or-pay costs among Tennessee's customers. This apparent inconsistency cannot be collaterally attacked by this Commission. *E.g.*, *Nantahala Power and Light Co. v. Thornburg*, *supra*.

86 (Popup)

[15]We recognize that the 60%-40% allocation is inconsistent with our deliberations at the Commission's April 29, 1991 public meeting. *See*, April 29, 1991 Commission Meeting Minutes at 2-5 (Item 7). However, such deliberations are always subject to the more rigorous analysis that is necessary when the Commission's rationale must be articulated in a written order. The task of committing an analysis to writing often reveals flaws that are not apparent in oral discussion. Thus, the Commission may always issue an order that is not consistent with oral deliberations and such oral deliberations are always subordinate to the Commission's written reports and orders.

Separate Statement of
Commissioner Ellsworth

87 (Popup)

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Separate Statement of
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88 (Popup)

[1]Northern asserts that under the Natural Gas Act, 15 U.S.C. sect. 717 *et seq.,* FERC can only set rates which are just and reasonable. Ferc may not use the "equitable sharing" methodology if it does not believe the resulting rate is a just and reasonable cost incurred by the LDC on the behalf of retail ratepayers. The majority notes that this is an issue which has not been addressed by the courts. In the absence of legal precedent on this critical issue, I believe that it is inappropriate to presume that FERC established take-or-pay costs which do not meet the just and reasonable standard required by the Natural Gas Act.

89 (Popup)

[2]While I am not prepared to state definitively that ENGI and Northern shareholders did not benefit from the open access policies, I note that during redirect examination ENGI witness Fleming testified there were no benefits. (Trans. 96-98)

90 (Popup)

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91 (Popup)

[1]We have also reviewed the argument of the NHEC in its Motion at 4, n. 1 bringing to our attention a possible inconsistent argument of PSNH at the FERC. *See also,* PSNH/NUSCO Objection, Attachment A. Our ruling in Order 20,122 and herein is based on our own independent analysis of preemption and preclusion principles and does not depend on the fact that any party may or may not have taken a particular position. We note, however, that we have reciprocated the respect that the FERC must have for our jurisdictional prerogatives with similar respect for the FERC's ability to act within its own sphere of jurisdiction. Our orders should not be read as endorsing the contrary argument of any party at the FERC.

92 (Popup)

[2]For example, the NHEC claims that the Commission ignored Mr. Pillsbury's testimony on the Cooperative's intent to retain the flexibility to join the New England Power Pool (NEPOOL). NHEC Motion at 7. *But see,* Tr. II at 42-46 where Mr. Pillsbury was asked directly whether the NHEC's reservation of its right to get into NEPOOL is inconsistent with a Cooperative agreement to remain a requirements wholesale customer of PSNH. Mr. Pillsbury replied, *inter alia,* "They're not inconsistent at all."

93 (Popup)

[3]The amount of unauthorized capitalization is not trivial. Subsequent to the issuance of Order 20,122 the NHEC filed a Petition with the United States Bankruptcy Court under Chapter 11 of the Bankruptcy Code. On this record we cannot comment on the contribution, if any, of the NHEC's willful failure to adhere to the requirement of seeking Commission pre-approval of approximately $37 million in debt to this most tragic and costly chapter in the Cooperative's existence. We do not believe that it can reasonably be disputed, however, that the existence of the unauthorized capitalization of $37 million will make the bankruptcy that much more difficult to resolve.

94 (Popup)

[4]The issue of whether additional sanctions are appropriate must await a properly noticed Commission proceeding as it relates to civil penalties and the completion of an investigation by the Attorney General and the subsequent judicial process, if any, as it relates to criminal penalties.

95 (Popup)

[5]We understand that PSNH/NUSCO may also be claiming that the clarified provision is unlawful and unreasonable — the grounds of a motion for rehearing. To the extent that PSNH/NUSCO's claim is in the nature of a motion for rehearing, it will be denied.

96 (Popup)

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97 (Popup)

[1]Although the Commission did not subject the inclusion of Seabrook in rate base to a traditional prudency evaluation, the Court recognized that the Commission did engage in an analysis of the value of PSNH's Seabrook investment in support of its conclusion that the rates contemplated by the rate plan are likely to be lower than what PSNH would receive under traditional ratemaking. Slip Opinion at 10. However, for the purpose of deciding the appeal, the Court accepted the appellants' argument that, in the absence of special legislation, the Commission was statutorily required to undertake a "full blown" rate proceeding in order to approve the plan.

98 (Popup)

[2]In *Appeal of Omni,* 122 N.H. 860, 451 A.2d 1289 (1982), the Court ruled that the Commission does not have the authority to regulate companies operating radio-paging systems because they operate in a competitive market. In prior decisions we have interpreted *Omni* narrowly and have concluded that the Court did not intend to preclude the Commission from regulating public utilities when necessary to foster competition. *Re AT&T Communications of New Hampshire*, Report and Order No. 19,956 (October 15, 1990); *Re Atlantic Connections, LTD.*, Report and Order No. 20,063 (February 22, 1991). If the Court's decisions in *Richards* and *Omni* are carried to their extreme, the Commission's regulatory options would be limited to full

rate of return regulation or total deregulation of NET, even if neither approach was an appropriate regulatory response to the market conditions confronting the Company. We are certain that the Court did not intend to place the Commission in such an untenable position.

99 (Popup)

[3]When the special legislation authorizing Commission approval of the PSNH rate plan was adopted on December 14, 1989, Seabrook was not in commercial operation. Thus, absent the special legislation, RSA 378:30-a alone would have precluded Commission approval of the rate plan.

100 (Popup)

[4]There may also be additional services which could be competitive, but nevertheless are subject to public policy constraints. A possible example of such a service may be coin phones.

101 (Popup)

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102 (Popup)

[1]Because the commission is disallowing all of the original investment in the water distribution system from ratebase the actual amount expended is irrelevant for our purposes. However, the commission notes that the company did not meet its burden of proof in establishing the exact amount expended in constructing the distribution system because of a lack of invoices.

103 (Popup)

[2]For the purposes of this order, the Commission will treat the two corporations as alter-egos. The companies are owned and operated by the same individuals and their accounts are commingled. The oral testimony of the companies' witnesses made it apparent that they are separate entities in name only.

104 (Popup)

[3]Our finding that the Companies already have recovered their original investment in the system is further supported by the offer of the principals to sell the water distribution assets to the Unit Owners' Association for one dollar ($1). If the principals considered the value of these assets to be $140,000 they would not have offered to sell the assets for one dollar ($1).

105 (Popup)

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106 (Popup)

[1]This assumes that the utility is willing to exercise and enforce its existing rights. *See e.g. Re Atlantic Connections, Ltd*, Report and Order No. 20,063 (February 22, 1991).

107 (Popup)

[1]This assumes that the utility is willing to exercise and enforce its existing rights. *See e.g. Re Atlantic Connections, Ltd*, Report and Order No. 20,063 (February 22, 1991).

108 (Popup)

[1]The procedural histories of all three dockets is set forth in Report and Order No. 20,105, and repetition is unnecessary. However, we will re-emphasize that Dockets DE 87-256 and DE 89-236 remained unresolved as the matters had not been totally addressed before another incident took place at Claremont's plant and facilities.

109 (Popup)

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110 (Popup)

[1]Service. Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.

111 (Popup)

[1]The OCA did not enter an appearance or otherwise participate as a party in the proceedings that resulted in Order 20,141. We will nevertheless entertain and rule on the OCA's Motion because we deem the OCA to be "... a person directly affected ..." by Order 20,141. RSA 541:3. We note that while the OCA is entitled to a ruling on its Motion for Rehearing, the analysis of that Motion is affected by the OCA's absence from the earlier part of the proceeding. *See e.g., Appeal of Gas Service, Inc.,* 121 N.H. 797 (1981) (the Commission is entitled to find no good cause presented by a motion for rehearing where the movant failed to explain why new proffered evidence could not be presented at the original hearing).

112 (Popup)

[2]*General Motors Corp.* reversed the lower court decision in *General Motors v. Illinois Commerce Commission,* 547 N.E.2d 1299 (Ill.App.4 Dist. 1989) which held that the Illinois Commerce Commission does have the authority to allocate take-or-pay costs in FERC established wholesale rates between LDC ratepayers and investors. We cited the Illinois Appellate Court case in Order 20,141 at 18, n.11 and stated our disagreement with the holding because of its overly broad reading of language in *Re Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* 40 FERC para. 61,172, 89 PUR4th 312 (1987) (Order 500). The Illinois Supreme Court took issue with the Illinois Appellate Court's analysis on different grounds.

113 (Popup)

[3]The filed rate doctrine is defined and discussed in Order 20,141 at 14-15.

114 (Popup)

[4]Northern cites *Maislin Industries U.S., Inc. v. Primary Steel, Inc.,* 497 U.S.__, 110 S.Ct.

2759 (1990) for the principle that federal agencies are precluded from departing from the filed rate doctrine. There, the Court held that the Interstate Commerce Commission could not authorize a carrier to charge a rate different than that contained in a filed tariff where the statute explicitly provides that carriers may only charge such filed rates. In the instant case, the issue is not a FERC authorization to pipelines to charge a rate that varies from the tariff; rather it is whether the FERC may leave open to the states the question of whether costs approved by it must be fully recovered from LDC ratepayers.

115 (Popup)

[5]The FPC is the predecessor agency to the FERC.

116 (Popup)

[6]Our analysis should not be viewed as a broad holding that the Commission must give effect to the final orders of all federal agencies. The instant situation involves orders of the FERC; the preemptive effect of FERC orders on state regulatory commissions is well-established. We cannot speak to a situation where a different federal agency without well-established preemptive authority attempts to impose requirements which conflict with those of this Commission.

117 (Popup)

[7]It is noteworthy that the remedy for inadequate earnings is not an accommodation in a COGA; rather, it is a request for rate relief. Indeed, on June 10, 1991 Northern filed a Notice of Intent to File Rate Schedules, the first step in initiating a rate proceeding. *See Re Northern Utilities, Inc.*, Docket No. DR 91-081.

118 (Popup)

[8]The Companies have not and cannot claim inadequate notice of the issues to be addressed as a part of the adjudicatory COGA proceedings.

119 (Popup)

[9]We understand that the purchase deficiency method was rejected as being inconsistent with the filed rate doctrine by the Court in *Associated Gas Distributors v. FERC*, 893 F.2d 349 (D.C.Cir. 1989). We do not read this opinion as foreclosing us from considering the fact that Northern's customers were cost causers of a portion of the take-or-pay liability for the purposes of an equitable sharing allocation. We note, however, that if we were foreclosed from considering purchase deficiency factors, the remedy would be to apply the 60-40 allocation to Northern's gross liability, rather than to reduce ENGI's allocation of costs to investors.

120 (Popup)

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121 (Popup)

[1]The staff also raised the issue of the pass-through to ratepayers of the expenses incurred by UNITIL to prevent a takeover by Eastern Utilities Associates (EUA) through the purchased power cost of UNITIL Power. Staff questioned whether the costs should be borne by the ratepayers or the stockholders. In testimony in the takeover proceeding, DF 89-085, Unitil witnesses testified that the company had not yet determined whether ratepayers would be responsible for costs related to the defense of the merger. The company is now claiming that it had always intended to pass though 100% of Unitil Power's share of the costs through the wholesale power contract, but had failed to make that point clear to the Commission during the evidentiary hearing.

The wholesale power contract is subject to jurisdiction of the Federal Energy Regulatory Commission (FERC). Accordingly, we will bring our concerns to the FERC's attention in response to Unitil Power's attempts to foreclose adjudication of this issue and, if appropriate, through other procedural mechanisms.

122 (Popup)

[1]SERVICE. Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate in all other respects just and reasonable.

123 (Popup)

[2]Ms. Osler offered to provide another phone number and to provide a free reference of calls while a separate number is utilized until the office conversion. Tr. 66. This is not acceptable to the Copsons because of the disruption it would cause Mr. Copson's business and the anxiety it might cause the Copsons' small children who need to call home. Tr. at 15.

124 (Popup)

[1]On April 30, 1991, the D.C. Circuit Court of Appeals in *Critical Mass II*, *supra* reversed the grant of summary judgment maintaining the confidentiality of INPO documents. On remand, the district court was required to develop a record to enable the appeals court to make findings on disputed material facts.

Although *Critical Mass II* is not binding on the commission in this case, there was testimony on the potential harm of disclosure. Therefore, in contrast to *Critical Mass II*, the commission has a record upon which it can make findings and conclusions.

125 (Popup)

[1]On June 5, 1991, the Business and Industry Association of New Hampshire (BIA) submitted a late filed motion to intervene. The BIA's request was not taken up at the June 21, 1991 hearing on the merits; however, it appeared at the hearing without opposition by any party. To the extent necessary, the BIA's request for intervention is hereby granted.

126 (Popup)

[2]On July 1, 1991 the FERC rejected the phased-in settlement rates. The FERC determined that a caveat demanded by the Cooperative that "it will not owe anything under the [phase-in] rates to the extent it will be deemed to have purchased the power from [the New

England Electric System]," would require prejudgment of fact issues surrounding the Cooperative's obligations as a PSNH customer. Because the FERC was unwilling to tie its hands on those issues, it rejected the proposed phased-in rates and accepted the proposal to delay implementing the 182% from February 8, 1991 to May 1, 1991.

The NHEC has yet to file a petition to increase its PPCA to reflect the 182% PSNH increase authorized by the FERC. The record before the Commission in this proceeding supports only the phased-in settlement rate. Should PSNH implement the FERC allowed rate, the Cooperative will have to petition the Commission for a corresponding increase in its PPCA charges. At that time, one issue the Cooperative must address is whether it is legally prohibited from retroactively collecting the increase in its purchase power costs for the period prior to its new filing. *Pennichuck Water Works v State*, 103 N.H. 49, 164 A.2d 669 (1960).

127 (Popup)

[3]In Order No. 20,180 issued on July 18, 1991, the Commission Ordered NISI that the Cooperative cease collecting the surcharge as of August 14, 1991 and scheduled a hearing on August 8, 1991 to discuss matters relating to the manner in which the Cooperative shall refund the escrowed surcharges.

128 (Popup)

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129 (Popup)

[1]The requirement that any QF wishing to invoke the long term rates established by the commission must agree "to sell its entire output to PSNH at the specified rates over the entire applicable time period" is actually found in report and order no. 16,619, 68 NHPUC 531, 544, the commission's interim long term rate order, not report and order no. 17,104 as cited by the Biomass Producers.

130 (Popup)

[2]This same issue was recently resolved in New York State where the Public Service Commission was upheld on appeal in its finding that approval of a utility's agreement to purchase all of the electricity produced at a cogeneration facility did not cover the facility's increased capacity of approximately nine percent of the originally estimated output of 49 megawatts. *In the Matter of Indeck-Yerkes Energy Services, Inc. v. Public Service Commission of the State of New York*, 564 N.Y.S. 2nd 841 (Jan. 24, 1991).

131 (Popup)

[3]Staff assumed, and therefore in its analysis represented to the Commission, that the rated capacity and expected output were calculated and reported at nominal equipment rating and system conditions.

132 (Popup)

[4]PSNH is incorrect, however, when it states that the worksheets filed with the petition

specified a level of capacity and energy. The worksheets only present avoided capacity and energy costs and rates for each on a per kilowatt and per kilowatthour basis. They do

not specify the kilowatts or kilowatthours to which the rates will be applied.

133 (Popup)

[5]Staff's letter to QFs in the winter of 1988-1989 urging them to maximize their output at the winter peak should only be interpreted as encouragement for the efficient and diligent management of a facility of an approved size, despite the challenges of mid-winter operation. It cannot be interpreted as a license to increase the size of the site beyond the level approved by commission in its rate order.

134 (Popup)

[6]*Re Small Power Producers and Cogenerators*, 69 NHPUC 352 (1984) and *Re Small Power Producers and Cogenerators*, 70 NHPUC 753 (1985).

135 (Popup)

[6]*Re Small Power Producers and Cogenerators*, 69 NHPUC 352 (1984) and *Re Small Power Producers and Cogenerators*, 70 NHPUC 753 (1985).

136 (Popup)

[1]A number of other parties sought and received intervenor status in this case; however, they neither appeared at the permanent rate proceedings nor filed briefs based on the record evidence. Therefore, they are not included in the "Appearances" or "Position of the Parties" sections of the Report and Order.

137 (Popup)

[2]The specific projects to which these forms pertain are as follows:

In 1988: (Windham) Route 111A, (Litchfield) Page Road; Route 102; R&B to Litchfield Core; (Pelham) William Mobile Corp.; (Londonderry) Orchard View/Buttrick; Route 128; King Richard Main; (Londonderry) Harvey Road; (Hudson) Derry Road; Rangers Drive; Walnut/Ayers Pond; Hudson Village Shops; Sullivan Drive; Quail Run. In 1989: (Windham) Route 111A, Paving, Booster Pump, Main Extension; (Hudson) Telegraph, Executive Drive; Barretts Hill; Unicorn Industrial Park; (Litchfield) Page Road; Pilgrim Drive; April Drive; (Pelham) Elderly Housing; (Londonderry) Route 128; Currier/Berkshire/Wilshire.

138 (Popup)

[3]Our exercise of discretion here is based solely on the remedy for failure to file E-22s. As discussed below, rate base disallowances are appropriate for several of the identified projects which were otherwise prudent because of Southern's failure to enforce its tariff provisions relative to contributions in aid of construction.

139 (Popup)

[4]Contributions in Aid of Construction are subject to a 34% federal income tax. The taxes paid by the utility on these contributions are capitalized and included in rate base. Therefore, the total disallowance, $955,823, and the test year disallowance, $805,792, have been reduced to reflect the taxes Southern would have paid on contributions had they been properly collected.

140 (Popup)

[5]Because the Company's request for a rate increase is based on a test year average, the disallowance for current ratemaking purposes is less than the total disallowance. The matter is made even more complex by pending rate design issues because a beginning and ending point average for the rate base calculation was used, rather than the usual thirteen point average.

141 (Popup)

[6]According to Exhibit 40 at RWP-6, the incremental cost of oversizing eight-inch ductile iron to sixteen-inch ductile iron is $16 per foot.

142 (Popup)

[7]We are mindful of the OCA's concerns *vis a vis* sizing for fire protection that is not desired by the municipality. That issue is addressed in the Rate Structure section of this Report, *infra*.

143 (Popup)

[8]There also exists the issue of whether current inclusion in rate base of investment in land to be used three to five years in the future would violate RSA 378:30-a. Given the failure of the Company to create a record that would support a factual determination that current rate base treatment is appropriate, it is not necessary for us to address here this legal issue.

144 (Popup)

[9]On occasion the Commission has approved automatic adjustment clauses for costs other than fuel to further a sound public policy objective. For example, to remedy certain barriers to the deployment of certain least cost demand side (as distinguished from supply side) resources, the Commission has allowed certain conservation and load management costs to be recovered through an automatic adjustment clause. *See e.q., Re Generic Investigation of Financial Incentives for Conservation and Load Management*, Report and Order No. 19,905 (August 7, 1990). Southern has identified no such overriding public policy objective here.

145 (Popup)

[10]The stipulation approved by the Commission also provided: "While the Company agrees to file its next rate case on the basis set forth above, the filing of such information shall not in any way prejudice the Company's nor any other party's right to request that rates be set in a different manner." *Id*.

146 (Popup)

[11]Indeed, much of the controversy in the instant proceeding is a direct result of Southern's acquisition of smaller deficient systems.

147 (Popup)

[12]In Order 20,156 it was not necessary to address the issue of what happens when the

cost of an upgrade requires financing. During public deliberations we commented that we would, in appropriate circumstances, be willing to entertain a request that such upgrade costs be financed by the purchasing utility to be paid by the customers in the acquired system through a rate surcharge.

148 (Popup)

[13]If Litchfield elects not to pay for fire protection, but uses it, the Town will be obligated to pay the tariffed fire protection charges. In such a circumstance, we would expect Southern to enforce its tariff by any available reasonable means.

149 (Popup)

[14]The record reflects that the Company sent a letter to Green Hills customers assigning to them the responsibility of high water usage when, in fact, the high usage was caused by leaks in the Company's mains.

150 (Popup)

[15]Primary drinking water standards are health related, while secondary standards address the aesthetic qualities of the water, such as taste, smell and appearance.

151 (Popup)

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152 (Popup)

[1]In Report and Order 20,173 (July 17, 1991) the Commission confirmed its decision to grant

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intervention to CRR.

153 (Popup)

[2]We note that though drafted by the current Chairman of the Commission, the Opinion was provided to the Commission as an Opinion of the Attorney General under RSA 7:8. This statute provides that the Attorney General exercises general supervisory authority over the Commission and other state agencies with respect to issues relating to our legal responsibility. An Opinion of the Attorney General concerning the Commission's responsibility to honor state statutes regulating the practice of law falls within the Attorney General's supervisory authority and, absent supervening authority, we must follow that opinion.

154 (Popup)

[3]The Opinion noted that *Settle* left open the issue of whether non-attorneys may

commonly represent others in uncomplicated proceedings. Thus, in the absence of a definitive Supreme Court ruling to the contrary, the Attorney General advised that we could apply the exceptions.

155 (Popup)

[4]The CRR argued in the alternative that if the Commission compels the CRR to hire legal counsel, the Commission should reconsider its policies with respect to intervenor compensation under the Public Utility Regulatory Policies Act of 1978 (PURPA). We note that the CRR recently requested PURPA compensation in a separate motion in DR 91-011. We will reserve consideration of this issue to our deliberation on that motion.

156 (Popup)

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157 (Popup)

[1]Our staff would have access to the underlying documents even without NHY's offer. RSA 365:10 and 14.

158 (Popup)

[2]For example, prior to the hearings in December, 1990, in Docket No. DR 90-186, staff propounded the following data request:

> Please provide an explanation of the reasons for and cause of the November 9th outage at Seabrook, particularly focusing on the cracked piston.

Staff Set No. 2, Request 2.

159 (Popup)

[3]A party is obligated to respond to requests for discovery honestly, "fully and responsively." He must refresh his recollection, find out what information is in his records and what is known to his agents and employees, and, in general, attempt in good faith to give his opponent the information he has requested. He need not volunteer information which has not been requested, but neither should he be evasive and rely upon technicalities of semantics or defects in the request to avoid producing information which he knows that his opponent is seeking and is entitled to receive. 4 Wiebusch, *Civil Practice and Procedure*, § 811 at 499 (1984).

160 (Popup)

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161 (Popup)

[1]GSEC was responding to a record request asking whether allocations in tax benefits similar to its proposal herein have been allowed for ratemaking purposes in other states. In essence, GSEC replied that this is a case of first impression because no other jurisdiction requires the filing of a consolidated return with taxes calculated on a unitary basis (*see* RSA 77-A:3). While there may be instances where tax benefits are deferred for ratemaking purposes (*e.g.* normalized tax accounting), we are unaware of any jurisdiction that allows utilities to withhold tax benefits from ratepayers. Thus, even in the absence of an analogous situation in another New England state, we are confident that we are treating GSEC in accordance with sound and well-accepted ratemaking principles.

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163 (Popup)

[1]The FCC in its Report and Order released July 26, 1991, in CC Docket No. 90-571 replaced the terminology dual party relay service (DPRS) with telecommunications relay service, among others, because the term DPRS "entrenches current technology, a result contrary to the intent of Congress. Therefore, TRS shall be the operative term for relay services." (Footnote 1 in the FCC Order). As such we will adopt the term TRS.

164 (Popup)

[1]As explained in Report and Order No. 20,185, the level of capacity and energy specified in a rate order petition is either the amount actually contained in the rate order petition or, alternatively, in the staff survey form.

165 (Popup)

[2]The amount paid by PSNH to a QF for capacity, is the product of the capacity rate component multiplied by the commission's audit value multiplied in turn by the peak reduction factor. The peak reduction factor is designed to adjust the price paid by PSNH to the QFs in accordance with the amount of actual peak load reduction of an individual QF or class of QFs.

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167 (Popup)

[1]It is not clear that a finding of poor quality should always lead to a denial of temporary rates; it is also possible that poor water quality might lead to imposing temporary rates in order to provide a company with the funds to improve it.

168 (Popup)

[2]The difference between Staff's 9.62% rate of return and the Company's 9.64% is so slight that it is unnecessary to choose between the two for this decision.

169 (Popup)

[1]The First Effective Date, which occurred on May 16, 1991, is the date on which Public Service Company of New Hampshire emerged from bankruptcy under its plan of reorganization.

170 (Popup)

[2]In order to facilitate proceedings and encourage informal disposition, the presiding officer may, upon motion of any party, or upon his own motion, schedule one or more informal prehearing conferences prior to beginning formal proceedings. The presiding officer shall provide notice to all parties prior to holding any prehearing conference.

Prehearing conferences may include, but are not limited to, consideration of any one or more of the following:

(1) Offers of settlement.

(2) Simplification of the issues.

(3) Stipulations or admissions as to issues of fact or proof, by consent of the parties.

(4) Limitations on the number of witnesses.

(5) Changes to standard procedures desired during the hearing, by consent of the parties.

(6) Consolidation of examination of witnesses by the parties.

(7) Any other matters which aid in the disposition of the proceeding.

RSA 541-A:16 V (b) - (d)

171 (Popup)

[3]Staff's reply memorandum correctly points out that even with our decision that the implementation of the annual BA factors should coincide with the anniversary of the First Effective Date, PSNH will significantly under-recover its Seabrook investment. This is because

the first contract year under the Seabrook Power Contract will actually occur from May 16, 1991 to May 15, 1992; during this first contract year 80% of the Seabrook investment will be excluded from rate base. However, the BA for calendar year 1991 which will be utilized from May 16, 1991, to May 15, 1992, will reflect an approximate 70% exclusion of Seabrook from rate base. Staff Reply Brief (August 27, 1991) at 13 to 15.

172 (Popup)

[4]In the POLARIS runs, Seabrook was modeled using the NUSCO composite nuclear availability factor of 87%. We see no reason why in the future, a plant specific factor for Seabrook should not be utilized.

173 (Popup)

[5]PSNH's argument that the capacity swap was negotiated pursuant to an express requirement in the Rate Agreement is flawed because, as pointed out by staff, Section 4 is only applicable to the Interim Period. The Interim Period is the period between the First Effective Date (May 16, 1991) and the date of the merger. Rate Agreement, Section 1 at D-13. Thus, the above-cited provision of the Rate Agreement does not apply to the reconciliation period (January 1, 1991 to May 16, 1991) for this proceeding.

174 (Popup)

[6]Staff's memorandum points out that in other jurisdicitions, courts have upheld the decisions of regulators to disallow recovery of replacement power cost incurred when a nuclear power plant was shut down as a result of a defective component manufactured and supplied by a contractor, *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 522 Pa. 338, 561 A. 2d 1224 (1989); imputed the blameworthy conduct of availability to another as a matter or proper regulatory policy *Commonwealth Electric Co. v. Department of Public Utilities*, 347 Mass. 361 (1986); and imputed irresponsible decision making of a third party contractor to a utility as an incentive to minimize outages, *Hamm v. South Carolina Public Service Commission*, 352 S.C.2d 476 (1987).

175 (Popup)

[7]Timing. In December and June of each year, stand alone PSNH or NUNH will file with the NHPUC the calculation of the FPPAC for the next January through June and July through December billing periods. Exhibit C at D-105.

176 (Popup)

[8]By letter dated September 10, 1991, PSNH informed staff's attorney that it had discovered a minor error in the calculation of the avoided energy costs. On-peak avoided energy costs were overstated by .117¢ /Kwh and off-peak by .057¢ /Kwh. PSNH indicated that it has decided to pay QF's based on the over-stated, approved rates rather than seek commission approval of the lower, corrected rates. As a result of this decision, PSNH energy costs will be about $100 higher per month, a negligible amount. Based upon these factors, we agree with PSNH's decision to forego a very small downward adjustment in the QF rates.

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178 (Popup)

[1]Hearings were held in this docket on May 21, 1990, and June 4, 1990 to provide the commission staff an opportunity to investigate: 1) ENGI's pricing of gas to interruptible customers; and 2) whether ENGI was observing the procedures set forth in the 1988 Stipulation regarding ENGI's contracts for interruptible gas service adopted by the commission in Docket DR 88-083. Report and Order No. 19,181 (September 22, 1988). After those hearings, the staff, the Office of the Consumer Advocate ("OCA"), and ENGI entered into a Stipulation dated June 15, 1990, (hereafter the "1990 Stipulation"). The commission approved the 1990 Stipulation in Report and Order No. 19,875 (July 3, 1990).

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180 (Popup)

[1]A copy of the 1991-1992 winter interruptible contract that specifies the settlement agreement is appended as Attachment A.

181 (Popup)

[1]The Offer of Settlement is attached hereto as Attachment A.

182 (Popup)

[2]GSEC proposes to offer four residential and three commercial and industrial (C&I) programs in 1992. The proposed residential programs are 1) Residential Space Heating, which installs weatherization and other conservation measures in the homes of customers with electric heat; 2) Residential Lighting, which sells efficient compact fluorescent lamps at reduced prices; 3) Home Energy Management, which cycles customers' water heaters to shift load to off-peak hours; and 4) Energy Crafted Homes, which promotes efficiency in the design and construction of new homes.

The proposed C&I programs include: 1) Design 2000, which encourages efficiency in new construction, renovation, remodeling and replacement of failed equipment; 2) Energy Initiative, which encourages the replacement of existing equipment with more efficient equipment; and 3)

the Small C&I program, which installs conservation measures in the facilities of C&I customers with average monthly demands of less than 50 kilowatts (kW) or annual energy use less than 150,000 kilowatthours (kWh).

Offer Of Settlement

183 (Popup)

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Offer Of Settlement

184 (Popup)

[1]The proposed residential programs are 1) Electric Space Heating, which installs weatherization and other conservation measures in the homes of customers with electric heat; 2) Residential Lighting, which sells efficient compact fluorescent lamps at reduced prices; 3) Home Energy Management, which cycles customers water heaters to shift load to off-peak hours; and 4) Energy Crafted Homes, which promotes efficiency in the design and construction of new homes.

185 (Popup)

[2]Granite State's proposed C&I programs include: 1) Design 2000, which encourages efficiency in new construction, renovation, remodeling and replacement of failed equipment; 2) Energy Initiative, which encourages the replacement of existing equipment with more efficient equipment; and 3) the Small C&I program, which installs conservation measures in the facilities of C&I customers with average monthly demands of less than 50 kilowatts (kW) or annual energy use of less than 150,000 kilowatthours (kWh).

186 (Popup)

[3]The value is based on the wholesale rates that the Company pays to its wholesale supplier, New England Power Company, adjusted for evaluation and customer costs.

187 (Popup)

[4]The Company and the CLF are close to finalizing a study of this issue. Preliminary

results indicate that Granite State's 1992 C&LM program will create thirty (30) new jobs in the Company's service territory. A copy of the report will be filed with the Commission when completed.

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