

NH.PUC*01/03/94*[70360]*79 NH PUC 1*Public Service Company of New Hampshire

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79 NH PUC 1

Re Public Service Company of New Hampshire

DR 93-179

Order No. 21,089

New Hampshire Public Utilities Commission

January 3, 1994

ORDER granting an electric utility a partial extension of time for finalizing new power purchase agreements (PPAs) with woodburning small power producers (SPPs), but denying a protective order for the terms of PPAs with hydropower SPPs pending such finalization of the woodburning SPPs.

1. PROCEDURE, § 39

[N.H.] Time limits — Extensions of time — Renegotiation of power purchase agreements — Factors affecting grant of extension — Determination of scope of docket — Lack of objection from other parties. p. 3.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective orders — Terms of hydropower power purchase agreements (PPAs) — Denial of confidential status — Factors — No nexus to ongoing negotiations for woodburning PPAs. p. 3.

3. COGENERATION, § 17

[N.H.] Power purchase contracts — Negotiation — Factors — Disclosure of terms of hydropower power purchase agreements (PPAs) — No impact on ongoing negotiations for woodburning PPAs. p. 3.

APPEARANCES: Rath, Young, Pignatelli and Oyer by M. Curtis Whittaker, Esq. and Gerald Eaton, Esq. for Public Service Company of New Hampshire; Castaldo and Malmberg by David Marshall, Esq. for New Hampshire Timberland Owners Association; David Harrigan, Esq. for Society for the Protection of New Hampshire Forests; D. Dickenson Henry, Jr. for Audubon Society of New Hampshire; Armond Cohen, Esq. for Conservation Law Foundation; Broderick and Dean by Mark Dean Esq. for New Hampshire Electric Cooperative, Inc.; Backus, Meyer and Solomon by Robert Backus, Esq. for Campaign for Ratepayers Rights; Kenneth Colburn for

Business and Industry Association; Richard Walker for Town of Springfield, New Hampshire; Donald Ferren for Southern New Hampshire Resource Conservation and Development Area; Michael B. Jenish for PREMCO, Inc.; Robert Berti for North Country Procurement, Inc.; Brooks McCandlish for Society of American Foresters, Granite State Division; Michael Lambert for Northeast Forest Users Coalition; James Anderson, Esq. for Office of Consumer Advocate; Eugene F. Sullivan, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. PROCEDURAL HISTORY

The Public Utilities Commission (Commission) on October 15, 1993 issued an order of notice initiating a docket to consider the status of negotiations between Public Service Company of New Hampshire (PSNH) and thirteen small power producers. The docket is the result of a provision within the Rate Agreement between PSNH and Northeast Utilities, as defined in RSA 362-C:2 I, and as accepted by the Commission in DR 89-244, *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385 (1990), under which Northeast Utilities is required to use its best efforts to renegotiate the rates of the following thirteen small power producers: Briar Hydro/Essex Hydro, Errol Dam, Greggs Falls, Pembroke Hydro, Pennacook Upper Falls (the five hydropower SPPs), Alexandria Power, Bio-Energy Corporation, Bridgewater Steam Power, TIMCO, Hemphill Power and Light,

Page 1

Bethlehem Pinetree Power, Tamworth Pinetree Power, Whitefield Power (the eight woodburning SPPs) (collectively the SPPs).

For a full procedural history, please see Report and Order No. 21,037 (November 18, 1993). This report and order will address the December 13, 1993 request of Public Service Company of New Hampshire (PSNH) for extension of time in which to file its final agreements, the December 21, 1993 request of PSNH for extension of time in which to file its testimony and the December 13, 1993 request of PSNH for confidentiality of particular terms in the agreements reached with five hydropower SPPs and the responses filed thereto.

II. EXTENSION REQUESTS AND CONFIDENTIALITY

A. *Extension on Final Agreements*

PSNH seeks an extension of time in which to file the final agreements with the four woodburning SPPs with which it has reached agreement in principal, proposing January 15, 1994 as a "target date." There was no objection filed to the request, Society for the Protection of New Hampshire Forests, Audubon Society of New Hampshire, Campaign for Ratepayers' Rights, North Country Procurement, Inc. and Southern N.H. Resource Conservation and Development Area jointly filed a request that no scoping order be issued until the final agreements are filed.

B. *Extension on Testimony*

PSNH seeks an extension of time in which to file its testimony, which had originally been due on December 22, 1993. PSNH argues that it cannot fairly file testimony until it knows the

scope of the dockets and the resolution of the requests for confidentiality. There were no objections to this request.

C. Limited Protective Treatment

PSNH seeks a limited protective order over the rates contained within Attachment B to each hydropower SPP agreement. PSNH argues that disclosure of the hydropower SPP rates would place the woodburning SPPs at a "substantive negotiation advantage" and, therefore, the benefits of public disclosure are outweighed by the harm to PSNH's general ratepayers.

The five hydropower SPPs oppose PSNH's request for limited protective order, arguing that the public should have full access to the terms and further that the Commission's review of the hydropower SPP agreements will be further delayed if linked with the woodburning SPP negotiations and agreements. The hydropower SPPs also took exception with a statement of the Commission within Report and Order No. 21,058 regarding its authority.

The OCA argues that the rates should not be protected, as there is no real relationship between the hydropower SPP costs, terms or considerations and those of the woodburning SPPs and that the types of information PSNH seeks to protect does not fall within the meaning of the Right to Know Law exemptions.

New Hampshire Timberland Owners Association and Society for the Protection of New Hampshire Forests jointly filed a response opposing such protective treatment. They argue that PSNH's assertion regarding the delicacy of negotiations is not sufficient to warrant protection under RSA 91-A and further that disclosure might not necessarily harm the negotiating process while protective treatment could harm the Commission's credibility as it evaluates the rates.

Society of American Foresters opposed the request for protective treatment, arguing that common interests between PSNH and all SPPs should be evaluated through an open process and further notes that it is not clear that PSNH is presently engaged in productive negotiations with the woodburning SPPs.

The Commission Staff argues that for the time being the hydropower SPP agreements' rates should be protected, as the risk to on-going negotiations outweighs the benefits of public disclosure, applying the three pronged test of *Zenith Radio Corporation v. Matsushita Electric Industrial Co.*, 529 F. Supp. 866 (D. Pa. 1981). The Staff recommends that the material be protected but that no "substantive action" be taken on the hydropower SPP agreements

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until the woodburning SPP negotiations are complete and filed, or abandoned, at which time the hydropower SPP rates would be made available to the public and that docket proceed.

III. COMMISSION ANALYSIS

Having reviewed the filings on extensions and confidentiality, we make the following determinations:

A. Extension on Final Agreements

[1] We will grant, in part, the request of PSNH for an extension of time in which to file final agreements with the four woodburning SPPs with which it has reached agreement in principle.

We are not willing, however, to set mere "target dates." Rather, we will require all final agreements with the four "settling" woodburning SPPs no later than Monday January 17, 1994.

If final agreements cannot be filed by that date, we require the filing of a detailed explanation for the failure to make such a filing. Given the magnitude of the expense that is deferred with each passing day, we will no longer accept a statement that negotiations are on-going but that additional time is needed to finalize the terms. We have been willing to accept at face value the representations that negotiations are continuing in good faith, but the longer it takes to "finalize" the terms agreed to in principle three months ago, the more concerned we become as to whether the parties are serious about working to a solution of the issues. While it is not generally our policy to interfere in negotiations between parties, we are prepared to take more assertive action if it appears the Commission process is being manipulated for other purposes.

B. Extension on Testimony

We are persuaded by PSNH's argument that it cannot file testimony until the scope of the docket or dockets is determined and its confidentiality request is resolved. We will grant PSNH's request for an extension of time for filing testimony until the scope issues are resolved and a new procedural schedule is adopted.

C. Limited Protective Treatment

[2, 3] We are not persuaded that the exact terms of the hydropower SPPs need be protected, as PSNH asserts. In any discussion of confidentiality, we are guided by the standards of RSA 91-A, the Right to Know Law, which establishes a presumption of public disclosure unless one demonstrates a need for protection that falls within one of the exceptions delineated in RSA 91-A:5. We agree with the Staff that the three pronged test in *Zenith Radio Corporation v. Matsushita Electric Industrial Co.* is the appropriate analysis, though we disagree with the Staff as to the results of that three pronged analysis in this case.

The OCA stresses that there is no real linkage between the hydropower SPP agreements and the woodburning SPP negotiations, as the costs, terms and entire structure of the "deals" are different. We agree with the OCA on this point. While we cannot predict whether the negotiations with the woodburning SPPs will suffer if the terms of the hydropower SPP agreements are made public, we find that on balance, it is best to move forward with as public a record as practicable and with as few further delays as possible. We have no evidence as to when the woodburning negotiations will be finalized or whether further information regarding the hydropower SPPs will frustrate those negotiations.

On the other hand, we are well aware of the degree of public interest in all of these negotiations, and the need for the Commission to evaluate fully all terms and conditions of the agreements. We know from our experience with hearings involving documents under protective order that it is very hard to fully explore the information proposed when we must also focus on whether the exhibits are to be sealed, or whether particular parties or members of the public must be removed from the hearing room before a question can be answered.

Because we see no compelling reason to justify protection under RSA 91-A and recognize the impracticalities of such protection, we

will deny PSNH's request for limited protective treatment over the exact terms of the hydropower SPP agreements. As we stated at our public meeting on December 26, however, we will refrain from disclosing any materials filed by PSNH in conjunction with its protective treatment request pending the period for reconsideration under RSA 541.

D. Number of Dockets

Because we do not see the connection between the hydropower SPP agreements and the woodburning SPP agreements, we will separate out the hydropower SPP agreements and consider them in DR 94-002, a new docket established by the Commission. Correspondence sent to us on the PSNH negotiations suggests that most of the controversy is focused on the woodburning SPP negotiations. In order to expedite the process, we ask that any party which is already an intervenor in DR 93-179 notify us by letter whether it seeks intervention in DR 94-002, identifying the interests which are affected by the docket. Such letters should be filed no later than Friday, January 14, 1994.

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 Public Service Company of New Hampshire (PSNH) for limited protective order governing the rates for each of the five hydropower SPPs is denied; and it is

FURTHER ORDERED, that the agreements with the five hydropower SPPs shall be separated from the rest of the docket involving woodburning SPPs and considered in Docket 94-002; and it is

FURTHER ORDERED, that any party already granted intervention in DR 93-179 which seeks to intervene in DR 94-002 shall so notify the Commission no later than January 14, 1994, including a statement as to the interests which are affected by the docket, at which time the Commission shall consider the request for intervention in the new hydropower docket; and it is

FURTHER ORDERED, that the request of PSNH for extension of time in which to file final agreements with the four woodburning SPPs is granted in part, such that final agreements are to be filed no later than January 17, 1994; and it is

FURTHER ORDERED, that if PSNH is unable to meet the January 17, 1994 filing date for the final agreements with the four woodburning SPPs, it shall file a substantive account of the reason for its inability to make such a filing, rather than merely notifying the Commission that final terms have not been agreed upon; and it is

FURTHER ORDERED, that the request of PSNH for an extension of time in which to file testimony until after the scope of the dockets has been determined is reasonable and is granted; and it is

FURTHER ORDERED, that issues regarding the scope of the two dockets and the procedural schedule in each shall be determined in subsequent orders of the Commission.

By order of the New Hampshire Public Utilities Commission this third day of January, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,037, 78 NH PUC 686, Nov. 18, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,058, 78 NH PUC 713, Dec. 13, 1993.

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NH.PUC*01/03/94*[70361]*79 NH PUC 5*Public Service Company of New Hampshire

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79 NH PUC 5

Re Public Service Company of New Hampshire

Additional applicants: North Atlantic Energy Corporation; Northeast Utilities Service Company; State of New Hampshire

DR 93-092
Order No. 21,090

Re Vermont Electric Generation and
Transmission Cooperative, Inc.

DE 93-114
Order No. 21,090

New Hampshire Public Utilities Commission

January 3, 1994

ORDER approving a memorandum of understanding (MOU), as further amended by stipulation, between various parties with respect to certain entitlements in the Seabrook nuclear generating plant, with Vermont Electric Generation and Transmission Cooperative, Inc., authorized to transfer its interest in Seabrook to North Atlantic Energy Corporation, with eventual ownership to rest with Public Service Company of New Hampshire.

Under the MOU, post-retirement benefit expenses other than pensions under Statement of Financial Accounting Standards No. 106 (FAS 106) will not be passed on to ratepayers, but instead will be offset by tax loss carryforwards under FAS 109. The MOU also recognizes the impact of the reimposition of a gross receipts tax, the repeal of the nuclear station property tax credit, and the lowering of the nuclear station property tax rate.

1. EXPENSES, § 112

[N.H.] Franchise or gross receipts tax — Effect of reimposition — Electric utilities having

interest in nuclear plant — Repeal of the nuclear station property (NSP) tax credit — Reduction in the NSP tax rate — Memorandum of understanding. p. 7.

2. EXPENSES, § 114

[N.H.] Income taxes — Statement of Financial Accounting Standards No. 109 — Availability of net loss carryforwards — Electric utility emerging from bankruptcy — Memorandum of understanding. p. 7.

3. EXPENSES, § 49

[N.H.] Employee pensions and welfare — Post-retirement benefits other than pensions — Statement of Financial Accounting Standards No. 106 — No passthrough to ratepayers — Memorandum of understanding. p. 7.

4. CONSOLIDATION, MERGER, AND SALE, § 66

[N.H.] Procedure — Stipulations and memorandum of understanding — Transfer of interest in Seabrook nuclear plant — Third- party intermediary. p. 7.

5. RETURN, § 26.4

[N.H.] Cost of equity — Collar floor rate — Adjustment — Factors — Discounted demand charge for industrial customer — Memorandum of understanding. p. 8.

6. RATES, § 333

[N.H.] Electric rate design — Demand charges — Discount for industrial customer — Impact on return-on-equity collar floor — Memorandum of understanding. p. 8.

7. NUCLEAR PLANT DECOMMISSIONING, § 7

[N.H.] Costs — Rate-making expense allowance — Prohibition on compounding — Seabrook nuclear plant — Memorandum of understanding. p. 8.

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8. VALUATION, § 398

[N.H.] Procedure — Period for capital recovery — Rate base allowances relating to the Seabrook nuclear plant — Elimination of overlapping recovery periods — Synchronization — Memorandum of understanding. p. 8.

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Richard A. Samuels, Esq. on behalf of Vermont Electric Generation and Transmission Cooperative, Inc.; Harold T. Judd, Esq. on behalf of the State of New Hampshire; Michael W. Holmes, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; Amy L. Ignatius, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On May 12, 1993, Public Service Company of New Hampshire (PSNH), Northeast Utilities Service Company, North Atlantic Energy Corporation (NAEC) and the State of New Hampshire (State) (collectively the petitioners) petitioned the New Hampshire Public Utilities Commission (Commission) for establishment of temporary and permanent base rate adjustments occasioned by a Memorandum of Understanding (MOU) entered into by the petitioners. The MOU (Exhibit 2) addressed reduction in the nuclear station property tax, reimposition of the utility franchise tax, accounting treatments resulting from adoption of FAS 106 and FAS 109, recovery for certain aspects of PSNH's settlement with the Vermont Electric Generation and Transmission Cooperative, Inc. (VEG&T) including the purchase of VEG&T's share of Seabrook Station, amendment to the Rate Agreement addressing impact of special discount rates previously approved for James River/Wausau Papers, amendment to the Rate Agreement addressing treatment of nuclear decommissioning costs, and amendment of the Rate Agreement to eliminate the effect of unintended overlap of recovery periods relating to the acquisition premium and the deferral return recovery period.

Docket No. DE 93-114, in which VEG&T petitioned the Commission for approval of transfer of its Seabrook interest, was consolidated with DR 93-092.

After notice and hearing, the Commission granted temporary rates by Order No. 20,857 (May 28, 1993). That order provided for temporary adjustment to base rates of \$0.00074 per kilowatt hour (kWh), effective June 1, 1993, for a total recovery of \$4,831,000, subject to refund. The temporary adjustment was applied equally on a per kWh basis to all customers.

On December 2, 1993 the parties and Staff presented a Stipulation and Recommendation For Commission Order (Stipulation) (Exhibit 21) which amended the MOU. Witnesses for PSNH, the State and VEG&T testified to the purposes and effect of the MOU and the changes occasioned by the Stipulation. This report and order will address the MOU as amended by the Stipulation.

II. COMPONENTS OF THE MOU AND STIPULATION

Because this docket was resolved by agreement among the parties and Staff, the positions presented in pre-filed testimony of PSNH, the State, VEG&T, OCA and the Staff will not be recounted here. For a full understanding of the positions of all participants, see the pre-filed direct and rebuttal testimony of Michael Wiater (Exhibits 1 and 10), John Noyes (Exhibits 9 and 17), Alan Kessler (Exhibit 11), Richard Joyce (Exhibits 12 and 18), Eugene Sullivan, Jr. (Exhibits 15 and 16), Thomas Frantz (Exhibit 14) and George McCluskey (Exhibits 13 and 19).

All parties and the Staff recommended approval of the MOU as modified by the Stipulation. The components of the MOU and amendments thereto are delineated below.

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A. Tax Changes Imposed by the Nuclear Property Tax Settlement

[1] The MOU provides for adjustment to PSNH base rates as a result of the enactment of the

recent legislation amending the nuclear station property tax (1993 N.H. Laws Chapter 49). The adjustment (granted on a temporary rate basis effective June 1, 1993 in Report and Order No. 20,857) is offset by a corresponding decrease in the Fuel and Purchased Power Adjustment Clause proceeding ordered in DR 93-023. As a result of the settlement of *Connecticut, et al. v. New Hampshire*, Original, No. 119, a one percent franchise tax on gross retail receipts of electric utilities was re-imposed on May 1, 1993, the nuclear station property tax was lowered in a series of steps in 1993, 1994 and 1995, the nuclear station property tax credit against the business profits tax was repealed, retroactive to July 1, 1992, and a portion of the nuclear station property tax collected during 1991 and 1992 was refunded, after offsetting a portion of the refund to recover 50% of the business profits tax avoided by use of the nuclear station property tax credit. The MOU reduces the effects on PSNH's base rates which would flow from the settlement of the court action by limiting the increase to the amount of the decreased FPPAC offset.

The Stipulation makes no change to the MOU regarding tax changes imposed by repeal of the nuclear station property tax and reimposition of the franchise tax.

B. Treatment of Adoption of New Income Tax Accounting Standards for FAS 109

[2] The MOU provides agreement on the accounting treatment for net operation loss carryforwards under new accounting standards issued in Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes (FAS 109). The MOU proposes that PSNH recognize as a deferred tax asset (and a corresponding offsetting liability) the value of income taxes that are estimated to be saved through use of substantial net operation loss carryforwards attributable to shareholder expenditures made largely prior to PSNH's emergence from bankruptcy. The offsetting liability should be amortized by PSNH over 6 years, beginning May 31, 1993, and will reduce PSNH's revenue requirements in each of the 6 years of amortization.

The Stipulation makes no change to the MOU regarding accounting treatment of FAS 109 issues.

C. Treatment of Adoption of New Accounting Standards for Post-Retirement Benefits Other Than Pensions

[3] The MOU provides for agreement on treatment of expenses for post-retirement benefits other than pensions under new accounting standards issues in FAS No. 106, such that PSNH not seek a base rate adjustment for FAS 106 expenses but instead absorb those expenses during the fixed rate period.

The Stipulation states that the Commission should find the FAS 106 accounting treatment to be reasonable and in the public interest, without specifically ruling on the meaning of the Rate Agreement provisions regarding FAS 106 recovery. It makes no other change to the MOU regarding treatment of FAS 106 issues.

D. Treatment of the Settlement with VEG&T

[4] The MOU provides for completion of the settlement of claims by VEG&T against PSNH in PSNH's bankruptcy proceeding and consequent rate treatment of the transactions contemplated by that settlement. Under the MOU, PSNH or its designee will acquire VEG&T's 0.41259 percent interest in Seabrook for a purchase price of approximately \$6.4 million, PSNH will enter into a contract with NAEC to purchase all of NAEC's acquired Seabrook entitlement

on terms and conditions substantially similar to the Seabrook Power Contract currently in effect between PSNH and NAEC, and approval of an amendment to the Rate Agreement to adjust the BA assumptions to provide that, at reference assumptions during the fixed rate period, there would be no impact on rates as a result of the VEG&T transaction.

The Stipulation modifies the MOU by

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calling for a fourth amendment, not yet approved but concurred in by all parties and Staff in draft form, to effectuate the provisions stated above. NAEC further agrees, as part of the Stipulation, to limit the exercise of its rights under Section 12 of the new unit contract regarding unilateral changes, such that it will only file unilateral changes to charges (as opposed to other terms and conditions) and that changes in terms and conditions must be with the prior written consent of PSNH and the approval of the Commission. The Stipulation also provides that PSNH and NAEC waive any provision of law that would preclude the Commission from undertaking a prudence review as part of the FPPAC adjustment of rates and payments made by PSNH under the Unit Contract and, for purposes of the former VEG&T Seabrook interest only, PSNH and NAEC waive any provision of law that would preclude a prudence review of the incremental costs of replacement power, subject to certain adjustments for insurance proceeds and other savings.

The Stipulation also recommends approval of VEG&T's request for transfer of the VEG&T interest docketed in DE 93-114, which has been consolidated with this docket.

E. Treatment of the Special Rates Established for James River Corporation/Wausau Papers

[5, 6] The MOU provides for an amendment to the Rate Agreement which requires PSNH to modify its revenue calculation for purposes of computing the ROE collar floor provisions by the amount of the demand charge discount for James River Corporation/Wausau Papers of New Hampshire, which was approved by the Commission in DR 92-125.

The Stipulation makes no change to the MOU regarding treatment of the special rates for James River Corporation/Wausau Papers.

F. Treatment of Decommissioning Costs

[7] The MOU provides for an amendment to the Rate Agreement that ensures that adjustments to PSNH base rates to reflect increased nuclear decommissioning costs will not be subject to compounding under the annual 5.5% increases established under the Rate Agreement.

The Stipulation contains the actual language of the Third Amendment to the Rate Agreement which effectuates this change and clarifies certain obligations of PSNH and NAEC regarding nuclear decommissioning.

G. Treatment of Overlapping Seabrook-Related Capital Recovery Schedules

[8] The MOU provides for amendment to the Rate Agreement that eliminates the overlap of two recovery periods during the period immediately following the end of the fixed rate period. The overlap is due to the delay in the First Effective Date. The amendment to the Rate Agreement would delay the commencement of the recovery by NAEC from PSNH of the

deferred Seabrook return from December 1, 1997 until June 1, 1998.

The Stipulation does not amend the terms of the MOU regarding the overlap of Seabrook related capital recovery periods, other than to limit the allowable interest on the deferred collection by NAEC from PSNH of the deferred Seabrook return during the period from December 1, 1997 through May 31, 1998 to 3% per annum.

III. COMMISSION ANALYSIS

Upon consideration of the exhibits and testimony of PSNH, the State, VEG&T, OCA and the Staff, we find that the MOU, as amended by the Stipulation, to be in the public interest and accordingly will approve both documents. We recognize that the terms of the MOU and Stipulation are interrelated, and that one aspect may be to the benefit of ratepayers while another benefits shareholders.

When taken as a whole, we believe the provisions are in the public interest, particularly the mechanism that keeps FAS 106 expenses from being passed on to ratepayers. For example, the pre-filed testimony of John Noyes, Vice President and Controller of Northeast Utilities Service Company and PSNH, estimated

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the retail revenue requirement to meet PSNH's FAS 106 liability to be \$8.5 million for 1993 alone. We believe the use of the FAS 109 loss carryforwards to offset much of the expense to be a creative way by which to avoid passing these expenses to ratepayers during the fixed rate period and is clearly in the public interest.

We find the provisions regarding the treatment of the new tax changes in light of the 1993 legislation and settlement of the Supreme Court litigation to be necessary and in the public interest. We also find the amendments to the Rate Agreement which prohibit the compounding of certain decommissioning costs and to change the calculations of the ROE collar floor as a result of the James River Corporation/Wausau Papers discounted rates to be consistent with our earlier determinations and in the public interest. Further, we believe the synchronization of the recovery periods which were overlapping due to a delay in the First Effective Date to be appropriate and in the public interest, particularly as limited by the Stipulation.

Finally, we approve VEG&T's petition to transfer its Seabrook interest to NAEC, understanding that in turn the interest will be acquired by PSNH, subject to the provisions of the Stipulation regarding changes to the new unit contract and the expanded prudence review waiver for the former VEG&T interest alone. We understand that a fourth amendment to the Rate Agreement regarding PSNH's purchase of NAEC's acquired Seabrook entitlement must still be approved by the Commission.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Memorandum of Understanding entered into between Public Service Company of New Hampshire (PSNH), Northeast Utilities Service Company, North Atlantic

Energy Corporation (NAEC), the State of New Hampshire and the Vermont Electric Generation and Transmission Cooperative, Inc. (VEG&T) is approved, as amended by the Stipulation and Recommendation for Commission Order entered into by the above parties in conjunction with the Office of Consumer Advocate and the Commission Staff are in the public interest, when taken as a whole and are approved; and it is

FURTHER ORDERED, that the petition for transfer of the interest in Seabrook Station now owned by VEG&T to NAEC and PSNH's subsequent acquisition of that interest from NAEC is approved.

By order of the New Hampshire Public Utilities Commission this third day of January, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-092, Order No. 20,857, 78 NH PUC 275, May 28, 1993.

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NH.PUC*01/03/94*[70362]*79 NH PUC 9*Exeter and Hampton Electric Company

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79 NH PUC 9

Re Exeter and Hampton Electric Company

DR 93-234

Order No. 21,091

Re Concord Electric Company

DR 93-235

Order No. 21,091

New Hampshire Public Utilities Commission

January 3, 1994

ORDER rejecting a proposal by two electric utilities to move from six-month fuel and purchased power adjustment clauses to 12-month clauses, finding that the reasonableness of relying on greater forecasted data had not been demonstrated.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Fuel cost adjustment clause — Semi-annual adjustment process — Calculation of credits — Electric utilities. p. 12.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Purchased power adjustment clause — Semi-annual adjustment process — Calculation of charges — Electric utilities. p. 12.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 68

[N.H.] Administrative review — Fuel and purchased power adjustment clauses — Reconciliation period — Retention of six-month period — Rejection of 12-month period — Factors — Reduced accuracy with greater use of forecasted data — Electric utilities. p. 12.

4. COGENERATION, § 27

[N.H.] Rates — Avoided capacity and energy costs — Short-term power purchase contracts — Calculation of capacity payments of zero cents per kilowatt-year — Factors — No recent short-term capacity transactions — No projections of short-term purchases in near future. p. 12.

APPEARANCES: Leboeuf, Lamb, Leiby & MacRae by Scott J. Mueller, Esquire for Concord Electric Company and Exeter & Hampton Electric Company; Edwin P. LeBel and Thomas C. Frantz, for the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. Procedural History

On December 2, 1993, UNITIL Service Corporation filed, on behalf of Concord Electric Company (Concord) and Exeter & Hampton Electric Company (Exeter & Hampton) (collectively the Companies), revised Fuel Adjustment Clause (FAC) rates and Purchased Power Adjustment Clause (PPAC) rates for the period January through December, 1994. Concord requested a FAC credit of \$0.00687 per kWh and a PPAC rate of \$0.00550 per kWh. Exeter & Hampton requested a FAC credit of \$0.00678 per kWh and a PPAC rate of \$0.00662 per kWh.

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 3.21 cents per kWh
 Off Peak 2.50 cents per kWh
 All Hours 2.72 cents per kWh
 Capacity Rate \$0.00 per kW-year

As a result of a record request, the Companies on December 21, 1993 filed Exhibit 4, which included revised rates. The record request sought new FAC and PPAC rates based on actual November 1993 data as well as including estimated savings which the Companies became aware of after the December 2nd filing was made.

The New Hampshire Public Utilities Commission (the Commission) held a duly noticed hearing at its office in Concord on December 16, 1993 to review the Fuel Adjustment Clauses and Purchased Power Adjustment Clauses and the short-term power purchase rate filings of the

Companies. Concord and Exeter & Hampton presented three witnesses: George Gantz, Lori King and David W. Lavoie. Ms. King and Mr. Lavoie both had submitted pre-filed testimony and exhibits.

II. Positions of the Parties

In the instant filing, the Companies are requesting a change in the PPAC and FAC rates

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based on incorporating twelve months of forecasted data into the clauses and moving the respective rates from a six month effective period to a twelve month effective period starting January 1, 1994. The calculations of the FAC rates and PPAC rates would remain essentially the same except for the change to a twelve month effective period and the incorporation of additional months of forecasted data.

Mr. Lavoie testified on the derivation of UNITIL Power Corp's (UPC) wholesale rates and the calculation of UPC's short-term avoided costs. His pre-filed testimony indicated that UPC's wholesale rates, effective January 1, 1994 would be as follows:

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

Demand	\$16.78 per kW-month
Base Energy	\$0.01906 per kWh
Fuel Charge	\$0.01834 per kWh

Exh. 3 at 4.

Ms. King and Mr. Lavoie stated at the hearing that based upon November, 1993 actual data, which had just been received, UPC would be revising its wholesale billing rate. Ms. King recommended that the Commission not adopt revised FAC and PPAC rates reflecting the updated data, citing the Companies' intention to submit revised tariffs the day after the hearing.

On December 21, 1993, the Companies filed Exhibit 4, a record request, which contains updated cost information reflecting, *inter alia*, November 1993 actual data. Exhibit 4 includes an updated wholesale cost forecast for January 1994 through December 1994. The updated wholesale cost forecast changes the Demand charge to \$16.73 per kW-month, the Base Energy charge to \$0.01896 per kWh and the Fuel Charge to \$0.01781 per kWh. The revised PPAC and FAC rates, based on an annual adjustment clause but using the updated data in Exhibit 4, are as follows: for Concord the PPAC would be \$0.00528 per kWh and the FAC rate would be a credit of \$0.00743 per kWh, and for Exeter & Hampton the PPAC would be \$0.00628 per kWh and the FAC would be a credit of \$0.00738 per kWh. For both Concord and Exeter & Hampton, the changes result in lower PPAC rates and greater FAC credits than what the Companies had filed on December 2, 1993. Also on December 21, 1993, the Companies submitted a follow-up to Exhibit 4. The follow-up calculations of the FAC and PPAC for both Companies are based on semi-annual FAC and PPAC periods. The January - June 1994 FAC rate for Concord would be a credit of \$0.00776 per kWh and for Exeter and Hampton it would be a credit of \$0.00754 per kWh. For July - December 1994, the credit would be \$0.00708 per kWh for Concord and \$0.00720 per kWh for Exeter & Hampton. The PPAC rate for Concord would be \$0.00494 per kWh during the first half of the year and for Exeter and Hampton it would be \$0.00669 per kWh.

The PPAC rate would increase for Concord during the second half of 1994 to \$0.00567 per kWh and decrease for Exeter & Hampton to \$0.00589 per kWh.

Mr. Gantz testified that the Companies presently have a high degree of confidence in their forecast as well as a belief that fuel costs will be stable over the next few years. Transcript at 8 and 9. Based on those reasons and the desire to reduce fluctuations in rates due to changes in the basic ratio of costs and sales, especially at Exeter & Hampton, the Companies are proposing a twelve month clause effective January 1, 1994, or alternatively, a six month trial clause for the first half of 1994 and then a permanent change to the twelve month clause on July 1, 1994.

Staff did not present testimony, but queried the Companies' witnesses on a number of issues including the reasons that the new clause could not go into effect on a twelve month basis every July 1st. Mr. Gantz testified that he felt more accuracy would be achieved on a January basis due to the Companies' budget cycle and the cycles of their fuel suppliers. Staff further questioned whether UPC, the Companies' wholesale power supplier, had long-term power contracts with their fuel suppliers and also explored the basis of the Companies fuel forecasts. The Companies indicated that they could use these forecasts but acknowledged that they would lose a slight degree of accuracy by the move to twelve months.

At the hearing the Staff requested and the

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Commission granted an opportunity to submit a position paper on the Companies' proposal to change to an annual rate for the FAC and PPAC. On December 30, 1993, Staff submitted a position paper to the Commission. Staff recommends the continuation of the present six month clauses citing the Companies' earlier support for a six month reconciliation period for FAC and PPAC rates. Moreover, Staff believes there is a benefit to both the Staff and the Commission, apart from the issues of reliably forecasting sales and costs and matching costs with rates, of staying closely attuned to the issues that arise as part of the semi-annual fuel and purchased power adjustment clauses.

In regard to UPC's short-term avoided cost rates, Mr. Lavoie testified that UPC calculated estimates for both capacity and energy. The avoided short-term capacity rate is based on actual experience contracting for capacity during the July through December 1993 period and a forecast of anticipated short-term capacity transactions for the January through December 1994 period. The costs of these transactions are established and a transaction weighted average cost rate is used as the current period avoided capacity rate. This method was developed after discussions with the Commission Staff in DR 90-095 and DR 90-097. Mr. Lavoie testified that UPC expects to have more capacity than it will need to meet its NEPOOL Capacity Responsibility through December 1994, although 10 MW purchases are anticipated for November and December 1994. UPC has not entered into any transactions for capacity in the last six months nor does it expect to make any short-term capacity transactions in the January through December 1994 period; therefore, the Companies believe the proper short-term capacity rate to pay QFs in 1994 is \$0.00 per kW-yr. Exh. 3 at 9.

UPC develops avoided energy cost rates using the same production costing stimulation model used to forecast energy costs. The system energy requirements are decreased for all hours

of the upcoming cost period by 5 MW and new production costs are estimated. This process is repeated with an all hours increase of forecast energy requirements by 5 MW. The difference in total production costs between each case and the base case is averaged and divided by the total average MWh differentials.

III. Commission Analysis

[1-3] We will accept the December 21, 1993 revised filings of the Companies that were submitted to the Commission and we will take administrative notice of the follow-up to Exhibit 4 that was sent to Staff on December 21, 1993. The follow-up adjusts the data in Exhibit 4 from annual rates to semi-annual rates in accordance with our present adjustment clause methodology. Although we believe there is merit in rate continuity, the beneficial effects of a change to an annual FAC and PPAC have not been demonstrated to the extent that we believe they outweigh, as Staff points out in its position paper, the benefits of the present semi-annual adjustment process. We find, therefore, that the just and reasonable rates to use for the Companies' FAC and PPAC shall be those based on a January through June, 1994 period. The FAC will be a credit of \$0.00776 per kWh for Concord and a credit of \$0.00754 per kWh for Exeter & Hampton. For the same period, the PPAC rate for Concord will be a charge of \$0.00494 per kWh and a charge of \$0.00669 per kWh for Exeter & Hampton. For a typical Concord residential customer using 500 kWh per month, the net result of the PPAC and FAC changes is a \$1.83, or 3.45%, decrease to a monthly 500 kWh bill. A typical 500 kWh per month residential bill for Exeter & Hampton customers will decrease by \$0.51, or 1.01%.

[4] We also find the proposed short-term avoided energy rates to be just and reasonable, and calculated in accordance with the methodologies outlined in previous Commission orders. The Companies may reflect a \$0.00 per kW-year capacity payment to QFs on short-term rates for the January through June 1994 period.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which is incorporated by reference herein, it is hereby ORDERED, that the Concord Electric

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Company Fuel Adjustment Charge rate for the period January through June, 1994, shall be a credit of \$0.00776 per kWh; and it is

FURTHER ORDERED, that for the period January through June, 1994, the Concord Electric Company Purchased Power Adjustment Clause rate shall be \$0.00494 per kWh; and it is

FURTHER ORDERED, that for the period January through June, 1994, the Exeter & Hampton Electric Company Fuel Adjustment Charge rate shall be a credit of \$0.00754 per kWh; and it is

FURTHER ORDERED, that for the period January through June, 1994, the Exeter & Hampton Electric Company Purchased Power Adjustment Clause rate shall be \$0.00669 per kWh; and it is

FURTHER ORDERED, that for the same period, Concord Electric Company's and Exeter & Hampton Electric Company's short-term power purchase (short-term avoided capacity and energy) rates for Qualifying Facilities (QF's) shall be as follows:

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

Energy Rates On Peak 3.21 cents per kWh
Off Peak 2.50 cents per kWh
All Hours 2.72 cents per kWh
Capacity Rate \$0.00 per kW-year;

and it is

FURTHER ORDERED, that Concord Electric Company and Exeter & Hampton Electric Company file revised tariff pages in compliance with this order by January 14, 1994.

By order of the New Hampshire Public Utilities Commission this third day of January, 1994.

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NH.PUC*01/04/94*[70363]*79 NH PUC 13*Kearsarge Telephone Company

[Go to End of 70363]

79 NH PUC 13

Re Kearsarge Telephone Company

DR 93-269

Order No. 21,092

New Hampshire Public Utilities Commission

January 4, 1994

ORDER authorizing a local exchange telephone carrier to offer a new custom calling feature for toll restriction, at no additional monthly charge for either residential or business customers.

1. SERVICE, § 470

[N.H.] Telephone — Toll call restriction — Custom calling feature — Use of existing switch options — No additional monthly charge — Local exchange carrier. p. 13.

BY THE COMMISSION:

ORDER

[1] On December 20, 1993, Kearsarge Telephone Company (Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to offer toll restriction, a new custom calling feature; and

WHEREAS, no additional costs will be incurred to offer this feature since existing switch options allow this service; and

WHEREAS, the Company proposes to offer toll restriction to residence and business customers without incurring an additional monthly charge; and

WHEREAS, Service Charges as specified in Section 4 NHPUC No. 7 apply; and

WHEREAS, Service Charges may be waived for residential customers subscribing to this feature as part of a scheduled payment plan; and

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WHEREAS, the Company states that it will experience little or no revenue impact as a result of offering this service; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revision to be in the public good; it is therefore

ORDERED, that the following tariff pages of Kearsarge Telephone Company are approved:

NHPUC - No. 7

Section 3 - Original Sheet 3.1
Second Revised Sheet 4

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as filed; and it is

FURTHER ORDERED, that the above addition to NHPUC No. 7 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this fourth day of January, 1994.

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NH.PUC*01/04/94*[70364]*79 NH PUC 14*Southern New Hampshire Water Company, Inc.

[Go to End of 70364]

79 NH PUC 14

Re Southern New Hampshire Water Company, Inc.

DR 93-207

Order No. 21,093

New Hampshire Public Utilities Commission

January 4, 1994

ORDER rescinding that part of Order No. 20,196 (76 NH PUC 521 [1991]) that had required a water utility to eliminate a fire protection surcharge on customer bills and collect fire protection

fees from the Town of Litchfield instead. Commission finds that the existing customer surcharge method was the most equitable, in that it assured that those receiving the benefit of fire protection service would pay for such service.

1. ORDERS, § 4

[N.H.] Commission authority — Continuing jurisdiction after issuance of order — Power to modify or abrogate — Reasonableness. p. 16.

2. RATES, § 619

[N.H.] Water rate design — Fire protection service — Retention of customer surcharge — Elimination of municipal fee requirement — Per-incident versus per-hydrant charges. p. 16.

APPEARANCES: Bossie, Kelly and Hodes by Jay L. Hodes, Esq. on behalf of the Town of Litchfield; Representative Leon Calawa, Jr.; Representative Loren Jean; McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. on behalf of Southern New Hampshire Water Company, Inc.; and Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On July 29, 1991, the New Hampshire Public Utilities Commission (Commission) issued Report and Order No. 20,196 which, *inter alia*, allowed Southern New Hampshire Water Company, Inc. (Southern or the Company) to continue to collect fees relative to fire protection in the Town of Litchfield (Town) through a customer surcharge until the tenth day following the next Town Meeting at which time the Town would assume its responsibility to pay for the service or be subject to the same disconnection procedures as any other customer. *Re Southern New Hampshire Water Company, Inc.*, 76 NH PUC 521, 535, 541 (1991).

On August 7, 1991, the Town filed a motion for rehearing pursuant to RSA 541:3 relative to the fire protection issue requesting that

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the Commission reconsider its deadline of ten days "following the next town meeting of Litchfield ..." because it did not provide an adequate time frame for the creation of fire districts and the submission of the issue to the Town's citizens.

On August 29, 1991, the Commission issued Report and Order No. 20,227 granting the Town's motion to extend the time limit set in Report and Order No. 20,196 relative to the Town's obligation to pay for fire protection to the tenth day following its 1993 town meeting. *Re Southern New Hampshire Water Company, Inc.*, 76 NH PUC 572, 573 (1991).

On April 27, 1993, the commission issued Report and Order No. 20,828 granting another continuance to the town.

On October 4, 1993, the Town filed a petition to "alter, amend, ... or modify" *Re Southern New Hampshire Water Company, Inc.*, 76 NH PUC 521, (1991) as it related to the collection of municipal fire protection charges in the Town of Litchfield, and to "set aside" all subsequent orders issued by the Commission dealing with this issue pursuant to RSA 365:28 based on evidence that was not available to the Commission at the time of the issuance of its Order in *Re Southern New Hampshire Water Company, Inc.*, 76 NH PUC 521, (1991).

On November 23, 1993, the Commission issued an Order of Notice setting a hearing for December 9, 1993, to consider this new evidence. A copy of the Order of Notice was delivered via first class mail to the individuals listed in Appendix A attached hereto, and the Order of Notice was published in the Manchester *Union Leader* on November 27, 1993.

On December 9, 1993, the commission held a duly noticed hearing on the merits of the Town's requests.

II. POSITIONS OF THE PARTIES

A. Town.

The Town took the position that payment to Southern for municipal fire protection via a surcharge on Litchfield customer's water consumption bills (excluding that area of the Town served by Southern known as the Sawmill Development which neither receives nor is charged for fire protection) resulted in a just and reasonable allocation of rates. The Town further argued that this rate design did not result in the inequitable provision of fire protection to non-Southern customers.

Thus, the Town requested that the Commission modify or rescind all orders requiring it to pay for this service out of its general revenues collected from all of the citizens of the Town, and continue the historical practice of surcharging Southern customers in areas provided fire protection and charge the Town for the use of these services to fight fires for non- Southern customers.

The Town also requested that the rate for the use of these services be calculated at \$1300 per incident rather than \$800 per hydrant.

B. Southern.

Southern generally supported the Town's position. They did not, however, support raising the fee to \$1300 per incident for the use of fire protection services for non-Southern customers because they interpreted the current tariff to read \$800 per incident, not per hydrant, and there was no notice to the public of this proposed rate change.

C. Representative Leon Calawa, Jr. and Representative Loren Jean.

Both Representative Calawa and Jean supported the Town's position.

D. Staff.

The Staff took no position.

III. COMMISSION ANALYSIS

The issue before the commission is whether it should modify its Order in *Re Southern New Hampshire Water Company, Inc.*, 76 NH PUC 521, (1991) requiring the Town of Litchfield, as a municipal entity, to pay for municipal fire protection provided by Southern New Hampshire Water Company, Inc. in certain limited and discreet areas of the Town, and

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rescind all subsequent Orders confirming that decision.

[1] RSA 365:28 provides, in pertinent part, that the Commission may at any time, after notice and hearing, "alter, amend, suspend, annul, set aside or otherwise modify any order made by it." The New Hampshire Supreme Court has stated that "RSA 365:28 should be liberally construed" and that RSA 365:28 is a directive from the legislature for the Commission to "'exercise continuous jurisdiction' over the utilities it regulates." *Appeal of the Office of Consumer Advocate*, 134 N.H. 651, 657 (1991). The Court went on to state that the only limitation on this authority is that the ultimate result be just and reasonable, satisfy the requirements of due process and be legally correct. *Id.* at 658.

The Town presented evidence in support of its position. That evidence consisted of the testimony of Cecil Williams, one of the Town's three Selectmen.

Selectman Williams testified that the Town had made all of its investments in fire protection equipment in pumpers and tankers designed to fight fires from a static source of water, such as portable reservoirs or ponds, rather than relying on the pressure provided by municipal fire hydrants. Selectman Williams also presented a map of the Town of Litchfield, attached hereto as Appendix B, which demonstrated that all of the areas currently being provided fire protection services by Southern are discrete subdivisions surrounded by undeveloped land in which virtually all of the homes are provided water service by Southern. Finally, Selectman Williams indicated that each time the Town had availed itself of Southern's fire protection services it had reimbursed the Company for the use of those services and that Southern's tariff provided that these funds were to be refunded to Southern's customers in Litchfield paying fire protection.

In *Re Southern New Hampshire Water Company, Inc.* the Commission based its decision requiring the Town to assume the financial responsibility for municipal fire protection on the perceived inequity of Southern ratepayers paying for fire protection services and the reduced homeowners insurance costs flowing therefrom for non-Southern ratepayers.

This perception was bolstered by the Company's inability to provide the Commission with any evidence that the Town had ever reimbursed the Company for the use of these fire protection services for non-Southern customers and provide the Commission with evidence that customers had been reimbursed.

[2] The new evidence presented by the Town persuades us that the current methodology for collecting municipal fire protection charges in the Town of Litchfield does not result in the inequitable treatment of Litchfield ratepayers. As is apparent from Appendix B, those individuals paying for fire protection are the same individuals receiving the benefits of fire protection.

Thus, the current methodology for collecting these charges is just and reasonable and appears to be a more equitable means of collecting these charges than requiring the entire Town to pay

for services it is not receiving. We, therefore, modify Report and Order No. 20,196 to allow Southern to continue to surcharge its customers receiving water service and fire protection services in the Town of Litchfield for fire protection services.

Consequently, all orders subsequent to Order No. 20,196 relating to the Town's obligation to pay for municipal fire protection are set aside.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is incorporated herein; it is hereby

ORDERED, that *Re Southern New Hampshire Water Company, Inc.*, 76 NH PUC 521 (1991) (Order No. 20,196) is modified to abrogate those sections of the Report and Order requiring the Town of Litchfield, New Hampshire to assume the full financial responsibility for public fire protection charges except in those cases where the Town accesses public hydrants; and it is

FURTHER ORDERED, that all orders subsequent to Order No. 20,196 implementing or continuing the effective date for the assumption of the financial responsibility for public fire

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protection in the Town of Litchfield are rescinded.

By order of the New Hampshire Public Utilities Commission this fourth day of January, 1994.

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NH.PUC*01/04/94*[70365]*79 NH PUC 17*Granite State Electric Company

[Go to End of 70365]

79 NH PUC 17

Re Granite State Electric Company

DR 93-232

Order No. 21,094

New Hampshire Public Utilities Commission

January 4, 1994

ORDER authorizing an electric utility to implement a slight increase of 0.006 cents per kilowatt-hour in its fuel adjustment clause factor, due primarily to a change in its fuel cost reconciliation period.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Fuel costs — Fuel cost adjustment

clause — Slight increase — Factors — Incorporation of an eight-month reconciliation period — Assimilation of both forecasted and actual cost data — Electric utility. p. 18.

APPEARANCES: David Saggau, Esq. for Granite State Electric Company; Thomas Frantz and James Cunningham for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On December 1, 1993, Granite State Electric Company (GSEC) filed tariff pages, testimony and schedules supporting changes to its fuel adjustment clause (FAC), oil cost adjustment (OCA), and qualifying facilities (QFs) power purchase rates for the period January through June 1994. GSEC is requesting that the Commission approve an FAC factor of \$0.00763 per kWh, an OCA factor of \$0.00116 per kWh, and the following short-term avoided capacity and energy rates for QFs as follow:

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

<i>Energy Rates</i>	<i>On Peak</i>	<i>Off Peak</i>	<i>Average</i>
Subtransmission Distribution	\$0.02630	\$0.02095	\$0.02341
Primary Distribution	\$0.02825	\$0.02198	\$0.02486
Secondary Distribution	\$0.02925	\$0.02249	\$0.02560

<i>Capacity Rate</i>	<i>Capacity Payment</i>
Subtransmission	\$1.55 per kW-month
Primary Distribution	\$1.70 per kW-month
Secondary Distribution	\$1.77 per kW-month

The New Hampshire Public Utilities Commission (Commission) held a duly noticed hearing at its offices in Concord on December 15, 1993 to review the FAC, OCA and short-term avoided energy and capacity rates filed by Granite State Electric Company. At the hearing GSEC presented two witnesses, Lawrence J. Reilly, and Jeffrey Van Sant. There were no intervenors.

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II. *Positions of the Parties*

GSEC proposes to increase slightly its current FAC factor based, primarily, on its estimate that GSEC's total fuel expenses for the first half of 1994 will be slightly higher than GSEC's total fuel expense incurred during the second half of 1993. GSEC proposes to keep the current OCA factor unchanged and to lower the QF rates for the first half of 1994.

In Exhibit 1 at 6, GSEC is proposing to increase the FAC factor by \$0.00006 per kWh to \$0.00763 per kWh. At the hearing, in response to Staff questions, the Company provided information on the reconciliation of actual and estimated generation and cents per kWh increases

for the months of September and October 1993. GSEC testified that the actual generation from Brayton Point Unit 4 and Salem Harbor Unit 4 is more expensive than the other units at each of these facilities and that generation from each of these units, as a percent of total station output, was greater than estimated.

Also, GSEC testified that its filing includes four months of actual data (i.e July through October, 1993) and two months of estimated data (i.e. November and December 1993). According to the Company, the reconciliation period in the June 1, 1994 filing will include a true-up for November and December 1993 actual data.

Based on increasing the FAC by \$0.00006 per kWh from the current rate of \$0.00757 per kWh and keeping the OCA factor of \$0.00116 per kWh the same, a residential customer using 500 kWh per month would see a bill increase of \$.03.

GSEC testifies that the short-term QF rates are consistent with past practices approved by the commission.

III. *Commission Analysis*

[1] GSEC is proposing to change language in its tariff, specifically page 35, that defines the "Adjustment to Past Differentials." GSEC believes that the current reconciliation of forecasted data with actual data may not be in complete conformance technically with the description of the reconciliation process in the tariff, particularly, the words "of said seven prior months and estimated charges and revenues for the seventh." We find that GSEC's proposal will have little to no effect on the FAC rate as it is currently calculated and therefore will approve changing the language to incorporate an eight-month reconciliation period. The eight month provision will include two months of actual data from the prior six-month period and four months of actual data of the new six-month period. We encourage the incorporation of the most recent and reliable data available. This language change should not be misinterpreted as a means to circumvent the inclusion of that data.

Based upon the record in this docket, the commission finds the FAC, OCA and QF rates filed by GSEC, effective January 1, 1994, to be just and reasonable.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that the Fuel Adjustment Clause factor for Granite State Electric Company (GSEC) for the period January through June 1994, shall be \$0.00763 per kWh; and it is

FURTHER ORDERED, that the Oil Cost Adjustment for GSEC for the period January through June 1994, shall be \$0.00116 per kWh; and it is

FURTHER ORDERED, that GSEC pay Qualifying Facilities for the period January through June 1994, the following:

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

<i>Energy Rates</i>	<i>On Peak</i>	<i>Off Peak</i>	<i>Average</i>
Subtransmission Distribution	\$0.02630	\$0.02095	\$0.02341
Primary Distribution	\$0.02825	\$0.02198	\$0.02486
Secondary Distribution	\$0.02925	\$0.02249	\$0.02560

<i>Capacity Rate</i>	<i>Capacity Payment</i>
Subtransmission	\$1.55 per kW-month
Primary Distribution	\$1.70 per kW-month
Secondary Distribution	\$1.77 per kW-month

and it is

FURTHER ORDERED, that GSEC file tariff pages in compliance with this commission Order no later than 15 days from the issuance date of this Order.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1994.

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NH.PUC*01/05/94*[70366]*79 NH PUC 19*New Hampshire Electric Cooperative, Inc.

[Go to End of 70366]

79 NH PUC 19

Re New Hampshire Electric Cooperative, Inc.

DR 93-229

Order No. 21,095

New Hampshire Public Utilities Commission

January 5, 1994

ORDER granting an electric cooperative a 4% net increase in its power cost adjustment rate, reflective of (1) an expected increase in costs associated with the refueling of the Seabrook plant, and (2) the elimination of two surcharges, one for the state franchise tax and one for a delayed base rate increase.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Power cost adjustment — Net increase — Factors — Costs associated with the refueling of the Seabrook plant — Elimination of state franchise tax surcharge — Elimination of delayed base rate increase surcharge — Electric cooperative. p. 21.

APPEARANCES: Broderick and Dean by Timothy Reiniger, Esq. on behalf of the New Hampshire Electric Cooperative, Inc.; Kenneth L. Traum of the Office of Consumer Advocate on

behalf of residential ratepayers; Thomas C. Frantz and Edwin P. Lebel for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On December 1, 1993 the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) its petition for an increase of \$0.0063 per kWh in its power cost adjustment, from a credit of \$0.00496 per kWh to a charge of \$0.00134 per kWh, effective January 1, 1994. In addition, NHEC noted that two surcharges, one for recovery of the state franchise tax and the other associated with a delayed base rate increase, now included in its retail rates will be discontinued January 1, 1994, resulting in a decrease of \$0.00144 per kWh. The net effect would be an average increase to retail rates of \$0.00486 per kWh, an increase of approximately 4.09 percent. In addition, on December

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7, 1993, NHEC sought a change in its short term qualifying facilities rates, effective December 1, 1993 through June 30, 1994.

By Order of Notice dated December 2, 1993, the Commission set a hearing for December 14, 1993 at 10:00 a.m. Notice of the hearing was published in the *Union Leader* on December 6, 1993. There were no requests for intervention.

II. *POSITIONS OF THE PARTIES AND STAFF*

A. *New Hampshire Electric Cooperative, Inc.*

NHEC presented one witness, Teresa L. Muzzey, Rates and Finance Manager, to support its petition for an increase in the Power Cost Adjustment (PCA) factor. Ms. Muzzey explained that the proposed PCA factor is calculated by estimating the total expected purchased power expense in 1994, \$48,901,435, and then adjusting it for the over-recovery of \$1,001 expected as of January 1, 1994 and a deferral of Seabrook refueling costs of \$526,800 which are included in the PSNH wholesale Fuel and Purchased Power Adjustment Clause (FPPAC). The total adjusted costs, \$48,373,635, are divided by 1994 expected sales of 588,848,000 kWhs to yield the PCA rate, \$0.08215 per kWh. The purchased power costs recovered through base rates, \$0.08081 per kWh, are then subtracted to yield the PCA factor for the upcoming PCA period necessary to recover NHEC's expected power costs.

At the hearing NHEC adjusted the purchased power costs downward by the amount of the interest, \$86,000, on the escrow funds that had been held until NHEC emerged from bankruptcy.¹⁽¹⁾ Ms. Muzzey testified that NHEC originally sought in its December 2, 1993 filing an increase of \$0.0063 per kWh over the currently effective PCA credit of \$0.00496 per kWh.²⁽²⁾

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The flow-through of the escrow fund interest reduces the forecasted power costs NHEC expects to incur in 1994. For January through December 1994, the total re-forecasted power costs are expected to be \$48,287,453. Exhibit 2. Ms. Muzzey also revised the expected over-collection as of January 1, 1994 from \$1,001 to \$87,182. The changes result in a revised PCA factor of \$0.00119 per kWh, an increase of \$0.00615 per kWh over the current PCA factor, which is a credit of \$0.00496 per kWh.

NHEC supports its requested PCA increase based primarily on an increase in the Public Service of New Hampshire (PSNH) wholesale FPPAC factor and an increase in the base wholesale rate, both effective January 1, 1994. The PSNH wholesale FPPAC factor is increasing primarily due to the Seabrook refueling in the spring of 1994. NHEC anticipates purchasing 302,179,453 kWhs from PSNH during the January through June 1994 PCA period. NHEC expects the Seabrook portion of its purchased power costs to be \$1,580,399. Exhibit 2 at 6.

NHEC is electing to defer with interest recovery of one-third, or six-months, of the Seabrook related costs until 1995. NHEC believes the deferral mitigates the rate impact for its customers while matching the costs of the Seabrook refueling cycle.

Ms. Muzzey cites the discontinuance of a prior period refund as another contributing factor to the proposed increase in the PCA. Exhibit 1 at 3.

Based on the increase in the PCA and the discontinuation of two surcharges, one for \$0.00038 per kWh to recoup two months of New Hampshire Franchise Tax and the other a base rate surcharge of \$0.00106 per kWh, the overall increase in retail rates will be slightly under 4 percent. Transcript at 11. A typical residential customer with monthly usage of 500 kWhs will receive a bill of \$64.12, an increase of \$2.38 over the existing monthly bill.

B. Commission Staff

The Staff did not file testimony in the proceeding, but questioned Ms. Muzzey on a number of power cost issues. Staff focused its inquiry on the assumptions used in the forecast of power costs and the effect NHEC's proposed DSM programs and interruptible programs may have on the billing demand portion of the PCA factor, as well as which customers would potentially bear the costs of changes in the forecasted power costs. Additionally, Staff raised an issue

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concerning the extent of NHEC's involvement in monitoring PSNH's wholesale FPPAC costs, especially those pertaining to replacement power costs associated with outages that may be due to imprudence. Staff also questioned Ms. Muzzey on the level of the deferral.

C. Office of Consumer Advocate

The OCA did not file testimony, but raised a number of forecast related issues including the effect of delay in NHEC's DSM programs and the loss of Plymouth State College's load due to cogeneration.

III. COMMISSION ANALYSIS

[1] Based on our review of the record, we find that the Power Cost Adjustment factor of \$0.00119 per kWh is appropriate for the period January through June 1994. This change by itself

would result in an approximately 5.1 percent increase in NHEC's rates, but the discontinuance of the surcharges results in an overall increase of 4.0 percent.

The concern NHEC has for rate stability is understandable considering the rate changes that its customers have recently experienced and we encourage NHEC to take the steps necessary to reduce its purchased power costs. At the same time, customers should see in their rates the costs to serve them. Because the deferral NHEC is proposing is based on the replacement outage costs associated with the upcoming Seabrook refueling, we believe the deferral proposal will match the costs of the outage and we will, therefore, approve it. We will also allow NHEC to recover the interest on the deferral.

We share the concerns of the OCA and Staff that NHEC's forecasted costs include adjustments for some 1994 DSM programs that may not occur in a timely manner, therefore raising the chances that NHEC's rate will under-recover its purchased power costs. It is not clear that these effects will have a substantial impact on the forecasted power costs considering the many variables included in the determination of the forecasted power costs. We will, therefore, accept NHEC's forecast as reasonable despite some noted minor discrepancies in it.

An order consistent with this report has previously been issued (Order No. 21,095 dated January 5, 1994).

ORDER

Based upon the foregoing report, which is a part hereof; it is hereby

ORDERED, that effective January 1, 1994, the New Hampshire Electric Cooperative, Inc.'s Power Cost Adjustment be \$0.00119 per kWh, an increase of \$0.00615 per kWh; and it is

FURTHER ORDERED, that NHEC's proposal to include interest on the monthly PCA balance is approved; and it is

FURTHER ORDERED, that 3rd Revised Page 43, the short-term QF rates filed on December 6, 1993, by NHEC are hereby approved effective December 1, 1993; and it is

FURTHER ORDERED, that NHEC file tariff pages in compliance with this Order by January 14, 1994.

By order of the New Hampshire Public Utilities Commission this fifth day of January, 1994.

FOOTNOTES

¹NHEC emerged from bankruptcy on December 1, 1993. On December 6, 1993, the Commission directed the Treasurer of New Hampshire to disburse the Escrow Fund, approximately \$88,947, to NHEC for inclusion in income and use by NHEC. At the same time, the Commission ordered the portion of the Escrow Fund representing interest earnings to be applied by NHEC to reduce the present Power Cost Adjustment factor. See Report and Order No. 21,050 in DR 92-009.

²The currently effective credit of \$0.00496 per kWh occurred when NHEC rolled the base wholesale portion of its PCA factor into base rates as part of the temporary base rate changes approved in DR 93-124, NHEC's petition for a base retail rate change. Prior to the October 1, 1993 temporary base rate change, the PCA factor was a charge of \$0.00119 per kWh. See

Commission Order No. 20,886, June 28, 1993 in docket DR 93-110.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 93-110, Order No. 20,886, 78 NH PUC 324, June 28, 1993. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 92-009, Order No. 21,050, 78 NH PUC 701, Dec. 6, 1993.

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NH.PUC*01/06/94*[70367]*79 NH PUC 22*Public Service Company of New Hampshire

[Go to End of 70367]

79 NH PUC 22

Re Public Service Company of New Hampshire

DR 93-247

Order No. 21,096

New Hampshire Public Utilities Commission

January 6, 1994

ORDER suspending an electric utility's proposed tariff, and scheduling a prehearing conference pertinent thereto, where the tariff proposal was for a radio-controlled rate option for separately metered electric service to electric thermal storage devices.

1. RATES, § 339

[N.H.] Electric rate design — Classes of service — Separately metered service to electric thermal storage devices — Proposal for radio-controlled rate option — Necessity of suspension and prehearing conference. p. 22.

BY THE COMMISSION:

ORDER

[1] On December 7, 1993, Public Service Company of New Hampshire (PSNH) filed in accordance with the Commission's Tariff Filing Rules the following revised tariff pages to NHPUC No. 34 - Electricity:

1st Revised Pages 39, 41, 42, and 45

2nd Revised Page 40; and

WHEREAS, the proposed tariff pages and technical statement and attachments support a new option for separately metered and controlled electric service to Electric Thermal Storage (ETS) devices; and

WHEREAS, PSNH is proposing to modify its currently effective Load Controlled Service Rate LCS to permit a Radio-Controlled Option for separately metered and controlled electric service to ETS devices; and

WHEREAS, the proposed option is priced at the same energy rate as the existing 8-Hour Option under Rate LCS, but will expand availability to conventional electric space heating systems provided either an ETS system or a non-electric heating source is available for backup service; and

WHEREAS, a thorough review of PSNH's proposal is necessary before the Commission can render a decision on the changes to Rate LCS; it is hereby

ORDERED, that a prehearing conference be held before the Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire, at 1:00 p.m. on February 8, 1994; and it is

FURTHER ORDERED, that PSNH's proposed tariff pages, NHPUC No. 34 - Electricity:

1st Revised Pages 39, 41, 42, and 45

2nd Revised Page 40

are hereby suspended pending further review and decision; 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 a 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, 1994 and is to be documented by affidavit filed with this office on or before February 8, 1994; and it is

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FURTHER ORDERED, that pursuant to RSA 541-A 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 the Commission on or before February 4, 1994.

By order of the New Hampshire Public Utilities Commission this 6th day of January, 1994.

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NH.PUC*01/10/94*[70368]*79 NH PUC 23*Public Service Company of New Hampshire

[Go to End of 70368]

79 NH PUC 23

Re Public Service Company of New Hampshire

DR 93-243
Order No. 21,097

New Hampshire Public Utilities Commission

January 10, 1994

ORDER approving a special contract between an electric utility and the Gilford School District, designed to retain load without giving pricing concessions, through contribution by the utility to the school district of \$55,000, to be used for the purchase and installation of an upgraded energy management system.

1. RATES, § 211

[N.H.] Special contracts — For the purpose of load retention — Factors affecting approval — Lack of pricing concessions — Contribution by serving utility toward purchase of customer's upgraded energy management system — Electric utility and school district. p. 23.

2. DISCRIMINATION, § 87

[N.H.] Rates — Special contract with local school district — Factors — Load retention — Lack of pricing concessions — Contribution by serving utility toward purchase of customer's upgraded energy management system. p. 23.

BY THE COMMISSION:

ORDER

[1, 2] On December 3, 1993, Public Service Company of New Hampshire (PSNH) filed a request for expeditious treatment and approval of a special contract, Special Contract No. NHPUC-91, between PSNH and Gilford School District (Gilford), effective December 20, 1993, or upon approval by the Commission; and

WHEREAS, Gilford currently takes electric service from PSNH for all of its energy requirements; and

WHEREAS, PSNH desires to retain Gilford as a total requirements customer and is willing to contribute up to \$55,000 to Gilford for the purchase and installation of an upgraded energy management system (EMS) that will reduce energy costs at Gilford Middle School; and

WHEREAS, PSNH will, subsequent to the installation of the EMS, monitor its effectiveness; and

WHEREAS, PSNH contends Gilford would, absent this special contract, no longer remain a PSNH customer and would in PSNH's opinion convert its source of energy for space and water heating from electricity to a fossil fuel-based energy system; and

WHEREAS, Special Contract No. NHPUC-91 is designed to retain electric service from Gilford for a period of five years from the effective date of Special Contract No. NHPUC-91; and

WHEREAS, PSNH is not proposing any special pricing provisions to Gilford other than the

contribution to the updated EMS and Gilford's agreement to take all of its electric service from PSNH for a period of at least five years and to use electricity from PSNH for space and water heating needs for period of at least three years; and

WHEREAS, Gilford may, at its option, utilize an alternative source of energy beginning in year four, so long as it is not another source of electricity, but should Gilford so choose to switch energy sources in year four it shall pay PSNH 40% of the total amount contributed by PSNH to Gilford with the contribution

Page 23

decreasing to 20% in year five; and

WHEREAS, PSNH desires that the Commission consider its request for approval of NHPUC-91 in an expeditious manner in order for Gilford to proceed with an order placement and the purchase and installation of the updated EMS; and

WHEREAS, by retaining service at full tariff rates to Gilford, PSNH maintains the same level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers; and

WHEREAS, PSNH admits that this proposal is not an economic development or business retention filing as defined in the Commission's Generic Discounted Rate Proceedings in DR 91-172, but believes that for the purposes of expeditious review it is made in accordance with the Commission's "Final Checklist for Economic Development and Business Retention Discounted Rates" (Checklist) as specified in Order No. 20,882; and

WHEREAS, upon review of the filing and Staff's recommendation, the Commission finds that Special Contract NHPUC-91 is in the public interest; it is hereby

ORDERED *Nisi*, that Special Contract NHPUC-91 is approved as filed effective February 1, 1994; and it is

FURTHER ORDERED, that recovery of any monies expended by PSNH on Gilford's Energy Management System or other conservation measures will be deferred to the upcoming 1994 docket on PSNH's conservation and load management programs where it may be more fully reviewed; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, PSNH notify all persons desiring to be heard by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 13, 1994, and documented by affidavit filed with this office on or before January 27, 1994; 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 January 27, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective January 31, 1994, unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the New Hampshire Public Utilities Commission this tenth day of January, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,882, 78 NH PUC 316, June 23, 1993.

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NH.PUC*01/11/94*[70369]*79 NH PUC 24*AT&T Communications of New Hampshire, Inc.

[Go to End of 70369]

79 NH PUC 24

Re AT&T Communications of New Hampshire, Inc.

DE 93-261

Order No. 21,098

New Hampshire Public Utilities Commission

January 11, 1994

ORDER approving an interexchange telephone carrier's proposal for tariff changes to its rules and regulations pertaining to promotional offerings associated with custom network services.

1. SERVICE, § 164

[N.H.] Rules and regulations — Interexchange telephone carrier — Publicity — Promotional offerings — Custom network services — Factors affecting approval of proposed changes — Fostering of effective competition. p. 25.

BY THE COMMISSION:

ORDER

Page 24

[1] On December 10, 1993, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to add Promotional Offerings language to the Rules and Regulations section of its NHPUC Tariff No. 1 - Custom Network Services.

WHEREAS, AT&T proposed the filing become effective January 10, 1994; and

WHEREAS, the proposed tariffs expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than February 7, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than January 21, 1994 and is to be documented by affidavit filed with this office on or before February 7, 1994; and it is

FURTHER ORDERED *NSI*, that the following tariff pages of AT&T Tariff PUC No. 1 - CUSTOM NETWORK SERVICES are approved:

Table of Contents - 4th Revised Page 3

Section 1 - Original Page 7.1

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective February 10, 1994 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 January, 1994.

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NH.PUC*01/11/94*[70370]*79 NH PUC 25*Public Service Company of New Hampshire

[Go to End of 70370]

79 NH PUC 25

Re Public Service Company of New Hampshire

DE 93-265

Order No. 21,099

New Hampshire Public Utilities Commission

January 11, 1994

ORDER authorizing an electric utility to reconstruct aerial distribution lines across the Winnepesaukee River, at a slightly different location but at the same voltage level.

1. ELECTRICITY, § 6

[N.H.] Wires and cables — Distribution lines — Reconstruction of aerial lines — Crossing of public waters — Factors affecting approval — Slight variance in location — No change in voltage level. p. 25.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Pole lines — Aerial electric distribution lines — Reconstruction project — Factors — Crossing of public waters — Location — Voltage level. p. 25.

BY THE COMMISSION:

ORDER

[1, 2] On December 9, 1993 Public Service Company of New Hampshire (Petitioner) filed

Page 25

with the New Hampshire Public Utilities Commission (Commission) a petition under RSA 371:17 for the licensing of a reconstruction of an existing aerial electric distribution line over and across certain Public Waters in the Towns of Tilton and Belmont, New Hampshire; and

WHEREAS, the Petitioner proposes to reconstruct at a slightly different location, without voltage upgrade, an existing Winnepesaukee River crossing previously licensed by the Commission under Order No. 12,219, dated April 21, 1976, in Docket DE 76-22; and

WHEREAS, the purpose of the reconstruction is to increase reliability and improve the ability to maintain the circuit; and

WHEREAS, in order to meet the requirements of service to the public, the Petitioner must maintain electric distribution lines over and across those certain Public Waters, which lines are an integral part of its electrical system; and

WHEREAS, the definition of "Public Waters" contained in the limited purposes of RSA 371:17 includes "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe"; and

WHEREAS, the Commission prescribes this subject crossing to be over and across Public Waters; and

WHEREAS, the reconstructed Winnepesaukee River crossing will consist of three aerial 336.4 Kcmil aluminum steel reinforced 18/1 phase conductors operated at 12.47 kV from the existing pole #3 near the northwest corner of the Depot Street Bridge to a new 40 foot class 3 wood pole structure installed near the northeast corner of the Depot Street Bridge, identified as new pole #4, a span of approximately 232 feet parallel to the Depot Street Bridge; and

WHEREAS, a map and profile of the crossing are on file with this commission; and

WHEREAS, the electric line clearances as depicted on Public Service Company of New Hampshire drawing No. D-7649-152 meet the applicable standards and specifications of the 1993 National Electrical Safety Code; and

WHEREAS, Staff has verified that these clearances exceed the minimum requirements of the 1993 National Electrical Safety Code; and

WHEREAS, the Commission finds such water crossing necessary for the Petitioner to meet its obligations to serve customers within its authorized franchise area, thus being 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 this matter before the Commission no later than February 7, 1994; and it is

FURTHER ORDERED, that the Petitioner effect said notification by: (1) causing an attested copy of this order to be published no later than January 21, 1994, once in a newspaper having general circulation in the area where the crossing is located; (2) providing, pursuant to RSA 541-A:22, a copy of this order to the Tilton and Belmont, New Hampshire Town Clerks, by First Class U.S. mail, postmarked on or before January 21, 1994; and (3) documenting compliance with these notice provisions by affidavit(s) to be filed with the Commission on or before February 7, 1994; and it is

FURTHER ORDERED *NSI*, that authority be, and hereby is granted, pursuant to RSA 371:17 *et seq.* to Public Service Company of New Hampshire for the installation and maintenance of the aforementioned crossing of an aerial electric line over the Winnepesaukee River in the Towns of Tilton and Belmont, New Hampshire, effective February 10, 1994 unless the Commission otherwise directs prior to the proposed effective date; and it is

FURTHER ORDERED, that all reconstruction hereafter performed conform to the requirements of the National Electrical Safety Code and all other applicable safety standards in existence at that time.

By order of the New Hampshire Public Utilities Commission this eleventh day of January, 1994.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 76-22, Order No. 12,219, 61 NH PUC 97, Apr. 21, 1976.

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NH.PUC*01/14/94*[70371]*79 NH PUC 27*Integrated Water System, Inc.

[Go to End of 70371]

79 NH PUC 27

Re Integrated Water System, Inc.

DR 93-164

Order No. 21,100

New Hampshire Public Utilities Commission

January 14, 1994

ORDER further extending the suspension period associated with a water utility's proposed tariff revisions, where the utility had not yet submitted new revisions agreed upon during meetings with commission staff and a local civic group.

1. PROCEDURE, § 42

[N.H.] Suspension — Of proposed tariff terms — Extension of suspension period — Factors — Necessity of submitting new revisions — Water utility. p. 27.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on September 16, 1993 Integrated Water System, Inc. (Company) filed a revised reorganized tariff governing its existing terms and conditions; and

WHEREAS, the commission by order no. 20,995 dated October 13, 1993 suspended the proposed tariff NHPUC No. 4 Integrated Water Systems, Inc. in order to provide staff with sufficient time to perform the necessary investigation prior to the issuance of a decision in this matter; and

WHEREAS, subsequent to the suspension of the proposed tariff staff met on a number of occasions with both the Company and Locke Lake Colony Association for the purposes of identifying any issues and revising the tariff in accordance with comments received; and

WHEREAS, on November 24, 1993 the staff had a final meeting with the Company to complete its review of the proposed tariff incorporating comments of both the association and staff; and

WHEREAS, the Company agreed at the November 24, 1993 meeting to revise the tariff in accordance with the comments and resubmit a revised tariff; and

WHEREAS, to date the commission has not received said revision, and staff has requested additional time to review the forthcoming revision and submit its recommendation to the commission; and it is hereby

ORDERED, the proposed tariff is suspended for an additional five months in accordance with RSA 378:6 I. (b).

By order of the New Hampshire Public Utilities Commission this fourteenth day of January, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 93-164, Order No. 20,995, 78 NH PUC 572, Oct. 13, 1993.

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NH.PUC*01/14/94*[70372]*79 NH PUC 28*Dunbarton Telephone Company

[Go to End of 70372]

79 NH PUC 28

Re Dunbarton Telephone Company

DR 93-233

Order No. 21,101

New Hampshire Public Utilities Commission

January 14, 1994

ORDER finding cause to examine if a small local exchange telephone carrier's limited technological offerings have rendered its service inadequate to the point of justifying the transfer of certain customers to another local carrier.

1. SERVICE, § 124

[N.H.] What constitutes adequate service — Adequate service distinguished from safe and reliable service — Telephone carriers — Public demand for technological advances — Effect of inability of small carriers to keep pace with change — Possible justification for transfer of customers. p. 28.

BY THE COMMISSION:

ORDER

On December 13, 1993 the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice for a public hearing on January 19, 1994 at 7 p.m. to address issues raised in a Petition for Hearing from certain residents of Goffstown, New Hampshire who are served by Dunbarton Telephone Company (Dunbarton). The rest of Goffstown is served by New England Telephone Company (NET). The Order of Notice requested, among other things, that Dunbarton and NET present information at the hearing regarding the costs and revenue loss or

gain associated with altering the franchise borders to switch the customers signing the petition to NET's franchise.

On December 29, 1993 Dunbarton filed a Motion for Rehearing and for Dismissal of Petition requesting, among other things, that it not be required to undertake a costly study of the effects on its revenues and expenses if those customers were to be served by NET. Dunbarton asserted that the Commission does not have jurisdiction to enter into such an investigation in the first place, as there have been no allegations of inadequate, unsafe or unreliable service.

[1] We reject Dunbarton's arguments for dismissal of the petition, finding that on the basis of the petition, there are sufficient allegations to justify such a hearing. What constitutes "adequate" telephone service in this age of modern telecommunications, may not be what was considered adequate ten to fifteen years ago. While we agree that there have been no allegations of unsafe or unreliable service, we believe the petition raises questions of Dunbarton's adequacy to respond to modern communications needs.

We find merit, however, in Dunbarton's request that it not be required to present a cost study regarding costs and revenue changes at the January 19, 1994 public hearing. Similarly, it is appropriate that NET be relieved of the obligation to present information regarding costs and revenue changes at the January 19, 1994 public hearing.

We still, however, expect at the January 19, 1994 public hearing to receive Dunbarton and NET's preliminary estimates, even if rough, regarding costs and revenue changes.

Finally, we find the requests for intervention filed by Union Telephone Company, Contel of New Hampshire, Inc. and Contel of Maine, Inc. and Merrimack Telephone Company to be reasonable.

Based upon the foregoing, it is hereby

ORDERED, that the Motion for Rehearing and for Dismissal of Petition is denied; and it is

FURTHER ORDERED, that Dunbarton and NET be relieved of an obligation to submit detailed cost analyses regarding changes in costs or revenue at the January 19, 1994 public hearing, though they are still obligated to present preliminary estimates of those changes

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in costs and revenues; and it is

FURTHER ORDERED, that Union Telephone Company, Contel of New Hampshire, Inc. and Contel of Maine, Inc. and Merrimack Telephone Company are granted full intervention status.

By order of the New Hampshire Public Utilities Commission this fourteenth day of January, 1994.

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NH.PUC*01/17/94*[70373]*79 NH PUC 29*Uniform System of Accounts for Water Utilities

[Go to End of 70373]

79 NH PUC 29

Re Uniform System of Accounts for Water Utilities

DRM 93-175
Order No. 21,102

New Hampshire Public Utilities Commission

January 17, 1994

ORDER announcing the commission's intent to adopt a new Uniform System of Accounts for water utilities, to replace outmoded water utility accounting rules last revised more than 50 years ago.

1. ACCOUNTING, § 55

[N.H.] Water utilities — New Uniform System of Accounts — Replacement of outmoded accounting rules — Rules of the National Association of Regulatory Utility Commissioners as a foundation — Reliance on generally accepted accounting principles — Recognition of state/federal accounting dichotomies. p. 30.

BY THE COMMISSION:

REPORT

I. HISTORY

In a Rulemaking Notice Form submitted to the Director of Legislative Services on November 15, 1993, we proposed to readopt and amend rule Puc 607.08 *Uniform Classification of Accounts*, thereby replacing it with a new Uniform System of Accounts (USOA) as prescribed and issued by this Commission.

II. BACKGROUND

The Commission's current USOA-Water rules were prescribed by the State of NH Public Service Commission on June 1, 1942. Part Puc 610 Uniform System of Accounts for Water Utilities would replace Puc 607.08. The basis for Puc 610 was the National Association of Regulatory Utility Commissioners (NARUC) USOA for Class A, B and C Water Utilities-1984. The account structure, numbering system, balance sheet and other facets of the revised USOA maintains the integrity of generally accepted accounting principles while allowing and preserving the Commission's specific accounting and rulemaking policies.

In rewriting the USOA-Water the objectives were to maintain close conformity with existing accounting standards, ease of use for the regulated utilities and the provision of consistent and reliable information to satisfy financial reporting needs while avoiding conflicts in account structure.

On September 28, 1993, Staff mailed a notification to each water utility to obtain comments prior to initiating the rulemaking procedure in accordance with the Administrative Procedures Act. Interested parties were requested to file written comments on or before November 1, 1993.

The utilities were also invited to a November 15, 1993 meeting to discuss the USOA-Water rewrite and to address concerns and comments. Interested parties attending the meeting included Manchester Water Works represented by Arthur Blair and Phillip Crosdale; Pennichuck Water Works represented by Bonnie Hartley and Justin Curtis; and Larry Eckhaus, Esquire representing himself. Staff informed the attendees of the rulemaking procedural schedule and provided an overview of the

Page 29

USOA rewrite and its basis. Bonnie Hartley, Pennichuck Water Works, Comptroller and Justin Curtis, Pennichuck Water Works, Accounting Manager made comments that they had read the complete USOA-Water rewrite and could not identify any areas of concern, rather they commented on the significant improvement from the existing USOA-Water. Favorable comments regarding the chart of accounts extensive rewrite were also given by Arthur Blair, Manchester Water Works, Senior Financial Analyst. Staff informed the companies' representatives that although the USOA-Water rewrite effective date was scheduled for January 1, 1994, companies could complete their accounting systems conversions during 1994, with the understanding that December 31, 1994 year end general ledger balances are to be reflected using the new account numbers.

In a rulemaking notice form submitted to the Director of Legislative Services on November 15, 1993, Staff proposed to amend rules Puc 607.08 *Accounting Records*, thereby replacing the old rules with a new Uniform System of Accounts as prescribed by this Commission. The notice as published in New Hampshire Rulemaking Register, November 24, 1993 indicates that the oral hearing was scheduled for December 21, 1993 at the N.H. Public Utilities Commission office and that there was a December 21, 1993 deadline for submission of written comments.

At the December 21, 1993 hearing, Norman Roberge, C.P.A. representing Lakes Region Water Company was the only interested party to attend. Mr. Roberge expressed some concern that the USOA-Water numbering system, which differs slightly from the traditional account numbers scheme, does not lend itself to generic accounting software package adaptation. Eugene Sullivan, Jr., PUC Finance Director, pointed out that the USOA-Water balance sheet accounts format is standard for regulated utility business due to its capital intensive characteristic. Mr. Sullivan further stated that the USOA provides waiver availability from any provision of the system of accounts for water utilities.

III. COMMISSION ANALYSIS

[1] The new USOA was established to replace the existing accounting system, in effect since 1940, and to reflect updated national standards, i.e., the account structure and format adopted by the National Association of Regulatory Utility Commissioners (NARUC). The revised USOA-Water recognizes the potential for differences between federal and state accounting and rulemaking policies. As indicated above, in revising the USOA-Water rules, the Staff used as a basis currently existing authorized NARUC Uniform System of Accounts. The account structure,

numbering system, balance sheet and other facets of the revised USOA-Water maintain the integrity of GAAP while allowing and preserving the Commission's specific account policies.

The rules described above have been prepared under the authority of RSA 374:8, which states "[T]he Commission may, whenever it deems advisable, establish a system of accounts and records to be used by public utilities for their business within this state, may classify them and prescribe a system of accounts for each class, and may prescribe the manner in which said accounts shall be kept."

IV. *CONCLUSION*

Based on the foregoing analysis we intend to proceed with the adoption of Part Puc 610, Uniform System of Accounts for Water Utilities.

Our Order will issue accordingly.

ORDER

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

ORDERED, that we proceed with the adoption of the proposed rules PART Puc 607.08 *Accounting Records* and PART Puc 610 *Uniform System of Accounts for Water Utilities* as set forth in the Final Proposal and submitted to the joint legislative committee on administrative rules; and it is

FURTHER ORDERED, that each water company under jurisdiction of this commission

Page 30

maintain its accounts and records for calendar year 1994 and thereafter in conformity with USOA Water, once they have been adopted.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of January, 1994.

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NH.PUC*01/18/94*[70374]*79 NH PUC 31*AT&T Communications of New Hampshire, Inc.

[Go to End of 70374]

79 NH PUC 31

Re AT&T Communications of New Hampshire, Inc.

DE 93-267

Order No. 21,103

New Hampshire Public Utilities Commission

January 18, 1994

ORDER approving an interexchange telephone carrier's proposal to introduce a four-tier operator schedule as well as pricing increases for operator-assisted calls, where both types of change

would mirror existing interstate tariff provisions.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Charges for operator-assisted service — Pricing increases — Four-tier operator schedule — Mirroring of interstate practices — Interexchange carrier. p. 31.

BY THE COMMISSION:

ORDER

[1] On December 17, 1993, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce a four tier Operator Station schedule. This schedule includes a new Operator Dialed Calling Card Station when the operator dials the number and customer's credit card number with the associated service and transport charges. The petition also provides for price increases for Operator Dialed Calling Card, Operator Station-Collect, Operator Station-Billed to Third Party, Operator Station-Sent Paid Non Coin, and Operator Station-Sent Paid Coin, Busy Line Verification and Busy Line Interrupt; and

WHEREAS, AT&T filed these changes for effect January 17, 1994; and

WHEREAS, these revisions mirror the current charges for these services in AT&T's interstate tariffs; and

WHEREAS, the new service expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages for AT&T's NHPUC No. 4 - AT&T Long Distance Service are approved:

Section 1 - General Regulations

1st Revised Page 31

Section 2 - 10+288 Calling

2nd Revised Page 3

1st Revised Page 6

2nd Revised Page 7

2nd Revised Page 8

1st Revised Page 13

2nd Revised Page 14

2nd Revised Page 15

2nd Revised Page 16
2nd Revised Page 17
1st Revised Page 19
2nd Revised Page 20;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted,

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such publication to be no later than January 28, 1994 and is to be documented by affidavit filed with this office on or before February 14, 1994; and it is

FURTHER 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 14, 1994; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective February 16, 1994, 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 eighteenth day of January, 1994.

=====

NH.PUC*01/18/94*[70375]*79 NH PUC 32*AT&T Communications of New Hampshire, Inc.

[Go to End of 70375]

79 NH PUC 32

Re AT&T Communications of New Hampshire, Inc.

DE 93-270
Order No. 21,104

New Hampshire Public Utilities Commission
January 18, 1994

ORDER approving an interexchange telephone carrier's proposal for "SELECTCALL" service, under which subscribers may receive certain pre-authorized direct-dialed calls, with automatic reversal of the charges, and without the need for operator assistance.

1. SERVICE, § 468

[N.H.] Telecommunications — Toll calling — New "SELECTCALL" service — Receipt of pre-authorized direct-dialed calls — Automatic reversal of charges — No need for operator assistance. p. 32.

BY THE COMMISSION:

ORDER

[1] On December 23, 1993, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce SELECTCALL Service which allows a subscriber to receive direct dialed calls from subscriber-authorized telephone numbers and have the calls reverse-billed without requiring the assistance to the AT&T operator; and

WHEREAS, AT&T filed these changes for effect January 24, 1994; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages for AT&T's NHPUC No. 4 - AT&T Long Distance Service are approved:

Table of Contents:

Original Page 6.1

Section 2 - 10+288 Calling:

Original Page 25

Original Page 26

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than January 28,

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1994 and is to be documented by affidavit filed with this office on or before February 14, 1994; and it is

FURTHER 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 14, 1994; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective February 16, 1994, 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 eighteenth day of January, 1994.

=====

NH.PUC*01/18/94*[70376]*79 NH PUC 33*Phoenix Network, Inc. of New Hampshire

[Go to End of 70376]

79 NH PUC 33

**Re Phoenix Network, Inc. of
New Hampshire**

DE 94-003

Order No. 21,105

New Hampshire Public Utilities Commission

January 18, 1994

ORDER approving proposed tariff changes for an interexchange telephone carrier, to incorporate a new calling card service, bring customer deposit requirements into compliance with commission rules, and clarify rate discounts available with Code S1 and EX services.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card options — Higher per-minute rate — Elimination of per-call surcharge. p. 33.

2. PAYMENT, § 58

[N.H.] Customer deposits — Interexchange telephone carrier — Compliance with commission rules. p. 33.

3. RATES, § 582

[N.H.] Telephone rate design — Toll service — Discounts for Code S1 and EX services — Clarification. p. 33.

BY THE COMMISSION:

ORDER

On December 27, 1993, the New Hampshire Public Utilities Commission (Commission) received a petition from Phoenix Network, Inc. of New Hampshire (Phoenix), a subsidiary of Phoenix, Inc., also d/b/a Phoenix Network for authority to amend its tariff, adding a calling card service, regarding customer deposits, and making rate and textual changes; and

[1] WHEREAS, the Choice Cardsm service offers customers the option of making calling card calls at a higher per-minute rate, but without incurring the typical, per-call surcharge; and

[2] WHEREAS, customer deposits will be handled as prescribed by the Commission's Administrative Rules; and

[3] WHEREAS, the textual changes clarify a discount offered on the Rate Code S1 and the introductory offer for EX service; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages are approved for Phoenix Inc. of New

Page 33

Hampshire, NH.P.U.C. No. 1:

1st Revised Page No. 1
1st Revised Page No. 3
1st Revised Page No. 7
1st Revised Page No. 13
1st Revised Page No. 14
1st Revised Page No. 16
1st Revised Page No. 17
1st Revised Page No. 18
1st Revised Page No. 19;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Phoenix publish an attested copy of this Order *Nisi* in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than January 28, 1994 and is to be documented by affidavit filed with this office on or before February 14, 1994; and it is

FURTHER 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 14, 1994; and it is

FURTHER ORDERED, that Phoenix file properly annotated tariff pages in compliance with

this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective February 17, 1994, 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 eighteenth day of January, 1994.

=====

NH.PUC*01/18/94*[70377]*79 NH PUC 34*QTI of New Hampshire, Inc.

[Go to End of 70377]

79 NH PUC 34

Re QTI of New Hampshire, Inc.

DE 93-264

Order No. 21,106

New Hampshire Public Utilities Commission

January 18, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate long-distance services — Interim authority — Trial period to assess benefits of competition. p. 34.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate toll services — Interim authority — Trial period to assess benefits of competition. p. 34.

BY THE COMMISSION:

ORDER

On December 10 1993, Quest Telecommunications, Inc., through its subsidiary Quest Telecommunications of New Hampshire, since incorporated domestically as QTI of New Hampshire, Inc., (Quest) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26; and

[1, 2] WHEREAS, interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period

(October 1, 1993 to September 30, 1995) described in Commission Report and Order No.

Page 34

20,916 (August 2, 1993); and

WHEREAS, Quest has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order; and

WHEREAS, the public good is served by permitting interim competition by competent telecommunications companies; and

WHEREAS, the public should be provided an opportunity to respond in support of, or in opposition to this petition; it is hereby

ORDERED, that Quest shall notify all persons interested in responding to this petition that they may submit comments or file a written request for a hearing on this matter before the Commission no later than February 14, 1994; and it is

FURTHER ORDERED, that Quest shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation, publication to be no later than January 28, 1994. Compliance with this notice provision shall be documented by affidavit to be filed with the Commission on or before February 14, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Quest shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that Quest may offer as a public utility, telecommunication services for the service territory of the entire State of New Hampshire; and it is

FURTHER ORDERED, *NISI*, that Quest hereby is granted authority to offer intrastate long distance services in the State of New Hampshire subject to the following conditions:

1. that the services shall be offered only by approved tariffs, as subsequently amended, and shall be offered only on an interim basis until completion of the Trial Period, at which time the authority granted herein may be revoked or continued on the same or different basis;

2. that Quest shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission;

3. that Quest shall notify the Commission of any change in rates of approved services to be charged the public within one day after offering the service at rates other than the rates on file with the Commission;

4. that Quest is exempt from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies;

5. that Quest shall maintain its books and records in accordance with Generally Accepted Accounting Principles;

6. that Quest shall file each calendar year an Annual Report, consisting of: a Balance Sheet and Statement of Operations and an Information Sheet, reflecting to whom the N.H. Utility Assessment should be mailed and a Listing of Corporate Officers and Titles;

7. that Quest shall be subject to and responsible for adhering to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein;

8. that Quest shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders;

9. that Quest shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Quest pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies;

10. that all new service offerings are to be accompanied by a description of the service, rates and effective dates;

11. that during the Trial Period, Quest shall within 60 days following the end of calendar quarter, report on a confidential basis, except where noted, monthly statistics, for each month the service is offered, the following information:

a. For each intrastate toll service offered:

Page 35

(1) number of subscribers in NH who have intrastate usage will be provided annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;

(2) intrastate minutes of use;

(3) intrastate revenue;

(4) type of access arrangement used;

(5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;

(6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC;

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements;

d. The number of interstate and intrastate special access arrangements stated by channel capacity;

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements;

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access;

g. For each interstate service offered which originates in New Hampshire or, for 800

service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential;

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow Quest to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Quest file a compliance tariff before beginning operations in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective February 17, 1994, 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 eighteenth day of January, 1994.

Notice of Conditional Approval of QTI of New Hampshire, Inc. to Do Business as a Telecommunications Utility in State of New Hampshire

On December 10, 1993, Quest Telecommunications, Inc., through its subsidiary Quest Telecommunications of New Hampshire, succeeded by QTI of New Hampshire, Inc. (Quest), filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services. Quest, a New Hampshire corporation, is affiliated with Quest Telecommunications, Inc. a Delaware corporation.

In Order No. 21,106, the Commission granted Quest conditional approval to operate as of February 17, 1994 subject to the right of the public and interested parties to comment on Quest or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on Quest's petition to do business in the State should submit written comments no later than February 14, 1994 to:

Page 36

Wynn E. Arnold
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*01/19/94*[70378]*79 NH PUC 37*New England Telephone Company

[Go to End of 70378]

79 NH PUC 37

Re New England Telephone Company

DR 93-268

Order No. 21,107

New Hampshire Public Utilities Commission

January 19, 1994

ORDER approving a local exchange telephone carrier's elimination of charges for selective blocking service, in keeping with rules promulgated by the Federal Communications Commission prohibiting local carriers from charging for blocking of "900" calling capabilities.

1. RATES, § 553

[N.H.] Telephone rate design — Calls to "900" numbers — Selective blocking service option — Elimination of associated charges — Compliance with federal mandates. p. 37.

BY THE COMMISSION:

ORDER

[1] On December 20, 1993, New England Telephone (NET or the Company) petitioned for Commission approval of revisions to its Selective Blocking tariff for effect January 19, 1994; and

WHEREAS, this proposed filing reduces the rates for NET's Selective Blocking Service to zero; and

WHEREAS, the Federal Communications Commission (FCC) issued an Order in Docket 93-22 stating that local exchange companies may not charge for a blocking option to 900 service; and

WHEREAS, NET reports that it filed its FCC compliance filing December 10, 1993, assigning the cost and recovery to the federal jurisdiction; and

WHEREAS, Staff has reviewed the filing and recommended the proposed revisions be

approved; and

WHEREAS, upon review of the petition and the Staff recommendation, the Commission finds the proposed revisions to be in the public good; it is therefore

ORDERED, that the following tariff pages of New England Telephone Company are approved:

- NHPUC - No. 75
- Part A - Section 6 - Third Revision of Page 10
- First Revision of Page 10.1
- Part A - Section 7 - Ninth Revision of Page 37

and it is

FURTHER ORDERED, that the above tariff pages be effective as filed; and it is

FURTHER ORDERED, that the above addition to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this nineteenth day of January, 1994.

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NH.PUC*01/24/94*[70379]*79 NH PUC 38*MCI Telecommunications Corporation of New Hampshire

[Go to End of 70379]

79 NH PUC 38

Re MCI Telecommunications Corporation of New Hampshire

DE 93-272
Order No. 21,108

New Hampshire Public Utilities Commission

January 24, 1994

ORDER approving an interexchange telephone carrier's proposals for short-term discounted promotional rates for certain intraLATA toll calling plans.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — Short-term discounted promotional rates — Discounts for calls to particular presubscribed numbers — Earning of credits for minimum monthly usage — Fostering of competition. p. 38.

BY THE COMMISSION:

ORDER

[1] On December 23, 1993, MCI Telecommunications Corporation of New Hampshire (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce the MCI Vision and Preferred IntraLATA Promotion and the Best Friends Promotion; and

WHEREAS, MCI filed these tariff pages for effect January 23, 1994; and

WHEREAS, the MCI Vision Regional Promotion proposes to offer customers discounted per minute rates between the effective date of the tariff and March 31, 1994; and

WHEREAS, the MCI Vision and Preferred IntraLATA Promotion offers customers who meet or exceed \$150 in new IntraLATA monthly usage at least once during the first three months of use, a credit in the fourth month's invoice based on the amount of usage and the customer's number of lines; and

WHEREAS, MCI proposes to introduce the Best Friends Promotion which offers customers a 20 percent discount to one phone number selected by the customer whether the phone number is an MCI customer or not. If the Best Friend phone number is an MCI customer, an additional 20 percent discount applies through MCI's Friends and Family plan; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages for MCI's NHPUC No. 1 - are approved:

25th Revised Page 1

14th Revised Page 2

2nd Revised Page 7

4th Revised Page 22

Original Page 22.1

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 of New Hampshire in which operations are proposed to be conducted, such publication to be no later than February 3, 1994 and is to be documented by affidavit filed with this office on or before February 18, 1994; and it is

FURTHER 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 18, 1994; and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance

with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective February 23, 1994, 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 January, 1994.

=====

NH.PUC*01/24/94*[70380]*79 NH PUC 39*AT&T Communications of New Hampshire, Inc.

[Go to End of 70380]

79 NH PUC 39

Re AT&T Communications of New Hampshire, Inc.

DE 93-275

Order No. 21,109

New Hampshire Public Utilities Commission

January 24, 1994

ORDER authorizing an interexchange telephone carrier to increase its rates for its CustomNet service, and to change associated billing increments from six seconds to one second.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — "CustomNet" service — Increase in rates — Change in associated billing increments from six seconds to one second. p. 39.

BY THE COMMISSION:

ORDER

[1] On December 28, 1993, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to change the additional time period increment of six seconds to a one second increment and to raise the rates for its CustomNet Service; and

WHEREAS, AT&T filed these changes for effect January 27, 1994; and

WHEREAS, the proposed changes allow the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages for AT&T's NHPUC No. 1 - AT&T Custom Network Services are approved:

Section 14 - AT&T CustomNet Service

4th Revised Page 5

2nd Revised Page 6

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than February 3, 1994 and is to be documented by affidavit filed with this office on or before February 18, 1994; and it is

FURTHER 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 18, 1994; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective February 24, 1994, 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 January, 1994.

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NH.PUC*01/24/94*[70381]*79 NH PUC 40*New England Telephone Company

[Go to End of 70381]

79 NH PUC 40

Re New England Telephone Company

DR 94-010

Order No. 21,110

New Hampshire Public Utilities Commission

January 24, 1994

ORDER taking note of a local exchange telephone carrier's change in corporate name, from New England Telephone Company to NYNEX.

1. CORPORATIONS, § 1

[N.H.] Corporate name — Change in name — Local exchange telephone carrier — From New England Telephone Company to NYNEX. p. 40.

BY THE COMMISSION:

ORDER

[1] On January 17, 1994, New England Telephone (NET) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to make an administrative change to its tariff for effect February 16, 1994; and

WHEREAS, NET seeks to introduce a sentence in the General Regulations stating that NET will now be doing business including advertising and billing customers as NYNEX; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revision to be in the public good; it is therefore

ORDERED, that the following tariff page of New England Telephone is approved:

NHPUC - No. 75

Part A - Section 1 - Second Revision of Page 2

and it is

FURTHER ORDERED, that the above tariff page shall be effective as filed; and it is

FURTHER ORDERED, that the above addition to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of January, 1994.

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NH.PUC*01/26/94*[70382]*79 NH PUC 40*Springwood Hills Water Company, Inc.

[Go to End of 70382]

79 NH PUC 40

Re Springwood Hills Water Company, Inc.

DE 90-051

Order No. 21,111

New Hampshire Public Utilities Commission

January 26, 1994

ORDER extending the deadline by which a small water utility was to have installed individual water meters in each residential dwelling unit, pending the outcome of a bid by Southern New

Hampshire Water Company, Inc., to acquire the smaller company.

1. SERVICE, § 288

[N.H.] Metering equipment — Duty to install — Deadline for installation — Postponement of deadline — Factors — Bid for takeover by another company — Water utility. p. 41.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On September 21, 1993 the Commission issued Order No. 20,971 in Docket DE 90-051, a proceeding establishing a franchise and permanent rates. The order required that

Page 40

Springwood Hills Water Company, Inc. (Water Company) install meters in all residential dwelling units located in the area served by the Company no later than April 30, 1994.

On October 25, 1993, Southern New Hampshire Water Company, Inc. (Southern) and the Water Company filed with the New Hampshire Public Utilities Commission a joint petition for approval of purchase and sale of the Water Company to Southern. Docket DE 93-203 was opened and a prehearing conference was held on December 15, 1993 to establish a procedural schedule and address requests for intervention.

On November 10, 1993, Springwood Hills Neighborhood Association (Association) filed a motion to intervene in DE 93-203. At the public hearing on December 15, 1993, the Commission granted the Association's request. On January 4, 1994, the Association, by its attorney, requested that the Commission modify Order No. 20,971 issued in DE 90-051 for the purpose of postponing the meter installation pending a final decision in Docket DE 93-203.

On January 10, 1994, through its attorney, the Water Company filed an objection to the motion for modification of Commission Order No. 20,971 relating to the date set for meter installation. On January 13, 1994, through its attorney, Southern filed a similar objection to the Association's motion to modify Order No. 20,971 even though Southern has not filed a motion to intervene in this docket. Southern did send in a letter dated December 28, 1993, in which it stated: "Please accept this letter as Southern's intention to intervene should the Commission hold further hearings concerning the rates and/or revenue requirement of Springwood Hills in Docket DE 90-051." No hearings have been held or scheduled since then. To the extent Southern wishes to intervene in this docket, however, they must submit a formal motion for the Commission to address.

II. COMMISSION ANALYSIS

[1] We have reviewed the motions concerning the installation date of meters as ordered in Order No. 20,971. The order mandating installation of meters by April 30, 1994 was issued on

September 21, 1993. On October 25, 1993, we received the joint petition of the Water Company and Southern regarding the purchase and sale of the assets of the Water Company. The issues in docket DE 93-203, relative to the joint petition to transfer the assets is still under investigation and, in accordance with the procedural schedule approved by the Commission in docket DE 93-203, hearings on the merits of the purchase and sale will be held on March 22, 23, and 24, 1994. It is not unreasonable nor would the public good suffer by postponing the installation of meters pending a final decision in DE 93-203 concerning the transfer of the Water Company assets.

We will, therefore, modify Order No. 20,971 DE 90-051 relative to the April 1, 1994 requirement that meters be installed in all residential units at Springwood Hills Water Company, Inc.

We have considered the issues raised in Southern's objection in arriving at a decision in this report and order. We are not persuaded that its late intervention at this time, on this single issue, would provide us with input which would cause us to find that aggressive insistence upon installation of water meters was in Springwood's customers' interests. The postponement is not irreversible and, in fact, does not permanently alter our earlier decision that meters are in the public interest. Rather, it delays the expenditure of substantial monies for a single specific reason until the more global issues of franchise responsibility and company ownership can be resolved.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that the motion to modify Order No. 20,971 filed by Springwood Hills Neighborhood Association is granted; and it is

FURTHER ORDERED, that the requirement to install meters, mandated in Order No. 20,971 in docket DE 90-051, be postponed pending further Commission order.

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

Page 41

January, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Springwood Hills Water Co., Inc., DE 90-051, Order No. 20,971, 78 NH PUC 530, Sept. 21, 1993.

=====

NH.PUC*01/31/94*[70383]*79 NH PUC 42*New England Telephone and Telegraph Company

[Go to End of 70383]

79 NH PUC 42

Re New England Telephone and Telegraph Company

DR 93-159

Order No. 21,112

New Hampshire Public Utilities Commission

January 31, 1994

ORDER approving a telephone carrier's proposal for its "Customized NETSAVER" plan, under which a high-volume toll customer can qualify for rate discounts through combined usage of outbound toll (message toll), inbound 800, and/or inbound 800 VALUFLEX services. The NETSAVER plan is deemed to be a new service, even though it merely combines existing services, and therefore it is found appropriate to develop a new price floor for the service rather than rely on price floors used for the existing services. The price floor is directed to be based on the least-cost form of access a competitor could supply.

1. SERVICE, § 468

[N.H.] Telephone — Toll calling — "Customized NETSAVER" plan — "New" service even though combining existing calling plan options — Components — Eligibility for overall rate discounts — Combined usage of outbound message toll and 800 services. p. 45.

2. RATES, § 582

[N.H.] Telephone rate design — Competitive toll calling plans — Necessity of price floors — Computation of new price floors for new services. p. 45.

3. RATES, § 582

[N.H.] Telephone rate design — Competitive toll calling plans — "Customized NETSAVER" plan — "New" service even though combining existing calling plan options — Components — Eligibility for overall rate discounts — Combined usage of outbound message toll and 800 services. p. 45.

4. RATES, § 582

[N.H.] Telephone rate design — Competitive toll calling plans — "Customized NETSAVER" plan — "New" service even though combining existing calling plan options — Necessity of price floors — Computation of new price floors for new service — Basis — Weighting of existing price floors as a proxy — Least-cost form of access a competitor could supply. p. 45.

APPEARANCES: Carl Giesy, Esq., for MCI Corporation of New Hampshire; Lori Vendinello, Esq., for AT&T; Mark Perkell, Esq., for Long Distance North of New Hampshire, Inc; Victor DelVecchio, Esq., for New England Telephone Company; James Anderson, Esq., of the Office of the Consumer Advocate for residential ratepayers; Amy Ignatius, Esq., for the Staff of the

New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On September 1, 1993, New England Telephone and Telegraph Company (NET) filed a

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petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce three new optional calling plans targeted toward the high and medium volume toll customer. The proposed calling plans included Customized NETSAVER Plan (Customized NETSAVER), Business Package and Business Package Plus. The Business Package and Business Package Plus plans were approved *nisi* by Order No. 20,979 (September 27, 1993). Customized NETSAVER was not approved.

Customized NETSAVER is an optional calling plan comprised of a single discounted rate per minute for combined customer usage of outbound toll, inbound 800 and/or inbound 800 VALUFLEX. 800 VALUFLEX is an inbound service targeted towards smaller volume 800 customers. It is provided over a regular exchange line that uses originating and terminating switched access. The available rates per minute for Customized NETSAVER vary depending on total monthly minutes of use and whether the customer commits to a two or three year contract. It is designed to appeal to customers with at least 5,000 total minutes of use per month.

A Modified Stipulation and Agreement Between the Parties (Modified Stipulation) was filed in docket DE 90-002, the Generic Telecommunications Competition Docket, on July 29, 1993 and approved by Order No. 20,916 (August 2, 1993). The Modified Stipulation establishes standards governing the price NET may charge when it introduces a new competitive service (the price floor test). These standards are contained in Attachment 4 of the Modified Stipulation.

Order No. 20,979, which approved Business Package and Business Package Plus, also sought input from interested parties as to whether Customized NETSAVER complied with the terms of the Modified Stipulation, Attachment 4.

On October 8, 1993, AT&T, MCI, Sprint and Long Distance North (the IXC's) filed joint comments which asserted that Customized NETSAVER does not meet the Modified Stipulation's price test. Their joint argument states that

New intraLATA toll products may be introduced by NET "so long as the average retail revenue per minute for each segment of service ... remains between the price ceiling and price floor for each segment of service, as described further herein." (Attachment 4 of the Modified Stipulation page i). For NET's proposed filing to be approved by the Commission, each segmented service for each OCP must pass the price floor test."

The IXC's further argue that the price floor test was designed to prevent NET from pricing any service below access and that the concept of comparing the price floor to a specific service and market segment is critical.

NET filed comments which argued that Customized NETSAVER complied with the terms of

the Modified Stipulation Agreement. According to NET, Section B1 of Attachment 4 is what governs. Section B1 states that the general pricing rules used in determining the price floors (as opposed to the specific price floors) of Section A in the Modified Stipulation should apply when calculating the relevant price floor for the new service.

Specifically, Section B2 of Attachment 4 provides that the particular price floor for any such new service shall be calculated according to the principles (as opposed to simply using existing service floors) established in Section A. NET argues that this language means that new price floors should be calculated for new services and that Customized NETSAVER is a new service. In the interest of simplicity, NET chose to use existing price floors from Section A (for existing services) rather than calculate a new price floor as required by Section B for a new service because, NET argues, Customized NETSAVER meets the requirements using price floors from Section A which are more conservative than if a new price floor were calculated under Section B.

The Commission Staff (Staff) also filed comments that argued Customized NETSAVER complies with the terms of the Modified Stipulation. Because Customized NETSAVER is not a single service offering, according to Staff, the price floor for each component of the service, (i.e. MTS, 800 and 800 VALUFLEX) should be

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weighted according to the percentage of minutes expected to be sold for each component and averaged as a proxy in lieu of calculating a new price floor for the new service. Staff asserted that calculating a weighted average price floor using existing price floors was reasonable because it provided a fairly close substitute and would allow the service to be offered without protracted litigation over the calculation of a new price floor.

On October 12, 1993, the Commission issued *Nisi* Order No. 20,989 which approved Customized NETSAVER for effect November 11, 1993. On November 5, 1993, in compliance with the comment period provided for in the order, AT&T, MCI, Sprint and Long Distance North filed a joint Motion to Suspend and Reject NET's tariff filing dated September 1, 1993 and requested a one day hearing to present their position to the Commission. The Commission suspended the Customized NETSAVER tariff and granted the request for a hearing, which was held on December 10, 1993.

Atlantic Connections, Ltd. (ACL) filed comments on October 12, 1993, opposing Customized NETSAVER because, it argued, combining 800 and toll usage to qualify for a discount would take toll customers who also use 800 service away from resellers such as ACL. The Commission accepted ACL's comments as being filed pursuant to Order No. 20,989.

The Commission held a hearing on December 10, 1993 and as a result, issued its decision in Order No. 21,069 on December 20, 1993. This Report contains the analysis that led to the decision in Order No. 21,069.

II. POSITIONS OF THE PARTIES

A. AT&T, MCI and LDN

On December 10, 1993, AT&T, MCI and LDN presented their joint argument (which was

supported by Sprint, though Sprint was unable to attend the hearing). William Salvatore of AT&T testified as to how one should apply the Modified Stipulation's price floor test to this case and outlined the importance of maintaining the integrity of the price floor test.

Salvatore stated that the price floors for NET services were developed 1) to ensure that NET could not engage in anti-competitive pricing and thereby stifle competition in the state and 2) that the price floors prevent NET from pricing services below the price of access which an IXC must purchase from NET in order to provide its own services, plus a negotiated add-on. (Tr. p.15) He argued that if NETSAVER were approved as filed, it could set a precedent which would allow NET to engage its competitors in a price squeeze and drive them out of significant segments of the market.

Salvatore testified that the price floors established in the Modified Stipulation are easy to apply. According to Salvatore, Exhibit 1, entitled "NET Optional Toll Calling Plans Average Revenue Per Minute vs. Price Floor", demonstrates that when the average revenue per minute (ARPM) for each "segment" of Customized NETSAVER is compared to the price floor for the corresponding segment defined in the Modified Stipulation, Customized NETSAVER's toll minutes pass the price test, but 800 and 800 VALUFLEX prices fail the test. Salvatore asserted that this was the appropriate and easiest way to apply the test because "NETSAVER, as well as any existing service, can be broken down or segmented into the market segments provided for in the Modified Stipulation and can be compared to its relevant price floor to determine if NET is violating the pricing rules ..." (Tr. pp.18-19). Subsequent to the hearing, the IXCs provided a revised version of Exhibit 1, identified as Exhibit 8, which showed that when the shortfall revenue is distributed between the three services in Customized NETSAVER, the ARPM for 800 minutes exceeds the price floor and passes the test, but the price for 800 VALUFLEX minutes still fails.

Salvatore testified that the second chart in Exhibit 1 demonstrates that weighting the price floors for each segment of a service could produce results which indicate that the service passes the price floor test, even though the ARPM of individual segments in a particular service are below the specific segment price floors identified in the Modified Stipulation.

Joseph Dunbar of MCI testified that the IXCs believe a weighted price floor test is

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inadequate to prevent anti-competitive pricing by NET. However, he presented the IXCs' analysis (summarized on Exhibit 3) which demonstrates that even using a weighted average price floor, Customized NETSAVER fails to pass the test. Based on proprietary information contained in Exhibit 9, Mr. Dunbar calculated a weighted price floor using the VALUFLEX price floor, 800-A price floor and a combination of MTS-B and MTS-C price floors to determine the weighted price floor for customers who use between 5,000 and 10,000 minutes of use per month and commit to three years. For customers who use between 10,000 and 15,000 minutes of use per month and commit to three years, Dunbar calculated a weighted price floor using the VALUFLEX, 800-A and MTS-C price floors. Finally, for customers who use greater than 15,000 minutes per month and commit to a three year contract, Dunbar used the VALUFLEX price floor, a combination of 800-A and 800-B price floors and a combination of MTS-C and

MTS-D price floors to calculate a weighted price floor. Using this methodology, Dunbar testified that Exhibit 3 shows only the price for customers who commit to 17,100 minutes of use per month passes the weighted price floor test.

B. New England Telephone and Telegraph Company

Peter Shepherd testified on behalf of NET. He argued that Customized NETSAVER is a new service and that in accordance with Section B2 of the Modified Stipulation, the price floor should be based on the relevant form of access. According to NET, the relevant form of access should be the lowest form of access that a competing carrier could use to provide a service targeted to the same volume of usage as the new service or calling plan. (Tr. p.137) He argued that Section B of Attachment 4 means that segmentation, to the extent it is necessary, would be based upon volume of usage, as opposed to requiring each component of a calling plan to meet a separate price floor based upon existing price floors.

Shepherd asserted that a new price floor should be calculated for a new calling plan based upon its relevant form of access and using the methodology in Schedule B of Attachment 4. Shepherd explained that at the time NET initially filed Customized NETSAVER and its supporting documentation, he did not calculate a new price floor because he believed it would create too much controversy. Instead, he used a proxy price floor based on the price floors which roughly correspond to the total combined inward and outward usage to which Customized NETSAVER was targeted. Shepherd stated that he believed this proxy test was more conservative than if he had calculated a new price floor specifically for Customized NETSAVER.

Shepherd argued that this service was designed to compete in the high volume end of the market where competition is intense and competitors combine services when applying discounts. In addition, he pointed out that NET's competitors offer discounts based on combined interstate and intrastate usage.

Shepherd refuted the IXCs' assumption that the appropriate price floor should be that for 800-A when calculating the average weighted price floor as shown in Exhibit 3. Shepherd stated that he knows of customers who have more than 4,800 minutes of 800 use in both the 5,000 to 10,000 and the 10,000 to 15,000 total minutes categories and therefore, the 800-B price floor should be used to calculate a weighted price floor.

III. COMMISSION ANALYSIS

We have carefully analyzed the evidence entered in this proceeding along with the various comments filed pursuant to our *Nisi* orders. As always, our objective is to ensure rates that are just and reasonable and in the public good. This requires us to interpret the terms in the Modified Stipulation and, in this case, strike a balance between the interests of competitors and the interests of New Hampshire and its ratepayers.

[1-4] We agree with the parties' interpretation that Section B of Attachment 4 to the Modified Stipulation applies. We find that Customized NETSAVER is a new service, albeit one that combines existing services. Paragraph

B1 refers to the appropriate price floor test for new services: "The general pricing rules established for NET's existing services will apply." The general pricing rules for NET's existing services are contained in Section A. We believe that if this language intended the price floors in Section A to apply to new services, the language would have clearly stated that the rules and price floors in Section A apply to new services as well. Reference to the "general pricing rules" indicates that the specific price floors in Section A do not apply to new services but rather, the rules for calculating the price floors in Section A should be used to calculate price floors for new services and compared to the average revenue per minute for the specific segment. Paragraph B2 reinforces this interpretation as it states, "[t]he price floor for any such service will be set according to the principles established in Section A. The price floor will equal the cost or costs of the relevant form or forms of access that other Toll Providers purchase in order to provide a competing service, plus the appropriate add-on corresponding to the relevant form of access." The second to last sentence in paragraph B2 states, "...it may be appropriate to segment such service in order to establish the relevant form of access used by the competitor in setting the price floor." In other words, if the service does not fit into one of the existing market segments, then a new segment should be established and a price floor for the segment calculated.

Customized NETSAVER is a product that combines usage from several segments. At minimum, Customized NETSAVER includes minutes from the VALUFLEX, MTS-C, MTS-D, 800-A and/or 800-B segments. Each of these segments has its own individual price floor established in Section A. We find that Customized NETSAVER is an example of a new service for which it would have been appropriate to segment and create a new price floor.

We do not find any language in the Modified Stipulation that suggests the Signatories to the Modified Stipulation contemplated weighting existing price floors. However, the price floor is to be compared to the average revenue per minute for a particular segment, which clearly suggests averaging. In addition, Section A, paragraph 4 suggests that weighting be applied when determining the relevant cost of access for a particular segment. These two provisions imply that the Signatories were aware that specific services within market segments could be priced below the cost of access as long as the average revenue per minute for the entire segment was above the price floor for that segment.

There has been no price floor calculated for this segment because Customized NETSAVER includes components from various segments and, therefore, no one single price floor applies. Because we view this as a new service, we believe the IXCs' argument that certain components of Customized NETSAVER fall below segment price floors contained in Section A does not apply. Because no specific price floor has been calculated for Customized NETSAVER, the price floor test cannot be conducted by simply comparing the average revenue per minute from the Customized NETSAVER segment to the price floor for that segment standing alone.

Staff argued that using a weighted average price floor as a proxy to compare against the average revenue per minute is reasonable, as a price floor has not been calculated for Customized NETSAVER. Using a weighted price floor methodology, Staff concluded that the average revenue per minute from Customized NETSAVER exceeds the weighted price floor. Although the IXCs did not advocate this approach, they proffered their own calculation of a weighted price floor test which concluded that the average revenue per minute was less than the weighted price floor in most cases.

The results differ because of the different price floors used in calculating the weighted average price floor. For example, the IXCs used the 800-A price floor exclusively in calculating a weighted price floor for minutes of use in the 7,500 minutes of use per month category.

The IXCs' reasoning was based on proprietary Exhibit 9 which stratified minutes of use segregated by toll, 800 and VALUFLEX and provided the total number of customers for each stratification. Performing a mathematical division between the total number of 800 minutes

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and the number of customers in each strata indicated that on average, no customer had 4,800 minutes of 800 usage. As a result, the IXCs used the price floor for 800-A in their calculation. We find it more appropriate to use the price floor for 800-B, which is the least cost form of access a competitor could use to supply the service with a comparable number of minutes, based on NET's testimony that some individual customer 800 usage exceeds 4,800 minutes of use per month in each of the Customized NETSAVER usage categories.

We find that in this instance it is in the public interest to use a weighted price floor calculation as a proxy for determining a specific price floor because we do not believe the resultant rates are anti-competitive and do not wish to delay introduction of this service any further. In our Order approving the Modified Stipulation we stated, "[t]he Modified Stipulation and Agreement is, therefore, approved and shall govern New Hampshire's transition from a monopoly to a competitive intrastate toll market. However, we retain jurisdiction over this matter to ensure the emergence of a competitive intrastate toll market and the public good." Order No. 20,916 (August 2, 1993).

With that in mind, we find the appropriate price floors to use in this calculation are VALUFLEX and 800-B for each tier of monthly usage (*i.e.* 7,500, 11,100 and 17,100 minutes per month), MTS-C for the 7,500 and 11,100 minutes of use tiers and MTS-D for the 17,100 minutes of use tier. We believe these floors are appropriate because they are based on the lowest cost form of access competitors could pay to serve customers with similar usage.

We are not convinced by the IXCs' argument that NET's offering of Customized NETSAVER at these rates will inhibit competition. On the contrary, we find that this product is a competitive offering that may encourage competitors to react by lowering prices. The IXCs have the opportunity to average revenue between services such as toll, 800 and VALUFLEX for which they pay different access rates and are not restricted on price. It is the competitor's responsibility to price services in order to achieve an overall profit and we believe NET's Customized NETSAVER is an offering in response to these competitive circumstances.

In the future, NET will be required to follow the terms of the Modified Stipulation more closely. If NET decides to change any of the Customized NETSAVER prices it will be required to calculate a segment price floor for Customized NETSAVER. Likewise, if NET files any other new service for which the existing price floors in Section A do not apply, including an offering which combines existing services, it shall create a new segment and calculate an appropriate price floor.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report, which is made a part hereof, it is hereby ORDERED, that the rates for the Customized NETSAVER Plan are approved as filed; and it is

FURTHER ORDERED, that New England Telephone calculate new segment price floors for any new services including those which combine existing services, for which it files in the future; and it is

FURTHER ORDERED, that New England Telephone calculate a new segment price floor for the Customized NETSAVER Plan before it files to change the rates contained in the Customized NETSAVER Plan tariff.

By order of the New Hampshire Public Utilities Commission this thirty-first day of January, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re New England Telephone, DR 93-159, Order No. 20,979, 78 NH PUC 540, Sept. 27, 1993. [N.H.] Re New England Telephone, DR 93-159, Order No. 20,989, 78 NH PUC 568, Oct. 12, 1993. [N.H.] Re New England Telephone, DR 93-159, Order No. 21,069, 78 NH PUC 731, Dec. 20, 1993.

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NH.PUC*01/31/94*[70385]*79 NH PUC 48*Energy Policy Act of 1992

[Go to End of 70385]

79 NH PUC 48

Re Energy Policy Act of 1992

DE 93-071

Order No. 21,114

New Hampshire Public Utilities Commission

January 31, 1994

ORDER directing Energy Tactics, American Hydro, Inc.-Peterborough, and the "Bio-Mass" qualifying facilities to comply with data requests under the Energy Policy Act of 1992 as to ownership, project financing, operations, fuel supply, and budgets, now that their respective quests for injunctive relief had been denied.

1. COGENERATION, § 5

[N.H.] Qualifying facility status — Energy Policy Act of 1992 — Necessity of answering data requests — Issues of project ownership, financing, and operation — Denial of injunctive relief as a factor. p. 48.

BY THE COMMISSION:

ORDER

[1] On May 28, 1993, the Commission Staff issued Data Requests to all Qualifying Facilities (QFs) selling energy and/or capacity to New Hampshire electric utilities. The Staff sought information on ownership, project financing, project operations, fuel supply and an analysis of project expenses and revenues over time. Staff Data Requests Set No. 1, *Energy Policy Act*, DE 93-071, (May 28, 1993). The Commission required the facilities to provide the information by June 25, 1993. *Energy Policy Act*, DE 93-071, Order No. 20,880 (June 22, 1993).

On June 15, 1993, Bristol Energy Corporation, Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power Inc., Pinetree Power-Tamworth, Inc., TIMCO, Inc. and Whitefield Power and Light Company, (referred to collectively as "Bio-Mass") filed with the United States District Court for the District of New Hampshire a complaint for declaratory and injunctive relief. *Bristol Energy Corp. et al. v. New Hampshire Public Utilities Commission*, Civil No. 93-322-SD. Wheelabrator and certain other qualifying facilities ("QFs") intervened in the District Court action. On July 20, 1993, the District Court dismissed the Bio-Mass petition for lack of subject matter jurisdiction. *Bristol Energy Corp. et al. v. New Hampshire Public Utilities Commission*, 1993 U.S. Dist. LEXIS 10012 at *4-*5 (D.N.H. July 20, 1993), *reconsideration denied*, (July 29, 1993).

On August 2, 1993, Bio-Mass filed for Injunctive Relief Pending Appeal in the United States Court of Appeals for the First Circuit, Docket No. 93 1824. Certain other QFs filed similar requests for injunctive relief. On August 19, 1993 the United States Court of Appeals issued an order enjoining the Public Utilities Commission from requiring the petitioning QFs to respond to the remaining unanswered May 28, 1993 data requests pending the resolution of the appeals. By Order No. 20,947 on August 26, 1993, the Commission suspended indefinitely the procedural schedule in the above-captioned case until further notice; and

WHEREAS, in August and September, 1993 the Commission Staff reached settlements with all QFs with the exception of Bio-Mass, American Hydro, Inc.-Peterborough and Energy Tactics for the provision of information adequate to perform the analysis required of the Commission under the Energy Policy Act; and

WHEREAS, on January 18, 1994 the United States Court of Appeals for the First Circuit affirmed the dismissal of the District Court, finding that the plaintiffs' allegations provide a basis for federal question jurisdiction, but that their preemption claim lacks merit. The Court further held that plaintiffs are not exempt from the Commission's requests for data under the Energy Policy Act. *Bristol Energy Corporation, d/b/a/ Alexandria Power Associates, Bio-Energy Corporation, Bridgewater Power*

Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Timco, Inc, and Whitefield Power and Light Company v. State of New Hampshire Public Utilities Commission, — F3d. —, 1994 WL7122 (1st Cir. (N.H.)); it is therefore

ORDERED, that Bio-Mass, American Hydro, Inc.-Peterborough and Energy Tactics shall supply to the Commission by February 14, 1994 the information requested in the May 28, 1993 Data Requests; and it is

FURTHER ORDERED, that any of the above-cited QFs which do not supply responses to the Data Requests by February 14, 1994 shall be subject to additional action taken by the Commission.

By order of the New Hampshire Public Utilities Commission this thirty-first day of January, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Investigation into 1992 Energy Policy Act Requirements, DE 93-071, Order No. 20,880, 78 NH PUC 314, June 22, 1993. [N.H.] Re Investigation into 1992 Energy Policy Act Requirements, DE 93-071, Order No. 20,947, 78 NH PUC 476, Aug. 26, 1993.

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NH.PUC*01/31/94*[70386]*79 NH PUC 49*Northern Utilities, Inc.

[Go to End of 70386]

79 NH PUC 49

Re Northern Utilities, Inc.

DE 91-149

Order No. 21,115

New Hampshire Public Utilities Commission

January 31, 1994

ORDER suspending a natural gas local distribution company's proposed tariffs for transportation service, to allow for further review by commission staff.

1. RATES, § 384

[N.H.] Gas rate design — Natural gas transportation service — Suspension of proposed tariffs — Need for further staff review. p. 49.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Factors — Need for further staff review — Natural gas transportation tariffs. p. 49.

BY THE COMMISSION:

ORDER

[1, 2] In accordance with Order No. 21,018, on January 3, 1994, Northern Utilities, Inc. (Northern or the Company) filed with the New Hampshire Public Utilities Commission (Commission) several compliance tariff pages regarding the provision of Natural Gas Transportation Service, with a proposed effective date of February 3, 1994; and

WHEREAS, the implementation of a plan to provide Natural Gas Transportation Service is a complex process; and

WHEREAS, Staff, the Company, and the other parties in this case met on January 20, 1994 to review and clarify key segments of the tariff filing; and

WHEREAS, Staff, the Company, and the other parties in this case will meet in a second technical session on February 7, 1994 to evaluate the revisions to the filing; and

WHEREAS, Staff requires additional time to review the tariff filing to ensure that it complies with the Commission Orders; it is hereby

ORDERED, that the aforementioned compliance tariff filing made by Northern be and hereby is suspended; and it is

FURTHER ORDERED, that the Company will file revisions to its compliance filing with the Commission no later than February 3, 1994, with an effective date of March 1, 1994.

By order of the New Hampshire Public Utilities Commission this thirty-first day of January, 1994.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 21,018, 78 NH PUC 602, Nov. 1, 1993.

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NH.PUC*01/31/94*[70387]*79 NH PUC 50*EnergyNorth Natural Gas, Inc.

[Go to End of 70387]

79 NH PUC 50

Re EnergyNorth Natural Gas, Inc.

DE 91-149

Order No. 21,116

New Hampshire Public Utilities Commission

January 31, 1994

ORDER suspending a natural gas local distribution company's proposed tariffs for transportation service, to allow for further review by commission staff.

1. RATES, § 384

[N.H.] Gas rate design — Natural gas transportation service — Suspension of proposed tariffs — Need for further staff review. p. 50.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Factors — Need for further staff review — Natural gas transportation tariffs. p. 50.

BY THE COMMISSION:

ORDER

[1, 2] In accordance with Order No. 21,018, on December 30, 1993, EnergyNorth Natural Gas, Inc. (EnergyNorth or the Company) filed with the New Hampshire Public Utilities Commission (Commission) several compliance tariff pages regarding the provision of Natural Gas Transportation Service, with a proposed effective date of January 29, 1994; and

WHEREAS, the implementation of a plan to provide Natural Gas Transportation Service is a complex process; and

WHEREAS, Staff, the Company, and the other parties in this case met on January 21, 1994 to review and clarify key segments of the tariff filing; and

WHEREAS, Staff, the Company, and the other parties in this case will meet in a second technical session on February 8, 1994 to evaluate the revisions to the filing; and

WHEREAS, Staff requires additional time to review the tariff filing to ensure that it complies with the Commission Orders; it is hereby

ORDERED, that the aforementioned compliance tariff filing made by EnergyNorth be and hereby is suspended; and it is

FURTHER ORDERED, that the Company will file revisions to its compliance filing with the Commission no later than February 4, 1994, with an effective date of March 1, 1994.

By order of the New Hampshire Public Utilities Commission this thirty-first day of January,

1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 21,018, 78 NH PUC 602, Nov. 1, 1993.

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NH.PUC*02/02/94*[70388]*79 NH PUC 51*AT&T Communications of New Hampshire, Inc.

[Go to End of 70388]

79 NH PUC 51

Re AT&T Communications of New Hampshire, Inc.

DE 94-006
Order No. 21,117

New Hampshire Public Utilities Commission

February 2, 1994

ORDER authorizing an interexchange telephone carrier to extend by six months to June 30, 1994, its operator-assisted collect calling promotion, and to introduce a new calling card promotion as well, with each promotion designed to provide customers with a 20% discount.

1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Operator-assisted collect calling — Calling card options — Promotional rate discounts. p. 51.

BY THE COMMISSION:

ORDER

[1] On January 7, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to extend its Operator Service Collect Calling Promotion and introduce a new promotion for Calling Card and Operator Calls; and

WHEREAS, the extension of the Operator Service Collect Calling Promotion is proposed to end on June 30, 1994 instead of December 31, 1993; and

WHEREAS, Operator Service Collect Calling is a promotional offering for collect calls placed by customers utilizing an AT&T provided access number; and

WHEREAS, the Calling Card and Operator Services Promotion is proposed to be effective from the effective date of the tariff page through March 31, 1994; and

WHEREAS, the Calling Card and Operator Services Promotion offers customers a 20 percent discount off the applicable rate for calling card calls and operator services calls placed using 1-800-CALL-ATT; and

WHEREAS, the proposed tariff expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than February 28, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than February 11, 1994 and is to be documented by affidavit filed with this office on or before February 28, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 4 - Section 1, AT&T Long Distance Service - are approved:

3rd Revised Page 28.1

1st Revised Page 28.2;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order

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Nisi will be effective March 2, 1994, 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 second day of February, 1994.

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NH.PUC*02/03/94*[70389]*79 NH PUC 52*Southern New Hampshire Water Company, Inc.

[Go to End of 70389]

79 NH PUC 52

Re Southern New Hampshire Water Company, Inc.

DR 89-224

Order No. 21,118

New Hampshire Public Utilities Commission

February 3, 1994

ORDER authorizing a water utility to continue collecting a rate case expense surcharge from only those customers in divisions from which target revenues had not yet been recouped. The utility is directed to refund or credit customers in those divisions where the target recoupment amount had already been collected but the utility had continued the surcharge anyway, since its overall target recoupment had not yet been accomplished.

1. EXPENSES, § 89

[N.H.] Rate case expense — Surcharge mechanism — Division-specific recoupment levels — Water utility. p. 53.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 34

[N.H.] Rate case expense surcharge mechanism — Division-specific recoupment levels — Water utility. p. 53.

3. RATES, § 260

[N.H.] Surcharges — To recover rate case expenses — Division-specific recoupment levels — Water utility. p. 53.

4. REPARATION, § 21

[N.H.] Grounds for allowing — Overcollections — Through rate case expense surcharge mechanism — Division-specific recoupment levels — Refunds/credits to those divisions exceeding recoupment targets — Continuation of surcharge in those divisions not yet attaining target levels — Water utility. p. 53.

BY THE COMMISSION:

REPORT

I. Background

On August 23, 1993, Southern New Hampshire Water Company, Inc. ("Southern" or the "Company") filed revised tariff pages associated with recoupment of rate case expense and the difference between temporary and permanent rates authorized in Southern's last rate proceeding in this docket. On September 22, 1993, the New Hampshire Public Utilities Commission ("Commission") suspended 4th Revised Page 70 and 4th Revised Page 71 pending further investigation.

The purpose of the petition was to address the recovery of additional rate case expenses

associated with the appeal of the Office of the Consumer Advocate and the continued application of approved surcharge amounts collecting the difference between temporary and permanent rates authorized in this docket.

The Commission reviewed the proposal and issued Report and Order No. 21,075 on December 28, 1993 which authorized the recovery of the additional rate case expenses and addressed the request by the Company to continue the application of a surcharge to all systems until the end of February 1994. As noted in the Commission's report accompanying Order No. 21,075 the Commission stated the

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continuation of the surcharge to those systems beyond the time necessary to recover the amounts allocated to each system was inconsistent with the tariff governing the recoupment allowance. In addition, in Order 21,075, the Commission denied the Company authority to extend surcharges to all service areas until the end of February 1994. The Commission did, however, provide Southern the opportunity to submit additional information regarding any uncollected recoupment amounts as well as rationale as to why the Company did not discontinue the surcharges after specific systems had contributed their respective recoupment amounts.

In accordance with Order No. 21,075, the Company submitted a letter on January 13, 1994 which stated that the rationale for the continued application of the surcharge was to be found in its submissions to the Commission on August 23, 1993 and October 24, 1993 as well as information contained in a February 7, 1992 letter to the Commission from which the Company quoted the following paragraph and added emphasis.

The Surcharge Percentage assumes a two year recovery. In any event, the surcharge will be collected only until the total amount of the Adjusted Surcharge Revenue is received *whether that period is more or less than two years.*

The Company reiterated the eight (8) reasons found in its October 24, 1993 letter that *all* surcharges remain in effect to *all* systems until the amounts the Company was to recover, adjusted for the additional rate case expenses, was collected, notwithstanding that there might be some over or undercollection in individual systems.

II. Commission Analysis

[1-4] The Commission has reviewed the information contained in Southern's letter dated January 13, 1994. We find no compelling evidence or rationale which would reverse our initial decision in Report and Order No. 21,075 which denied the Company's request to continue the surcharges to all customers in all systems until approximately February 28, 1994.

The Commission has labored in reaching a final decision relative to the Company's request in this matter. The initial allocation to the various systems was based upon a reasonable approach in assuring that each system contributes a fair and equitable portion of the recoverable amount. Since the initial surcharge percentages were calculated, the Commission is aware that circumstances for some systems have changed and, as a result, the initial targeted recoupment of approximately 24 months will not be realized for all systems. In an effort to maintain stable rates the Company, anticipating a prolonged recovery period for some systems as well as an

abbreviated recovery period for other systems, proposed to allow all surcharges to remain in effect until the end of February 1994. This would have the result of assuring the Company those revenues which we approved, as well as allowing discontinuance of all surcharges to all systems at the same time.

The Commission appreciates the Company's attempt to maintain stability of rates in order to recover their approved revenues. However, we find that the unanticipated factors which have transpired since the establishment of the surcharges do not justify the inequities that would result from the company's proposal. The circumstances initially used to determine the recovery periods in this case have in fact varied since the surcharges were first placed in effect. As a result, some recovery periods will be greater and others will be less than the targeted 24 months. To approve the Company's request would result in undue discrimination rather than fairness and equity by requiring those customers who have already supported their share of system expenses to continue paying the share of those who haven't.

We are concerned that the Company delayed notification to the Commission until August 23, 1993, when it had reached the point that it should have discontinued billing the surcharge to some customers. The company has a responsibility to track surcharge collections and to recommend corrective actions well in advance of any such overcollection and provide appropriate alternatives for commission

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consideration.

III. Conclusion

The Commission finds that the Company shall refund and/or credit any and all customers in systems from which the recoupment amounts have been recovered in excess of what was originally approved in the Company's tariff. The Company will be allowed to continue to apply the surcharges to bills issued to customers in systems from which the recoupment amounts have not been recovered to date and to continue to surcharge those customers until such time as the allocated amount of recoupment is completed. The company is encouraged, however, to reassess its surcharge collection requirements and to cease surcharge billings as soon as possible in order to minimize the burden on its affected customers.

In arriving at this decision we were persuaded in part by the language in the original tariff which clearly stated that the surcharge would continue "until the total surcharge or refund for each Service Area equals the Adjusted Surcharge Revenue". To now suggest that the customers of systems which have reached or exceeded the adjusted surcharge revenues for each respective system as contained in that original tariff should contribute, at least in some cases, substantially more than the amount contained in the original tariff would be contrary to the provisions of that tariff and would be, in our opinion, unfair to those customers.

The Company shall be required to file a monthly accounting of the status of the recoupment or refund by system.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition of Southern New Hampshire Water Company, Inc. to extend the application of the surcharge to all service areas until February 24, 1994 is denied; and it is

FURTHER ORDERED, that the Southern New Hampshire Water Company, Inc. shall make refunds and/or credits to those customers in systems that the recoupment has been overcollected; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. continue the application of the tariff until revenues are recovered from those customers in systems that the recoupment has been undercollected; and it is

FURTHER ORDERED, that the Southern New Hampshire Water Company, Inc. file monthly reports with the Commission on the status of the over and under collections in accordance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this third day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., DR 89-224, Order No. 21,075, 78 NH PUC 738, Dec. 28, 1993.

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NH.PUC*02/07/94*[70390]*79 NH PUC 54*New England Telephone Company

[Go to End of 70390]

79 NH PUC 54

Re New England Telephone Company

DR 93-140

Order No. 21,119

New Hampshire Public Utilities Commission

February 7, 1994

ORDER authorizing a local exchange telephone carrier to introduce network reconfiguration service, whereby medium- and large-size business subscribers may use their own terminal equipment or a company attendant to reconfigure digital private line networks.

1. SERVICE, § 463

[N.H.] Telephone — Private line service

— Introduction of network reconfiguration service — Business customers. p. 55.

BY THE COMMISSION:

ORDER

[1] On July 22, 1993, New England Telephone Company (NET or the Company) filed a petition with the Commission seeking to introduce Network Reconfiguration Service (NRS); and

WHEREAS, the proposed tariff pages were suspended by Order No. 20,932 on August 16, 1993 so that Staff could review corrections to NET's cost support; and

WHEREAS, this service provides medium and large size businesses with the ability to reconfigure their digital private line networks by using customer-owned and maintained terminal equipment or by instructing a Company attendant to initiate the change; and

WHEREAS, NET's analysis demonstrates that NRS service will produce a positive contribution within two years of its introduction; and

WHEREAS, Staff has reviewed the filing, including cost support and data responses; and

WHEREAS, upon review of the petition and the Staff recommendation, the Commission finds the proposed filing to be in the public good; it is therefore

ORDERED, that the following tariff pages of New England Telephone are approved:

Part C -

Section 11, Table of Contents Page 1

Section 11, Original Pages 1 through 6.

By order of the New Hampshire Public Utilities Commission this seventh day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 93-140, Order No. 20,932, 78 NH PUC 442, Aug. 16, 1993.

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NH.PUC*02/07/94*[70393]*79 NH PUC 55*Public Service Company of New Hampshire

[Go to End of 70393]

Re Public Service Company of New Hampshire

DF 93-217

Order No. 21,122

New Hampshire Public Utilities Commission

February 7, 1994

ORDER approving a plan by an electric utility to invest savings in interest payments in conservation and economic development programs, which interest savings were realized from the conversion of pollution control revenue bonds (PCRBs) with taxable interest to PCRBs with tax-exempt interest. State law requires that at least half of any such interest savings be invested in conservation, load management, energy-efficiency, or economic development activities.

1. CONSERVATION, § 1

[N.H.] Conservation, load management, and economic development programs — Funding — Investments from interest savings — Interest savings stemming from bond conversions — Mandatory investment of at least half of savings in conservation, load management, and/or economic development programs. p. 56.

2. SECURITY ISSUES, § 106

[N.H.] Bonds — Interest rates — Pollution control revenue bonds — Effect of conversion from taxable to tax-exempt status — Interest savings — Necessity of investing at least half of

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savings in conservation, load management, and/or economic development programs. p. 56.

BY THE COMMISSION:

ORDER

[1, 2] On October 29, 1993, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) an Application for Approval of Investment Plan for Annual Interest Savings from Pollution Control Revenue Bond (PCRB) Conversion (PCRB Conversion Savings Plan or Plan) pursuant to Chapter 263 of the New Hampshire Session Laws of 1993; and

WHEREAS, the term of approval sought extends through the calendar years 1994, 1995, 1996 and the first five months of 1997, representing the remainder of the fixed rate period under the Rate Agreement consistent with the intent of Chapter 263; and

WHEREAS, Chapter 263.2,I requires that at least half of the interest savings that resulted from converting existing PCRBs with taxable interest rates to PCRBs with tax-exempt interest must be invested in conservation and load management, energy efficiency projects, and/or

economic development activities coordinated with the New Hampshire Department of Resources and Economic Development; and

WHEREAS, consistent with the above-mentioned statute PSNH's Plan proposes investment of one quarter of the savings in conservation and one quarter of the savings in economic development programs; and

WHEREAS, consistent with the above-mentioned statute PSNH's Plan is not expected to cause any rate increases due to activation of the floor of the return on equity collar under the Rate Agreement; and

WHEREAS, the Commission Staff reviewed the Plan, formulated data requests and reviewed PSNH's responses, and recommended that the Commission approve the plan as submitted; and

WHEREAS, the Plan will benefit ratepayers and stimulate a more efficient economic development of New Hampshire without any rate increases to PSNH customers; now therefore, it is hereby

ORDERED, that the PCRB Conversion Savings Plan filed by PSNH for investment of at least half of the annual interest savings from the conversion of taxable PCRBs to tax-exempt PCRBs is approved; and

FURTHER ORDERED, that PSNH shall submit a report to the Commission on or before June 1 of 1994, 1995, 1996, and 1997 detailing the investments and results of the investments.

By order of the New Hampshire Public Utilities Commission this seventh day of February, 1994.

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NH.PUC*02/08/94*[70394]*79 NH PUC 56*New England Telephone Company

[Go to End of 70394]

79 NH PUC 56

Re New England Telephone Company

DR 93-208
Order No. 21,123

New Hampshire Public Utilities Commission

February 8, 1994

ORDER approving a local exchange telephone carrier's proposal for "SWITCHWAY" service, an information transport service that provides digital end-to-end switched access at 56 kilobits per second. The service would facilitate video teleconferencing, bulk data transfers, image viewing, and high-speed facsimile (FAX) transmissions, among other services.

1. SERVICE, § 467

[N.H.] Telephone — Switched access — "SWITCHWAY" service — High-speed digital information transport service — Facilitation of teleconferencing, and bulk data and FAX transmissions. p. 57.

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BY THE COMMISSION:

ORDER

[1] On October 29, 1993, New England Telephone (NET or the Company) petitioned for Commission approval of SWITCHWAY Service, a digital end to end public switched 56 kilobit per second service that provides full duplex, synchronous information transport via a specially equipped measured access line; and

WHEREAS, applications for this service include high speed facsimile transmission, video teleconferencing, desktop conferencing, bulk data transfer, and image viewing and transfer; and

WHEREAS, Staff reviewed the revenue projections and cost support filed with the petition and found numerous arithmetic errors; and

WHEREAS, the Company submitted corrected supporting material on December 17, 1993, December 27, 1993 and December 29, 1993; and

WHEREAS, the Company met with the Office of Consumer Advocate and the Staff on January 7, 1994 to address remaining questions regarding this filing; and

WHEREAS, an analysis using corrected cost support and revenue projections reflects a positive contribution in the first year after introduction of the service; and

WHEREAS, Staff has reviewed the filing, including corrected cost support; and

WHEREAS, upon review of the petition and the Staff recommendation, the Commission finds the proposed tariff to be in the public good; it is therefore

ORDERED, that the following tariff pages of New England Telephone Company be approved:

NHPUC - No. 75 - Part C - Section 3
Original Table of Contents Page 1
Original Pages 1 through 6.

By order of the New Hampshire Public Utilities Commission this eighth day of February, 1994.

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NH.PUC*02/08/94*[70395]*79 NH PUC 57*AT&T Communications of New Hampshire, Inc.

[Go to End of 70395]

79 NH PUC 57

Re AT&T Communications of New Hampshire, Inc.

DE 94-007

Order No. 21,124

New Hampshire Public Utilities Commission

February 8, 1994

ORDER authorizing an interexchange telephone carrier to extend by 2.5 months to April 19, 1994, its minimum average time requirement promotion, available to its "800 READYLINE" and "800 Gold" service customers.

1. RATES, § 582

[N.H.] Telephone rate design — Toll services — "800 READYLINE" and "800 Gold" services — Promotional rate discounts — Extension of promotion period. p. 57.

BY THE COMMISSION:

ORDER

[1] On January 17, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to extend its Minimum Average Time Requirement (MATR) promotional offering for AT&T 800 READYLINE, AT&T 800 Gold Service - Switched, and the switched access option of AT&T UniPlan customers; and

WHEREAS, the extension of the MATR Promotion is proposed to end on April 19, 1994 instead of February 1, 1994; and

WHEREAS, the promotion automatically waives the 30 second Minimum Average Time Requirement associated with intrastate calls on these services; and

WHEREAS, the proposed tariff expands

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the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than March 7, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than February 18, 1994 and is to be documented by affidavit filed with this office on or before March 7, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 1 - CUSTOM NETWORK SERVICES, Section 5, are approved:

3rd Revised Page 10

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective March 8, 1994, 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 eighth day of February, 1994.

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NH.PUC*02/10/94*[70396]*79 NH PUC 58*Expedited Rate Relief for Small Water Systems

[Go to End of 70396]

79 NH PUC 58

Re Expedited Rate Relief for Small Water Systems

DRM 93-157
Order No. 21,125

New Hampshire Public Utilities Commission

February 10, 1994

ORDER devising procedures by which small water systems (those serving fewer than 600 customers) may obtain expedited rate relief, on a biennial basis.

1. RATES, § 640

[N.H.] Procedure — Expedited rate relief proceedings — Small water utilities — Eligibility — Service to fewer than 600 customers — Reasoning — Small customer base means fairly homogeneous, residential base — But proportionally greater costs of service. p. 61.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 34

[N.H.] Environmentally related costs of service — Costs of compliance with state and federal mandates — Clean water directives — Proposal for annual adjustment clause mechanism for water utilities — Rejection — But expedited relief for such costs for small water systems. p. 63.

3. RATES, § 640

[N.H.] Procedure — Expedited rate relief proceedings — Small water systems — Eligibility — Service to fewer than 600 customers — Organization as separate utility or as stand-alone system of larger company. p. 63.

4. RATES, § 645

[N.H.] Procedure — Expedited rate relief proceedings — Scope of proceedings — Small

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water systems — Recovery of capital outlays associated with compliance with clean water mandates — Recovery of related operating costs. p. 64.

5. RETURN, § 115

[N.H.] Water utilities — Generic standard for small systems — In expedited rate relief proceedings — Computation of return on equity — Discounted cash flow method — Comparisons to other non-California water utilities. p. 64.

6. RATES, § 640

[N.H.] Procedure — Expedited rate relief proceedings — Small water systems — Allowed frequency of filings — Biennial basis only. p. 65.

7. RATES, § 645

[N.H.] Procedure — Expedited rate relief proceedings — Scope of proceedings — Small water systems — Consideration of revenue requirement only — No addressing of rate design issues. p. 65.

8. RATES, § 640

[N.H.] Procedure — Expedited rate relief proceedings — Small water systems — Period for review by commission staff — Notice to customers — Period for responses — Right to appeal by any party. p. 66.

9. EXPENSES, § 76

[N.H.] Management and administration — Pursuit of expedited rate relief — Associated publication, mailing, photocopying, and transcript costs — Fees for professional representation *or* mileage and hourly fees for representation by utility employees — Small water systems. p. 67.

APPEARANCES: Stephen Densberger on behalf of Pennichuck Water Works, Inc.; Ransmeier

and Spellman by Dom S. D'Ambruoso, Esq. on behalf of Hampton Water Works Company; Mary Ellen Goggin, Esq. on behalf of Carleton Water Works Trust; Norman Roberge on behalf of Lakes Region Water Company, Inc.; Cedric Dustin on behalf of Pittsfield Aqueduct Company, Inc.; and Eugene F. Sullivan III, Esq. on behalf of the New Hampshire Public Utilities Commission.

Written Comments: Representative Randy L. Lyman; Barbara J. Money on behalf of Tilton-Northfield Aqueduct Company, Inc.; Gallagher, Callahan and Gartrell by John B. Pendleton, Esq. on behalf of Pennichuck Water Works, Inc.; Gallagher, Callahan and Gartrell by John B. Pendleton, Esq. on behalf of Integrated Water Systems, Inc.; Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. on behalf of Hampton Water Works Company.

BY THE COMMISSION:

REPORT

I. *BACKGROUND AND PROCEDURAL HISTORY*

As delineated in proposed N. H. Admin. R., Puc 611.01¹⁽³⁾, these rules were initiated by the Commission to address the peculiar circumstances of small water distribution systems. The Commission has recognized that what might be considered a "minor" expense to a large water utility may in fact comprise more than the entire annual revenue flow, or more, of a small water distribution system, thereby imposing very substantial rate increases to customers.

The Commission also recognized that both state and federal mandates relative to monitoring and improving water quality are currently increasing, and most likely will continue to increase the cost of providing safe and adequate service to these utilities' customers.

The Commission further observed that the cost of the current process of obtaining rate relief by these systems in many cases exceeded the annual revenue stream of the systems. In light of these concerns, the Commission has

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attempted to streamline its rate-making process in recognition of the relatively static nature of these systems in an attempt to save both ratepayers and their utilities the cost of these proceedings.²⁽⁴⁾

Thus, the Commission sought to create an expedited procedure that would not involve the same level of investigation traditionally expected of our Staff in a rate proceeding filed pursuant to Puc 1600.

II. *COMMENTS*

A. *Pennichuck Water Works, Inc.*

Pennichuck Water Works, Inc. (Pennichuck) requested that the rules be modified to extend their applicability to small water "systems" rather than utilities. This would allow water systems serving under 600 customers, whose rates are set on a "stand-alone" basis although they are owned by a much larger utility, to qualify for expedited rate treatment. Pennichuck stated that it believed the same rationale set forth by the Commission in Puc 611.01 applied to these systems.

Pennichuck further requested that Puc 611.02 be clarified; that Puc 611.03 allow for annual eligibility; and finally that the reference to the Safe Drinking Water Act be deleted from 611.01 to clarify that it is not the only state and federally mandated program being addressed by these rules.

B. Hampton Water Works Company

Hampton Water Works Company (Hampton) requested that the rules be modified to provide for eligibility for all water utilities, regardless of the number of customers served, if the company's capital additions exceed some predetermined percentage of rate base.

Hampton also requested clarification of the manner in which capital additions and increased expenses would be computed in setting a new revenue requirement, i.e., the traditional 13 point, twelve month average or on a preferred year end basis.

Finally, Hampton objected to the provision in Puc 611.09 (a) limiting a utility's right to appeal a Commission decision under these rules, and the biennial eligibility provision in Puc 611.03.

C. Carleton Water Works Trust

Carleton Water Works Trust (Carleton) asked for clarification as to whether the audit provision in Puc 611.02(a)(2) was mandatory or discretionary and if the discovery rules (Puc part 200) applied to petitions filed under these rules.

Carleton requested that Puc 611.02 place a time limit on Staff review of petitions and that the review be bifurcated into procedural infirmities and substantive infirmities.

Carleton also requested annual eligibility under 611.03. It further requested that the Commission limit the right of customers to object after an order *nisi* has issued since customers will have ample opportunity to participate in the proceeding prior to the issuance of the Order pursuant to these rules. Along those same lines, Carleton requested clarification as to the responsibility for serving documents on customers, and believed that documents should only be served upon those customers that had indicated an interest in the proceedings after the first notice.

Carleton requested that the words "bona fide" in Puc 611.06 be replaced or clarified to delineate the actual standards that would be applied by the Executive Director and Secretary.

Carleton was also uncertain as to the applicability of the rules relative to capital additions, i.e., whether capital additions must be mandated by the state or federal governments to qualify for expedited treatment.

Carleton requested that the time limits in 611.06 (d) be extended to provide the petitioning utility with more time to respond and that the prohibition on appeals by the petitioning utility be lifted.

Carleton requested that the phrase "who have participated in the proceeding" contained in 611.06 (f) apply to all filings and correspondence after the initial notice to customers.

Finally, Carleton questioned whether the rate case expense provisions contained in

611.10 were intended to be inclusive or exemplary. Upon indication by the Commission that 611.10 was intended to be inclusive, Carleton requested that copying expenses be added to the list and that professional fees be added to provide for the efficient filing and processing of petitions.

D. Lakes Region Water Company, Inc.

Lakes Region Water Company, Inc. (Lakes Region) joined Pennichuck in the request that the rules be amended to apply to "water systems" rather than "water utilities", and Hampton in its request that eligibility be annual rather than biennial.

It joined Hampton, Carleton and others in requesting that the prohibition on appeals pursuant to RSA 541:3 be lifted and also requested that the Commission remove any prohibitions on rate design modifications as part of the rules.

Finally, Lakes Region requested that any audits by the Commission pursuant to the rules be limited to capital additions and expenses for which recovery was sought.

E. Pittsfield Aqueduct Company, Inc.

Pittsfield Aqueduct Company, Inc. (Pittsfield) raised a concern over the 600 customer cut-off for eligibility. Pittsfield explained that its customers varied from below 600 to just above 600 over short periods of time and that at certain times it may qualify for expedited treatment and at other times it would not. Thus, Pittsfield requested that the 600 customer limit be raised.

F. Representative Randy Lyman

Representative Lyman requested that the 600 customer threshold for eligibility under the rules be lowered to more accurately reflect those water utilities which the rules are designed to help.

G. Tilton Northfield Aqueduct Company, Inc.

Tilton and Northfield Aqueduct Company, Inc. (Tilton/Northfield) requested that the less than 600 customer threshold for eligibility under the rules be raised to recognize the fact that Companies such as Tilton/Northfield with approximately 1000 customers also have limited access to capital markets when attempting to comply with state and federal mandates.

III. COMMISSION ANALYSIS

Initially, we would like to thank all of the participants to this proceeding for their thoughtful input which we believe will lead to more efficient and effective rules.

We are issuing this Report and Order pursuant to RSA 541-A:3-c (IV), even though none was requested, to explain our rationale for adopting or rejecting the above referenced input in recognition of the time and effort of the participants.

We will address each issue raised by the participants following the sequential numbering of the rules.³⁽⁵⁾

A. Puc 602.01

[1] A number of comments addressed the threshold for eligibility for expedited rate treatment

under part 611. The threshold is established in Puc 602.01 which defines those "utilities" which are eligible for rate filings under part 611.

Initially, we will address the 600 customer threshold. Both Tilton/Northfield and Pittsfield requested that the threshold be raised because they were either very close to the threshold or had similar problems raising capital to meet State and federal mandates as those utilities with under 600 customers.

Representative Lyman expressed a concern that the threshold was too high, which could lead to delays in helping those small utilities truly in need of expedited rate treatment.

We will retain the threshold at 600 customers. We do so for a number of reasons, including the availability of waivers pursuant to existing Puc 201.05 and the fact that these rules are somewhat of a departure from our "traditional" ratemaking methodology with which we have had no experience (*See*, Footnote 1 *supra*). Our

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experience has shown that utilities with customer levels greater than the threshold generally need to be examined with greater scrutiny than provided by these rules.

In regard to Representative Lyman's concern, we will monitor the effectiveness of the rules in meeting their intended goals. Should her concern materialize in the form of excessive delays we will consider lowering the threshold for eligibility. The utilities themselves will alleviate unnecessary delays by providing all of the information required by the rules in the first instance and attempting to expeditiously satisfy Staff requests thereafter.

Hampton requested that the 600 customer threshold be totally expunged from the rules and replaced with a state and federal mandate adjustment clause for expense items, i.e., a dollar for dollar pass through of all increased expenditures incurred as a result of State and federal mandates, and expedited rate treatment for all capital additions whenever they exceed 5% of rate base (on an annual basis). Hampton argued that the Commission's 600 customer threshold is "wholly artificial and arbitrary" without "logic or justification" resulting in the unequal treatment of equally situated water utilities.

Given that the implication of these allegations involve both statutory and constitutional standards to which the Commission must adhere we will address this comment in some detail. RSA 541:13; U.S. *Const.* amend. XIV, § 1 (as Hampton did not specifically cite any constitutional provisions, federal or State, we will not address any implied claims under the New Hampshire Constitution, *Appeal of Atlantic Connections Ltd.*, 135 N.H. 510 (1992)).

We note at the outset that the standard to be applied is whether the Commission's choice of a 600 customer threshold is unjust and unreasonable, i.e. "without logic or justification" or "wholly artificial and arbitrary", and whether there is a rational relationship between the 600 customer threshold for eligibility and the stated purpose of the rule.

As both of these issues are addressed in 611.01, we will set forth that section, as it will appear in the "final proposal", in its entirety:

611.01 *Purpose*. Over the past five years the Commission has found in its experience

with small water distribution systems subject to its jurisdiction that unexpected capital additions, and State and federally mandated operating expenses can severely erode not only earnings, but revenues intended to meet ordinary operating expenses, thereby threatening these systems ability to provide safe and adequate service to their customers. The Commission has also found that the costs of "prosecuting" a rate proceeding, costs which are currently passed on to customers in the form of rate surcharges, may equal or surpass the increase in annual revenues sought or granted. Furthermore, the Commission has found that a number of these small water systems have difficulty obtaining access to the financial markets to raise the funds necessary to meet their responsibilities to provide safe and adequate service to their customers. Finally, these small water systems generally share most, if not all, of the following characteristics; simplicity of legal structure, simplicity of books and records once the utility has been franchised and prosecuted a rate proceeding pursuant to Puc 1600, simplicity of debt structure, a limited number of employees, a static customer base comprised almost entirely of residential customers, and an extremely high ratio of average rate case expense to annual revenue stream. Thus, it appears to be to the benefit of both the owners and customers of these small water distribution systems to establish a streamlined method for prosecuting a limited rate proceeding.

This statement of purpose does not, however, delineate how the Commission arrived at the 600 customer threshold.

The 600 customer threshold was arrived at, again, through experience. We examined our records and discerned those utilities we believe share most if not all of the characteristic problems identified in 611.01. Our examination revealed that those systems serving 600 or less customers generally, among other things, were established as part of a subdivision consisting almost entirely of residential customers, they

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were generally owned by the developer of the subdivision or sold off to a utility that treats the system on a stand-alone basis, and the cost of prosecuting a rate case pursuant to existing Puc Part 1600 becomes a substantial rate burden to these utilities and their customers.

By contrast we have found that utilities with more than 600 customers, such as Hampton, do not serve a generally homogeneous class of residential customers. Our experience with these "large utilities" has not demonstrated that this type of expedited rate treatment is necessary to ensure safe and adequate service to their customers. These utilities are comprised of a customer base which is not static and consists of many rate classes including commercial and industrial customers whose usage patterns vary greatly during the cyclical patterns of our economy. The cost of prosecuting a rate case, although high, can be spread over a larger customer base. Their books and records, and legal and debt structures are not simple by any means and audits and other Staff investigations generally consume a great deal of time.

Thus, the Commission has found that there is a rational relationship between the findings and the goals delineated in 611.01 and the 600 customer threshold. We, therefore, do not believe it would be appropriate, at this time, to treat these dissimilar entities in a similar fashion.

[2] We also do not believe that a State and federal mandate adjustment clause for water utilities is appropriate. As the Commission noted in *Re Southern New Hampshire Water Company, Inc.*, 76 NH PUC 521, at 531 (1991) "[a]utomatic 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..." and that the "rationale [was] based on the facts that: 1) fuel costs were highly volatile; and 2) fuel represents a substantial percentage of the [electric] operating costs". Thus, automatic adjustment clauses reduce the need for frequent rate cases. *Id.*, citing *Re Concord Electric Company and Exeter and Hampton Electric Company*, 76 NH PUC 450 (1991).

Although we agree that there is volatility in meeting the expenses of state and federally mandated programs in the context of a water system serving more than 600 customers these expenses do not constitute a large percentage of a large water system's operating costs. Thus, we do not believe an annual adjustment clause for such expenses is warranted for systems serving more than 600 customers.

We do believe, however, that these costs can lead to serious revenue erosion for a small water system requiring frequent rate filings, in light of the Safe Drinking Water Act, 42 USCA §§ 300F-300J, and the potentially substantial cost in relation to a small water system's overall operating costs. Thus, we will provide for expedited review of requests to recover these expenses by small water systems pursuant to these rules on a biennial basis.

[3] The next issue raised relative to 602.01 was the Commission's application of the rules to small water utilities rather than small water systems. That is, it was suggested that a number of the same problems identified relative to small water utilities also applied in the case of large water utilities which owned and operated water distribution systems serving less than 600 customers whose rates were established on a stand alone basis.

We agree that the cost of prosecuting a rate proceeding for such a system may outweigh the benefits of an investigation conducted pursuant to Puc part 1600. Therefore, we will delete the current definition entitled "small water utility", 602.01 (i), and all references thereto in Chapter 611 and replace it with the following term:

"Small water system" means any water distribution system serving fewer than 600 customers which has received a franchise and established an initial revenue requirement pursuant to Puc 1600 which is not interconnected with any other water distribution system owned, operated or affiliated with the same individual or entity and whose revenue requirement is established based on the value of the assets used to serve only those customers served by that water distribution system.

B. *Puc 611.02*

[4] The next issue raised was a need to clarify exactly what types of expenditures qualify for expedited treatment under the rules. A number of commentators were concerned that only capital additions made in response to a State or federal mandate qualified for expedited rate treatment. That was not our intent. We will, therefore, clarify the rule and make some minor corrections in

response to these concerns. The revised 611.02 will read as follows:

611.02 Expedited Proceeding

(a) In the alternative to a full rate proceeding filed pursuant to Puc 1600, a small water system may request an increase in revenues to recover the cost of any capital additions, or any operating costs that are the result of any State or federal mandate, that result in annual earnings, based on the small water system's fiscal year, below a generic return on equity set pursuant to 611.03 subject to the following conditions:

(1) The small water system shall file a petition with the commission containing the following information:

a. The small water system's last established rate base and rate of return with a citation to the docket establishing said rate base and rate of return;

b. The system's and the utility's realized rate of return established from its last filed annual report in combination with any increased or decreased costs and capital additions that were not included in that annual report;

c. Copies of all invoices substantiating the capital additions requested to be added to rate base;

d. An explanation signed under oath of each capital addition's usefulness, necessity and purpose;

e. An explanation signed and under oath of all increased operating costs incurred as a result of a federal or State mandate including a specific citation to the Federal or State mandate that required the increase in costs;

f. The requested increase in revenues, and its effect upon the average customer's annual bill; and

g. An amended tariff page reflecting the proposed increase.

(2) The small water system shall make itself available for an audit at the location where its books and records are kept;

(3) The small water system shall maintain its books and records pursuant to Puc 610; and

(4) The small water system shall give notice to all of its customers, all municipalities in which those customers are served and the Office of the Consumer Advocate by first class mail of its requested rate increase, the rate impact on the average customers annual bill, the capital additions and the Federal or State mandates that necessitated the need for rate relief and the customers right to participate in the review of the requested rate increase by the commission a copy of which, along with an affidavit of mailing, shall be filed with the small water system's petition.

(b) Failure to comply with any of the provisions and requirements set forth in paragraph (a) shall result in the immediate rejection of the petition.

C. Return on Equity

[5] In order to further simplify these proceedings we are adding the following section to these rules to derive a generic cost of capital.⁴⁽⁶⁾

611.03 Generic Return on Equity. At least once during any twelve month period

following the adoption of these rules the Commission shall establish a generic return to be applied to the equity invested in the small water system using the Discounted Cash Flow (DCF) methodology.

(a) For the purposes of this section the Commission shall assume that the DCF model is based on the concept that stockholders value a share of stock at the present

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value of the expected cash flow from that share of stock, and that cash flow will grow at the same rate from the present to perpetuity.

(b) For the purposes of this section the DCF methodology shall mean the estimation of the expected flow of dividends in relation to the current market price of the stock, described by the following equation:

$$(1) k = (\text{Div}_1 / P_0) + g, \text{ where:}$$

- a. k is the cost of equity capital;
- b. Div_1 is the annual dividend expected in year 1;
- c. P_0 is the current market price of a share of common stock; and
- d. g represents the expected rate of growth in dividends, which is assumed to be constant;

(c) For the purposes of this section the sample of companies used in computing k will consist of non-California water utilities listed in the *Value Line Investment Survey* that have consistent data for at least a ten year period of time.

(d) For the purposes of this section cash flow shall be measured using both dividends and earnings, with a 3:1 weighting, reflecting the view that investors discount that which they receive, but are also concerned with the source of the cash flow.

D. Puc 611.03

[6] A number of commentators requested that 611.03 be deleted to allow for annual filings pursuant to these rules.

We do not believe this would be appropriate or advantageous for the Commission, the small water systems eligible to petition for rate relief pursuant to these rules or their customers.

One of our purposes in adopting these rules is to expedite the rate making process to provide rate relief to financially strapped utilities so that they are better able to provide safe and adequate service to their customers. As we noted in response to Representative Lyman's concerns above, we have limited the number of systems that qualify for relief under these rules in an attempt to ensure that the process is expeditious. Our records indicate that there are currently approximately 35 water utilities in the state under our jurisdiction that serve less than 600 customers, not including the additional small water "systems" which will now qualify for expedited rate treatment under the revised rules.

We believe that annual filings would result in undue delays in responding to petitions which

would threaten the effectiveness of the rules. We will, therefore, limit access to proceedings pursuant to these rules to once every 24 months.

The rule will be amended to read as follows:

611.03. *Eligibility.* A small water system shall not be eligible for rate relief pursuant to this section more than once during any 24 month period.

E. *Puc 611.04*

[7] Lakes Region requested that 611.04, prohibiting changes in rate design as part of a rate proceeding filed pursuant to these rules, be deleted.

We do not believe this is the type of proceeding in which to address rate design issues. Again, we want to make filings pursuant to these rules as expeditious as possible and we believe that changes to rate design will unnecessarily delay the proceedings. Furthermore, changes in rate design tend to shift revenue burdens from one type of customer to another or they may result in increases or decreases in revenue if the change alters consumption patterns. Therefore, the prohibition on rate design in 611.04 will remain so that the rule will read as follows:

611.04. *Rate Design.* There shall be no change to a small water system's allocation of revenue responsibility between classes of customers, such as residential, commercial, wholesale or industrial customers, its fixed charge for service regardless of the amount of water consumed unless the system bills on

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an unmetered basis, or availability charges or any other charge that is not based on the amount of water consumed for metered rates as a result of a rate request pursuant to this section unless a small water system has installed meters since its last revenue requirement was set by the commission at which time a volumetric charge shall be established along with a fixed charge.

F. *Puc 611.05*

[8] The only requested change to 611.05 came from Carleton, which requested that a time limit be placed on the review of the small water system's petition by the Staff.

As we have noted above, one of the main purposes of these rules is to expedite the process of seeking rate relief by qualifying systems. However, we do not believe it would be appropriate at this time to place a time constraint on our Staff.

Staff's ability to respond to petitions is affected by many factors beyond our control, such as the type of petitions currently before the Commission and our decisions relative to the most efficacious use of our Staff's time, not to mention the quality of the utility's petitions and the supporting documentation. Thus, we will not place a time constraint on our Staff at this time.

Puc 611.05 will read as follows:

611.05 *Staff Review and Recommendation.*

(a) Upon the filing of a request for rate relief pursuant to this section the commission staff shall:

- (1) verify that the small water utility has complied with the requirements set forth in 611.02 and 611.03;
- (2) review all information acquired pursuant to the requirements of 602.02; and
- (3) make a recommendation to the commissioners that the requested increase, or some modification thereof, be approved or denied based on the criteria set forth by these rules and RSA chapter 378 and the opinions of the New Hampshire Supreme Court.

(b) A copy of the staff recommendation shall be served on the petitioning small water utility, the Office of the Consumer Advocate, the customers of the small water utility and the municipalities in which those customers reside at the time it is filed with the commissioners.

G. Puc 611.06

There were a number of comments filed relative to 611.06. The commentators asked for clarification of the standards to be applied by the Executive Director in 611.06 (b), a request was made to extend the twenty days provided for in 611.06 (e) because it only allowed five days for responses to positions filed pursuant to 611.06 (d), and one utility requested that the requirement that all documents filed pursuant to this section be copied to the small water system's customers be removed.

We agree that the standard of review set forth in 611.06 (b) is vague and we will delete paragraph (b) in its entirety.

We also agree that the five days provided for in 611.06 (e) is too ambitious and will not provide Staff, utilities, customers or other interested parties enough time to analyze the other positions and file reasoned responses. However, as we have noted above our intent is to expedite the process. Therefore in balancing these two interests we will extend the filing deadline in 611.06 (e) to twenty five days.

Finally, given the expedited nature of this procedure we believe that it is essential that customers be provided with as much information as possible. Therefore, the requirement contained in 611.06 (f) providing for copies to all customers of all filings made pursuant to this section will remain unchanged.

The revised rule will read as follows:

611.06 Right to Challenge Recommendation.

- (a) The small water system, the Office of the Consumer Advocate, a customer or

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other interested party may challenge the staff recommendation to approve, modify or deny the requested rate increase by filing with the commission's executive director, within 15 days of mailing of the staff recommendation, a request to meet with the relevant staff members to discuss the recommendation. Any such request shall set forth the basis of the objection to the recommendation of the commission staff and the issues discussed at any such meeting shall be limited to those issues raised in the request.

- (b) If staff, the small water system, the Office of the Consumer Advocate, or any

other interested party resolve any disagreement regarding staff's original recommendation they shall so notify the commission in writing.

(c) If staff, the small water utility, the Office of the Consumer Advocate, or any other interested party are unable to resolve their differences, they may present their positions to the commission by filing a written statement of its position with the executive director within 15 days of the conference with staff.

(d) Twenty-five days after the conference referred to in (b) above, staff and any party may respond to the statements filed pursuant to section (c), by filing a response with the executive director.

(e) Copies of all documents filed with the Commission pursuant to this section shall be served upon all of the small water system customers, the Office of the Consumer Advocate, the small water system or any other party that has participated in the proceeding.

H. *Puc 611.07*

Puc 611.07 has been revised as follows to address concerns raised by the Staff of the JLCAR.

611.07 Commission Decision.

(a) After review and consideration of the staff recommendation and any position statements and responses thereto filed by the parties or the staff, the commission shall:

- (1) Issue an order nisi approving a rate increase, if the commission finds the rate increase just and reasonable pursuant to the standards set forth in RSA chapter 378 and by the New Hampshire Supreme Court, and the request is within the ambit of these rules;
- (2) Issue an order denying the rate increase, if the Commission finds the requested rate increase to be unjust and unreasonable pursuant to the standards set forth in RSA chapter 378 and by the New Hampshire Supreme Court, or the request is outside the ambit of these rules; or
- (3) Issue an order initiating a full rate proceeding pursuant to RSA 378:7 and Puc 1600.

I. *Puc 611.08*

Puc 611.08 will remain unchanged.

J. *Puc 611.09*

A number of commentators objected to this provision which required a small water system to waive its immediate right to appeal a Commission decision under these rules and in the alternative prosecute another rate proceeding pursuant Puc 1600. Our intent in formulating these rules was to relieve administrative burdens not only for the small water systems, but also the Commission.

However, given the fact that the rule provided all other parties the right to appeal and the potential statutory infirmities raised by the commentators we will expunge this section from the rules.

K. *Puc 611.10*

[9] A number of commentators also objected to this provision for numerous reasons including the fact that the rule did not include such costs as photocopying and other

administrative expenses or the services of any professionals to aid the small water system through the process.

Our intent as set forth in 611.01 was to reduce rate case expenses, we, therefore,

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intentionally excluded the services of professionals such as accountants and attorneys. In their place, we included mileage expenses and overtime expenses for the employees of the water system; the exclusion of some administrative costs was not intentional but an oversight.

The commentators suggested that the exclusion of recovery of all professional expenses would discourage the use of these rules by small water systems, thereby, defeating the purpose of the rules.

We will amend the rule to allow for the recovery of the expenses of the fees of one professional until the adoption of rules of general applicability relative to rate case expenses pursuant to RSA 378:28 (Supp. 1993). We will also amend the rule to include all of the administrative cost of the proceeding to the utility. However, overtime expenses of employees and their mileage will be excluded as we consider these expenses to be part of the usual and customary duties of the system's operators or owners unless they choose to forgo the use or the recovery of a professional's fees.

The revised rule will read as follows:

611.10 Procedural Expenses.

(a) A small water utility seeking rate relief pursuant to this section may recover the following expenses until the adoption of general rules relative to the recovery of rate case expenses pursuant to RSA 378:28:

(1) all administrative costs, including, but not limited to:

- a. postage costs;
- b. publication costs;
- c. photocopying expenses; and
- d. transcription costs;

and

(2) One of the following two expense categories:

- a. the fees of one professional, such as, an accountant, economist, engineer or attorney; or
- b. all mileage and hourly fees of utility employees used to prosecute a rate proceeding pursuant to this section.

L. Puc 611.11

Puc 611.11 will remain unchanged.

IV. CONCLUSION

The complete text of the revised rules is attached hereto as Appendix A.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the text of the revised rules attached hereto as Appendix A shall be submitted to the Office of the Legislative Budget Assistant for an amended fiscal impact statement; and it is

FURTHER ORDERED, that once the amended fiscal impact statement has been received the revised rules shall be submitted to the Office of Legislative Services as a Final Proposal for consideration by the Joint Legislative Committee on Administrative Rules.

By order of the New Hampshire Public Utilities Commission this tenth day of February, 1994.

*ATTACHMENT A**Puc 602.01 Definitions.*

- (a) "Commission" means the New Hampshire Public Utilities Commission.
- (b) "Customer" means any person, firm, corporation, cooperative marketing association, utility or governmental unit or subdivision of a municipality or of the state or nation supplied with water service by any utility.
- (c) "Customer service pipe" or "customer service line" mean that section of service pipe from the customer's property line or the curbstop to the meter.
- (d) "Franchise" means the right to conduct business as a public utility pursuant to RSA 374:22 and RSA 374:26.

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- (e) "Meter" means a device installed by a utility for the measurement of water quantities to be used as a basis for determining charges for water service.
 - (f) "Order nisi" means an order that will ripen or take effect at some set date in the future unless the order is rescinded by the Commission before that date.
 - (g) "Service connection" means the point of connection between the customer's service line and the utility's service line.
 - (h) "Service pipe" or "service line" mean the connection between the utility's main and the customer's place of consumption and includes all of the pipe, fittings and valves necessary to make the connection.
 - (i) "Small water system" means any water distribution system serving fewer than 600 customers which has received a franchise and established an initial revenue requirement pursuant to Puc 1600 which is not interconnected with any other water distribution system owned, operated or affiliated with the same individual or entity and whose revenue requirement is established based on the value of the assets used to serve only those customers served by that water distribution system.
 - (j) "Utility" means any person, partnership, corporation, company, association, cooperative

marketing association, joint stock association, their lessees, trustees or receivers appointed by any court, except municipal corporations operating within their corporate limits or which comply with the exemption provisions of RSA 362:4, owning, operating or managing any plant or equipment or any part of the same for supplying of water to the public, or engaged in the transmission or sale of water ultimately sold to the public within New Hampshire.

(k) "Water service" means the furnishing of water to a customer in this state by a utility as described in paragraph (j) above.

(l) "Utility service pipe" or "utility service line" mean that portion of the service pipe not characterized as customer service line or pipe.

611.01 *Purpose.* Over the past five years the commission has found in its experience with small water distribution systems subject to its jurisdiction that unexpected capital additions, and State and federally mandated operating expenses can severely erode not only earnings, but revenues intended to meet ordinary operating expenses, thereby threatening these systems ability to provide safe and adequate service to their customers. The commission has also found that the costs of "prosecuting" a rate proceeding, costs which are currently passed on to customers in the form of rate surcharges, may equal or surpass the increase in annual revenues sought or granted. Furthermore, the commission has found that a number of these small water systems have difficulty obtaining access to the financial markets to raise the funds necessary to meet their responsibilities to provide safe and adequate service to their customers. Finally, these small water systems generally share most, if not all, of the following characteristics; simplicity of legal structure, simplicity of books and records once the utility has been franchised and prosecuted a rate proceeding pursuant to Puc 1600, simplicity of debt structure, a limited number of employees, a static customer base comprised almost entirely of residential customers, and an extremely high ratio of average rate case expense to annual revenue stream. Thus, it appears to be to the benefit of both the owners and customers of these small water distribution systems to establish a streamlined method for prosecuting a limited rate proceeding.

611.02 *Expedited Proceeding.*

(a) In the alternative to a full rate proceeding filed pursuant to Puc 1600, a small water system may request an increase in revenues to recover the cost of any capital additions, or any operating costs that are the result of any State or federal mandate, that result in annual earnings, based on the small water system's fiscal year, below a generic return on equity set pursuant to 611.03 subject to the following conditions:

- (1) The small water system shall file a petition with the commission containing the following information:
- a. The small water system's last established rate base and rate of return with a citation to the docket establishing

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said rate base and rate of return;

- b. The system's and the utility's realized rate of return established from its last filed annual report in combination with any increased or decreased costs and capital additions that were not included in that annual report;

- c. Copies of all invoices substantiating the capital additions requested to be added to rate base;
- d. An explanation signed under oath of each capital addition's usefulness, necessity and purpose;
- e. An explanation signed and under oath of all increased operating costs incurred as a result of a federal or State mandate including a specific citation to the Federal or State mandate that required the increase in costs;
- f. The requested increase in revenues, and its effect upon the average customer's annual bill; and
- g. An amended tariff page reflecting the proposed increase.

(2) The small water system shall make itself available for an audit at the location where its books and records are kept;

(3) The small water system shall maintain its books and records pursuant to Puc 610; and

(4) The small water system shall give notice to all of its customers, all municipalities in which those customers are served and the Office of the Consumer Advocate by first class mail of its requested rate increase, the rate impact on the average customers annual bill, the capital additions and the Federal or State mandates that necessitated the need for rate relief and the customers right to participate in the review of the requested rate increase by the commission a copy of which, along with an affidavit of mailing, shall be filed with the small water system's petition.

(b) Failure to comply with any of the provisions and requirements set forth in paragraph (a) shall result in the immediate rejection of the petition.

611.03 *Generic Return on Equity*. At least once during any twelve month period following the adoption of these rules the commission shall establish a generic return to be applied to the equity invested in the small water system using the Discounted Cash Flow (DCF) methodology.

(a) For the purposes of this section the commission shall assume that the DCF model is based on the concept that stockholders value a share of stock at the present value of the expected cash flow from that share of stock, and that cash flow will grow at the same rate from the present to perpetuity.

(b) For the purposes of this section the DCF methodology shall mean the estimation of the expected flow of dividends in relation to the current market price of the stock, described by the following equation:

$$(1) k = (\text{Div}_1 / P_0) + g, \text{ where:}$$

- a. k is the cost of equity capital;
- b. Div_1 is the annual dividend expected in year 1;
- c. P_0 is the current market price of a share of common stock; and
- d. g represents the expected rate of growth in dividends, which is assumed to be constant.

(c) For the purposes of this section the sample of companies used in computing k will consist of non-California water utilities listed in the *Value Line Investment Survey* that have consistent data for at least a ten year period of time.

(d) For the purposes of this section cash flow shall be measured using both dividends and

earnings, with a 3:1 weighting, reflecting the view that investors discount that which they receive, but are also concerned with the source of the cash flow.

611.04. *Eligibility.* A small water system shall not be eligible for rate relief pursuant to this section more than once during any 24 month period.

611.05. *Rate Design.* There shall be no change to a small water system's allocation of revenue responsibility between classes of customers, such as, residential, commercial,

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wholesale or industrial customers, its fixed charge for service regardless of the amount of water consumed unless the system bills on an unmetered basis, or availability charges or any other charge that is not based on the amount of water consumed for metered rates as a result of a rate request pursuant to this section unless a small water system has installed meters since its last revenue requirement was set by the commission at which time a volumetric charge shall be established along with a fixed charge.

611.06 *Staff Review and Recommendation.*

(a) Upon the filing of a request for rate relief pursuant to this section the commission staff shall:

- (1) verify that the small water utility has complied with the requirements set forth in 611.02 and 611.03;
- (2) review all information acquired pursuant to the requirements of 602.02; and
- (3) make a recommendation to the commissioners that the requested increase, or some modification thereof, be approved or denied based on the criteria set forth by these rules, RSA chapter 378 and the opinions of the New Hampshire Supreme Court.

(b) A copy of the staff recommendation shall be served on the petitioning small water utility, the Office of the Consumer Advocate, the customers of the small water utility and the municipalities in which those customers reside at the time it is filed with the commissioners.

611.07 *Right to Challenge Recommendation.*

(a) The small water system, the Office of the Consumer Advocate, a customer or other interested party may challenge the staff recommendation to approve, modify or deny the requested rate increase by filing with the commission's executive director, within 15 days of mailing of the staff recommendation, a request to meet with the relevant staff members to discuss the recommendation. Any such request shall set forth the basis of the objection to the recommendation of the commission staff and the issues discussed at any such meeting shall be limited to those issues raised in the request.

(b) If staff, the small water system, the Office of the Consumer Advocate, or any other interested party resolve any disagreement regarding staff's original recommendation they shall so notify the commission in writing.

(c) If staff, the small water utility, the Office of the Consumer Advocate, or any other interested party are unable to resolve their differences, they may present their positions to the

commission by filing a written statement of its position with the executive director within 15 days of the conference with staff.

(d) Twenty-five days after the conference referred to in (b) above, staff and any party may respond to the statements filed pursuant to section (c), by filing a response with the executive director.

(e) Copies of all documents filed with the commission pursuant to this section shall be served upon all of the small water system customers, the Office of the Consumer Advocate, the small water system or any other party that has participated in the proceeding.

611.08 Commission Decision.

(a) After review and consideration of the staff recommendation and any position statements and responses thereto filed by the parties or the staff, the commission shall:

(1) Issue an order nisi approving a rate increase, if the commission finds the rate increase just and reasonable pursuant to the standards set forth in RSA chapter 378 and by the New Hampshire Supreme Court, and the request is within the ambit of these rules;

(2) Issue an order denying the rate increase, if the commission finds the requested rate increase to be unjust and unreasonable pursuant to the standards set forth in RSA chapter 378 and by the New Hampshire Supreme Court, or the request is outside the ambit of these rules; or

(3) Issue an order initiating a full rate proceeding pursuant to RSA 378:7 and Puc

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1600.

611.09 Service and Publication of Order.

(a) A copy of the order nisi granting the small water utility any increase in revenues shall be served by the utility upon each of the utility's customers via first class mail and the municipalities in which the rate increase shall take effect.

(b) The small water utility shall also publish an attested copy of the order nisi in a newspaper having general circulation distributed in that part of the State in which the rate increase shall take effect.

611.10 Procedural Expenses.

(a) A small water utility seeking rate relief pursuant to this section may recover the following expenses until the adoption of general rules relative to the recovery of rate case expenses pursuant to RSA 378:28:

- (1) all administrative costs, including, but not limited to:
- a. postage costs;
 - b. publication costs;
 - c. photocopying expenses; and
 - d. transcription costs;

and

- (2) One of the following two expense categories:
 - a. the fees of one professional, such as, an accountant, economist, engineer or attorney; or
 - b. all mileage and hourly fees of utility employees used to prosecute a rate proceeding pursuant to this section.

611.11 *Commission Right to Initiate Full Rate Case.* Nothing contained in these rules shall limit the commission's authority to initiate a full rate proceeding pursuant to RSA 378:7 at any time.

FOOTNOTES

¹Hereinafter, to avoid repetition, we will delete the word proposed from each reference to the proposed rules.

² Because this is a new rate making procedure we will monitor its effects to ensure that it addresses these concerns, and does not unduly disturb that delicate balance between the rights of ratepayers and regulated utilities. RSA 363:17-a.

³We are also making some revisions to the proposed rules in response to certain objections raised by the Staff of the Joint Legislative Committee on Administrative Rules (JLCAR).

⁴Please note that this action will result in the renumbering of the rules in Appendix A.

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NH.PUC*02/11/94*[70397]*79 NH PUC 72*Public Service Company of New Hampshire

[Go to End of 70397]

79 NH PUC 72

Re Public Service Company of New Hampshire

DR 94-002

Order No. 21,126

New Hampshire Public Utilities Commission

February 11, 1994

ORDER determining the scope of issues to be addressed in a docket examining the renegotiation of rates payable by an electric utility for power purchased from five hydro small power producers.

1. ELECTRICITY, § 5

[N.H.] Hydroelectric plant — Small power producers — Renegotiation of rates — Issues to be addressed — Contract terms — Calculation of expected ratepayer savings — Cost recovery methods. p. 74.

2. ELECTRICITY, § 5

[N.H.] Hydroelectric plant — Small power producers — Renegotiation of rates — Issues *not* to be addressed — Investment options for

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ratepayer savings resulting from renegotiation. p. 74.

3. ELECTRICITY, § 5

[N.H.] Hydroelectric plant — Small power producers — Renegotiation of rates — Test of reasonableness — "Public good" — As affected by least-cost planning principles and the Limited Electrical Energy Producers Act. p. 74.

APPEARANCES: Rath, Young, Pignatelli and Oyer by M. Curtis Whittaker, Esq. and Gerald Eaton, Esq. for Public Service Company of New Hampshire; Orr and Reno by Howard M. Moffett, Esq. for Briar/Essex Hydro, Penacook Upper Falls, Errol Hydro, Pembroke Falls and Greggs Falls Hydro; Castaldo and Malmberg by David W. Marshall, Esq. for New Hampshire Timberland Owners Association; D. Dickenson Henry, Jr. for Audubon Society of New Hampshire; Jeanne M. Sole, Esq. for Conservation Law Foundation; Broderick and Dean by Mark W. Dean Esq. for New Hampshire Electric Cooperative, Inc.; Kenneth Colburn for Business and Industry Association; James Anderson, Esq. for Office of Consumer Advocate; Eugene F. Sullivan, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. PROCEDURAL HISTORY

The Public Utilities Commission (Commission) on October 15, 1993 issued an order of notice initiating a docket to consider the status of negotiations between Public Service Company of New Hampshire (PSNH) and thirteen small power producers. The docket is the result of a provision within the Rate Agreement between PSNH and Northeast Utilities, as defined in RSA 362-C:2 I, and as accepted by the Commission in DR 89-244, *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385 (1990), under which Northeast Utilities is required to use its best efforts to renegotiate the rates of the following thirteen small power producers: Briar Hydro/Essex Hydro, Errol Dam, Greggs Falls, Pembroke Hydro, Penacook Upper Falls (the five hydropower SPPs), Alexandria Power, Bio-Energy Corporation, Bridgewater Steam Power, TIMCO, Hemphill Power and Light, Bethlehem Pinetree Power, Tamworth Pinetree Power, Whitefield Power (the eight woodburning SPPs).

By Report and Order No. 21,089 (January 3, 1994) the Commission separated the hydropower SPP agreements from the woodburning SPP negotiations. At a prehearing conference on January 21, 1994, the Commission granted requests for intervention filed by the New Hampshire Electric Cooperative, Inc. (NHEC), Conservation Law Foundation (CLF), Audubon Society of New Hampshire (Audubon), New Hampshire Timberland Owners Association (Timberland Owners), and the Business and Industry Association (BIA). The

Commission requested recommendations of all parties and Commission Staff (Staff) regarding scope of issues to be considered, to be filed no later than February 7, 1994.

By Order No. 21,113 (January 31, 1994) the Commission adopted an expedited procedural schedule, calling for hearing on the merits February 25, 1994. This report and order will address the scope of issues to be considered.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Joint Stipulation on Scope*

On January 31, 1994, PSNH filed a Joint Stipulation Regarding Applicable Proceeding Scope on behalf of itself, the hydropower SPPs, CLF, Audubon, NHEC, BIA and the Office of Consumer Advocate (OCA). The Joint Stipulation calls for three issues to be considered: a) the terms of the proposed agreements; b) the methodology used to calculate potential savings to PSNH customers resulting from the proposed agreements, compared to the hydropower SPP rate orders; and c) the method of recovering PSNH's costs under the proposed agreements from its customers.

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By filings dated February 7, 1994, Timberland Owners and Staff concurred in the scope of issues. The Staff recommended an additional issue to be addressed — the use of the savings for 1994 and 1995 in accordance with the stipulation in PSNH's 1992 Least Cost Plan, DE 92-080. Similarly, PSNH addressed the use of savings in the testimony of PSNH witness Richard A. Soderman, attached to the Joint Stipulation. CLF, in its February 4, 1994 filing, argued that the use of savings should not be considered in this docket and moved to strike portions of Mr. Soderman's testimony. CLF asked, however, that if the Commission were to choose to include the use of savings in this docket, the procedural schedule should be extended to allow further time for discovery on the issue.

B. *Legal Standard*

PSNH also filed on January 31, 1994 a statement regarding its view of the appropriate legal standard for this docket. PSNH believes the docket has been opened pursuant to RSA 362-C:3 which authorized the Commission to determine whether implementation of the Rate Agreement would be consistent with the public good.

Timberland Owners disagreed with PSNH's recommendation regarding the appropriate standard, arguing that review of the hydropower SPP agreements is not a proceeding necessary to implement the provisions of the Rate Agreement. Instead, according to Timberland Owners, the Commission should evaluate the docket in light of the standards of RSA 362-A, the Limited Electrical Energy Producers Act (LEEPA) and RSA 378:37 through 39 to determine if the agreements "are in the public good." No other participant commented on the legal standard for this proceeding.

III. COMMISSION ANALYSIS

[1] We have reviewed the filings of the parties and Staff in this docket and appreciate the efforts they have undertaken to reach agreement on procedural aspects of this case. We agree

that the three issues identified in the Joint Stipulation are appropriate for Commission review. The terms of the agreements, the methodology for calculating savings to PSNH customers and the method of recovering PSNH's costs from its customers will be considered.

[2] We do not believe the use of savings from these agreements should be considered in this case. We have reviewed the Stipulation in PSNH's 1992 Least Cost Plan docket, DR 92-080 and recognize that the Stipulation contained an agreement that the signatories (which included PSNH, CLF, OCA, Staff, as well as parties not participating in this case) would recommend for additional conservation and load management programs "a portion of any savings generated from negotiations with hydro producers ... at the time any results from hydro negotiations are submitted for Commission approval." Stipulation at 12. PSNH, through the testimony of Mr. Soderman, is apparently recommending that the portion of savings to be applied to C&LM programs be zero. CLF has asked that the use of savings be deferred, at least for an additional two weeks for further discovery on the issue.

We find that in light of the expedited schedule agreed to in this case and the likelihood that many of the participants to this docket, particularly the five hydropower SPPs, will not take a position on the use of the savings, it would not be appropriate to delay these proceedings for further discovery and testimony on how savings are to be used. We will entertain the suggestions of the parties and Staff as to the appropriate time and docket in which to consider the question, if the agreements are approved. Anyone wishing to file comments on this issue should do so no later than February 25, 1994. We will, therefore, deny CLF's request for additional time and Staff's recommendation that use of the savings be considered in this docket. We do not think it necessary to strike portions of Mr. Soderman's testimony, but we do not intend to consider his suggestion on use of the savings and similarly do not wish to see testimony of other witnesses regarding the use of savings.

[3] Finally, we agree with PSNH that the appropriate legal standard is that contained within RSA 362-C:3, that is, whether the agreements, which we believe are a necessary

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implementation of the Rate Agreement, are consistent with the "public good." This conclusion does not, however, mean that we reject Timberland Owners assertion that the agreements must be considered within the context of LEEPA and least cost planning. We do not consider these to be mutually exclusive concepts, and we intend to apply the "public good" standard in light of the principles of LEEPA and least cost planning. Certainly we could not find the agreements to be in the public good if we concluded after review that they violated the policy set forth in LEEPA or the least cost plan statutes.

Our order will issue accordingly.

ORDER

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

ORDERED, that the scope of issues shall be as contained in the Joint Stipulation filed January 31, 1994; and it is

FURTHER ORDERED, that use of savings from these agreements, if approved, will not be

considered in this docket; and it is

FURTHER ORDERED, that any party or Staff wishing to comment on the appropriate docket and/or time in which to consider the use of savings should file comments no later than February 25, 1994; and it is

FURTHER ORDERED, that the agreements shall be considered in accordance with the "public good" standard of RSA 362-C, within the context of the policy considerations of RSA 362-A and RSA 378:39.

By order of the New Hampshire Public Utilities Commission this eleventh day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,089, 79 NH PUC 1, Jan. 3, 1994.

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NH.PUC*02/14/94*[70398]*79 NH PUC 75*Extended Area Service Rulemaking

[Go to End of 70398]

79 NH PUC 75

Re Extended Area Service Rulemaking

DRM 94-001

Order No. 21,127

New Hampshire Public Utilities Commission

February 14, 1994

ORDER granting confidentiality to route- and exchange-specific information made available by local exchange telephone carriers with respect to sales, revenues, customer usage characteristics, and planning forecasts in a docket examining the possible necessity of reconfiguring extended area service venues.

1. RATES, § 573

[N.H.] Telephone service — Extended area service — Investigation into possible reconfiguration — Data requests — Route- and exchange-specific information — Confidential treatment. p. 75.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Data requests — Confidential treatment of information — Factors — Competitive disadvantage if disclosed — Docket examining possible realignment

of extended area telephone service venues. p. 75.

BY THE COMMISSION:

ORDER

[1, 2] Granite State Telephone, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Dunbarton Telephone Company, Inc., and Bretton Woods Telephone Company (Companies) and New England

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Telephone and Telegraph Company (NET) filed with the New Hampshire Public Utilities Commission (Commission) Motions for Proprietary Treatment (Motions) on February 4, 1994, and January 28, 1994 respectively, seeking protection of NET's and the Companies' responses to Commission Staff Data Requests Set 1 (Confidential Information); and

WHEREAS, the Confidential Information requested is part of the Commission's preliminary investigation into possible revision of Extended Area Service in New Hampshire; and

WHEREAS, the Confidential Information is a detailed review of route- and exchange-specific sales, revenues, customer usage characteristics and includes general planning and trunking forecasts more focused than that obtainable from industry analysts, and

WHEREAS, the Confidential Information represents customer-specific data which could well be used to either NET's or the Companies' competitive disadvantage; and

WHEREAS, the benefits of full review of the information requested, for purposes of the Commission's investigation, and the benefits of avoiding competitive disadvantage which flow to NET and the Companies from non-disclosure, outweigh the benefits of disclosure to the public; and

WHEREAS, the Confidential Information falls within the scope of "confidential, commercial and financial information" exempt from public disclosure pursuant to RSA 91-A: 5(IV); now therefore, it is

ORDERED, that the Motions of NET and the Companies are hereby granted.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1994.

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NH.PUC*02/14/94*[70399]*79 NH PUC 76*Connecticut Valley Electric Company, Inc.

[Go to End of 70399]

79 NH PUC 76

Re Connecticut Valley Electric Company, Inc.

DF 94-011
Order No. 21,128

New Hampshire Public Utilities Commission

February 14, 1994

ORDER renewing an electric utility's short-term debt financing authority, for a one-year period at a limit of \$1 million.

1. SECURITY ISSUES, § 98

[N.H.] Short-term debt financing — Renewal — One-year limit — Factors — Costs associated with moving to a seasonally differentiated rate structure — Electric utility. p. 76.

BY THE COMMISSION:

ORDER

[1] WHEREAS, Connecticut Valley Electric Company, Inc. (the "Company" pursuant to RSA 369:7 filed with this Commission on January 24, 1994 a petition to approve short term debt financing; and

WHEREAS, the Company states that the amount of short term financing required to meet temporary working capital needs resulting from the Company's growth and from the introduction of seasonal rates in the Connecticut Valley service territory which will produce revenue flow not in synchronization with cash flow requirements; and

WHEREAS, the Commission's current approval of \$1,000,000 of short term financing, granted in Order No. 20,778 in Docket DF 93-026, will expire on February 28, 1994; and

WHEREAS, the Company requests that this \$1,000,000 short term debt limit be

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renewed at the same limit for the next 12 months; and

WHEREAS, the Bank East Division of the First NH Bank has reaffirmed its \$1,000,000 line of credit to the Company; and

WHEREAS, the Company states that the short term note is a demand note issued December 20, 1991 and reaffirmed on June 9, 1992 and again on June 10, 1993 with a floating interest rate equal to Bank of Boston's prime rate; and

WHEREAS, the New Hampshire Public Utilities Commission, pursuant to RSA 369:7, finds that the renewal in the short term debt line of \$1,000,000 as proposed in the petition is consistent with the public good; it is hereby

ORDERED, that the \$1,000,000 short term debt level will remain in effect until February 28, 1995; and it is

FURTHER ORDERED, that Connecticut Valley Electric 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 note; and it is

FURTHER ORDERED, that this authorization shall be effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DF 93-026, Order No. 20,778, 78 NH PUC 126, Mar. 8, 1993.

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NH.PUC*02/15/94*[70400]*79 NH PUC 77*New England Telephone Company

[Go to End of 70400]

79 NH PUC 77

Re New England Telephone Company

Additional respondents: Granite State Telephone, Inc.; Merrimack County Telephone; Dunbarton Telephone Company, Inc.; Wilton Telephone Company, Inc.; Bretton Woods Telephone Company; Contel of New Hampshire dba GTE NH; Contel of Maine dba GTE Maine; Chichester Telephone Company; Kearsarge Telephone Company; Meriden Telephone Company; Union Telephone Company

DE 93-003

Order No. 21,129

New Hampshire Public Utilities Commission

February 15, 1994

ORDER directing the state's independent local exchange telephone carriers to establish a charge for seven-digit blocking service equivalent to currently tariffed "service order subsequent charges," but to connect and disconnect such service free of charge the first time.

1. RATES, § 311

[N.H.] Installation and connection charges — Telephone service — Moves and changes in service — Seven-digit blocking service — Charges commensurate with "service order subsequent charges" — But initial connection/disconnection of blocking free of charge — Independent local exchange telephone carriers. p. 78.

BY THE COMMISSION:

ORDER

Page 77

[1] On August 20, 1993, the New Hampshire Public Utilities Commission (the Commission) issued Order No. 20,938, which directed NET and the Independent Telephone Companies (the ICOs, including: Granite State Telephone, Inc., Merrimack County Telephone, Dunbarton Telephone Company, Inc., Wilton Telephone Company, Inc., and Bretton Woods Telephone Company, Contel of New Hampshire d/b/a GTE NH and Contel of Maine d/b/a GTE Maine (collectively GTE), Chichester Telephone Company, Kearsarge Telephone Company, Meriden Telephone Company, and Union Telephone Company) to submit to the Commission staff, no later than January 10, 1994, cost data regarding the blocking option and the manner in which they propose to allocate those costs, subject to Commission approval; and

WHEREAS, the charge for 7 digit blocking approved in NET's tariff is the same as NET's Service Establishment Charge for vertical services such as Caller ID; is waived for 7 digit blocking orders placed before January 10, 1995 and does not apply when installed or removed within 60 days of the installation of a network access line; and

WHEREAS, the Commission Staff has reviewed and analyzed the information provided by the ICOs in compliance with Order No. 20,938; and

WHEREAS, no ICO, except GTE, specifically proposed a method to allocate the costs associated with implementing 7 digit blocking, but rather proposed rates to be charged based on existing non-recurring charges; and

WHEREAS, in most cases the rates proposed to be charged for customers who order 7 digit blocking were both the existing Service Order Subsequent Charge and the Central Office Charge; and

WHEREAS, a Service Order Subsequent Charge is, in general, a charge which applies for a move, change or addition to an existing service, per customer request and is comparable to NET's Service Establishment Charge; and

WHEREAS, a Central Office Work Charge is, in general, a charge which applies for work completed within the central office making and changing connections as a result of either a primary or subsequent request for service; and

WHEREAS, based on the information provided by the ICOs it appears that the work involved in providing 7 digit blocking does not involve connections in the central office and does involve a change to existing service; and

WHEREAS, Bretton Woods Telephone Company (Bretton Woods) does not have a Service Order Subsequent Charge approved in its tariff but has proposed to use the non-recurring rate for adding Centrex optional features, which is comparable to adding a vertical feature; it is hereby

ORDERED, that the ICOs shall file tariffs with a non-recurring charge for 7 digit blocking at the same rate as the company's currently approved Service Order Subsequent Charge or its

equivalent, and it is

FURTHER ORDERED, that the ICOs' tariffs shall include a provision for free installation or removal of 7 digit blocking for the period of time between the effective date of the tariff and January 10, 1995, and for the period of time within 60 days of the installation of a network access line; and it is

FURTHER ORDERED, that Bretton Woods' shall use its non-recurring tariffed rate of \$5.00 for a Centrex optional feature since Bretton Woods' tariff does not contain a Service Order Subsequent Charge; and it is

FURTHER ORDERED, that any ICO who requires further recoupment of the costs for implementing 7 digit blocking shall keep a record of the number of customers who pay the non-recurring charge for 7 digit blocking after January 10, 1995, as well as the actual costs involved in implementing 7 digit blocking and provide such evidence when and if it petitions the Commission for recovery of these costs; and it is

FURTHER ORDERED, that the ICOs shall file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Investigation into New England Telephone's Long Distance Dialing Plan for New Hampshire, DE 93-003, Order No. 20,938, 78 NH PUC 446, Aug. 20, 1993.

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NH.PUC*02/15/94*[70401]*79 NH PUC 79*AT&T Communications of New Hampshire, Inc.

[Go to End of 70401]

79 NH PUC 79

Re AT&T Communications of New Hampshire, Inc.

DE 94-008
Order No. 21,130

New Hampshire Public Utilities Commission
February 15, 1994

ORDER approving an interexchange telephone carrier's proposals for short-term discounted

promotional rates for certain intraLATA toll calling plans for customers who use private branch exchange or automatic route selection systems, or who use automatic dialing devices.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — Short-term discounted promotional rates — Rerouting of intraLATA calls — Credit for reprogramming costs — Use of private branch exchange, automatic route selection, or automatic dialing equipment — Fostering of competition. p. 79.

BY THE COMMISSION:

ORDER

[1] On January 18, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce its intraLATA Dialing Plan Promotion; and

WHEREAS, this promotion is specifically for customers who use Private Branch Exchange (PBX), Automatic Route Selection (ARS) systems or Automatic Dialers (AD) to route intraLATA traffic; and

WHEREAS, the promotion offers customers who reprogram their PBX, ARS or AD to route all intraLATA traffic to AT&T, a credit of \$250 to offset reprogramming costs and an additional one time credit to customers who use ADs and meet or exceed specified monthly incremental usage levels; and

WHEREAS, the promotion is available to new and existing customers who subscribe to AT&T Software Defined Network Service, AT&T MEGACOM PLUS, AT&T MEGACOM PLUS with the UniPlan Discount Option, or AT&T OPTIMUM, as well as existing AT&T MEGACOM WATS customers; and

WHEREAS, the proposed tariff expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than March 14, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than February 25, 1994 and is to be documented by affidavit filed with this office on or before March 14, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 1 -

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CUSTOM NETWORK SERVICES, are approved:

Table of Contents:

6th Revised Page 5
3rd Revised Page 5.1
1st Revised Page 13

Section 2:

2nd Revised Page 11
Original Page 12

Section 3:

1st Revised Page 12
Original Page 13

Section 11:

2nd Revised Page 9
Original Page 10

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective March 16, 1994, 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 fifteenth day of February, 1994.

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NH.PUC*02/18/94*[70402]*79 NH PUC 80*Energy Policy Act of 1992

[Go to End of 70402]

79 NH PUC 80

Re Energy Policy Act of 1992

DE 93-071
Order No. 21,131

New Hampshire Public Utilities Commission

February 18, 1994

ORDER granting Energy Tactics, American Hydro, Inc.-Peterborough, and the "Bio-Mass"

qualifying facilities (QFs) an extension of time for complying with data requests under the Energy Policy Act of 1992 as to ownership, project financing, operations, fuel supply, and budgets, pending consideration of appropriate protective treatment to be accorded such QF data.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Qualifying facility status — Energy Policy Act of 1992 — Necessity of answering data requests — Issues of appropriate protective treatment for such data — Extension of time for answering data requests. p. 81.

BY THE COMMISSION:

ORDER

By Report and Order No. 20,906 (July 12, 1993), the New Hampshire Public Utilities Commission (Commission) granted protective treatment to data responses filed by Qualifying Facilities (QFs). These data responses were submitted in accordance with data requests issued by the Commission Staff (Staff) pursuant to the Energy Policy Act of 1992 (EPACT). After numerous proceedings within the Commission and the courts, QFs which had not yet filed data responses have been ordered to comply with the requests. *See Bristol Energy Corporation, et al. v. State of New Hampshire Public Service Commission*, No. 93-1835, Slip Op. (1st Cir., January 18, 1994).

On February 4, 1994, Bristol Energy Corporation d/b/a Alexandria Power Associates, Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., TIMCO, Inc. and Whitefield Power and Light Company (collectively Bio-Mass) requested expanded protective treatment over the data responses. American Hydro, Inc.-Peterborough and Energy Tactics, Inc., on February 9, 1994, joined in Bio-Mass'

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request for expanded protective treatment.

On February 14, 1994, Public Service Company of New Hampshire (PSNH) and the Staff filed objections to Bio-Mass' request for expanded protective treatment. In addition, both PSNH and the Staff moved the Commission to eliminate some aspects of the protective treatment already granted. Bio-Mass in turn requested on February 15, 1994 an extension of time for filing the requested data and an opportunity to respond to the objections, arguing that they effectively constituted new motions to which parties have ten days to respond under our rules.

[1] Although no one has styled their pleadings as motions for reconsideration of our prior ruling on protective treatment in Report and Order No. 20,906, we find that the Bio-Mass motion and objections comprise such a request. While we do not wish to delay this matter further, we find some merit to Bio-Mass' argument for an extension of time. We agree that the pleadings seek modification of our prior protective orders regarding QF data. We therefore believe it

would be appropriate to allow Bio- Mass and any other party to this docket or member of the public to comment on the appropriate level of protective treatment, if any, to be accorded QF data (both those filings already made and those yet to be filed by Bio-Mass).

We will, therefore, suspend the date by which Bio-Mass must file their data requests and set dates for filing of comments regarding the appropriate level of protective treatment for QF data responses already filed and data responses yet to be filed. We do not consider a need for testimony on this issue, as it is strictly a legal determination under RSA 91-A. We will allow, however, an opportunity for oral argument for those comments parties and Staff may want to raise in response to the comments filed by other participants in this case.

Based upon the foregoing, it is hereby

ORDERED, that the date by which data responses must be filed by Bio-Mass is suspended pending resolution of the outstanding pleadings regarding protective treatment; and it is

FURTHER ORDERED, that the motion of Bio-Mass and objections thereto filed by PSNH and the Staff will not be acted upon until after submission of comments and oral argument; and it is

FURTHER ORDERED, that parties to this docket, Staff, any New Hampshire QF and any member of the public may comment on the appropriate degree of protection, if any, to be accorded to data responses previously filed by QFs and those yet to be filed by Bio-Mass, such comments to be filed no later than February 28, 1994; and it is

FURTHER ORDERED, that the Commission will hold a hearing on March 4, 1994 at 10 a.m. at the Commission offices for the purpose of hearing oral argument in response to or otherwise supplementing the comments filed on February 28, 1994 as well as taking oral or written statements of members of the public or other interested entities who may not be parties to this docket; and it is

FURTHER ORDERED, that the Assistant Secretary shall serve this order upon the parties to this docket, all QFs who received the original data requests and publish this order in a newspaper of statewide circulation no later than February 23, 1994.

By order of the New Hampshire Public Utilities Commission this eighteenth day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Investigation into 1992 Energy Policy Act Requirements, DE 93-071, Order No. 20,906, 78 NH PUC 344, July 12, 1993.

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NH.PUC*02/22/94*[70404]*79 NH PUC 82*Claremont Gas Corporation

[Go to End of 70404]

Re Claremont Gas Corporation

DR 92-020

Order No. 21,133

New Hampshire Public Utilities Commission

February 22, 1994

ORDER adopting a settlement agreement providing a natural gas distribution company with a base rate increase of \$115,901 (38.14%), inclusive of a 20% emergency increase granted previously.

1. RATES, § 373

[N.H.] Natural gas rate design — Base rate increase — Inclusive of previously granted emergency rate relief — Changes in cost of service — Settlement. p. 83.

2. RATES, § 630

[N.H.] Emergency rate relief — Incorporation in eventual base rate relief granted — Natural gas distribution company — Settlement. p. 83.

3. RATES, § 374

[N.H.] Natural gas rate design — Block rate structure — Customer charges — Local distribution company — Settlement. p. 84.

4. EXPENSES, § 89

[N.H.] Rate case expense — Emergency and base rate proceedings — Recovery through surcharge mechanism — Two-year period — Natural gas distribution company — Settlement. p. 84.

5. ACCOUNTING, § 5

[N.H.] Duty to keep proper accounts — Necessity of complying with commission's accounting rules — Natural gas distribution company. p. 84.

APPEARANCES: Ransmeier & Spellman by Dom S. D'Ambruoso, Esq. for Claremont Gas Corporation, Kenneth E. Traum for the Office of the Consumer Advocate on behalf of residential ratepayers, E. Barclay Jackson, Esq. for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On January 27, 1992, Claremont Gas Corporation (Claremont or Company) filed a Notice of

Intent to file rate schedules requesting an increase of approximately \$626,500 (an increase of 202% over existing revenues). On March 24, 1992, Claremont filed direct testimony and exhibits addressing the issues of revenue requirement and rate design to support a requested increase in annual revenues of \$538,342 (an increase of 175.45% over existing revenues). The Company also filed proposed tariff NHPUC-11 designed to update and replace the existing tariff and a petition for temporary rates with supporting testimony as well as a motion for an expedited hearing on temporary rates.

On April 14, 1992, by its Order No. 20,439 the Commission suspended proposed NHPUC-11 pending further investigation. By an Order of Notice dated May 14, 1992, the Commission established dates for the filing of intervention petitions and set June 12, 1992 as the date for a pre-hearing conference and hearing on the issue of temporary rates.

At the duly noticed public hearing on June 12, 1992, Staff and the Company agreed upon a procedural schedule. The Company submitted revisions to the temporary rate schedules previously submitted; Staff and the Company presented testimony. Staff raised issues regarding the adequacy of the Company's accounting practices and customer services.

On August 24, 1992, at 7 PM, the Commission held a public hearing on the petition to increase rates in Claremont. Members of the public voiced their concerns about the impact of

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the proposed increase on the community.

On October 23, 1992, during the period the Commission was deliberating, Claremont filed an emergency rate petition. The petition requested a 20% increase in rates and recovery of rate case expenses.

The Commission suspended the proposed emergency tariff pages 1-30, Tariff Supplement A, Original Page 1 (Order No. 20,652 dated October 29, 1992); on November 4, 1992, the Commission held a hearing on the merits of the emergency rate petition.

By Report and Order No. 20,674, dated November 23, 1992, the Commission approved an emergency rate increase of approximately 20% (a \$61,482 increase in annual revenues) which applied equally to all existing rate classes and provided for the recovery of rate case expenses over a 24 month period.

By agreement of Claremont and Staff, Claremont was to update its permanent rate case filing in the Spring of 1993. On June 7, 1993, Claremont filed an updated rate filing and tariff pages, requesting an increase of approximately \$130,260 or a 37.46% increase over the base rates which had been in effect on January 27, 1992.

During the lengthy pendency of this docket, Staff, the Office of the Consumer Advocate (OCA), and the Company participated in numerous settlement discussions. A Settlement Agreement (Agreement) resulted and is attached hereto as Attachment A.

At the October 5, 1993, hearing on the merits of the updated permanent rate petition, the Commission heard testimony regarding the Agreement. The written testimony of Staff witnesses, submitted by Edwin P. LeBel of the Finance Department, Robert F. Egan of the Engineering

Department, Scott W. Harrold and Kenneth E. Yasuda, Sr. of the Economics Department, and Amanda O. Noonan of the Consumer Assistance Department was accepted into the record. Kenneth E. Traum's written testimony for the OCA was accepted into the record. Revised rate schedules were submitted on behalf of the Company.

In order to expedite the resolution of this long-pending case, on December 14, 1993, the Commission issued Order No. 21,061 approving the Agreement without a Report attached. This Report supports Order No. 21,061.

II. SETTLEMENT AGREEMENT

The Agreement addresses all the issues raised, including: test year operating revenues and expenses, rate base, rate of return, rate structure, and six administrative issues regarding an audit report, customer service, deposit and billing procedures, management contract and fees, and late fees. Revised schedules and a letter from the Staff are attached to the Agreement and specifically incorporated into it.

By agreement of the Company and Staff, the Staff testified to the content of the Agreement. The Staff Finance Department witness described the revised schedules 1 and 2, attached to the Agreement, which support an annual increase in revenues of \$115,901 (an increase of 38.14% in base rates). Adjustments were applied to the test year accounting entries in order to reach compliance with Commission practice. Accounting books and practices were examined by Staff during two audits: the 1991 test year filing and the 1992 test year.

The Staff Engineering Department witness addressed issues related to: late charges, communication between Staff and the Company, rate design, proforma adjustments related to the loss of the Company's largest customer, and customer service issues. (See Attachment A.)

III. COMMISSION ANALYSIS

[1, 2] The Commission reviewed the settlement agreement in order to insure that its contents are lawful, consistent with Commission practice, in the public interest, and that all plant and property is used and useful. After thorough review of the testimony and exhibits we find that the Agreement meets those requirements.

The two audits conducted by Staff, analyzing two test years, constitutes a thorough examination of the books and records of the Company and a strong basis from which to make recommendations. The proposed proforma adjustments to rate base, operating revenues, and expenses have been conducted in

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accordance with Commission practice and the resulting proposed revenue increase of 38.14% is just and reasonable and based on assets prudently invested and used and useful in service to the public. We note that a large portion of the 38.14% is already being recovered as a result of our approval of an emergency rate increase of 20% in November 1992. The impact on ratepayers of the total increase is therefore lessened. Even with recoupment, the impact of the increase is, on average across all customer classes, \$0.1661 per therm. We find, further, that the proposed rate of return will allow the Company the opportunity to earn a reasonable return on investment.

[3] Evidence was presented that indicated the existing rate design was inconsistent with current rate designs for gas utilities and did not reflect the load characteristics of existing customers. The rate design contained in the Agreement incorporates a customer charge and block design which will more accurately reflect the cost to serve the customers on the Claremont system.

[4] The Agreement's provision that prudently incurred rate case expenses shall be recovered by means of a surcharge on customers' bills for a period of 24 months or until fully collected is reasonable, subject to our review of the amount of expenses claimed.

[5] Despite our approval of the Agreement, certain aspects of the evolution of this docket give us concern. The original filing on January 27, 1992 requested an increase of 202%. Ten months later at the Emergency Rate Hearing on November 4, 1992, the Company witness testified that a 20% rate increase "is not enough to make the Company profitable, but it's enough to give the Company an opportunity to make changes and become profitable and viable in the future..." and that, "if we were to take the Staff's audit recommendations and other factors under consideration, that loss will be changed substantially." (Tr. p. 12, lines 15-24, p. 13, lines 1-2)

Thus, at the time of its original filing, Claremont apparently was not following proper utility accounting and had within its own means the ability to improve its financial circumstances significantly enough to reduce its request for rate relief from 202% to 20% in the short term and 38.14% in its final revised request in the permanent rate case hearing. It is evident that the original filing was based on erroneous calculations due, in some part, to the Company's lack of understanding of or attention to New Hampshire's utility accounting practices. Claremont has an obligation to understand and follow Commission practices. More specifically, it has a responsibility to maximize efforts to control costs before requesting any rate relief, let alone relief of such magnitude. While we are heartened to note the statement on page 6 of the Agreement, lines 8 through 11: "(W)ith respect to deposits and billing, Claremont agrees to conform with Commission rules", we point out that compliance with Commission rules is not subject to agreement. We require compliance. The departures from Commission practices, mentioned and unrefuted in the record, demonstrate that the manner in which the Company has conducted some of its operations as a public utility in the State of New Hampshire has been inadequate. Our acceptance of the Agreement is not to be construed by the Company as acceptance of those operations. We will direct Staff to monitor the ongoing operations of the Company. We shall treat future instances of noncompliance seriously and initiate appropriate regulatory action.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Agreement entered into between Staff and Claremont attached hereto as Attachment A, is approved as per Order No. 21,061; and it is

FURTHER ORDERED, that within ten days Claremont shall file revised tariff pages reflecting the approved permanent rate increase, a statement of its rate case expenses, and a proposal as to recoupment of the difference between the emergency rates and the approved

permanent rates; and it is

FURTHER ORDERED, that the revised tariff pages shall become effective upon the

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issuance of a further Commission order delineating the surcharge for reasonable rate case expenses and the recoupment of the difference between emergency rates and the approved permanent rate; and it is

FURTHER ORDERED, that on or before April 1, 1994, Claremont Gas Corporation shall submit a report to the Commission delineating all actions it has taken to correct deficiencies raised by Staff in this proceeding and the current and expected results of such actions.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1994.

ATTACHMENT A
SETTLEMENT AGREEMENT

1.0 This Settlement Agreement ("Agreement") is entered into this 5th day of October, 1993, between Claremont Gas Corporation ("Claremont"), the Office of Consumer Advocate (the "Consumer Advocate"), and the Staff ("Staff") of the Public Utilities Commission (the "Commission") for the purposes and subject to the terms and conditions hereinafter stated.

1.1 On January 27, 1992, Claremont filed a Notice of Intent to file rate schedules requesting an increase of approximately \$626,500 or approximately 202% rate increase. On March 24, 1992, Claremont filed direct testimony and exhibits comprehensively addressing the issues of revenue requirement and rate design to support a requested increase in annual revenues of \$538,342 or an increase of 175.45% over existing revenues. Claremont's filing proposed a complete rewrite of its tariff NHPUC-11 Gas in order to update many of its provisions to accord with Commission regulations. Claremont simultaneously filed a petition for temporary rates, testimony in support of temporary rates, and a motion for an expedited hearing on temporary rates requesting the establishment of temporary rates during the pendency of this proceeding and until permanent levels of rates were established.

2.0 By its Order No. 20,439 dated April 14, 1992, the Commission suspended the proposed tariff pending a thorough investigation. By an Order of Notice dated May 14, 1992, the Commission ordered public notice, established dates for the filing of intervention petitions, and established June 12, 1992 as the date for a pre-hearing conference and hearing on the issue of temporary rates.

2.1 On July 30, 1992, the Commission issued an Order of Notice scheduling a public informational hearing on both temporary and permanent rates to be held in the City of Claremont.

2.2 On October 23, 1992, Claremont filed an emergency rate petition requesting a 20% increase in rates and also filed supporting data for the recovery of rate case expense. On October 29, 1992, the Commission issued Order No. 20,652 suspending the emergency rate filing. On November 23, 1992, the Commission held a hearing on the merits of Claremont's Emergency

Rate Petition. On November 23, 1992, the Commission issued Report and Order No. 20,674 approving emergency rates of approximately 20% or approximately a \$61,482 increase in annual revenues, said increase to apply equally to all existing rate classes and the recovery of \$37,726 of rate cases expenses over a 24-month period.

2.3 Claremont and Staff had agreed that Claremont would update its rate case filing on or about May 28, 1993. On May 27, 1993, Claremont filed a Motion for Extension, extending the date for the rate case filing and on June 7, 1993, Claremont filed its updated rate filing containing financial information, revisions of schedules, and tariff pages requesting an increase of approximately \$130,260 or 37.46%.

2.4 Commission Staff and the OCA conducted extensive discovery throughout all stages of this proceeding. The Staff conducted an audit of Claremont's 1991 test year filing. On April 14, 1993, Claremont accepted Staff's recommendations in this Audit Report. The Commission Staff also conducted an audit of Claremont's updated filing culminating in the issuance of a draft audit Report dated August 31, 1993.

2.5 Staff and the parties held settlement conferences at the Commission offices on August 2, 1993 and conducted numerous additional telephone conference calls in an effort to

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reach a stipulation of the issues raised by Claremont's filing, the Staff audit, and the testimony of all parties. As a result of these settlement discussions, the parties have entered into this Agreement which together with the attached revised Schedules and the documents referenced in it comprise a Settlement Agreement.

2.6 As indicated in Section 4.0 below, the annual increase in revenues is \$115,901, or a 38.14% increase, exclusive of rate case expense which will be treated in accordance with the procedure set forth in Section 6.0 herein. This Settlement Agreement will be presented to the Commission at the hearings which are scheduled to commence on October 5, 1993.

3.0 *Agreement an Integrated Whole: All Provisions as Conditions of Each Other Provision.* Each of the parties understands and agrees that this Agreement constitutes an integrated and entire understanding, and that each of the terms and provisions hereof is in consideration and support of every other provision and is an essential condition of each such other provision.

4.0 *Stipulated Level of Test Year Operating Revenues, Expenses, Rate Base, and Rate of Return.* There are attached hereto revised versions of certain of the Schedules which Claremont submitted on June 7, 1993, to support its tariff filing. As revised, these schedules, together with this narrative Agreement, reflect the agreements with respect to all issues, and result in an annual increase in revenues of \$115,901 or an increase of 38.14%.

I. *Test Year Operating Revenues and Expenses.* Revised Schedule 3 and 3A, indicate that the overall adjusted test year utility operating income and expenses which the parties have agreed Claremont shall be allowed. This results in an annual increase in revenues of \$115,901. This figure is supported by the attached Schedules.

II. *Rate Base.* Revised Schedule 1 indicates that the total rate base of Claremont upon which Claremont shall be allowed to earn a return at the conclusion of this proceeding is

\$193,746.

III. *Rate of Return*. Revised Schedule 1 indicates the cost of capital which the parties have agreed that claremont shall be allowed the opportunity to earn as a result of this proceeding. The agreed overall rate of return is 9%.

5.0 *Stipulated Rate Structure*. The parties agree that the increase approved by the Commission in this case shall be applied as set forth on Schedule A. Upon receipt of the Commission rate Order in this docket approving this Agreement, Claremont will file a compliance tariff providing for the rate increase stipulated herein.

6.0 *Recovery of Rate Case Expense*. The parties agree that the rate case expense approved by the Commission in this proceeding shall be collected by means of a surcharge on customers' bills for a period of 24 months or until fully collected. At the conclusion of these proceedings, Claremont shall submit a report of rate case expense for Commission review including the date and description of the service rendered, the name of the individual who performed the service, the hours and the rate charged. Upon approval of the Commission, Claremont shall file a tariff supplement calculating the rate case expense surcharge and providing for its collection. Claremont shall also report to the Commission when the surcharge has been collected.

7.0 *Other Matters*. The parties agree to items one through six in the Staff letter dated September 29, 1993 attached hereto and incorporated by reference with the following minor modifications. With respect to the Staff Draft Audit, Claremont will respond on or before October 8, 1993. In the event Claremont objects to the contents of this Draft Audit, the Staff shall schedule an exit conference in an attempt to agree on the contents of the Draft Audit and to finalize the Audit Report.

Claremont agrees to file a signed Affiliate Agreement prior to Commission deliberation on the Settlement Agreement. With respect to deposits and billing, Claremont agrees to conform with Commission rules. Staff agrees to continue to work with Claremont to complete this process.

8.0 *Non-Waiver*. By this Agreement, Claremont has not waived its right to seek

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additional revenue by means of a full rate proceeding or otherwise, and neither the Staff nor the Consumer Advocate has waived the right to seek a reduction in Claremont's rates by means of a show cause proceeding or otherwise.

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 acceptance and approval, and such acceptance and approval shall be forthcoming 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 or contention in these proceedings, other than those specifically agreed to herein, is true and valid.

9.3 The Commission's acceptance of this Agreement does not constitute approval of or precedent regarding any principle or issue in this proceeding.

9.4 The making of this Agreement establishes no principles or precedents and shall not be deemed to foreclose any party from making any contention in any proceeding or investigation, except that no contention shall be so made which is inconsistent with any express commitment or obligation hereunder.

9.5 The issuance of an Order by the Commission implementing this Agreement shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions 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 accept it in its entirety, without change or condition, any party to the Agreement may unilaterally withdraw from the Agreement and its terms shall not constitute any part of the record.

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.

CLAREMONT GAS CORPORATION
 By: DOM S. D'AMBRUOSO, ESQUIRE
 RANSMEIER & SPELLMAN
 PROFESSIONAL CORPORATION
 One Capitol Street
 P.O. Box 1378
 Concord, NH 03302-1378
 Tel. # (603) 228-0477
 FAX # (603) 228-2131

STAFF OF
 PUBLIC UTILITIES COMMISSION
 By: SUSAN CHAMBERLIN, ESQUIRE
 OFFICE OF CONSUMER ADVOCATE
 By: KENNETH TRAUM

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

REVISED SCHEDULE 1 CLAREMONT GAS CORPORATION REVENUE REQUIREMENT			
	<i>Per Company</i>	<i>Per Staff</i>	<i>Proposed Settlement</i>
Rate Base	294,238	157,659	193,746
Rate of Return	9.00%	9.00%	9.00%
Required Net Operating Income	26,481	14,189	17,437
Net Operating Income	(103,779)	(28,188)	(98,464)
Revenue Increase	130,260	42,378	115,901
Tax Effect	0	0	0

Required Increase	130,260	42,378	115,901
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[Graphic(s) below may extend beyond size of screen or contain distortions.]

REVISED
SCHEDULE 2

CLAREMONT GAS CORPORATION
RATE BASE
AS OF
DECEMBER 31, 1992

Proposed

<i>Settlement</i>	<i>Company</i>		<i>Staff</i>		<i>Rate</i>	<i>Rate</i>	
<i>Per</i>	<i>Per</i>	<i>Proforma</i>	<i>Per</i>	<i>Proforma</i>	<i>Base Per</i>	<i>Proposed</i>	<i>Base</i>
	<i>Company</i>	<i>Adjustment</i>	<i>Staff</i>	<i>Adjustment</i>	<i>Staff</i>	<i>Settlement</i>	<i>Staff</i>
Plant in Service 478,450	508,752	35,000	543,752	(59,732)	449,021	(30,302)	
Accumulative Depreciation 278,395	279,562		279,562	(2,343)	277,219	(1,167)	
Less Non-Utility Plant 22,518	22,518		22,518		22,518		
<hr/>							
Net Plant in Service 177,537	206,672	35,000	241,672	(57,388)	149,284	(29,135)	
Cash Working Capital 29,842	40,371		40,371	(18,362)	22,009	(10,529)	
Materials and Supplies 0	25,828		25,828	(25,828)	0	(25,828)	
Less: Customer Deposits (13,633)	(13,633)		(13,633)		(13,633)		
<hr/>							
Cash Working Capital 16,208	52,566	0	52,566	(44,190)	8,376	(36,357)	
<hr/>							
Net Rate Base 193,746	259,238	35,000	294,238	(101,579)	157,659	(65,492)	
<hr/>							
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SCHEDULE 2
ATTACHMENT 1
SUMMARY OF
PROFORMA ADJUSTMENT TO
PLANT IN SERVICE

	<i>Per Company</i>	<i>Per Staff</i>	<i>Proposed Settlement</i>
Company's Planned 1993 Plant Additions See Schedule 3A	35,000	0	0
To Remove Main Repairs Added in December 1992 (9,007/13)		(693)	(693)
To Remove Meter Repairs Added in December 1992 (2,338/13)		(180)	(180)
To Remove Smith and Norrington Work on Plant		(58,859)	(29,430)
	<u>35,000</u>	<u>(59,732)</u>	<u>(30,302)</u>

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

SCHEDULE 2
ATTACHMENT 2

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO
ACCUMULATED DEPRECIATION

	<i>Per Company</i>	<i>Per Staff</i>	<i>Proposed Settlement</i>
To Remove Accumulated Depreciation on Main Repairs Added in December 1992			
Plant Value	9,007		
Depreciation Rate	2.00%		
Depreciation Per Year	<u>180</u>		
1/2 Year's Depreciation Taken	90		
Divided by 13		7	7
To Remove Accumulated Depreciation on Meter Repairs Added in December 1992			
Plant Value	2,338		
Depreciation Rate	2.00%		
Depreciation Per Year	<u>47</u>		
1/2 Year's Depreciation Taken	23		
Divided by 13		2	2
To Remove Smith and Norrington Work on Plant		(2,352)	(1,176)
Proforma Adjustment		<u>(2,343)</u>	<u>(1,167)</u>

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

REVISED
SCHEDULE 3

CLAREMONT GAS CORPORATION
INCOME STATEMENT FOR THE
TWELVE MONTHS ENDED
DECEMBER 31, 1992

<i>Staff</i>		<i>Company</i>					
<i>Staff</i>	<i>Proposed</i>	<i>Settlement</i>		<i>Proformed</i>		<i>Proposed</i>	
<i>Proformed</i>	<i>Settlement</i>	<i>Twelve</i>	<i>Twelve</i>	<i>Twelve</i>	<i>Company</i>	<i>Twelve</i>	<i>Twelve</i>
<i>Twelve</i>	<i>Twelve</i>	<i>Months</i>	<i>Months</i>	<i>Months</i>	<i>Proposed</i>	<i>Months</i>	<i>Months</i>
<i>Months</i>	<i>Months</i>	<i>December</i>	<i>Company</i>	<i>December</i>	<i>Revenue</i>	<i>December</i>	<i>Staff</i>
<i>December</i>	<i>Proposed</i>	<i>December</i>	<i>Adjustments</i>	<i>December</i>	<i>Increase</i>	<i>December</i>	<i>Staff</i>
<i>Adjustments</i>	<i>31, 1992</i>	<i>Settlement</i>	<i>31, 1992</i>	<i>31, 1992</i>	<i>31, 1992</i>	<i>31, 1992</i>	<i>31, 1992</i>
Revenues Firm		347,738		347,738	130,260	477,998	(12,251)
335,487 (40,112)	307,626						
Revenue Other		8,385	19,173	27,558		27,558	19,173
27,558 19,173	27,558						
<hr/>		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total Revenues		356,123	19,173	375,296	130,260	505,556	6,922
363,045 (20,939)	335,184						
Cost of Gas Firm		176,518		176,518		176,518	
176,518 (19,545)	156,973						
Other Production		65,092	(7,550)	57,542		57,542	(9,319)
55,773 (7,697)	57,395						
Distribution		32,072		32,072		32,072	11,345
43,417 11,345	43,417						
Customer Accounting		117,394	(88,711)	28,683		28,683	(88,711)
28,683 (88,711)	28,683						
Job Works & New Business		7,573		7,573		7,573	
7,573 0 7,573	7,573						
Administrative and General		107,045	25,000	132,045		132,045	(66,420)
40,625 (5,379)	101,666						
Taxes Federal Income Tax						0	
0 0	0						
State		29,328		29,328		29,328	646
29,974 (646)	28,682						
Other				0		0	
0 0	0						
Depreciation		9,960	5,354	15,314		15,314	(1,289)
8,671 (701)	9,259						
<hr/>		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total Revenue Deduction		544,982	(65,907)	479,075	0	479,075	(153,749)
391,233 (111,334)	433,648						
Gas Operating Income (Loss)	(188,859)		85,080	(103,779)	130,260	26,481	160,671
(28,188) 90,395	(98,464)						
Operating Rents		27,621	(27,621)	0		0	(27,621)
0 (27,621)	0						
<hr/>		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Net Operating Income (Loss)	(161,238)		57,459	(103,779)	130,260	26,481	133,050
(28,188) 62,774	(98,464)						
<hr/>		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

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SCHEDULE 3
ATTACHMENT 1

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO
REVENUES

	<i>Per</i>	<i>Per</i>
	<i>Company</i>	<i>Staff</i>
Adjustment for Late Payment Fees	19,173	19,173
Less Sugar River Mills		(27,861)
Adjustment to Remove Emergency Rate Increase		(12,251)
Total Proforma	<u>19,173</u>	<u>(20,939)</u>

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

SCHEDULE 3
ATTACHMENT 1A

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO
INVENTORY LOSS

	<i>Per</i>	<i>Per</i>	<i>Proposed</i>
	<i>Company</i>	<i>Staff</i>	<i>Settlement</i>
Gas Cost Booked in Test Year = 92%		176,518	
Gas Cost With 8% Gas Lost Included		191,867	
Inventory Adjustment		(15,349)	
Inventory Loss Adjustment Per Company		57,207	
Proforma Adjustment		<u>41,858</u>	

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

SCHEDULE 3
ATTACHMENT 2

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO

DISTRIBUTION

	<i>Per</i>	<i>Per</i>
	<i>Company</i>	<i>Staff</i>
Street Repair - Leak		2,550
Street Repair - Leak		5,063
Street Repair - Clamps		1,395
Total Main Repairs	0	9,007
Meter Repairs		1,581
Meter Repairs		757
Total Adjustment to Mains and Meters	0	11,345

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

SCHEDULE 3
ATTACHMENT 3

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO
CUSTOMER ACCOUNTING

	<i>Per</i>	<i>Per</i>
	<i>Company</i>	<i>Staff</i>
Bad Debt Expense	(88,711)	(88,711)
Payroll Customer Service Info		
Total Payroll	(88,711)	(88,711)
Total Customer Accounting	(88,711)	(88,711)

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

SCHEDULE 3
ATTACHMENT 4
REVISED

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO
ADMINISTRATIVE AND GENERAL

	<i>Per</i>	<i>Per</i>	<i>Proposed</i>
	<i>Company</i>	<i>Staff</i>	<i>Settlement</i>
Allocation of General Expenses		9,213	(9,213)
To Correct Company's Error of Admin and General From 107,045 To 127,737			20,692
Add Management Fee	25,000		25,000
Excess Inventory Loss		57,207	(41,858)

25,000 66,420 (5,379)

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

SCHEDULE 3

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO
OTHER PRODUCTION

*Per Per Proposed
Company Staff Settlement*

Allocation of Manager's
Salary 7,550 9,319 7,697

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

SCHEDULE 3
ATTACHMENT 5
CLAREMONT GAS CORPORATION
PROFORMA ADJUSTMENT FOR
CHANGE OF ALLOCATION

	Telephone	Total	JOURNAL ENTRY 13			JOURNAL ENTRY 21			Je 31
			Light Heat & Power	Rent	Misc	Office Supplies	Other Supplies	General Office Supplies	
Staff									
January 1992		374.42	300.00	621.31	6.83	146.64	0.00		354.67
1,803.87									
February 1992		46.80	300.00	275.54	84.31	12.87	0.00		608.96
1,328.48									
March 1992		149.09	300.00	101.63	76.99	56.81	0.00	(32.35)	518.72
1,170.89									
April 1992		30.97	300.00	17.61	10.08	229.26	0.00		545.97
1,133.89									
May 1992		369.46	300.00	0.00	0.00	291.63	0.00		234.02
1,195.11									
June 1992		45.98	300.00	22.73	19.65	25.25	0.00		563.54
977.15									
July 1992		144.73	300.00		36.73	346.03	154.89		323.86
1,306.24									
August 1992		125.51	300.00		34.59	1,941.01	181.17		361.46
2,943.74									
September 1992		206.05	300.00		99.91	292.71	166.35		441.61
1,506.63									
October 1992		49.39	300.00		38.49		113.45		444.12
945.45									
November 1992		106.81	300.00		43.16		124.72		465.12
1,039.81									
December 1992		130.23	300.00		80.07		121.74		444.05
1,076.09									
Total at 50% Allocation		1,779.44	3,600.00	1,038.82	530.81	3,342.21	862.32	(32.35)	5,306.10
		16,427.35							

Time 2	2	2	2	2	2			
Total Expense	3,558.88	7,200.00	2,077.64	1,061.62	6,684.42	862.32	(32.35)	5,306.10
26,718.63								
New Allocation Factors								
Utility	27.00%	27.00%	27.00%	27.00%	27.00%	27.00%	27.00%	27.00%
27.00%								
Non Utility	73.00%	73.00%	73.00%	73.00%	73.00%	73.00%	73.00%	73.00%
73.00%								
Amount								
Utility	960.90	1,944.00	560.96	286.64	1,804.79	232.83	(8.73)	1,432.65
7,214.03								
Non Utility	2,597.98	5,256.00	1,516.68	774.98	4,879.63	629.49	(23.62)	3,873.45
19,504.60								
Total	3,558.88	7,200.00	2,077.64	1,061.62	6,684.42	862.32	(32.35)	5,306.10
26,718.63								
Proforma Adjustment								
Old Allocation	1,779.44	3,600.00	1,038.82	530.81	3,342.21	862.32	(32.35)	5,306.10
16,427.35								
New Allocation	960.90	1,944.00	560.96	286.64	1,804.79	232.83	(8.73)	1,432.65
7,214.03								
Adjustment	(818.54)	(1,656.00)	(477.86)	(244.17)	(1,537.42)	(629.49)	23.62	
(3,873.45)	(9,213.32)							

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

SCHEDULE 3
ATTACHMENT 6
CLAREMONT GAS CORPORATION
PROFORMA ADJUSTMENT FOR
BRANCH MANAGERS SALARY
CHANGE OF ALLOCATION

Pay Period	Total	Federal		NH		Benefits	Total
	Salary	FICA	Unemploy	Unemploy	Benefits		
Jan 15,1992	1,416.67	108.38	11.33	46.75	37.50	1,620.63	
Jan 31	1,416.67	108.37	11.33	46.75	37.50	1,620.62	
Feb 15	1,416.67	108.37	11.33	46.75	37.50	1,620.62	
Feb 28	1,416.67	108.37	10.67	22.00	37.50	1,595.21	
March 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
March 31	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
April 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
April 30	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
May 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
May 31	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
June 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
June 30	1,441.67	108.37	0.00	0.00	37.50	1,587.54	
July 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
July 31	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Aug 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Aug 31	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Sept 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Sept 30	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Oct 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Oct 31	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Nov 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Nov 31	1,416.67	108.37	0.00	0.00	37.50	1,562.54	
Dec 15	1,416.67	108.37	0.00	0.00	37.50	1,562.54	

Dec 31	1,416.67	108.37	0.00	0.00	37.50	1,562.54
Total	34,025.08	2,600.89	44.66	162.25	900.00	37,732.88
Org. Allocation	16,676.97	1,300.45	22.33	81.13	450.00	18,866.44
New Allocation Factors						
Utility	27.00%	27.00%	27.00%	27.00%	27.00%	27.00%
Non Utility	73.00%	73.00%	73.00%	73.00%	73.00%	73.00%
Amount						
Utility	9,186.77	702.24	12.06	43.81	243.00	10,187.88
Non Utility	24,838.31	1,898.65	32.60	118.44	657.00	27,545.00
Total	34,025.08	2,600.89	44.66	162.25	900.00	37,732.88
Proforma Adjustment						
Old Allocation	16,676.97	1,300.45	22.33	81.13	450.00	18,866.44
New Allocation	9,186.77	702.24	12.06	43.81	243.00	10,187.88
Adjustment	(7,490.20)	(598.20)	(10.27)	(37.32)	(207.00)	(8,342.99)

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

SCHEDULE 3
ATTACHMENT 7

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO
DEPRECIATION

	<i>Per Company</i>	<i>Per Staff</i>	<i>Proposed Settlement</i>
Depreciation on New Assets	6,243		
Depreciation on Retail			
Storage Tank	(889)		
To Remove Smith and Norrington			
Work on Plant		(1,176)	(588)
Depreciation on Main Repairs		(90)	(90)
Depreciation on Meters Repairs		(23)	(23)
	5,354	(1,289)	(701)

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

SCHEDULE 3
ATTACHMENT 8

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT FOR
SMITH AND NORRINGTON

<i>Expense</i>	<i>Depreciation Settlement</i>	<i>Proposed Depreciation</i>	<i>Accumulated Depreciation</i>	<i>Proposed Settlement</i>
July 1990	98	49	98	49

August 1990	98	49	196	98
September 1990	98	49	294	147
October 1990	98	49	392	196
November 1990	98	49	490	245
December 1990	98	49	588	294
January 1991	98	49	686	343
February 1991	98	49	784	392
March 1991	98	49	882	441
April 1991	98	49	980	490
May 1991	98	49	1,078	539
June 1991	98	49	1,176	588
July 1991	98	49	1,274	637
August 1991	98	49	1,372	686
September 1991	98	49	1,470	735
October 1991	98	49	1,568	784
November 1991	98	49	1,666	833
December 1991	98	49	1,764	882
January 1992	98	49	1,862	931
February 1992	98	49	1,960	980
March 1992	98	49	2,058	1,029
April 1992	98	49	2,156	1,078
May 1992	98	49	2,254	1,127
June 1992	98	49	2,352	1,176
July 1992	98	49	2,450	1,225
August 1992	98	49	2,548	1,274
September 1992	98	49	2,646	1,323
October 1992	98	49	2,744	1,372
November 1992	98	49	2,842	1,421
December 1992	98	49	2,940	1,470
Total 1992	1,176	588	30,576	15,288
Average 1992			2,352	1,176

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

SCHEDULE 3
ATTACHMENT 9

CLAREMONT GAS CORPORATION
SUMMARY OF
PROFORMA ADJUSTMENT TO
TAXES OTHER

To Change Allocation	
Factor of Branch	
Managers Salary	(646)
Total Proforma Adjustment	(646)
	-
	-

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

SCHEDULE 3A
CLAREMONT GAS CORPORATION
INCOME STATEMENT FOR THE
TWELVE MONTHS ENDED
DECEMBER 31, 1992

*Proposed
Settlement*

	Twelve Months December 31, 1992	Proposed Settlement Adjustments	Income 12 Months December 31, 1992	Proposed Revenue Increase	Proposed Settlement With Revenue Increase
Revenues Firm	347,738	(40,112)	307,626	115,901	423,527
Revenue Other	8,385	19,173	27,558		27,558
Total Revenues	356,123	(20,939)	335,184	115,901	451,085
Cost of Gas Firm	176,518	(19,545)	156,973		156,973
Other Production	65,092	(7,697)	57,395		57,395
Distribution	32,072	11,345	43,417		43,417
Customer Accounting	117,394	(88,711)	28,683		28,683
Job Works & New Business	7,573		7,573		7,573
Administrative and General	107,045	(5,379)	101,666		101,666
Taxes Federal Income Tax	0	0	0		0
State	29,328	(646)	28,682		28,682
Other	0	0	0		0
Depreciation	9,960	(701)	9,259		9,259
Total Revenue Deduction	544,982	(111,334)	433,648	0	433,648
Gas Operating Income (Loss)	(188,859)	90,395	(98,464)	115,901	17,437
Operating Rents	27,621	(27,621)	0		0
Net Operating Income (Loss)	(161,238)	62,774	(98,464)	115,901	17,437

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

SCHEDULE A
Page 1 of 2
CLAREMONT GAS CORPORATION
SETTLEMENT RATE DESIGN

SETTLEMENT NUMBERS [Pre-franchise Tax]				Total	Average	Average		
1992 Test Year	Total	Number of Customers	Percent Increase	Therms of Propane	Annual Gas Consumption	Monthly Gas Consumption		
Current Group	Revenue	Dollar Increase	Percent Increase					
Residential	\$248,329	\$346,562	\$98,233	39.56%	621	272,206	438.34	36.53
Non-Residential	\$55,530	\$73,198	\$17,668	31.82%	16	59,729	3,733.08	311.09
Total	\$303,859	\$419,760	\$115,901	38.14%	637	331,935	521.09	43.42

TWO-CLASS SETTLEMENT RATE DESIGN [Pre-franchise Tax] [TO MEET THE SETTLEMENT REVENUE REQUIREMENT OF \$419,760]

1992 Test Year	Therm Step Quantities	Sub-total	Meter		
Customer Group	0 < X < 10	10 < X < 50	50 < X		
Residential	59,467.5	108,734.2	104,004.5	272,206.1	
Charge Total	7,142				
Price per Therm	\$1.19	\$1.16	\$1.13		
Revenue	\$4.50	\$70,766.29	\$126,131.64	\$117,525.07	\$314,423.00
	\$32,139.00	\$346,562			

1992 Test Year	Therm Step Quantities	Sub-total	Meter
Customer Group	0 < X < 300	300 < X	
Charge Total	33,466.1	26,263.2	59,729.3
Non-Residential			

188					
Price per Therm			\$1.16	\$1.13	
\$25.00					
Revenue			\$38,820.68	\$29,677.42	\$68,498.09
\$4,700.00	\$73,198				

TOTAL OF THE RESIDENTIAL AND NON-RESIDENTIAL CLASS REVENUES:
\$419,760

REMARKS:

1. This is an example of where the percentage increase in the Residential Customer Class rate is somewhat greater than that of the Non-residential Customer Class.

2. Sugar River Mills is NOT included in EITHER the residential or non-residential rate classes of the SETTLEMENT NUMBERS.

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

SCHEDULE A					
Page 2 of 2					
CLAREMONT GAS CORPORATION					
BILL COMPARISONS					
(EXCLUDING PRE-FRANCHISE TAX)					
		Emerg	Prop	Staff Percent	Percent
Therms	1991 Rates	Rates	Rates	From 1991	From Emerg Rates
D CUSTOMER CLASS					
7	\$9.51	\$11.40	\$12.83	34.91%	12.54%
15	\$18.39	\$22.07	\$22.20	20.72%	0.59%
24	\$28.11	\$33.77	\$32.64	16.12%	-3.35%
35	\$39.99	\$48.07	\$45.40	13.53%	-5.55%
75	\$83.19	\$100.07	\$91.05	9.45%	-9.01%
150	\$164.19	\$197.57	\$175.80	7.07%	-11.02%
W CUSTOMER CLASS					
7	\$8.35	\$10.02	\$12.83	53.65%	28.04%
15	\$12.70	\$15.22	\$22.20	74.80%	45.86%
24	\$20.53	\$24.58	\$32.64	58.99%	32.79%
35	\$30.10	\$36.02	\$45.40	50.83%	26.04%
75	\$64.90	\$77.62	\$91.05	40.29%	17.30%
150	\$130.15	\$155.62	\$175.80	35.07%	12.97%
H CUSTOMER CLASS					
7	\$9.83	\$11.81	\$12.83	30.59%	8.64%
15	\$17.22	\$20.69	\$22.20	28.96%	7.30%
24	\$24.42	\$29.33	\$32.64	33.69%	11.29%
35	\$33.22	\$39.89	\$45.40	36.69%	13.81%
75	\$65.22	\$78.29	\$91.05	39.62%	16.30%
150	\$125.22	\$150.29	\$175.80	40.40%	16.97%
200	\$165.22	\$198.29	\$232.30	40.60%	17.15%
250	\$205.22	\$246.29	\$288.80	40.73%	17.26%
300	\$245.22	\$294.29	\$345.30	40.82%	17.33%
G CUSTOMER CLASS					
10	\$12.99	\$15.57	\$36.60	181.76%	135.07%
50	\$56.19	\$67.57	\$83.00	47.71%	22.84%
100	\$110.19	\$132.57	\$141.00	27.96%	6.36%
150	\$164.19	\$197.57	\$199.00	21.20%	0.72%
200	\$218.19	\$262.57	\$257.00	17.79%	-2.12%
300	\$326.19	\$392.57	\$373.00	14.35%	-4.99%
400	\$403.19	\$484.57	\$486.00	20.54%	0.30%

500	\$480.19	\$576.57	\$599.00	24.74%	3.89%
1000	\$865.19	\$1,036.57	\$1,164.00	34.54%	12.29%
5000	\$3,945.19	\$4,716.57	\$5,684.00	44.07%	20.51%
D CUSTOMER CLASS: DOMESTIC SERVICE					
W CUSTOMER CLASS: WATER HEATING					
H CUSTOMER CLASS: WATER AND SPACE					
G CUSTOMER CLASS: COMMERCIAL & INDUSTRIAL					

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Corp., DR 92-020, Order No. 20,652, 77 NH PUC 673, Oct. 29, 1992.

[N.H.] Re Claremont Gas Corp., DR 92-020, Order No. 21,061, 78 NH PUC 718, Dec. 14, 1993.

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NH.PUC*02/23/94*[70405]*79 NH PUC 101*Lakes Region Water Company, Inc.

[Go to End of 70405]

79 NH PUC 101

Re Lakes Region Water Company, Inc.

DR 93-067

Order No. 21,134

New Hampshire Public Utilities Commission

February 23, 1994

ORDER approving a settlement agreement granting a water utility a rate increase. Also pursuant to settlement, the utility is authorized a rate of return on equity of 9.24% and is directed to complete its conversion from a flat-rate to a metered-rate system within two years.

1. RETURN, § 115

[N.H.] Water utility — Settlement agreement — 9.24% return on equity — 9.36% overall return. p. 102.

2. RATES, § 595

[N.H.] Water rate design — Multi-district utility — Rate increases — Concomitant step increase adjustment for one district — Factors — Well construction costs — Prevention of attrition. p. 102.

3. RATES, § 275

[N.H.] Flat versus metered rates — Transition from flat to metered rates — Water utility —

Factors — Seasonality of customers and usage. p. 102.

4. RATES, § 153

[N.H.] Factors affecting reasonableness — Intercorporate relations — Necessity of filing affiliate contracts — Water utility. p. 103.

5. EXPENSES, § 89

[N.H.] Rate case expense — Recovery through surcharge mechanism — 18-month period — Water utility. p. 103.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire on behalf of Lakes Region Water Company, Inc.; Robert M. Sullivan on behalf of the Waterville Valley Gateway Townhome Association; and Eugene F. Sullivan III, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On March 23, 1993, Lakes Region Water Company, Inc. (Lakes Region or the Company) filed a notice of intent to file rate schedules requesting an overall rate increase. Subsequently, the Company filed its petition and supporting exhibits and testimony to support its requested rate increase. This filing was rejected by the Commission for failure to comply with N.H. Admin. R., chapter 1600. In response to this action the Company resubmitted its petition and supporting testimony and exhibits in compliance with Puc 1600.

On June 23, 1993, the Commission issued Order No. 20,881 scheduling a prehearing conference for July 15, 1993, to establish a procedural schedule to govern the Commission's examination of the Company's petition and to address any motions to intervene in the proceedings.

On July 9, 1993, the Commission received a petition from the Waterville Valley Gateway

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Townhome Association (Association) requesting full intervenor status in the proceeding. At the prehearing conference on July 15 the Hearings Examiner granted the Association's request subject to subsequent Commission approval. In addition, the parties agreed to a procedural schedule for the remainder of the proceeding and presented it to the Commission for its approval. In Order No. 20,922 issued August 4, 1993 the Commission ratified the decision of the Hearings Examiner and approved the procedural schedule submitted by the parties.

On July 28, 1993 Lakes Region submitted Supplemental Testimony of Norman Roberge relative to the Company's request for a temporary rate. On July 30, 1993 Staff submitted Testimony of Mark A. Naylor, also regarding a temporary rate. On August 16, 1993 the Company withdrew its petition for a temporary rate on agreement with the parties that such

withdrawal was without prejudice to Lakes Region. On November 5, 1993 Staff submitted testimony of James Lenihan, Mark A. Naylor, and Jane A. Emerson. The Company, on December 9, 1993, filed a motion for continuance of the hearing on the merits from December 21 and 22, 1993 to January 11 and 12, 1994. On December 17, 1993 the Company filed Testimony of Thomas A. Mason, Sr. in support of its request for increased salaries.

On December 20, 1993 the Company filed a "step increase adjustment" to include post-test year plant in its proposed rate base. On December 29, 1993 the Company filed a statement of the responsibilities and tasks of Thomas A. Mason, Sr., President and Superintendent of Lakes Region, along with minutes of a Special Meeting of the Board of Directors of the Company. On December 30, 1993 the Commission issued Order No. 21,083 granting Lakes Region's motion for continuance of the hearing on the merits and ordered that said hearing would be continued to January 24 and 25, 1994. In addition, the Company and Staff met in settlement conferences on November 10, 1993, December 6, 1993, and January 22, 1994 in order to narrow the issues or reach agreement of all outstanding issues in the proceeding. The Association did not attend the settlement conferences. On January 25, 1994 the hearing on the merits was held. A Rate Case Settlement Agreement, attached hereto as Exhibit 1, was presented to the Commission by the Company and Staff. The Association did not sign the agreement, however, it submitted a letter on February 7 indicating its concurrence with the agreement.

II. POSITIONS OF THE PARTIES

A. Settlement Agreement.

[1] The Company and Staff agreed to the following terms:

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

Rate Base:	
Lakes Division	\$291,288
WVG	61,227
Hidden Valley	64,482
Wentworth/Pendleton	64,084
Deer Run	6,699
Woodland Grove	20,286
Echo Lake Woods	17,120
Total Rate Base	\$525,187
Revenue Requirement:	
Lakes Division	\$142,255
WVG	26,822
Hidden Valley	27,829
Wentworth/Pendleton	34,070
Deer Run	12,627
Woodland Grove	20,499
Echo Lake Woods	12,734
Total Revenue Req.	\$276,836
Overall Rate of Return:	9.36%
Return on Equity:	9.24%

[2] The Company and Staff agreed to a step increase adjustment for the Paradise Shores system, a part of the Lakes Division, to take effect with the permanent rates in this docket. This adjustment reflects the Company's investment in the development and construction of a well field, and is intended to prevent potential attrition in Lakes Region's revenues which could necessitate the early filing of another rate case at additional cost to the Company's ratepayers.

[3] The Company and Staff agreed to

revisions to the Company's rate structure as detailed on Schedules 218, 318, 418, 518, 618, 718 and 818. These revisions were made giving consideration to the variation of seasonality of occupancy that is found in the seven metered systems of Lakes Region. The new rates for both the Waterville Valley Gateway and Hidden Valley systems involve the implementation of metered rates for the first time. The three systems most recently acquired by Lakes Region, namely Deer Run, Woodland Grove, and Echo Lake Woods, remain on a flat-rate basis. However, at the hearing on January 25, the Company's president, Mr. Thomas Mason Sr., committed the Company to the completion of metering at those three systems within two years.

The Company and Staff agreed that the Company's tariff, refiled in its entirety as a part of this proceeding, would be further revised by the filing of a revised page 6 to delete the reference to a \$600 charge for contributions in aid of construction.

[4] The Company and Staff agreed that, within two months of the date of the agreement Lakes Region would file affiliates contracts pursuant to RSA 364 for all businesses owned or operated by any of the principals, officers or directors or their relatives to the third degree that conduct business with Lakes Region Water Company. In addition, the Company and Staff agree that, within two months of the date of the Settlement Agreement, the Company will file a written contract identifying the water utility assets, employees, facilities, or other assets which may be used for non-utility purposes and proposing a level of compensation which would be paid to the Company for the use of such items. The Company and Staff agree to work collaboratively in an attempt to come to agreement relative to the reasonableness of the compensation to be received by Lakes Region. If the Company and Staff are unable to reach agreement within three months of the date of the agreement, the matter is to be submitted to the Commission for its review. The Company and Staff further agree that Lakes Region's revenue requirement and, therefore, its rates, will be adjusted to reflect any consideration received.

[5] The Company and Staff further agree that rate case expenses from this proceeding, and remaining rate case expenses from DR 88-188, shall be combined and surcharged to customers' bills for a period of 18 months or until fully collected.

B. WATERVILLE VALLEY GATEWAY TOWNHOME ASSOCIATION

Robert M. Sullivan appeared on behalf of the Association. Mr. Sullivan asked at the hearing for a reasonable period of time for the Association Board of Directors to review the Settlement Agreement executed by the Company and Staff, and to respond with written comments. The Company objected, citing the opportunity the Association had, as a full intervenor in the proceeding, to participate fully. The Commission allowed the Association two weeks, or until February 8, to submit written comments regarding the agreement. On February 7, a letter from Mr. Sullivan was received which indicated that the Association had reviewed the agreement and was satisfied with it.

III. COMMISSION ANALYSIS

Based upon review of the record and testimony at the January 25 hearing, we are persuaded that the Rate Case Settlement Agreement is in the public good, and we will accept it. We are

satisfied by the testimony of Staff and the Company that the rates contained therein are just and reasonable, and are based on assets prudently invested and used and useful in service to the public. The satisfaction on the part of the intervenor expressed after their review of the Agreement further convinces us of the reasonableness of the rates contained therein.

We note that Mr. Thomas Mason, who testified on behalf of the Company, indicated at the hearing that the Company would commit to the completion of metering at its three remaining flat-rate systems within two years. We will order Lakes Region to do so.

We accept Staff's recommendation with respect to the recovery of rate case expenses in this docket and will allow the recovery of \$35,620.40 in a surcharge to customer bills over

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an 18 month period.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that rates for water service be increased in the seven divisions of Lakes Region Water Company, Inc. according to the Rate Case Settlement Agreement, executed by the Company and the Staff, which is attached hereto as Exhibit 1; and it is

FURTHER ORDERED that, within two years from the date of this Order, Lakes Region will complete the installation of meters at its three remaining unmetered systems; and it is

FURTHER ORDERED, that the Company is authorized to collect \$35,620.40 in rate case expenses over an 18 month period commencing with the issuance of this Order; and it is

FURTHER ORDERED, that Lakes Region shall file within ten days of this Order revised tariff pages in compliance with this Order.

By order of the New Hampshire Public Utilities Commission this twenty-third day of February, 1994.

SETTLEMENT AGREEMENT

1.0 This Settlement Agreement ("Agreement") is entered into this ____ day of January, 1994, among Lakes Region Water Company, Inc. ("Lakes Region"), the Waterville Valley Gateway Townhome Association ("WVG"), and the Staff ("Staff") of the Public Utilities Commission (the "Commission") for the purposes and subject to the terms and conditions hereinafter stated.

1.1 On March 30, 1993, Lakes Region filed a petition for an increase in its permanent rates. On April 6, 1993, the Commission rejected Lakes Regions' filing on the basis that it did not fully comply with the requirements set forth in N.H. Admin. Rules Puc 1603(a) and 1600(e). On May 28, 1993, Lakes Region refiled revised schedules to comply with the Commission's rate filing requirements, requesting an increase in annual revenues of \$64,697.00, or an increase of approximately 26.40% over existing revenues. Lakes Region proposed to increase its permanent rate levels pursuant to RSA 378:28 effective July 1, 1993.

2.0 By its Order No. 20,881 dated June 23, 1993, the Commission suspended Lakes Region's Tariff No. 4 and established July 15, 1993, as a date for a pre-hearing conference. As a result of said pre-hearing conference, the Commission issued Report and Order No. 20,922 dated August 4, 1993, establishing a procedural schedule to conduct an investigation into the proposed rate increase and approved the intervention of WVG.

2.1 Simultaneously with the filing of its permanent rate request, Lakes Region filed a petition for temporary rates, with supporting exhibits and testimony. After consultations with Staff, Lakes Region withdrew its petition for temporary rates on August 16, 1993. Thereafter, the parties engaged in extensive discovery, Staff conducted an on-site audit and issued its Audit Report. Lakes Region met with Staff on September 28, 1993, for the purpose of reviewing the Staff Audit Report.

2.2 Staff and the parties held settlement conferences at the Commission offices on November 10, 1993, December 6, 1993, and January 22, 1994 and conducted numerous additional telephone conference calls in an effort to reach this stipulation of issues raised by Lakes Region's filing. As a result of these settlement discussions, the parties have entered into this Agreement which comprises a Settlement Agreement on all issues. On December 29, 1993, Lakes Region filed an additional statement of Thomas W. Mason, Sr. supporting Lakes Region's original request for salaries and benefits.

2.3 On December 9, 1993, Lakes Region filed a Motion For Continuance with the consent of all other Staff and the parties, deferring the hearing on the merits to January 24, 1994, and January 25, 1994. The Commission granted the Motion in its Order No. 20,083 dated December 30, 1993.

2.4 On December 20, 1993, Lakes Region filed data to support a requested step increase adjustment reflecting the cost of the development and construction of a well field to provide service to the customers of Paradise Shores

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which was placed in service on September 6, 1993, and the installation of new water mains at Hidden Valley which were placed into service on October 1, 1993. Staff agrees that a step adjustment is an appropriate ratemaking tool in this instance because the cost of the well field would cause such significant attrition in Lakes Region's revenues in all likelihood requiring the filing of another petition to increase rates. *See, Re EnergyNorth Natural Gas, Inc.*, Docket DR 91-212, Report and Order No. 20,776 (March 1, 1993). Staff has investigated the capital additions and found them to be prudent investments, used and useful in service to the public.

2.5 *Effective Date.* The proposed step increase shall be effective on the same date as any permanent rate increase approved by the Commission in this docket.

3.0 *Stipulated Rate Base.* Revised Schedule 902 indicates that the total rate base of Lakes Region upon which Lakes Region shall be allowed to earn a return at the conclusion of this proceeding, including the step increase set forth in paragraphs 2.4 and 2.5, is \$525,187.

4.0 *Stipulated Rate of Return.* Revised Schedule 917 indicates the weighted cost of capital which the parties have agreed that Lakes Region shall be allowed the opportunity to earn as a

result of this proceeding. The agreed overall rate of return is 9.36%.

5.0 Test Year Operating Revenues and Expenses. Revised Schedules 905 and 906 indicate the agreement of the parties to all adjusted test year operating revenues and expenses.

6.0 Stipulated Rate Structure. The parties and Staff agree that the increase approved by the Commission in this case shall be applied as set forth on Schedules 218, 318, 418, 518, 618, 718 and 818. Upon receipt of the Commission rate Order in this docket approving this Agreement, Lakes Region will file a compliance tariff providing for the rate increase stipulated herein.

6.1 Contribution In Aid Of Construction. Lakes Region agrees to file a revised page 6, item 16 to its proposed tariff deleting the reference to a \$600 charge for contributions in aid of construction.

6.2 Proposed Tariff. As part of this proceeding Lakes Region has refiled its entire tariff. The parties and Staff agree that the "new" tariff is just and reasonable, excluding the issue addressed in paragraph 6.1.

7.0 Affiliate Relationships. The parties and Staff agree that within two months of the date of this agreement Lakes Region agrees to file affiliates contracts pursuant to RSA chapter 364 for all businesses owned or operated by any of the principals, officers or directors or their relatives to the third degree that conduct business with Lakes Region, including but not limited to, T. J. Excavation.

8.0 Compensation For Use Of Utility Assets. The parties and Staff agree that within two months of the date of this agreement Lakes Region agrees to file a written contract identifying the water utility assets, employees, facilities, or other assets which may be used for non-utility purposes and proposing a level of compensation which would be paid to Lakes Region for use of such items. Lakes Region will also file with the Staff supporting documentation justifying the consideration paid by these individuals or entities to Lakes Region.

8.1 Collaborative Review. The parties and Staff agree to cooperate in the exchange of information, and to work together to attempt to come to agreement relative to the reasonableness of the consideration paid by any individuals or entities pursuant to paragraph 8.0. If, after three months, the parties and Staff cannot agree on the appropriate consideration to be paid to Lakes Region for the above referenced items, the issues shall be submitted to the Commission for its review.

8.2 Revenue Adjustment. The parties and Staff further agree that Lakes Region's revenue requirement, and, therefore, its rates, will be adjusted to reflect any consideration received pursuant to the contracts referred to in paragraph 8.1.

9.0 Recovery of Rate Case Expenses. The parties agree that the rate case expense approved by the Commission in this proceeding, and the remaining rate case expenses from Docket DR 88-188 shall be collected by means of a surcharge on customers' bills for a period of 18 months or until fully collected. At the conclusion of these proceedings, Lakes Region shall submit a report of rate case expense for

Commission review including the date and description of the service rendered, the name of the individual who performed the service, the hours and the rate charged. Upon approval of the Commission, Lakes Region shall file a tariff supplement calculating the rate case expense surcharge and providing for its collection. Lakes Region shall also report to the Commission when the surcharge has been collected.

10.0 *Non-Waiver*. By this Agreement, Lakes Region has not waived its right to seek additional revenue by means of a full rate proceeding or otherwise, and neither WVG nor the Staff has waived the right to seek a reduction in Lakes Region's rates by means of a show cause proceeding or otherwise.

11.0 *Agreement an Integrated Whole; All Provisions as Conditions of Each Other Provision*. Each of the parties and Staff understands and agrees that this Agreement constitutes an integrated and entire understanding of the parties and Staff. The parties and Staff further agree that each of the terms and provisions hereof is in consideration and support of every other provision and is an essential condition of each such other provision.

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

12.1 The Agreement shall be promptly presented to the Commission for acceptance and approval, and such acceptance and approval shall be forthcoming without delay.

12.2 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, other than those specifically agreed to herein, is true and valid.

12.3 The Commission's acceptance of this Agreement does not constitute approval of or precedent regarding any principle or issue in this proceeding.

12.4 The making of this Agreement establishes no principles or precedents and shall not be deemed to foreclose any party from making any contention in any proceeding or investigation, except that no contention shall be so made which is inconsistent with any express commitment or obligation hereunder.

12.5 The issuance of an Order by the Commission implementing this Agreement shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions made in this rate proceedings other than those issues specifically addressed in this agreement.

12.6 This Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not accept it in its entirety, without change or condition, any party to the Agreement may unilaterally withdraw from the Agreement and its terms shall not constitute any part of the record.

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.

LAKES REGION WATER
COMPANY, INC.
By: DOM S. D'AMBRUOSO, ESQUIRE

RANSMEIER & SPELLMAN
PROFESSIONAL
CORPORATION
One Capitol Street
P.O. Box 600
Concord, NH 03302-0600
Tel. # (603) 228-0477
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WATERVILLE VALLEY GATEWAY
TOWNHOME ASSOCIATION
By: ROBERT M. SULLIVAN

STAFF OF
PUBLIC UTILITIES
COMMISSION
By: Eugene F. Sullivan, III
Senior Hearings
Examiner

*See Commission Files For Attachments

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Lakes Region Water Co., Inc., DR 93-067, Order No. 20,881, 78 NH PUC 315, June 23, 1993. [N.H.] Re Lakes Region Water Co., Inc., DR 93-067, Order No. 20,922, 78 NH PUC 422, Aug. 4, 1993. [N.H.] Re Lakes Region Water Co., Inc., DR 93-067, Order No. 21,083, 78 NH PUC 748, Dec. 30, 1993.

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NH.PUC*02/23/94*[70406]*79 NH PUC 107*New England Telephone Company

[Go to End of 70406]

79 NH PUC 107

Re New England Telephone Company

DR 93-144
Order No. 21,135

New Hampshire Public Utilities Commission

February 23, 1994

ORDER approving a local exchange telephone carrier's special contract arrangements with GTC Leasing Company for the provision of digital Centrex service.

1. SERVICE, § 467

[N.H.] Telephone — Switching functions — Digital Centrex service — Special contract arrangements. p. 107.

BY THE COMMISSION:

ORDER

[1] On July 28, 1993 New England Telephone Company (NET or the Company) petitioned for Commission approval of the First Amendment to Centrex Service Agreement with GTC Leasing Company, Inc. (GTC); and

WHEREAS, NET requested and was granted (by Order No. 20,934) proprietary treatment of the First Amendment to Centrex Service Agreement with GTC; and

WHEREAS, on June 3, 1992, the Commission issued Order No. 20,499 in Docket DR 92-075 approving special contract No. 92-3 R for a Digital Centrex System between NET and GTC; and

WHEREAS, the agreement for which NET now seeks approval amends Appendix A, Page 2 and Appendix B, Pages 2 and 3, and fully incorporates all of the other terms and conditions of the original special contract approved by Order No. 20,499; and

WHEREAS, Staff has reviewed the filing, including supporting cost information, and recommended the new contract be approved; and

WHEREAS, upon review of the petition and the Staff recommendation, the Commission finds the proposed special contract to be in the public interest; it is therefore

ORDERED *NISI*, that New England Telephone's Centrex special contract with GTC is approved; 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 statewide circulation, such publication to be no later than March 7, 1994 and it is to be documented by affidavit filed with this office on or before March 22, 1994; 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 March 22, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 25, 1994, unless the Commission provides otherwise in a supplemental order prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twenty-third day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 92-075, Order No. 20,499, 77 NH PUC 264, June 3, 1992. [N.H.] Re New England Teleph. & Teleg. Co., DR 93-144, Order No. 20,934, 78 NH PUC 443, Aug. 16, 1993.

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NH.PUC*02/23/94*[70407]*79 NH PUC 108*New England Telephone Company

[Go to End of 70407]

79 NH PUC 108

Re New England Telephone Company

DR 93-209

Order No. 21,136

New Hampshire Public Utilities Commission

February 23, 1994

ORDER authorizing a local exchange telephone carrier to introduce integrated services digital network (ISDN) primary service, to extend existing capabilities of private branch exchange customers with respect to call identification, selection, and transport.

1. SERVICE, § 463

[N.H.] Telephone — Private branch exchange — Enhanced service options — Call identification, selection, and transport — Integrated services digital network (ISDN) — ISDN primary service. p. 108.

BY THE COMMISSION:

ORDER

[1] On October 29, 1993, New England Telephone Company (NET or the Company) filed a petition seeking to introduce Integrated Services Digital Network (ISDN) Primary Service for implementation on March 1, 1994; and

WHEREAS, ISDN Primary Service extends the capabilities of the Integrated Services Digital Network to customers currently served by FLEXPATH Digital PBX Service, analog DID

trunks, and analog PBX trunks; and

WHEREAS, ISDN Primary Service provides large PBX customers with capabilities not available today with FLEXPATH service, such as Circuit Switched Data Transport; Incoming Line Identification; and Call-by-Call Service Selection, which allows the customer to designate the type(s) of calls to be carried over individual channels; and

WHEREAS, ISDN Primary Service will be deployed in the Concord, Manchester, Nashua and Rochester central offices; and

WHEREAS, Staff has reviewed the filing, including cost support and data responses; and

WHEREAS, Staff has concerns regarding the proposed rate elements and cost estimates relating to initial and additional local distribution channels; and

WHEREAS, upon review of the petition and the Staff recommendation, the Commission finds the proposed tariff filing to be in the public good; it is therefore

ORDERED *NISI*, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 75

Part C - Section 10 - Original Pages 16 through 22;

and it is

FURTHER ORDERED, that NET work with Staff to resolve their remaining concerns, and to revise these rates as necessary to ensure proper cost recovery; 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 statewide circulation, such publication to be no later than March 7, 1994 and it is to be documented by affidavit filed with this office on or before March 22, 1994; and it is

FURTHER ORDERED, that any

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interested party may file written comments or request an opportunity to be heard in this matter no later than March 22, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 25, 1994, unless the Commission, on its own motion, orders otherwise.

By order of the New Hampshire Public Utilities Commission this twenty-third day of February, 1994.

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NH.PUC*02/23/94*[70408]*79 NH PUC 109*New England Telephone Company

[Go to End of 70408]

Re New England Telephone Company

DR 93-210

Order No. 21,137

New Hampshire Public Utilities Commission

February 23, 1994

ORDER authorizing a local exchange telephone carrier to introduce integrated services digital network (ISDN) basic service, to provide certain small Centrex customers with access to voice, circuit switched data, and packet switched data transport services.

1. SERVICE, § 467

[N.H.] Telephone — Switching services — Enhanced service options — Voice, circuit switched data, and packet switched data transport — Integrated services digital network (ISDN) — ISDN basic service. p. 109.

BY THE COMMISSION:

ORDER

[1] On October 29, 1993, New England Telephone Company (NET or the Company) filed a petition seeking to introduce Integrated Services Digital Network (ISDN) Basic Service; and

WHEREAS, ISDN Basic Service provides residential and business customers and customers of Intellipath Digital Centrex service with integrated digital access to voice, circuit switched data and packet switched data transport services; and

WHEREAS, ISDN Basic Service is designed to make it technically and economically feasible for small business and residential customers to derive sophisticated telecommunications services similar to those available to medium and large business customers; and

WHEREAS, many of the costs in the supporting cost information were derived from the Bellcore Switching Cost Information System (SCIS); and

WHEREAS, NET plans to deploy ISDN Basic Service from the Concord, Laconia, Manchester and Nashua central offices; and

WHEREAS, Staff has reviewed the filing, including cost support and data responses; and

WHEREAS, upon review of the petition and the Staff recommendation, the Commission finds the proposed tariff filing to be in the public good; it is therefore

ORDERED *NISI*, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 75

Part C - Section 10 - Original Pages 1 through 15;

and it is

FURTHER ORDERED, that NET provide Staff with the opportunity to analyze the SCIS model which was used to produce relevant switching cost estimates; 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 statewide circulation, such publication to be no later than March 7, 1994 and it is to be documented by affidavit filed with this office on or before March 22, 1994; and it is

FURTHER ORDERED, that any

Page 109

interested party may file written comments or request an opportunity to be heard in this matter no later than March 22, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 25, 1994, unless the Commission, on its own motion, orders otherwise.

By order of the New Hampshire Public Utilities Commission this twenty-third day of February, 1994.

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NH.PUC*02/23/94*[70409]*79 NH PUC 110*New England Telephone Company

[Go to End of 70409]

79 NH PUC 110

Re New England Telephone Company

DR 93-273

Order No. 21,138

New Hampshire Public Utilities Commission

February 23, 1994

ORDER approving a local exchange telephone carrier's special contract arrangements with First National Bank of Portsmouth for the provision of Centrex service.

1. SERVICE, § 467

[N.H.] Telephone — Switching functions — Centrex service — Special contract arrangements. p. 110.

BY THE COMMISSION:

ORDER

[1] On December 22, 1993 New England Telephone Company (NET or the Company) petitioned for Commission approval of Special Contract No. 93-5 for Centrex Service with First National Bank of Portsmouth; and

WHEREAS, NET requested proprietary treatment of Special Contract No. 93-5 and its supporting material; and

WHEREAS, on January 3, 1994, the Commission granted NET's request for proprietary treatment; and

WHEREAS, Staff has reviewed the filing, including supporting cost information, and recommended the contract be approved; and

WHEREAS, upon review of the petition and the Staff recommendation, the Commission finds the proposed special contract to be in the public interest; it is therefore

ORDERED *NISI*, that New England Telephone's Special Centrex contract with First National Bank of Portsmouth is approved; 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 statewide circulation, such publication to be no later than March 7, 1994 and it is to be documented by affidavit filed with this office on or before March 22, 1994; 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 March 22, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 25, 1994, unless the Commission provides otherwise in a supplemental order prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twenty-third day of February, 1994.

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NH.PUC*02/24/94*[70410]*79 NH PUC 111*Northern Utilities, Inc.

[Go to End of 70410]

79 NH PUC 111

Re Northern Utilities, Inc.

DE 91-149

Order No. 21,139

New Hampshire Public Utilities Commission

February 24, 1994

ORDER suspending a natural gas local distribution company's proposed tariff revisions for transportation service, to allow for further review by commission staff.

1. RATES, § 384

[N.H.] Gas rate design — Natural gas transportation service — Suspension of proposed tariff revisions — Need for further staff review. p. 111.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Factors — Need for further staff review — Natural gas transportation tariff revisions. p. 111.

BY THE COMMISSION:

ORDER

[1, 2] In accordance with Order No. 21,018, on January 3, 1994, Northern Utilities, Inc. (Northern or the Company) filed with the New Hampshire Public Utilities Commission (Commission) several compliance tariff pages regarding the provision of Natural Gas Transportation Service, with a proposed effective date of February 3, 1994; and

WHEREAS, the implementation of a plan to provide Natural Gas Transportation Service is a complex process; and

WHEREAS, the compliance tariff pages were suspended by Order No. 21,115 to provide Staff with sufficient time to conduct a thorough compliance review; and

WHEREAS, Staff, the Company, and the other parties in this case met in a technical session on January 20, 1994 to review and clarify key segments of the tariff filing; and

WHEREAS, the Company filed a revised compliance tariff on February 3, 1994, with a proposed effective date of March 3, 1994; and

WHEREAS, Staff, the Company, and the other parties in this case met in a second technical session on February 7, 1994 to evaluate the revisions in the February 3, 1994 filing; and

WHEREAS, on February 11, 1994, Staff distributed to the Company and the other parties in this case its comments on a number of key issues stemming from a companion February 8, 1994 technical session with EnergyNorth Natural Gas, Inc.; and

WHEREAS, Staff, the Company, and the other parties in this case held a conference call on February 18, 1994 to discuss Staff's comments; and

WHEREAS, the Company has agreed to file a second revised compliance tariff on February 25, 1994; and

WHEREAS, Staff requires additional time to review this second revised tariff filing to ensure that it complies with the Commission Orders; it is hereby

ORDERED, that the aforementioned February 3, 1994 revised compliance tariff filing made by Northern be and hereby is suspended; and it is

FURTHER ORDERED, that the Company will file a second set of revisions to its compliance filing with the Commission no later than February 25, 1994.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 21,018, 78 NH PUC 602, Nov. 1,

Page 111

1993. [N.H.] Re Northern Utilities, Inc., DE 91-149, Order No. 21,115, 79 NH PUC 49, Jan. 31, 1994.

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NH.PUC*02/24/94*[70411]*79 NH PUC 112*EnergyNorth Natural Gas, Inc.

[Go to End of 70411]

79 NH PUC 112

Re EnergyNorth Natural Gas, Inc.

DE 91-149
Order No. 21,140

New Hampshire Public Utilities Commission

February 24, 1994

ORDER suspending a natural gas local distribution company's proposed tariff revisions for transportation service, to allow for further review by commission staff.

1. RATES, § 384

[N.H.] Gas rate design — Natural gas transportation service — Suspension of proposed tariff revisions — Need for further staff review. p. 112.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Factors — Need for further staff review — Natural gas transportation tariff revisions. p. 112.

BY THE COMMISSION:

ORDER

[1, 2] In accordance with Order No. 21,018, on December 30, 1993, EnergyNorth Natural

Gas, Inc. (EnergyNorth or the Company) filed with the New Hampshire Public Utilities Commission (Commission) several compliance tariff pages regarding the provision of Natural Gas Transportation Service, with a proposed effective date of January 29, 1994; and

WHEREAS, the implementation of a plan to provide Natural Gas Transportation Service is a complex process; and

WHEREAS, the compliance tariff pages were suspended by Order No. 21,116 to provide Staff with sufficient time to conduct a thorough compliance review; and

WHEREAS, Staff, the Company, and the other parties in this case met in a technical session on January 21, 1994 to review and clarify key segments of the tariff filing; and

WHEREAS, the Company filed a revised compliance tariff on February 4, 1994, with a proposed effective date of March 1, 1994; and

WHEREAS, Staff, the Company and the other parties in this case will met in a second technical session on February 8, 1994 to evaluate the revisions in the February 4, 1994 filing; and

WHEREAS, on February 11, 1994, Staff distributed to the Company and the other parties in this case its comments on a number of key issues stemming from the February 8, 1994 technical session; and

WHEREAS, Staff, the Company, and the other parties in this case held a conference call on February 18, 1994 to discuss Staff's comments; and

WHEREAS, the Company has agreed to file a second revised compliance tariff on March 2, 1994; and

WHEREAS, Staff requires additional time to review this second revised tariff filing to ensure that it complies with the Commission Orders; it is hereby

ORDERED, that the aforementioned February 4, 1994 revised compliance tariff filing made by EnergyNorth be and hereby is suspended; and it is

FURTHER ORDERED, that the Company will file a second set of revisions to its compliance filing with the Commission no later than March 2, 1994.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of February, 1994.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 91-149, Order No. 21,116, 79 NH PUC 50, Jan. 31, 1994. [N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 21,018, 78 NH PUC 602, Nov. 1, 1993.

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NH.PUC*02/28/94*[70412]*79 NH PUC 113*Dunbarton Telephone Company, Inc.

[Go to End of 70412]

79 NH PUC 113

Re Dunbarton Telephone Company, Inc.

DR 93-233

Order No. 21,141

New Hampshire Public Utilities Commission

February 28, 1994

ORDER confirming that a commission investigation into the adequacy of existing extended telephone calling areas has rendered a similar state legislative initiative duplicative and unnecessary. In a related matter, a small local exchange telephone carrier is directed to conduct a customer survey as to the extent of demand for expansion of calling areas from Dunbarton to Manchester.

1. RATES, § 573

[N.H.] Telephone service — Extended area calling — Ongoing commission investigation — Duplicative legislative efforts. p. 114.

2. RATES, § 573

[N.H.] Telephone service — Extended area calling — Possible expansion — Necessity of customer survey. p. 114.

BY THE COMMISSION:

ORDER

On October 28, 1993, a group of residents living in the municipality of Goffstown who are served by Dunbarton Telephone Company, Inc. (Dunbarton) filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting investigation into their concerns that the service provided to them by Dunbarton was not comparable to the service provided to other Goffstown residents who are served by New England Telephone (NET). Of primary concern was the local calling area for Dunbarton customers, which charges toll calls to Manchester but not to Concord; customers in Goffstown served by NET have no toll charges to Manchester but pay toll charges to Concord.

After a public hearing in Goffstown at which Commission Telephone Engineer Kathryn Bailey appeared and heard the complaints of the residents, the Commission opened Docket DE 93-233 to further investigate the complaints of the residents. By Order of Notice dated December

13, 1993, the Commission ordered a second public hearing, this one before the Commissioners, on January 19, 1993 at 7:00 p.m. Dunbarton and NET were made mandatory parties to the docket. The Commission granted requests for intervention filed by Union Telephone Company, Contel of New Hampshire, Inc. and Contel of Maine, Inc., Merrimack County Telephone, Inc. and Granite State Telephone Company.

On December 29, 1993, Dunbarton filed a Motion for Rehearing and for Dismissal of Petition, which the Commission denied in Order No. 21,101 (January 14, 1994). Dunbarton and NET, however, were relieved of an obligation to submit detailed cost analyses regarding changes in costs or revenue at the January 19, 1994 public hearing, though the Commission stated it was still interested in hearing preliminary estimates of those changes in costs and revenues.

At the January 19, 1994 public informational hearing, there were speakers in favor of and opposed to any change in the service territories of Dunbarton and NET. Mark Goucher, who filed the original petition, spoke in favor of

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extending the local calling area of those Goffstown customers served by Dunbarton to include calling to Manchester, even if that would require an increase in those customers' monthly basic exchange charge. Dunbarton filed at that time a petition for the Commission to consider two way extended area service between Manchester and Dunbarton's territory.

Because of a severe winter storm, a number of residents had called to say they would not be able to attend the public information hearing. The Commission, therefore, sent a letter on January 26, 1994 to the petitioners notifying them that anyone who couldn't attend the hearing should submit their views by letter. The Commission noted that if there were enough interest expressed, the Commission would consider scheduling a second public informational hearing. Letters were received from three Goffstown residents, stressing their desire to have "free" calling to Manchester.

On February 7, 1994, Senator Ann J. Bourque, who represents Manchester and Goffstown, submitted a letter asking that the Commission conduct a survey regarding Dunbarton customers' interests in expanding calling areas, before the end of the current legislative session. Were that done, and the results reported to her and the Goffstown residents served by Dunbarton, she would withdraw House Bill 1575, co-sponsored with Goffstown Representative Bruce R. Hunter, as being unnecessary. On February 9, 1994 a similar letter was received from Representative Beverly T. Rodeschin, Chairperson of the House of Representatives' Science, Technology and Energy Committee noting the Commission's on-going investigation of the issue and in light of that, recommending that the bill be ruled inexpedient to legislate as unnecessary. Representative Rodeschin asked for confirmation that indeed the investigation was on-going and was addressing the same issues raised in HB 1575.

[1, 2] We can confirm for the legislature and the public that Docket DE 93-233 indeed addresses the same issues raised in HB 1575. At the start of our docket we did not call for a survey of customers, but will grant the request of Senator Bourque and others that we conduct such a survey. This was the only issue which was part of the proposed legislation but was not already a part of our investigation. As a result of this order there will be no issue in HB 1575

which is not included in our investigation and, therefore, we agree with Representative Rodeschin that HB 1575 appears to be unnecessary. We further note that many of the concerns raised by the Petitioners in this docket will be addressed in DRM 94-001, which is our on-going statewide investigation into extended calling areas. We, therefore, suggest that the Petitioners follow that docket and direct any further comments on their local calling areas to us in that proceeding.

Based upon the foregoing, it is hereby

ORDERED, that our Staff work with Dunbarton to develop and conduct a survey of Dunbarton customers regarding expansion of the calling area from Dunbarton's territory into Manchester, recognizing the increase to all Dunbarton customers as a result of Dunbarton's lost toll revenue; we ask that in developing the survey, the Staff and Dunbarton consider using the cost data developed by Dunbarton for its survey conducted a little over a year ago in DE 92-013 and potential lost toll revenue data collected in DRM 94-001, to calculate an appropriate surcharge; and it is

FURTHER ORDERED, that we deny Dunbarton's request for investigation of extended calling between the Manchester and Dunbarton exchanges at this time; and it is

FURTHER ORDERED, that no further public informational meeting is necessary at this time.

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Dunbarton Teleph. Co., DR 93-233, Order No. 21,101, 79 NH PUC 28, Jan. 14, 1994.

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NH.PUC*02/28/94*[70413]*79 NH PUC 115*Connecticut Valley Electric Company, Inc.

[Go to End of 70413]

79 NH PUC 115

Re Connecticut Valley Electric Company, Inc.

DR 93-151

Order No. 21,142

New Hampshire Public Utilities Commission

February 28, 1994

ORDER approving an electric utility's conservation and load management (C&LM) programs, except as to the calculation of associated net lost revenues. The utility is authorized to proceed with direct billing of commercial and industrial customers for C&LM services and also to separately calculate and allocate development and infrastructure costs. But it is not allowed to

compute net lost revenues on a consolidated basis with its parent company since the parent wholesale company does not engage in C&LM activities. The commission finds that it would be inequitable to burden ratepayers in order to unreasonably benefit shareholders by allowing net lost revenue calculations to include the fixed costs of both retail rates and wholesale rates.

1. CONSERVATION, § 1

[N.H.] Conservation and load management (C&LM) programs — Electric utility — Components — Direct billing of commercial and industrial customers for C&LM services — Separately calculated and allocated development and infrastructure costs — Recovery of net lost revenues associated with sales lost to C&LM efforts. p. 118.

2. CONSERVATION, § 1

[N.H.] Conservation and load management (C&LM) programs — Electric utility — Recovery of net lost revenues associated with sales lost to C&LM efforts — Calculation — On retail, stand-alone basis — No recognition of parent company's wholesale costs since no C&LM activities of its own. p. 118.

3. REVENUES, § 5

[N.H.] Lost revenues — Sales lost to conservation and load management (C&LM) activities — Electric utility — Calculation of amount allowed to be recovered — On retail, stand-alone basis — No recognition of parent company's wholesale costs since no C&LM activities of its own — Prevention of unreasonable ratepayer burdens and unreasonable stockholder benefits. p. 118.

APPEARANCES: Kenneth C. Picton, Esq. for Connecticut Valley Electric Company and E. Barclay Jackson, Esq. on behalf of Commission Staff.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On September 7, 1993, Connecticut Valley Electric Company (CVEC or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) to open a proceeding on its 1994 conservation and load management (C&LM) programs and C&LM percentage adjustment (C&LMPA).

A duly noticed prehearing conference was held on October 12, 1993 at which a procedural schedule was presented by the Commission Staff (Staff) and CVEC. The procedural schedule approved by the Commission on October 27, 1993, by Order No. 20,006, allowed for the filing of data requests and responses by CVEC and Staff as well as the filing of Staff testimony.

At a Settlement Conference on January 5, 1994, Staff and CVEC entered into a Stipulation Agreement (Stipulation, attached hereto as Attachment A). The Stipulation resolved all issues raised by Staff in its testimony except for

one.

The Office of Consumer Advocate (OCA), a statutory party to this docket, received all filings and notice of the hearings, technical session and settlement conference. However, OCA did not participate in any part of this proceeding.

On January 13, 1994, CVEC and Staff submitted the Stipulation and litigated the unresolved issue, that of the calculation of net lost revenues before the Commission. At the conclusion of the hearing, the Commission requested briefs on the issue be submitted by February 7, 1994.

On February 28, 1994, the Commission issued Order No. 21,142, approving the Stipulation and requiring calculation of net lost revenues pursuant to Attachment 4B of the Stipulation. This Report constitutes the report explaining the Commission's decision, which was required by its Order No. 21,142.

II. POSITIONS OF STAFF AND THE PARTIES

A. As to the Stipulation

This docket includes six primary areas of inquiry regarding CVEC's C&LM filing: (1) the Company's 1993 C&LM performance; (2) the Company's 1994 proposed program deferrals and C&LM activity; (3) the C&LM incentives calculation; (4) the Company's proposal to direct bill certain commercial and industrial (C&I) customers for C&LM products and services; (5) the accounting, calculation, and allocation of development and infrastructure (D&I) costs; and (6) the methodologies to calculate avoided costs and the calculation of net lost revenues. Within these six areas of concern, Staff raised numerous issues. The Stipulation resolves all but one aspect of issue (6), the net lost revenue calculation, which is addressed in section B, below.

CVEC and Staff agreed that the Company will provide C&LM programs in 1994 at the same participant level as targeted in 1993. As a result of actual cost data, as well as monitoring and evaluation studies, the 1994 forecasts for costs and savings are lower than the 1993 costs and savings forecast per participant.

CVEC and Staff agreed that the updated, lower avoided cost projection submitted in CVEC's filing would be used for the purpose of calculating the 1993 maximizing and efficiency incentives and for the purpose of field screening only for 1994. They agreed that the older, higher avoided cost projection would be used to reconcile the 1992 maximizing and efficiency incentives. CVEC and Staff also agreed on a particular definition of "Utility Costs" for the calculation of maximizing and efficiency incentives.

CVEC and Staff agreed that the Company's request for recovery of certain D&I costs will be deferred pending a Commission Finance Department audit of parent company Central Vermont Public Service's (CVPS') C&LM accounting practices. The parent company will revise and refine its cost accounting practices to clearly distinguish between D&I expenses of CVEC and CVPS. In addition, CVEC will advise Staff of any accounting refinements or revisions and note them in its Quarterly C&LM Activity Reports.

CVEC and Staff agreed that the Company will implement a pilot program offering directly billed C&LM services. The major features of the program were agreed upon. Staff and the Company have also agreed on such details as delivery, recovery of other related costs, and development of general terms and conditions, *inter alia*.

CVEC and Staff agreed upon a threshold benefit/cost ratio for evaluating all residential, commercial, and industrial C&LM programs. Programs which fall below this threshold but are determined to be cost-effective may be included only if they constitute lost opportunity programs or if the projected savings have been verified by evaluation studies.

The basis of economic evaluation of C&LM resources for CVEC was disputed. Staff recommended that economic evaluation be based on the avoidance of wholesale power charges reflected in the wholesale rate of the parent company CVPS. CVEC maintained that evaluation should continue to be based on the avoided costs of CVPS. CVEC and Staff agreed to enter into good faith negotiations during

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1994 to re-design CVPS' RS-2 wholesale rate to better reflect CVPS' avoided costs. They will submit any re-designed wholesale rate for Commission approval.

B. As to Net Lost Revenues

I. CVEC's Position

CVEC requests that it be permitted to collect net lost revenues based upon the avoided costs of a consolidated entity consisting of the parent company CVPS and the affiliate CVEC. CVEC argues that this methodology has been approved by the Commission in prior dockets as one which encourages C&LM services.

In support of its argument for use of the consolidated entity avoided costs, CVEC cites *Re Incentives for Conservation and Load Management*, 75 NH PUC 527 (1990) (hereinafter *Re Incentives*), for the general principle that utilities should be 'made whole,' i.e., left in the same financial condition that would have occurred but for the implementation of the C&LM program. "What has been referred to as 'lost revenue' ... falls into this category." *Id.* at 540. CVEC advocates that the Commission's statement in *Re Incentives* that "C&LM programs not only benefit ratepayers, but should also benefit utility stockholders," *Id.* at 539, mandates that net lost revenue recovery must make whole both the utility itself and the utility's sole stockholder, in this case its parent, CVPS.

The consolidated entity avoided cost methodology, CVEC explains, is the only method by which the stockholder can be made whole. CVEC points out that using the Company's method, net lost revenue recovery is \$129,536 while using Staff's method, net lost revenue recovery is only \$38,415, reducing recovery by approximately \$91,000.

CVEC also contends that *Re Purchases for Nongenerating Utilities*, 67 NHPUC 825 (1982) (hereinafter *Re Purchases*), determined that avoided costs for affiliate non-generating utilities are calculated by looking through the wholesale rate of the supplier to its avoided resource costs rather than looking only at the wholesale rate charged to the affiliate. *Re Purchases*, CVEC

argues, found that the appropriate rate for the affiliated non-generator is the avoided cost of its supplier. *Id.* at 838.

Finally, CVEC asserts that consideration of an alternate methodology should be deferred until after Staff and the Company have completed their upcoming negotiations to re-design the wholesale rate. Opportunity to assess the benefits and hazards of a wholesale rate based avoided costs calculation will occur at a subsequent Commission review, CVEC argues. The Commission's adoption of Staff's recommendation may well result in lower current costs for CVEC ratepayers, but it will result also in the negative financial impact on CVEC's shareholder as outlined above.

2. Staff's Position

Staff first points out that the purpose of allowing a utility to recover lost revenues incurred by C&LM is that of removing the disincentive to the pursuit of C&LM recognized by the Commission in *Re Incentives*. The cost of removing the disincentive, i.e. net lost revenues, is borne by the utility's ratepayers who benefit from the C&LM. Using CVEC's consolidated entity theory, Staff argues, means that New Hampshire ratepayers will bear an additional \$91,000 rate burden in 1994 alone. And, because the annual net revenue loss is a mathematical function of the kWh saved in that year—a function of the programs installed in that year and all prior years, Staff avers that the magnitude of the additional rate burden to New Hampshire ratepayers will grow over time.

Staff's position is that C&LM policy is more complex than outlined by CVEC: that it involves, pursuant to *Re Incentives*, the three intertwined elements of direct cost recovery, lost revenue recovery, and financial incentives. For example, while the use of CVPS' wholesale rate to calculate the value of C&LM results in a decrease in lost revenue, it simultaneously increases the value of C&LM resulting in the award of higher financial incentives. Concentrating solely on the impact upon CVEC's lost revenue position, Staff argues, ignores the simultaneous benefit of higher incentive payments to CVEC.

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In support of its argument that CVEC's, rather than CVPS', avoided costs are the relevant costs for calculating net lost revenues, Staff asserts that wholesale companies do not invest in C&LM and that, by the company's own admission, no consolidated CVPS/CVEC utility exists. Staff also notes that in *Re Connecticut Valley Electric Company*, 74 NHPUC 165 (1989), CVEC had notice that the parent company's wholesale rate structure did not adequately reflect real resource costs.

In opposition to CVEC's argument, Staff insists that the economic factors which shaped the decision in *Re Purchases* do not apply today and that case cannot be viewed as mandating use of the parent company's avoided cost to calculate net lost revenue. CVEC and CVPS are not consolidated, as demonstrated by the CVEC witness' testimony and by the uncertainty regarding the outcome of the planned negotiations to re-design CVPS' wholesale rate.

Staff advocates strict adherence to the Commission's adoption of a general definition of lost revenues which allowed utility-specific factors to be considered in the actual calculations. Staff's argument is that utility-specific factors may be considered only in relation to calculations and

may not be considered inconsistent with the adopted definition, for example, by treating the variable as well as fixed costs as recoverable. Staff argues that the definitions of utility and utility fixed costs, for the purposes of C&LM net lost revenues calculations, cannot be expanded to include the wholesale supplier.

III. COMMISSION ANALYSIS

[1-3] The C&LM programs proposed are reasonable as per our Order No. 21,142. After careful review of the Stipulation Agreement, we find the proposed programs, the proposed pilot program for direct billing of C&LM services for certain Commercial and Industrial customers, and the various provisions for accounting and measurement changes to be reasonable and in the public good.

After careful review of the testimony and exhibits offered and the briefs submitted on the lost revenue issue, we are persuaded that using the parent company's avoided costs to determine CVEC's net lost revenues is not in the public good nor consistent with our decision in *Re Incentives*. Therefore we approved, in Order No. 21,142, the use of CVEC's avoided costs pursuant to Attachment 4B of the Stipulation to determine CVEC's net lost revenues.

Our analysis follows our reasoning in *Re Incentives*, in which we addressed several issues that are critical to the successful implementation of C&LM. In that case we identified the Commission's interest in promoting C&LM as that of capturing its benefits for ratepayers, the utility, and the public at large. 75 NHPUC at 539. We identified the Commission's mission as that of insuring service at just and reasonable rates. *Id.* Our decision today fulfills our mission and our interest. For although we believe utility stockholders should benefit from well designed C&LM programs through financial incentives, we did not then and will not now unreasonably burden ratepayers in order to unreasonably benefit stockholders.

The interpretation of net lost revenues offered by CVEC would result in an unreasonable benefit for its stockholders. In *Re Incentives* all of the parties agreed that sales not made because of utility C&LM programs result in lost revenues to the utility. 75 NHPUC at 540. But CVPS does not implement C&LM, and therefore our definition of utility must exclude CVPS. In our final comment on the subject in *Re Incentives*, we "reiterate(d) that our intent with respect to the recovery of lost revenues is to ensure that the utility is made whole for the costs of its C&LM programs and the point of comparison is what utility costs and revenues would have been absent utility C&LM." *Id.* Given our definition of utility, we will limit lost revenues to the fixed cost component of CVEC's retail rates and deny recovery of un-recovered fixed costs at the wholesale level.

We do not accept CVEC's contention that our decision in *Re Purchases* is at odds with Staff's position in this case. Our decision in *Re Purchases* rested on an economic analysis which demands that the rate paid to small power producers match the benefits received, that is, the resource costs avoided. Further, a rate reflecting the avoided resource costs will result in an optimal mix of small power

production. While we believe the use of avoided resource costs to evaluate C&LM investments will likewise result in an optimal amount of C&LM, from CVPS' perspective, we

agree with Staff that such investments would have adverse financial consequences for CVEC.

An order consistent with this report has previously been issued (Order No. 21,142 dated February 28, 1994).

ORDER

On September 7, 1993, Connecticut Valley Electric Company (CVEC) filed its proposed 1994 conservation and load management (C&LM) program; and

WHEREAS, following the submission of testimony by Staff and lengthy settlement discussions, CVEC and Staff reached agreement on all issues raised in this docket with the exception of one, the calculation of net lost revenues; and

WHEREAS, on January 19, 1994, the Commission conducted a hearing at which CVEC and Staff submitted a Stipulation regarding the resolved issues and presented testimony on the unresolved issue of how to calculate C&LM induced net lost revenues; and

WHEREAS, on February 7, 1994, CVEC and Staff submitted briefs on the lost revenue issue; and

WHEREAS, a complete and detailed report explaining the Commission's decisions in this case will be issued in due course; it is hereby

ORDERED, that the proposed Stipulation is just and reasonable and is hereby approved; and it is

FURTHER ORDERED, that CVEC shall file Conservation and Load Management Percentage Adjustments to be effective March 1, 1994, that reflect the net lost revenues shown in Revised Attachment 4B to the Stipulation; and it is

FURTHER ORDERED, that the pilot program for direct billing of C&LM services submitted by CVEC on February 14, 1994 is in the public good and is hereby approved.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1994.

STIPULATION

I. INTRODUCTION

This Stipulation (Stipulation) sets forth the agreement between the New Hampshire Public Utilities Commission Staff (Staff) and Connecticut Valley Electric Company Inc. (Connecticut Valley or Company) regarding Connecticut Valley's conservation and load management (C&LM) programs and its proposed C&LM Percentage Adjustment (C&LMPA) to be effective on or after March 1, 1994. The Stipulation resolves all but one issue in this docket. A summary of the procedural history, the issues presented, and the terms of the Stipulation are set forth below.

II. PROCEDURAL HISTORY

On September 7, 1993, Connecticut Valley filed its petition with the New Hampshire Public Utilities Commission (Commission) to open a proceeding on its 1994 C&LMPA for effect January 1, 1994 through December 31, 1994. The Company proposed a reduced budget of \$115,000 and residential and non-residential C&LMPAs of 1.15% and 0.42% respectively. The

Commission held a duly noticed pre-hearing conference on October 12, 1993, at which time a procedural schedule was established. There were no intervenors in this proceeding.

On October 13, 1993 Staff issued Data Requests to which Connecticut Valley responded. A technical session on the Company's filing was held November 4, 1993, at which time Connecticut Valley and Staff agreed to a March 1, 1994 effective date for the proposed C&LMPA. On November 29, 1993, Staff issued its testimony and on December 6, 1993, Connecticut Valley issued Data Requests to which Staff responded.

On January 5, 1994, Staff and Connecticut Valley participated in lengthy settlement discussions which resulted in this Stipulation resolving all but one issue raised by Staff in its testimony.

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The Office of the Consumer Advocate (OCA), a statutory party to this docket, received all filings and notice of the hearings, technical session, and settlement conference. The OCA did not participate in the technical session, telephone conferences or the settlement discussions.

III. *ISSUES RAISED*

This docket includes issues relating to Connecticut Valley's: (1) 1993 C&LM activity; (2) 1994 proposed C&LM activity; (3) C&LM incentives calculation; (4) calculation of net lost revenues; (5) accounting and allocation of Development and Infrastructure (D&I) expenditures; and (6) proposal to direct bill certain non-residential customers C&LM products and services received. Within these six issue areas, Staff raised twenty-two items of concern. This Stipulation resolves all of Staff's concerns with the exception of calculation of net lost revenues.

IV. *STIPULATION*

1. Connecticut Valley agrees to provide C&LM programs in 1994 at the same participant level as targeted in 1993 and approved in Docket DR 92-113. However, as a result of adjustments to prior forecasts resulting from actual cost and savings information acquired during the past two years of program implementation, and the results of monitoring and evaluation studies, the current 1994 forecasts for costs and savings — at the 1993 participant level — are lower than the costs and savings per participant originally forecast for 1994 in this docket. Target participant levels and projected costs and savings for the 1994 C&LMPA period are attached to this Stipulation as Attachment I.

2. Connecticut Valley's filing used an updated avoided cost projection¹⁽⁷⁾ (New avoided costs — see Attachment 2) to calculate the 1993 maximizing and efficiency incentives and for reconciling the 1992²⁽⁸⁾ maximizing and efficiency incentives. During the course of this proceeding, the Company submitted revised 1992 and 1993 maximizing and efficiency incentives based on the higher Old avoided costs. For the purposes of this settlement only, Connecticut Valley and Staff agree to use the Old avoided costs for reconciling the 1992 maximizing and efficiency incentives and the New avoided costs for the 1993 maximizing and efficiency incentive calculations. For purpose of field screening for 1994 only, CVEC and staff agree to use new avoided cost.

3. Connecticut Valley and Staff agree that the term "Utility Costs" as used in the calculation

of the efficiency incentive includes Direct Costs, Monitoring and Evaluation Costs, Development and Infrastructure (D&I) Costs and the amortization of C&LM deferrals granted through September 30, 1991. For purposes of the 1992 and 1993 efficiency incentive calculations, Connecticut Valley and Staff agree that the Company's Utility Costs are as shown in Attachment III. Subject to provision 4 of this Stipulation, Connecticut Valley and Staff further agree that Utility Costs will be fully recovered in the respective C&LM program year in which they are incurred.

4. Connecticut Valley agrees to defer its request to recover \$27,375 of D&I costs allocated to the Company through July 1993, pending an audit by the Commission's Finance Department of CVPS's C&LM accounting practices and specifically the incurrence and allocation to Connecticut Valley of D&I expenditures. This deferral of the recovery of D&I expenditures is reflected in the 1994 C&LMPA shown on Attachments IVa and IVb to this Stipulation, reflecting the Company's and Staff's lost revenue calculations respectively. Connecticut Valley reserves its right to request recovery of this amount in a future proceeding and Staff reserves its right to recommend disallowance of the above amount and any additional D&I expenditures for the August through December 1993 period.

5. Connecticut Valley and Staff agree that CVPS will revise and refine its cost accounting practices to reflect more accurately the direct D&I expenditures of Connecticut Valley, separate and distinct from those of CVPS. In particular, CVPS will avoid placing such direct D&I expenditures in a "common pool" for allocation between the Company and CVPS. In future, D&I expenditures placed in the "common pool"

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shall be allocated between the Company and CVPS in proportion to the projected³⁽⁹⁾ annual level of program-specific C&LM costs incurred by the Company compared to such projected program-specific C&LM costs incurred by CVPS.

6. Connecticut Valley agrees to specifically inform Staff of accounting refinements or other revisions to C&LM reporting protocols, whenever such refinements or revisions are contemplated and will note such changes in its Quarterly C&LM Activity Reports. If necessary, Staff and the Company will meet to discuss such changes. In addition, if deemed necessary, either Connecticut Valley or Staff will seek Commission approval.

7. Connecticut Valley will implement a pilot C&LM program that offers direct billing services for Commercial and Industrial customers. The pilot program will take place in 1994 and the Company will enroll customers in the program with a target of obtaining up to one third of its 1994 projected C&LM energy savings for the Small Commercial Retrofit, Large Commercial Retrofit and Industrial Retrofit Programs.

Connecticut Valley and Staff agree to work together over the next three weeks to refine the objectives and details of the Company's direct bill pilot which contains the following major features:

- A loan which does not appear as debt on the customer's financial statement.
- A charge on the customer's monthly electric bill resulting in a positive cash flow.

- Engineering services to identify, evaluate, design and install energy efficiency measures.

This program will target rates C, GT, GV and T Commercial and Industrial customers in the Company's service territory. The program will be available for energy efficiency measures in retrofits and new equipment purchases.

Marketing will be direct selling to targeted Commercial and Industrial customers with characteristics that will increase their likelihood of participating in the program. The primary marketing objectives will be to overcome capital constraints and to inform customers of energy efficiency measures that have good financial returns.

Connecticut Valley will provide high quality engineering analysis for the customer and produce a Technical Assistance Report (TAR). Energy efficiency measures included in the TAR will be identified by a walk-through of the facility by a Connecticut Valley's Customer Services Engineer and the customer. A "Scope of Work" will be developed and an outside engineering firm will perform the engineering analysis unless Central Vermont's Customer Services Engineers have the capability of performing it.

The completed TAR will be reviewed jointly by Company and customer representatives and the customer will select the energy efficiency measures to be installed.

Once a project has been identified, competitive bids from installers will be solicited and a contract drawn up between the Company and the customer covering all of the obligations of the parties. Bids will be evaluated using the Connecticut Valley's Total Resource Cost screening tool.

Connecticut Valley will arrange the capital for the project installation, using either its own internal funds or the funds of private financial institutions, and will explore loan guarantees and mechanisms to release the customer from pledging assets for loan repayment. The Company will recover the loan through a direct charge on the customer's bill over a period designed to produce a positive cash flow for the customer. The recovery of other related costs and the development of general terms and conditions will be addressed in the above mentioned discussions between the Company and Staff and the outcome reported to the Commission on or before February 11, 1994.

8. Staff recommended in its testimony that the economic evaluation of C&LM resources for Connecticut Valley be based on the avoidance of wholesale power charges as reflected in the wholesale rate of its parent company Central Vermont Public Service's (CVPS). Connecticut Valley maintains that such evaluations should continue to be based on CVPS's avoided costs. Connecticut Valley and Staff agree to enter into

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good faith negotiations during 1994 to re-design CVPS's RS-2 wholesale rate so that the charges contained therein better reflect CVPS's avoided costs. The agreed schedule for such negotiations is shown on Attachment V to this Stipulation. The re-designed wholesale rate will then be presented to the Commission for approval and as the basis of future C&LM investment decisions. Staff and the Company reserve their rights to present arguments to the Commission

regarding the issue of Connecticut Valley's avoided costs in a future proceeding should negotiation fail to produce an acceptable wholesale rate structure.

9. Connecticut Valley agrees to use a threshold benefit/cost ratio of 1.2:1 for evaluating all residential, commercial, and industrial C&LM programs. Connecticut Valley and Staff further agree that programs which are cost-effective but fall below this threshold may be included only if they constitute a lost opportunity or if the projected savings have been verified by evaluation studies.

10. Connecticut Valley and Staff agree that the pre-filed testimony in this docket will be entered into the record as evidence, as well as the Data Requests and Responses thereto and the memorandum regarding direct billing prepared by the Company's witness William J. Deehan.

11. Connecticut Valley and Staff agree that the antitrust issues raised by the Company in its Brief of Connecticut Valley Electric Company Inc. Regarding Anti-Trust Concerns can be addressed by the Commission's acceptance of the findings and conclusions of law contained in the Brief.

V. MISCELLANEOUS PROVISIONS

1. Other than as expressly stated herein, the making of this Stipulation establishes no principles or precedents and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation.

2. This Stipulation is the product of settlement negotiations. The content of those negotiations shall be privileged and all previous and/or draft offers of settlement shall be without prejudice to the position of any party or participant presenting such offer.

3. This Stipulation is submitted on the condition that if the Commission does not approve the Stipulation in its entirety, the Stipulation shall be deemed withdrawn and shall not constitute a part of the record in this or any proceeding or be used for any purpose to foreclose Staff or the Company from making any contention in any future proceeding or investigation.

4. Connecticut Valley and Staff agree that this Stipulation, or portions hereof, shall be effective and binding, only upon approval of the Commission.

Dated as of this nineteenth day of January, 1994.

CONNECTICUT VALLEY ELECTRIC
COMPANY

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NEW HAMPSHIRE PUBLIC
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*See Commission Files For Attachments

FOOTNOTES

¹Compared to the projection submitted in Connecticut Valley's 1992 LCIP (Old avoided costs).

²That is, the C&LMPA 1 time period October 1, 1991 through December 31, 1992.

³Connecticut Valley and Staff agree that the allocated D&I expenditures will be reconciled after the end of the program year once actual program-specific C&LM costs become available.

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NH.PUC*02/28/94*[70414]*79 NH PUC 123*Granite State Electric Company

[Go to End of 70414]

79 NH PUC 123

Re Granite State Electric Company

DR 93-188

Order No. 21,143

New Hampshire Public Utilities Commission

February 28, 1994

ORDER adopting a settlement agreement with respect to an electric utility's conservation and load management program. A budget of \$3.1 million is approved, with the utility encouraged to pursue greater customer co-payments for certain measures. Administration of a home energy management program is transferred from the utility to its wholesale supplier, New England Power Company, given that the program's load-reduction benefits inure more to the supplier than the utility itself.

1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Settlement agreement — Possibility of more use of customer co-payments for certain measures — Study of efficacy of residential lighting programs — Transfer of administration of home energy management program to wholesale supplier. p. 124.

2. ELECTRICITY, § 4

[N.H.] Operating practices and efficiency — Conservation and load management programs — Alternative financing proposals — Greater use of customer co-payments — Cost-effectiveness of residential lighting programs — Transfer of administration of home energy management program to wholesale supplier — Settlement agreement. p. 124.

APPEARANCES: David J. Saggau, Esq. on behalf of Granite State Electric Company; Jeanne Sole, Esq. for the Conservation Law Foundation; Kenneth E. Traum for the Office of Consumer Advocate on behalf of residential ratepayers; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On October 1, 1993, Granite State Electric Company (GSEC or Company) filed adjustments to its 1993 Conservation and Load Management (C&LM) Program which was previously approved February 4, 1993 by Order No. 20,742.

A duly noticed prehearing conference was held on November 15, 1993, at which a procedural schedule was presented. The Commission approved the procedural schedule on November 29, 1993 by Order No. 21,043. A motion to intervene submitted by the Conservation Law Foundation (CLF) was approved by the Commission on December 6, 1993.

Following a round of data requests by the Office of Consumer Advocate (OCA) and Staff, a technical session was held on December 9, 1993 to discuss outstanding issues of concern. The OCA and Staff filed separate testimony on December 21, 1993 and December 29, 1993 respectively.

On February 7, 1994, the parties and Staff submitted a Settlement Agreement (Attachment I) that resolved all issues in the case. The Commission held a hearing on February 8, 1994, at which the Company presented testimony and exhibits in support of the Settlement Agreement.

II. POSITION OF STAFF AND THE PARTIES

A. Granite State Electric Company

The Company's C&LM filing consists of

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five (5) residential and three (3) commercial and industrial (C&I) programs. Descriptions of the programs are provided in the Settlement Agreement which is included as Attachment A to this Report. With the exception of the changes discussed below, the eight proposed programs are the same programs approved by Order No. 20,742.

Two significant changes are proposed to the C&LM program approved by Order No. 20,742. First, the Company requests a multi-year approval of its programs. The three primary reasons for this request are: 1) the Company desires the ability to make multi-year financial commitments to large customers whose projects often extend beyond annual C&LM and customer budget periods, 2) many of the Company's C&LM programs are mature and operating efficiently at current budget levels and designs, and 3) given ongoing program efficiencies, subsequent annual C&LM filings could then focus on program or budget revisions proposed by the Company or any

party.

Second, the Company requests to transfer control of the Home Energy Management (HEM) program from the Company to New England Power (NEP) Company. The Company asserts HEM is a load management program that provides benefits to ratepayers by reducing loads during the peak hours for NEP, the Company's wholesale supplier. Accordingly, the program would be best administered by NEP. Approval of the transfer would effectively reduce the proposed 1994 residential C&LM budget by \$216,000, the amount of the HEM program budget.

The Company proposes a 1994 budget of \$2.9 million for new business and a total budget of \$3.3 million reflecting \$396,000 of carryover from previous years. Residential program spending is projected at \$885,600 and C&I program spending at \$2.4 million. To recover those costs plus incentives earned in 1993, the Company proposes 1994 C&LM adjustment factors of \$.00338 and \$.00449 per kWh for the residential and C&I classes respectively.

B. Office of Consumer Advocate

The OCA's testimony generally supported the Company's filing, but it raised three concerns. First, OCA agreed that HEM should be transferred to NEP. However, OCA testified that the Commission should retain some authority over HEM in case NEP revises the current program design and implementation plan. Second, the Company should more aggressively pursue the implementation of customer co-payment options for C&LM programs and services, or demonstrate why such options are not cost-effective. Third, OCA proposed to limit the maximum amount spent on any single family home in the Energy Crafted Home program to \$2,000.

C. Staff

Staff recommended that the Company's proposed multi-year program approval be rejected in favor of continuation of the current two year approval granted in Docket DR 92-161. Staff contends that a multi-year approval would limit its flexibility to recommend changes to budgets and program designs.

Staff recommended that the Company be required to file and implement within six months an alternative funding proposal that would have the effect of reducing or eliminating C&LM rebates for certain classes of customers and, at the same time, reduce the rate impact on non-participants.

Staff expressed concern about the cost effectiveness of the Residential Lighting program. Given evaluation results to date, staff is not convinced that further evaluation will lead to improved program cost effectiveness. Therefore, Staff recommended that the Commission consider withdrawing the Residential Lighting program after 1994 if the evaluation results do not show improvement.

D. Conservation Law Foundation

Although granted intervenor status, the Conservation Law Foundation did not submit testimony in this docket.

III. Settlement Agreement

[1, 2] Attachment I to this Report and

Order is a copy of a Settlement Agreement that resolves all issues in this case. It was presented to the Commission as the product of negotiations by the parties and Staff.

The parties and Staff agreed that the Company's proposed 1994 C&LM program (as amended below) shall be effective March 1, 1994 and that the 1995 C&LM program shall be filed on or about October 1, 1994.

The parties and Staff agreed to set the 1994 C&LM budget at \$3.1 million, of which \$2.7 million is for new business, and the C&LM adjustment factors at \$0.00238 and \$0.00167 per kWh for the residential and C&I classes respectively. These factors reflect the transfer of the Home Energy Management program from the Company to New England Power.

The Company agreed to withdraw its request for multi-year C&LM approval and to develop, in conjunction with the Staff and the other parties, alternative financing mechanisms that require participating C&LM customers to pay a higher percentage of implementation costs. The Company undertakes to implement a pilot financing program within six months of the date of the Commission's order in this docket. The Company also agrees to submit a report in its 1995 C&LM filing that details the results of its study of the impacts of customer co-pay options.

Finally, the parties and Staff agreed that if the evaluation results of the Residential Lighting program do not improve cost effectiveness to a level deemed adequate by Staff and the parties, the Company shall seek approval to reduce or eliminate Residential Lighting program activity.

IV. Commission Analysis

The C&LM programs proposed are reasonable as per our Order No. 21,043. We find the changes outlined in the Settlement Agreement are reasonable and in the public good. Furthermore, we particularly commend the proposed pilot financing program.

We recognized in the generic docket Incentives for Conservation and Load Management, DE 89-187, that C&LM is a valuable utility resource and we established a policy framework designed to encourage its cost-effective development and implementation. That framework includes timely recovery of C&LM direct costs, recovery of lost revenues, and the payment of financial incentives. Since our policy has succeeded in encouraging electric utilities under our jurisdiction to design and implement programs that benefit all customer classes, we are naturally interested in knowing whether those benefits can be maintained or increased while lowering costs. That is, can utilities achieve existing or higher levels of kWh savings with lower rate impacts? We are therefore encouraged to learn that the Company has begun to lower rebates and is exploring alternative financing arrangements that involve participants paying a higher percentage of C&LM direct costs. We look forward to reviewing preliminary results of that effort in the 1995 C&LM filing.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed Settlement Agreement is just and reasonable and is hereby approved; and it is

FURTHER ORDERED, that the C&LM program shall be effective on March 1, 1994; and it is

FURTHER ORDERED, that following the development of the pilot financing program with Staff and the other parties, Granite State Electric shall file a description of said program, but in any event no later than two months after the date of this order.

By order of the New Hampshire Public Utilities Commission this 28th day of February, 1994.

ATTACHMENT I
OFFER OF SETTLEMENT

This Offer of Settlement is jointly submitted by the New Hampshire Public Utilities Commission Staff ("Staff"), the Office of Consumer Advocate ("OCA"), the Conservation

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Law Foundation ("CLF"), and Granite State Electric Company ("Granite State Electric" or "Company"), together hereinafter the "Parties," and resolves all issues among the Parties in this proceeding concerning Granite State Electric's 1994 Conservation and Load Management ("C&LM") Program.

I. Background

On October 1, 1992, Granite State Electric filed with the Commission its proposed 1993-1994 C&LM Program consisting of five separate residential and three commercial & industrial ("C&I") programs.¹⁽¹⁰⁾ The Company proposed an annual budget for new business of \$2.8 million each for the 1993 and 1994 program year.

By Order No. 20,742 issued on February 4, 1993 in Docket No. DR92-161, the Commission approved a settlement submitted by the Parties²⁽¹¹⁾ which included program design and budget approvals for both the Company's 1993 and 1994 C&LM programs. Pursuant to the terms of that settlement, the Company agreed that, in lieu of filing a full C&LM petition for 1994, it would file on or before October 1, 1993 its proposed 1994 C&LM factors, to be effective January 1, 1994, and any proposed changes to the Company's pre-approved 1994 C&LM program.

On October 1, 1993, Granite State Electric filed testimony and schedules supporting its 1994 C&LM program factors. In addition, in response to the experiences with the 1993 program, the Company proposed several changes to program budgets and designs from what had been pre-approved for 1994.

The Company proposed a slight increase of its pre-approved budget for new business from \$2.8 million to \$2.9 million, for a total budget of \$3.3 million reflecting carryover from previous years.³⁽¹²⁾ The Company proposed a residential C&LM adjustment factor of \$.00338 per kWh and a C&I C&LM adjustment factor of \$.00449 per kWh. In addition to slightly increasing the budget for new business and proposing several minor changes to the 1994 program, the Company proposed two significant changes. First, the Company requested a multi-year approval of its programs so that subsequent annual C&LM filings would focus on only proposed changes to the ongoing program. Second, the Company proposed to move the Home Energy Management

("HEM") program from Granite State Electric's C&LM program to New England Power Company ("NEP") since HEM is a load control program and is best administered by NEP, Granite State Electric's wholesale supplier.⁴⁽¹³⁾

The Commission held a duly noticed pre-hearing conference in this docket on November 15, 1993, at which time the procedural schedule was established. The motion to intervene submitted by the CLF was approved by the Commission on December 6, 1993. There were no other intervenors in this docket.

Both Staff and the OCA submitted testimony in this proceeding pursuant to the procedural schedule. Staff made four primary recommendations in its testimony. First, Staff supports the transfer of the HEM program to NEP and the corresponding revision to the Company's 1994 residential factor to exclude the proposed \$216,000 HEM budget. Second, Staff expressed concern about the Company's multi-year approval proposal and recommended rejection by the Commission. Instead, Staff supports the continuation of the current two-year approval period as was originally provided for in Docket No. DR92-161. Third, Staff expressed concern about Granite State Electric's lack of an alternative funding mechanism to utility-financed rebates. Fourth, except as mentioned above, Staff supports all proposed 1994 program and budget revisions filed by the Company. Staff also expressed a concern over the cost-effectiveness of the Company's Residential Lighting program. Staff stated that the Commission should take no action now, but should consider withdrawing the Residential Lighting program after 1994 if Granite State Electric's evaluations of this program do not lead to an improved cost-effectiveness.

The OCA testified that, in general, it is supportive of the Company's revised filing, but raised three (3) concerns of the Company's proposal. First, the OCA believes that the Commission should retain some authority with regards to the HEM program, but agrees that the

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program should be transferred to NEP. Second, the OCA would like to see the Company be more aggressive in pursuing co-payment options, or definitively show why they are not cost-beneficial. Third, the OCA supports a spending cap on any single home served under the Energy Crafted Home program of \$2,000.⁵⁽¹⁴⁾

The CLF, which participated with the Company in the filing, did not submit written pre-filed testimony.

II Settlement

During the course of discovery in this proceeding, the Company responded to 25 data requests and 9 record requests of Staff and 14 data requests of the OCA. In addition, the Parties participated in a technical session on December 9, 1993. As a result of discussions among the Parties, hereto have reached a settlement which resolves all issues among them in this proceeding. Specifically, the Parties agree as follows:

A. Overall Proposal

Granite State Electric shall implement its 1994 C&LM program as revised by the Company in this proceeding, subject to the modifications and stipulations contained in this Settlement. The Company's 1994 C&LM program as modified by this Settlement shall be effective March 1,

1994. The Company shall file for its 1995 C&LM program on or about October 1, 1994

B. Program Budget

The Company's 1994 C&LM program budget shall be \$3.1 million, of which \$2.7 million is for new business. The 1994 budgets associated with each program are shown in Attachment 1. The values associated with each program are shown in Attachment 2. The projected 1994 incentives and customer dividends are shown in Attachment 3.

C. Adjustment Factors

The 1994 residential C&LM factor shall be \$0.00238 per kWh⁶⁽¹⁵⁾ and the 1994 C&I factor shall be \$0.00167 per kWh,

⁷⁽¹⁶⁾ effective March 1, 1994. The calculation of each factor in 1994 is shown in Attachment 4.

D. Home Energy Management Program

The Parties agree that the HEM program shall be transferred from Granite State Electric to NEP. The Parties expressly acknowledge that the Commission may require the Company to reinstate the HEM program in New Hampshire if the Commission is not satisfied with the program being administered by NEP. The Company agrees to submit to the Commission, on or about January 15 of each year, a report summarizing the level of activity in New Hampshire in the HEM program. In 1994, approximately 600 customers will be served under the HEM program in New Hampshire — the same number Granite State Electric had proposed in its initial filing.

E. Multi-Year Approval

The Company agrees to withdraw its proposal for a multi-year approval of its C&LM program. The parties agree that nothing in this Settlement would prevent the Company from proposing such a multi-year approval in the future.

F. Financing

The Company agrees to develop alternative financing mechanisms that involve participants in a C&LM program paying a greater percentage of the implementation costs. One or more such mechanisms shall be in place on a pilot basis no later than six months after the date of the Commission's order in this proceeding and shall be in such a form as is acceptable to the Commission. Staff, OCA, CLF and the Company agree to work together to define the objectives and details of the Company's financing plan.

G. Customer Co-Pay

The Company shall submit in its next

C&LM filing a report detailing the results of a study on the impact of customer co-pay options and will provide the Company's view on the role customer co-pays may play in its C&LM program.

H. Residential Lighting Program

The Parties agree that the Company shall offer the Residential Lighting program as proposed by the Company. However, depending on the evaluation results for this program which will be filed in June 1994, the Company will seek approval to reduce or eliminate activity associated with this program if the cost-effectiveness of the program has not improved to a level deemed adequate by the Parties.

I. 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 other 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 other proceeding or be used for any purpose.

The Parties respectfully request the Commission to adopt this Settlement as a final resolution of all issues in this proceeding.

Dated this seventh day of February, 1994.

Respectfully submitted,

NEW HAMPSHIRE PUBLIC
UTILITIES COMMISSION
STAFF
E. Barclay Jackson

OFFICE OF THE CONSUMER
ADVOCATE

CONSERVATION LAW FOUNDATION
Armond Cohen, Esquire

GRANITE STATE ELECTRIC
COMPANY
David J. Saggau, Esquire

ATTACHMENT 1

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

1994 C&LM PROJECTED SPENDING

Program	Payroll (\$000)	Expense (\$000)	Advertising (\$000)	Total (\$000)
RESIDENTIAL PROGRAMS				
Energy Crafted Home	\$4.6	\$20.8	\$2.9	\$28.3
Multifamily Retrofit	\$6.1	\$142.9	\$2.4	\$151.5
Residential Lighting	\$6.6	\$177.5	\$32.5	\$216.6
Residential Space Heating	\$7.6	\$261.0	\$4.4	\$273.0
SUBTOTAL	\$24.9	\$602.3	\$42.2	\$669.5
C&I PROGRAMS				
Design 2000	\$100.9	\$1,205.3	\$16.9	\$1,323.0
Energy Initiative	\$93.9	\$641.2	\$30.6	\$765.8
Small C&I	\$14.7	\$336.7	\$0.4	\$351.8
SUBTOTAL	\$209.5	\$2,183.2	\$47.9	\$2,440.6
GRAND TOTAL	\$234.5	\$2,785.5	\$90.1	\$3,110.0

NOTE:

Includes Design 2000 and Energy Initiative carryover from previous years.

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

ATTACHMENT 2

GRANITE STATE ELECTRIC COMPANY
Summary of Expenses, Value, kW, and kWh by Program

1994

Load Reduction in kW	Program			Value					
	MWh Saved			(000's)					
Maximum	Benefit/Expenses			Total	Capacity	On Peak	Off Peak	MDC	
Commercial and Industrial	Cost	Annual	Lifetime						
Annual Summer	Winter	Lifetime	Annual	Lifetime					
Design 2000									
3.04	\$1,323.0	\$4,019.0	\$1,170.7	\$1,563.3	\$617.9	\$667.1			
1,387	1,219	940	22,933	5,197	85,750				
Energy Initiative									
1.78	765.8	1,366.4	361.2	469.4	326.6	209.1			
476	343	352	7,801	2,033	33,334				
Small C/I									
1.27	351.8	448.0	183.4	125.4	32.9	106.3			
231	200	204	3,135	415	5,600				
SUBTOTAL									
2.39	\$2,440.6	\$5,833.4	\$1,715.3	\$2,158.1	\$977.4	\$982.5			
2,094	1,761	1,495	33,869	7,645	124,684				
Residential Programs									
Energy Crafted Home									
0.79	\$28.3	\$22.3	\$5.9	\$4.9	\$5.0	\$6.5			
8	0	8	277	18	587				
Multi-Family Retrofit									
1.05	151.5	159.8	49.0	40.6	38.2	32.0			
93	9	93	1,584	198	3,371				
Residential Lighting									
1.08	216.6	234.9	47.6	105.5	35.5	46.2			
129	35	129	1,050	545	4,442				
Residential Space Heating									
1.42	273.0	388.8	111.2	79.5	83.9	114.3			
195	45	195	3,593	428	7,670				
SUBTOTAL									
1.20	\$669.5	\$805.8	\$213.7	\$230.5	\$162.6	\$199.0			
425	90	425	6,504	1,189	16,071				
TOTAL									
2.13	\$3,110.0	\$6,639.2	\$1,929.0	\$2,388.6	\$1,140.0	\$1,181.5			
2,519	1,851	1,920	40,373	8,834	140,754				

Value Calculations will be based on parameters included in Schedule EGH-1.

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ATTACHMENT 3

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

GRANITE STATE ELECTRIC
PROJECTED 1994 INCENTIVES AND CUSTOMER DIVIDENDS

	<i>Total Incentive Calculation</i>	<i>Residential Incentive Calculation</i>	<i>C&I Incentive Calculation</i>
1. Total Value	\$6,639,200	\$805,800	\$5,833,400
2. NEP Evaluation Costs	\$97,000	\$23,000	\$74,000
3. Customer Direct Costs	\$821,200	\$11,900	\$809,300
4. Adjusted Program Value	\$5,721,000	\$770,900	\$4,950,100
5. Program Costs	\$3,110,000	\$669,400	\$2,440,600
6. Non-Cost Effective Program Value	\$22,300	\$22,300	\$0
7. Value Eligible for Maximizing Incentive	\$5,698,700	\$748,600	\$4,950,100
8. Maximizing Incentive	\$210,684	\$37,430	\$173,254
9. Value Eligible for Efficiency Incentive	\$2,400,316	\$64,070	\$2,336,246
10. Efficiency Incentive	\$240,032	\$6,407	\$233,625
11. Total Conservation Incentive	\$450,716	\$43,837	\$406,879
12. Customer Dividend	\$2,160,284	\$57,663	\$2,102,621
13. Threshold	\$2,860,500	\$385,450	\$2,475,050

Line 1: Source: DSM Regulatory Department — Attachment 2.

Line 2: Source: DSM Regulatory Department.

Line 3: Source: DSM Regulatory Department.

Line 4: Line 1 - Line 2 - Line 3.

Line 5: Source: DSM Regulatory Department — Attachment 1.

Line 6: Source: DSM Regulatory Department — Attachment 2.

Line 7: If Line 4 < Line 13 or Line 4 < Line 5 then Line 7 = 0. Else Line 7 = Line 4 - Line 6.

Line 8: Res Max Inc = Line 7 *.05, C&I Max Inc = Line 7 *.035.

Line 9: If Line 4 < Line 13 or Line 4 < Line 5 then Line 9 = 0. Else Line 9 = Line 4 - Line 5 - Line 8.

Line 10: Line 9 *.10.

Line 11: Line 8 + Line 10.

Line 12: Line 4 - Line 5 - Line 11.

Line 13: 50% of Adjusted Program Value.

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ATTACHMENT 4

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

GRANITE STATE ELECTRIC
CALCULATION OF RESIDENTIAL & C&I FACTORS
Proposed 1994 C&LM Factors

	<i>Residential</i>	<i>C&I</i>	<i>Total</i>
Line 1 1994 Program Budget	\$669,400	\$2,440,600	\$3,110,000
Line 2 1993 Incentives (Preliminary)	\$0	\$0	\$0
Line 3 1993 Year-end C&LM Fund Balance	\$150,972	\$1,495,351	\$1,646,323
Line 4 Estimated Jan & Feb 1994 Revenues	\$61,558	\$351,468	\$413,026
Line 5 Total to Be Recovered	\$456,870	\$593,781	\$1,050,651
Line 6 10 Months kwh Sale	192,173,000	354,872,294	547,045,294
Line 7 1994 C&LM Factor	\$0.00238	\$0.00167	\$0.00192
Line 8 Current Factor	\$0.00116	\$0.00489	\$0.00358
Line 9 Increase/(Decrease) in Factors per kwh	\$0.00122	(\$0.00322)	(\$0.00166)

Line 1: Attachment 1.

Line 2: Preliminary Estimate.

Line 3: November 1993, Monthly C&LM Report (January 13, 1994).

Line 4: Jan & Feb forecasted kwh * Effective C&LM factor.

Line 5: Line 1 + Line 2 - Line 3 - Line 4.

Line 6: Load Forecasting.

Line 7: Line 5/Line 6.

Line 8: Current C&LM Adjustment Factor.

Line 9: Line 7 - Line 8.

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FOOTNOTES

¹The five residential programs include 1) Electric Space Heat, which installs weatherization and other conservation measures in 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; 4) Energy-Crafted Homes, which promotes efficiency in the design and construction of new homes; and 5) Multi-Family Retrofit, which install a variety of conservation measures in electrically heated multi-family buildings of five or more units.

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 of less than 150,000 kilowatthours ("kWh").

²The Parties to DR 92-161 included Staff, the CLF and the Company; the OCA was not a party.

³As discussed below, the proposed 1994 budget amounts have been subsequently revised to \$2.7 million and \$3.1 million, respectively, which reflects the elimination of the \$216,200 HEM program budget.

⁴Through this transfer, the HEM Program will be handled in a manner consistent with the two other dispatchable C&LM programs already administered by NEP — standby generation and interruptible rates.

⁵As originally filed, it appeared that the Company spent \$4,200 per dwelling served under this program in 1993. Upon further review of the 1993 program, it was subsequently determined that the per dwelling spending amount was \$2,800, an amount acceptable to the OCA.

⁶Reflects the elimination of the HEM Program budget.

⁷Reflects carryover from 1993 C&I budgets.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 92-161, Order No. 20,742, 78 NH PUC 68, Feb. 4, 1993.

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NH.PUC*02/28/94*[70415]*79 NH PUC 133*Connecticut Valley Electric Company

[Go to End of 70415]

79 NH PUC 133

Re Connecticut Valley Electric Company

DR 93-227

Order No. 21,144

New Hampshire Public Utilities Commission

February 28, 1994

ORDER accepting an electric utility's filing for a fuel adjustment clause rate of \$0.0038 per kilowatt-hour (kWh) and a purchased power cost adjustment rate of \$0.0012 per kWh.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct costs — Fuel adjustment clause — Decrease — Purchased power cost adjustment — Increase — Electric utility. p. 135.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect costs — Fuel and purchased power clauses — Legal fees — Associated with a contest of qualifying facility status — Deferral of ruling on inclusion of such costs — Electric utility. p. 135.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 26

[N.H.] Indirect costs — Fuel and purchased power clauses — Franchise taxes — Proper accounting as a factor — Electric utility. p. 135.

APPEARANCES: Kenneth Picton, Esq., for Connecticut Valley Electric Company; James J. Cunningham, Jr., Thomas C. Frantz, Chester A. Kokoszka and Robert J. Frank, Esq. for the Staff of the Public Utilities Commission.

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BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On January 28, 1994, Connecticut Valley Electric Company (CVEC) filed tariff changes to its Fuel Adjustment Clause (FAC), Purchased Power Cost Adjustment (PPCA), and the rate CVEC pays to small power producers under Rate E, Short- Term Power Rates, effective for the period March, 1994 through December, 1994. Supporting testimony and exhibits were filed January 28, 1994.

The New Hampshire Public Utilities Commission (Commission) held a duly noticed public hearing at its offices in Concord on February 22, 1994 to review the FAC, PPCA and Short-Term avoided energy and capacity costs filed by Connecticut Valley Electric Company. At the hearing, the Commission heard testimony from four CVEC witnesses: Robert J. Ameland addressed the derivation of the 1994 CVEC Short-Term Energy Purchase Rate E; David W. Carbon supported his testimony on the 1994 sales forecast; Charles A. Watts addressed the derivation of the 1994 monthly RS-2 energy charges, the 1994 CVEC Small Purchase Power Producer forecast, the 1994 CVPS Transmission by Others forecast and the 1994 CVPS Purchased Capacity forecast and C.J. Frankiewicz addressed the derivation of the FAC and PPCA. In addition, he summarized changes to his testimony and attachments incorporating actual data for January 1994. This data was not available at the time of CVEC's initial filing.

II. POSITION OF THE PARTIES

A. CVEC

CVEC proposes an FAC of \$0.0038 per kWh. This represents a \$0.0013 per kWh decrease from the current FAC factor of \$0.0051 per kWh and is based on: (1) a decrease of \$205,439 in the prior period under collection amount (the prior year (1993) under collection now stands at \$33,301); and (2) Central Vermont Public Service Company's (CVPS) RS-2 energy charges are \$398,062 or 16% less than they were in 1993. Partially offsetting these reasons was an increase in Small Power Producers (SPP) costs. Both the output and cost from the CVEC SPP's are higher than 1993 due primarily to the projected higher output levels of the New Hampshire/Vermont Solid Waste Plant (NH/VTSWP). Total CVEC costs from SPP's are \$419,605, or 12% higher.

CVEC proposes that it recover legal expenses incurred beginning on January 1, 1994

(pursuant to NHPUC Order No. 21,000, Docket DR 93-196) in its FERC proceeding initiated against the operator of the NH/VTSWP. CVEC states that actual costs cannot be determined now because the case may settle or be resolved on summary disposition, or it may be necessary to proceed to a final hearing and possible appeal(s). Therefore, CVEC has not included an estimate of these legal costs in its proposed FAC. CVEC nonetheless seeks Commission approval to recover these costs by identifying them in a separate monthly FAC reconciliation column beginning with the January 4, 1994 reconciliation report. CVEC states that because it commits to passing through the benefits of the FERC filing to ratepayers through the FAC automatically, it should also recover the expenses of this FERC filing in the FAC automatically. Without such a recovery plan, CVEC believes that the flow of benefits and costs for this NHPUC ordered FERC filing would not be in tandem.

CVEC proposes a PPCA of \$0.0012 per kWh. This represents an increase of \$0.0034 from the previous 1993 PPCA factor of (\$0.0022) per kWh and is based on: (1) an increase of \$82,326 in the prior period over collection amounts (the 1993 PPCA factor anticipated an over collection balance of \$307,291, and the actual over collection is only \$224,965 due to an unanticipated increase in the production capacity allocation factor in the RS-2 Rate); and (2) RS-2 Capacity costs are \$275,941, or 3.8% higher than 1993.

Finally CVEC proposes the following short-term energy rates which it pays under Rate E of its tariff:

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

1994 March - April	\$0.0212 per kWh
1994 May - October	\$0.0211 per kWh
1994 November - December	\$0.0273 per kWh

The base capacity rate is \$0.00 per kW-month which is lower than the 1993 rate of \$0.25 per kW-month due to the soft capacity market within NEPOOL. The energy rate is lower due to lower fossil fuel and opportunity purchase costs. The total impact is a 22% reduction in cost to CVEC for purchases from Small Power Producers under the 1994 Rate E relative to the 1993 Rate E. In addition to the cost impact, CVEC is proposing a design change. Starting in 1994 CVEC is not providing time of day rates. Time interval data has never been measured for producers under RATE E and CVEC does not expect that such data will be made available.

B. Staff

Staff addressed two areas of concern with regard to CVEC's proposed FAC and PPCA rate calculations. First, Staff questioned whether it is proper for CVEC to request FAC recovery of legal expenses incurred to pursue alleged violations of qualifying facility status by the operator of the NH/VTSWP. Second, staff indicated that CVEC miscalculated its New Hampshire franchise tax costs. Staff recalculations did not change the rates proposed by the CVEC; the FAC remains \$0.0038 per kWh and the PPCA remains \$0.0012.

Staff contends that expenses for legal fees and other related costs are built into base rates and that only fuel-related costs should be reflected in the FAC. The FAC was instituted in order to

protect companies from fluctuations in the cost of fuel. Other cost elements are included in base rates.

Staff expressed concern that CVEC was including franchise taxes in its total cost of fuel, and that it appeared that CVEC was not segregating revenues pertaining to franchise taxes. Staff also indicated that CVEC had not adjusted its franchise tax calculation to reflect over and under collections brought forward from the previous period in the PPCA and the FAC. After incorporating these adjustments, neither the FAC nor the PPCA rate per kWh changed from the rates proposed by CVEC.

III. COMMISSION ANALYSIS

[1] The first issue before the Commission is whether to approve an FAC rate of \$0.0038 (excluding the provision for legal expenses and other costs mentioned above), a PPCA rate of \$0.0012 per kWh, and short-term energy rates CVEC pays under Rate E of its tariff. Based on the record in this case, the Commission finds the rates as modified by the changes noted above to be just and reasonable.

[2] The second issue before the Commission relates to CVEC's request to include in its 1994 reconciliation a provision to recover an unspecified amount for legal fees and other related costs incurred beginning January 1, 1994 in CVEC's action at the FERC against the operator of the NH/VTSWP. The Commission will defer its decision regarding CVEC's request to recover legal fees and related costs incurred pursuant to Commission Order No. 21,000 in Docket DR 93-196 until such time as more information about the outcome of the FERC case is available.

[3] During cross-examination of Mr. Frankiewicz, an issue arose concerning CVEC's treatment of the state franchise tax. The Commission has established general principles for franchise tax treatment. In its generic docket, DR 83-205, electric and gas utilities were allowed to apply the franchise tax to their gross sales of electricity and gas. This tax was to be applied by using either a multiplier of 1.010101 or by dividing the gross bill by a factor of .99. Each utility was ordered to account for the revenue from the franchise tax by separating the amounts in an "other utility revenue account". The purpose of that accounting was to enable the Commission to track the franchise tax revenues and expenses.

In July 1993, when CVEC refiled its tariffs to reflect the reinstatement of the franchise tax, the Commission allowed CVEC to include one percent of its gross revenues from the sale of electricity into its rates. A proportionate share of that franchise tax revenue was allowed to be used in the calculation of the purchased power

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rate and the fuel adjustment rate. In effect, this accomplished the same result as would have been realized using the original adjustment factor. Each of these cost and revenue elements need to be accounted for using proper accounting procedures from the Chart of Accounts, which the Commission adopted in 1969. The Chart of Accounts provides separate accounts for purchased power, fuel costs, other utility taxes, and interest income and expense.

The franchise tax is based upon one percent of the gross sales of electricity. Therefore, in any given year the franchise tax will be based upon the revenues for that year. In the event that there

is an over or under collection of the costs in any given year, the associated amounts will be brought forward to the next period, increasing or reducing the revenues to be collected in the adjustment period. Staff has adjusted the franchise tax calculation to account for the fact that the adjustments for over and under collections will be included in revenues during the adjustment period, and it is that amount upon which CVEC will be liable for franchise taxes in the adjustment period.

It is important to note that the intent of the Commission's treatment of the franchise tax is that CVEC would match the franchise tax cost with the franchise tax revenues. It is not the Commission's intent to provide any opportunity for a margin to be realized from the operation of the franchise tax. CVEC has been allowed to include a factor for the franchise tax and interest on over and under collections in its calculation of the FAC and the PPCA for billing purposes. CVEC should properly account for each cost element. We ask that CVEC and the Staff work together to ensure that the franchise tax is properly accounted for and tariffs amended as necessary.

An order (Order No. 21,144) has been issued consistent with this report.

ORDER

Upon review of the evidence; it is hereby

ORDERED, that the Fuel Adjustment Clause factor for Connecticut Valley Electric Company (CVEC) for the period March 1994 through December 1994, shall be \$0.0038 per kWh; and it is

FURTHER ORDERED, that the Purchased Power Adjustment Clause for 1994 for the period March 1994 through December 1994 shall be \$0.0012 per kWh; and it is

FURTHER ORDERED, that the short-term capacity and energy rates paid to Qualifying Facilities shall be as follows:

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

1994 March-April	\$0.0212 per kWh
1994 May-October	\$0.0211 per kWh
1994 November-December	\$0.0273 per kWh;

and it is

FURTHER ORDERED, that CVEC file tariff pages in compliance with this Order no later than 15 days from the issuance date of this Order; and it is

FURTHER ORDERED, that CVEC file with the Commission a standard contract to comply with Order No. 19,052; and it is

FURTHER ORDERED, that a report detailing the evidence and findings in this case will follow.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., DR 93-196, Order No. 21,000, 78 NH PUC 579, Oct. 18, 1993.

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NH.PUC*02/28/94*[70416]*79 NH PUC 137*Granite State Electric Company

[Go to End of 70416]

79 NH PUC 137

Re Granite State Electric Company

DE 93-155

Order No. 21,145

152 PUR4th 285

New Hampshire Public Utilities Commission

February 28, 1994

ORDER approving proposed contracts for the purchase by an electric utility of renewable resource-generated power at prices in excess of avoided cost, pursuant to a settlement agreement.

The contracts, which were executed following a "Green" request for proposals, involve seven renewable resource qualifying facilities (QFs), the utility, and the utility's other retail affiliates in the New England Electric System.

The settlement provides that the price paid by the utility for its share of the renewable resource QF output shall not exceed 105% of avoided cost, with the QF developers agreeing to pay the utility a sum of money for direct refund to ratepayers. The commission finds that the 5% premium over avoided cost is not unreasonable in light of the risk of compliance costs associated with possible future changes in environmental regulation. However, to provide greater substantiation of the risk premium, the utility is directed to include in its next least-cost integrated resource plan a rigorous methodology to estimate compliance costs relating to reasonably certain changes in environmental requirements as well as costs and benefits of investing early in renewable resources.

1. ELECTRICITY, § 4

[N.H.] Integrated resource planning — Resource acquisition — Supply-side resources — Renewable resources — "Green" request for proposals — Avoided-cost standard — Environmental risk premium — Settlement. p. 140.

2. CONSERVATION, § 1

[N.H.] Integrated resource planning — Electric utilities — Purchases of renewable resource-generated power — "Green" request for proposals — Avoided-cost standard —

Environmental risk premium — Need for substantiation — Settlement. p. 140.

3. EXPENSES, § 122

[N.H.] Electric utilities — Supply costs — Renewable resources — Avoided-cost standard — Environmental risk premium — Settlement. p. 140.

4. COGENERATION, § 25

[N.H.] Rates — Purchases of renewable resource-generated power — Avoided-cost standard — Externalities — Inclusion of an environmental risk premium — Settlement. p. 140.

APPEARANCES: David J. Saggau, Esq. for Granite State Electric Company; Armond Cohen, Esq. for the Conservation Law Foundation; M. Curtis Whittaker, Esq. for Suncook Energy Corporation; Office of the Consumer Advocate by Kenneth E. Traum; Eugene F. Sullivan, III, Esq. for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. Procedural History

On August 26, 1993, Granite State Electric Company (Granite State) petitioned for approval of seven renewable resource contracts among and between Granite State and its other retail affiliates in the New England Electric System (NEES Retail Companies), and seven qualifying facilities. The proposed contracts, which

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provide an additional 36 MW of generation capacity, were executed following a request for proposals (Green RFP) by NEES's generation affiliate New England Power Company (NEP) to developers of renewable resource technologies. This filing was also submitted to the Rhode Island Public Utilities Commission (RIPUC) and the Massachusetts Department of Public Utilities (MDPU).

By Order of Notice dated September 21, 1993, the Commission conducted a prehearing conference on October 8, 1993, at which a procedural schedule was presented that contained dates for discovery, Staff testimony, and technical and settlement discussions. The Commission approved the procedural schedule on October 27, 1993 by Order No. 21,015 and subsequently modified it by letter dated December 13, 1993.

On November 19, 1993, the Conservation Law Foundation (CLF) petitioned to intervene and filed testimony supporting the proposed contracts. On December 1, 1993, Staff filed testimony that responded to the testimony of Granite State and CLF.

On January 6, 1994, the Commission granted the Joint Motion to Intervene of Suncook Energy Corporation, Traitement Industriel Des Residus Urbanis, Phillips Energy, Inc. and Alternative Power Limited Partnership, development sponsors of four of the renewable energy projects covered by Granite State's filing.

The Commission held a hearing on January 5, 1994, at which the parties and Staff presented a Joint Settlement that resolved all issues in the case. Granite State and Staff presented testimony and exhibits in support of the Joint Settlement.

At its public meeting on January 31, 1994, the Commission accepted the Joint Settlement and noted a forthcoming report detailing its analysis, findings and conclusions; this report fulfills that purpose.

II. Positions of the Parties and Staff

(a) Granite State

NEP issued its Green RFP to help advance the goals of NEESPLAN 3, which was released in late 1991. NEESPLAN 3 is based on three goals: (1) to provide continuous environmental improvement, including significant reductions in air emissions from its operations by the year 2000; (2) to provide competitive and stable rates; and (3) to provide a diverse and competitively procured power supply. The Green RFP was designed to help accomplish the first of these goals by expanding the use of renewable technologies in NEP's energy mix to reduce the risk of compliance costs associated with potential future changes in environmental regulations.

The NEES Retail Companies entered into seven contracts with developers of renewable resources for power ranging in price from approximately 4.4¢ to 6.0¢ per kWh in 1993 dollars. The projects, which would be located in Rhode Island, Massachusetts, New Hampshire and Maine, include a wind power facility, a municipal solid waste facility, a waste heat recovery facility and four landfill gas facilities. If the contracts are approved by all three agencies that regulate the NEES Retail Companies, they will be assigned to NEP who would recover the associated costs from wholesale power customers via its FERC approved tariff.

In supplemental testimony, Granite State opposed Staff's recommendation (set forth below) that five of the seven contracts remain at the retail company level, a recommendation designed to insulate Granite State customers from the costs of the four projects located in Massachusetts.

Granite State testified that the proposed projects will provide environmental benefits to customers, provide NEP with a better understanding of the cost and operating characteristics of renewable technologies, and will further stimulate the market for renewables. Granite State also testified that the disbursed nature of some of the projects would provide benefits to the NEES Retail Companies through the avoidance of locally incurred costs such as line losses and distribution system reinforcements. With respect to project economics, Granite State testified that the net lifetime cost to NEP (after taking into account the costs avoided by the purchases) is projected to be \$27 million in

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1993 dollars. However, if account is also taken of the external costs and benefits (also known as externalities) associated with the purchases, the \$27 million net cost to customers becomes a \$19.4 million net benefit to "society".

(b) CLF

CLF filed testimony in support of the early acquisition of renewable energy resources such as

those proposed in this case by Granite State. CLF's testimony outlined several areas of future risk associated with existing and future fossil fuel and nuclear generating technologies. These include the risk (and added cost) of future environmental regulations addressing emissions such as nitrogen oxides, air toxics, small particles, sulfur, and greenhouse gasses, as well as the risk of early retirement, reduced availability, and higher-than-expected capital additions in connection with existing aging nuclear facilities. CLF's testimony concluded that, as a hedge against such risks, it would be economically prudent for utilities to develop practical experience with a diverse array of non-fossil, non-nuclear options.

(c) Staff

Staff testified that NEP does not need new power resources until after the turn of the century and that the proposed projects, though small in aggregate, would add to the current capacity excess. Staff also testified that the cost of power from each project is greater than the equivalent cost from alternative non-renewable resources. Consequently, the proposed contracts put upward pressure on electric rates. Notwithstanding these conclusions, Staff further concluded that NEP and its customers stand to gain from the demonstration of the wind and waste heat recovery technologies and accordingly recommended that the associated contracts be approved as filed. As to the five other projects, Staff testified that: (i) the demonstration of landfill and municipal solid waste technologies do not offer the prospect of competitively priced power; and (ii) compelling rationales for approving what are otherwise "above avoided cost" contracts have not been provided. Staff indicated, however, that it would not oppose these projects if each contract (and the costs) remained with the NEES Retail Company with which each such project would interconnect.

Staff also recommended that the Commission encourage electric utilities to develop: (i) cost-effective carbon control strategies; (ii) methods to quantify environmental risks, and (iii) methods to quantify the cost of early acquisition of renewable resources.

III. Settlement

The parties and Staff agreed to recommend approval of the wind and waste heat recovery projects as filed.

With respect to the landfill and municipal solid waste projects, Staff accepted in supplemental testimony that the contracts provide for the NEES Retail Companies to benefit from the receipt of any air emissions credits (should they materialize in the future) from the combustion of methane or the incineration of methane producing wastes. In recognition of the value of those credits, Staff testified that the payment of a premium above avoided cost might be justified. Based on that testimony, the parties and Staff agreed to recommend approval of the remaining projects provided the premium paid by Granite State did not exceed its historical share of a five percent (5%) adder to NEP's avoided cost. The 5% premium (equivalent to \$62,000 for Granite State) resulted from settlement negotiations. To limit the premium to that amount without revising the agreements, the developers of the landfill and municipal solid waste projects agreed to pay Granite State \$188,233 for direct refund to its ratepayers.

The Settlement Agreement also requires the NEES Retail Companies to try to develop a rigorous method to: (i) estimate the costs of complying with more stringent environmental regulations, and (ii) quantify the costs and benefits of early acquisition of renewable energy

resources. The parties and Staff acknowledged, however, that the agreement to develop a method to estimate compliance costs of potential (as opposed to actual) environmental regulations does not constitute acceptance by this Commission of quantitative

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environmental externalities in the resource evaluation and selection process.

IV. Commission Analysis

[1-4] In a prior proceeding, the Commission approved Granite State's 1992 least cost integrated resource plan (LCIP) and the broad goals of NEESPLAN 3, on which the LCIP was based (Granite State Exhibit 1A, at I-1-2 in DE 92-079). In this case, we are faced with a request to approve seven power purchase contracts which the petitioner claims are consistent with the NEESPLAN 3 goal of achieving significant reductions in air emissions by the year 2000. Though we do not dispute that claim, much of the testimony in this case has focused on issues which relate to the above-mentioned second goal of NEESPLAN 3, that is, the maintenance of competitive and stable rates.

Although Granite State testified to purchase prices in the 4.4 to 6.0¢ kWh range, Staff noted that even the low end of that relatively low price range exceeds NEP's avoided costs. This fact helps focus attention on what we believe to be the fundamental question for any electric utility considering environmental strategies that go beyond state or federal mandates, namely, can those strategies be implemented while remaining competitive in the energy marketplace? While Staff raised this question, the record is unclear as to the long-term rate impacts of NEES's renewable initiative. We will therefore require Granite State to address this issue in its forthcoming LCIP.

With respect to the proposed contracts, the parties and Staff have recommended that the windpower and waste heat recovery contracts be approved as filed, even though the former is by far the most costly and perhaps least reliable power supply. Staff cites the learning value that NEP would gain from the demonstration of these technologies as the primary justification for their approval. We will accept the recommendation and require Granite State to submit activity reports summarizing the first two years' operating results for each of these two project.

With regard to the four landfill projects and the municipal solid waste facility, Staff testified that they provide no obvious economic or learning value, and, therefore, the contracts should either be rejected or approved subject to the condition that Granite State's customers not be harmed financially. Granite State opposed Staff's recommendation. As noted above, however, Staff did accept that these projects may be given emissions credits for the combustion of methane, and that such credits would reduce the risk of future air emissions compliance costs to NEP and provide the necessary justification for the payment of a price premium above avoided cost. Based on that testimony, the parties and Staff have recommended that the conditionally approved projects be allowed to go forward provided the price paid by Granite State for its share of the output from these facilities does not exceed 105% of NEP's avoided cost. To achieve this result without revising the contracts, the developers have agreed to pay Granite State a sum of money for direct refund to its ratepayers.

Given the importance the Commission attaches to avoided costs as the standard for resource evaluation and selection, and the fact that we have not adopted a policy that would allow

quantitative externality values to be used to justify resource decisions that are otherwise uneconomic to ratepayers, our task in this case is to decide whether it is appropriate for utilities to take into consideration the risk (and added cost) of new and tighter environmental regulations and, if so, whether the proposed 5% premium over or understates the magnitude of that risk.

As to the first task, while we have not previously accepted the inclusion of quantitative environmental externalities in the resource selection process, we believe it is appropriate for utilities to anticipate changes in environmental or other regulations that may be accompanied by material increases in costs. In other words, externalities should be considered whenever there is a reasonable expectation that they will be internalized in the not too distant future. That is not to say, however, that above-avoided-cost renewable resources offer the only solution to the problem of future changes in environmental regulations. On the contrary, the Commission believes there is reason to

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continue purchasing power from developers of low cost non-renewable resources if those developers are contractually willing to assume or share the risk of higher compliance costs. On the second task, although the 5% risk premium is not supported by any projection of future compliance costs, we do not believe it is unreasonable based on the evidence presented. However, to provide greater substantiation of the so-called risk premium we direct Granite State to include in its 1994 LCIP a rigorous methodology to estimate those costs. Alternatively, that methodology should be submitted the next time we consider Granite State's or NEP's purchase of renewable resources that are above avoided cost.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed Joint Settlement is just and reasonable and is hereby approved; and it is

FURTHER ORDERED, that Granite State file reports summarizing the first two years of operational activity for the wind and waste heat recovery projects; and it is

FURTHER ORDERED, that Granite State develop methodologies to estimate: (i) the compliance costs associated with reasonably certain changes in environmental regulations; and (ii) the costs and benefits of investing early in renewable resources, in compliance with the time frames set forth in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1994.

*JOINT SETTLEMENT OF
GRANITE STATE ELECTRIC COMPANY, SUNCOOK ENERGY CORPORATION,
TRAITMENT INDUSTRIEL DES RESIDUS URBANIS, LAIDLAW GAS RECOVERY SYSTEMS,
PHILLIPS ENERGY, INC. ALTERNATIVE POWER LIMITED PARTNERSHIP,
CONSERVATION LAW FOUNDATION, OFFICE OF THE CONSUMER ADVOCATE, AND
PUBLIC UTILITIES COMMISSION STAFF*

I. BACKGROUND

On August 26, 1993, Granite State Electric Company ("Granite State Electric") filed with the Commission for approval power purchase agreements with seven proposed renewable energy projects.

1(17) The agreements provide for the sale of electricity by the seven projects to the three New England Electric System ("NEES") retail affiliates, Granite State Electric, Massachusetts Electric and Narragansett Electric (the "Affiliated Companies"). The seven projects were selected by the Affiliated Companies through a competitive solicitation for renewable resource technologies (the "Green RFP"). The selected projects, along with their sponsors, locations and proposed generation capacity, are as follows:

A. NEP Windplant I, Franklin and Somerset Counties, ME (U.S. Windpower, 20 MW).

B. Johnston Waste Heat Recovery Project, Johnston, RI (GES/KMS I).

C. Montachusett Regional Recycling Facility, Shirley, MA (Traitements Industriel Des Residus Urbanis ("TIRU"), 5.9 MW (the "Shirley Project").

D. Plainville Landfill Gas Project, Plainville, MA (Laidlaw Gas Recovery Systems ("laidlaw"), 3.0 MW) (the "Plainville Project").

E. Randolph Landfill Gas Recovery Project, Randolph, MA (Alternate Power Limited Partnership ("APLP"), 2.6 MW) the "Randolph Project").

F. Nashua Four Hills Landfill, Nashua, NH (Suncook Energy Corporation ("Suncook"), 1.5 MW) (the "Nashua Project").

G. Barre Landfill Gas Recovery Project, Barre, MA (Phillips Energy, Inc. ("Phillips"), 1.0 MW) (the "Barre Project").

The Affiliated Companies proposed to assign the power purchase agreements to their wholesale generation affiliate, New England Power Company ("NEP") upon approval of the agreements by regulators in New Hampshire, Massachusetts and Rhode Island. On November 19, 1993, the Conservation Law Foundation

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("CLF") filed testimony supporting early utility acquisition of renewable energy resources such as those which resulted from the Green RFP. CLF's testimony outlined several areas of potential future risk associated with existing and future fossil fuel and nuclear generating technologies. These include the risk (and added cost) of future environmental regulations addressing emissions such as nitrogen oxides, air toxics, small particles, sulfur, and greenhouse gasses, as well as the risk of early retirement, reduced availability, and higher-than-expected capital additions in connection with existing aging nuclear facilities. CLF's testimony concluded that, as a hedge against such risks, it would be economically prudent for utilities to develop practical experience with a diverse array of non-fossil, non-nuclear options.

In response to the testimony of Granite State Electric and CLF, Commission Staff testified that NEP does not currently have a need for additional resources and the power purchase agreements for all seven projects exceed NEP's most recent long run avoided cost projections by varying percentages. McCluskey Testimony at 3-5. However, Staff recommended that two of the proposed power purchase agreements be approved without condition, given the "learning value" associated with the introduction of new technology or generation processes to New England. These two projects are the NEP Windplant I, and Johnston Waste Heat Recovery Project (the "Recommended Projects").

As to the five other proposed projects (the "Conditionally Recommended Projects"), Staff testified that (i) the demonstration of these projects do not offer the prospect of competitive power costs, and (ii) compelling rationales for approving what are otherwise "above avoided cost" contracts have not been provided. McCluskey Supplemental Testimony at 3-B. However, Staff stated that it would not oppose approval of the contracts with the Conditionally Recommended Projects if the contracts remained with the specific Affiliated Company with which each such project would interconnect. McCluskey Supplemental Testimony at 1. In this way, Granite State Electric's ratepayers would not bear any of the costs associated with the five conditionally recommended contracts located in Massachusetts.

Granite State Electric testified that the present value of the "rate burden" above NEP's long term avoided cost projections of the five Conditionally Recommended Projects is approximately \$8.3 million. Of that amount, approximately 3%, or \$250,000 (the "NH Rate Burden") would be recovered from Granite State Electric through NEP wholesale capacity and energy charges. Hachey Supplemental Testimony at 3.

On December 30, 1993, the sponsors of the Conditionally Recommended Projects (the "Sponsors") filed a separate Joint Motion for Intervention and asserted that their projects do offer learning value to the Affiliated Companies of a type similar to the Recommended Projects, and that they reduce the risk to the Affiliated Companies of new or tighter air emissions regulations. The Commission approved the intervention on January 3, 1994.

II. *DISCUSSION*

Commission Staff has testified that the Affiliated Companies may be given air emissions credits for the combustion of methane and other gases from the four landfill projects. McCluskey Supplemental Testimony at 6. In recognition of the associated reduction of risk to the Affiliated Companies of future increased air emissions compliance costs, Commission Staff believes that some premium above avoided costs might be justified. Although the record does not contain a thorough analysis of such potential future compliance costs, Commission Staff agrees, solely for purposes of this docket, that the Commission should allow the Sponsor's projects to go forward as proposed provided the premium paid by Granite State Electric does not exceed its share of a five percent (5%) adder to NEP's current avoided cost projection for the Conditionally Recommended Projects. This figure is the result of settlement negotiations, and cannot be understood to have precedential value or indicate Commission Staff's support for a 5% environmental adder for non-renewable projects. The figure is adopted here only in the interest of settlement of

outstanding issues.

The 5% premium amounts to \$62,000 in additional rate burden for Granite State Electric ratepayers for the Conditionally Recommended Projects. To limit the premium to that amount without revising the agreements, the Sponsors have agreed to pay Granite State Electric \$188,233 for direct refund to its ratepayers. This payment will cause the five Conditionally Recommended Projects to have the same approximate rate impact within New Hampshire as other power purchase contracts with prices equal to 105% of NEP's current long term avoided costs.

This collective payment to Granite State Electric would be reduced to the extent that any of the Conditionally Recommended Projects did not achieve its Commencement Date of Operation ("CDO"), as defined in the relevant power purchase agreement (and therefore did not contribute to the NH Rate Burden). The amount reduced for each project is given in Section III, E to this Settlement Agreement. Also, the payment is subject to the acceptance of the relevant power purchase agreements by the Massachusetts and Rhode Island commissions, as set forth in the specific agreements below.

The Sponsor's agreement to make the foregoing payment to Granite State Electric's ratepayers represents a pragmatic attempt to prevent extended litigation in New Hampshire regarding various elements of NEP's and the Commission Staff's testimony. This payment mechanism only works because the rate burden to New Hampshire ratepayers from the Sponsor's projects is a relatively small sum. Similar payments will not be possible in the other remaining jurisdictions (Massachusetts and Rhode Island), given the substantially higher shares of the total "rate burden" above avoided cost borne by those states. If those jurisdictions do not accept the various rationales supporting the Sponsors projects, and approve Sponsors' power sales agreements without additional cost burdens, these projects very likely will not proceed.

III. SETTLEMENT

In the interest of settling outstanding issues in this docket and to avoid extended litigation in this jurisdiction on a variety of issues brought forth by Granite State Electric and Commission Staff in this case, the parties to this docket have entered into this Settlement. Specifically, the parties agree as follows:

A. The power purchase agreements for the NEP Windplant I Project and Johnston Waste Heat Recovery Project shall be approved as proposed.

B. The five Conditionally Recommended Projects shall be approved as proposed by Granite State Electric subject to the terms of this Settlement.

C. The present value of the total costs of capacity and energy from the Shirley Project, Nashua Project, Randolph Project, Plainville Project, and Barre Project (the Conditionally Recommended Projects) in excess of NEP's current avoided cost projections is \$8.3 million.

D. Three percent 3% of this amount, or approximately \$250,000 (the "NH Rate Burden"), will be allocated to Granite State Electric ratepayers once these contracts are assigned to NEP.

E. To partially offset the impact of the NH Rate Burden, and subject to the conditions set forth below, Suncook, TIRU, Phillips, Laidlaw and APLP agree to pay to Granite State Electric an aggregate sum of \$188,233 (the "Payment Amount") for direct refund to Granite State Electric ratepayers. The Payment Amount will reduce the NH Rate Burden to \$62,000. The contribution from each of the Sponsors to the Payment Amount will be as follows:

1. Suncook: \$34,453
2. TIRU: \$31,666
3. Phillips: \$29,561
4. Laidlaw: \$32,228
5. APLP: \$60,325

F. The payment Amount will be reduced in the event and to the extent that any of the Conditionally Recommended Projects do not achieve DCO, as defined in the relevant

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power purchase agreement.

G. Each Sponsor shall pay its share of the Payment Amount to Granite State Electric, as set forth in (E) above, prior to achieving CDO, as defined in its relevant power purchase agreement. A Conditionally Recommended Project will not achieve its CDO until it has paid to Granite State Electric its contribution to the Payment Amount. In the event that a Conditionally Recommended Project has paid its contribution to the Payment Amount and subsequently fails to achieve its CDO, the Conditionally Recommended Project shall certify to the Commission and Granite State Electric that it will not achieve CDO and Granite State Electric shall refund to the Sponsor its contribution. Once a Conditionally Recommended Project achieves CDO, it shall not be entitled to any refund, in whole or in part, of its contribution to the Payment Amount.

H. Granite State Electric shall flow through its fuel adjustment clause the contributions received from the Sponsors who have achieved CDO in order to offset the NH Rate Burden.

I. The parties recommend that the cost of investing early and the avoidance of environmental risk be incorporated in the Affiliated Companies' resource evaluation and selection process. The Affiliated Companies agree to develop a methodology which attempts to quantify those costs and benefits prior to requesting approval of power purchase agreements that involve those factors.

J. With the exception of (I) above, the parties hereto specifically agree that this agreement has no precedential value in any other current or future proceeding before this or any other current or future proceeding before this or any other regulatory entity. The parties further agree that this agreement, if accepted by the Commission, does not alter the Commission's policy regarding the non-recognition of environmental "adders" for resource evaluation and selection purposes.

IV. MISCELLANEOUS PROVISIONS

A. 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.

B. 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 other proceeding.

C. 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.

D. 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 other proceeding or be used for any purpose.

WHEREFORE, the parties here to respectfully request that the Commission approve without conditions this Settlement as a resolution of all outstanding issues in this docket.

Respectfully submitted:

Granite State Electric Company

N.H. Public Utilities

Commission Staff

N.H. Office of Consumer Advocate

Suncook Energy Corporation

Traitement Industriel Des

Residus Urbanis

Laidlaw Gas Recovery Systems

Phillips Energy, Inc.

Alternative Power Limited

Partnership

Conservation Law Foundation

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FOOTNOTES

¹Granite State Electric's affiliates, Massachusetts Electric Company and The Narragansett Electric Company, simultaneously filed the same seven contracts with their respective state commissions in Massachusetts and Rhode Island. As of this date, these other state commissions have not rendered a decision on the proposed contracts.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 93-155, Order No. 21,015, 78 NH PUC 593, Oct. 27, 1993.

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NH.PUC*02/28/94*[70417]*79 NH PUC 145*Long Distance North of New Hampshire, Inc.

[Go to End of 70417]

79 NH PUC 145

Re Long Distance North of New Hampshire, Inc.

DE 94-022

Order No. 21,146

New Hampshire Public Utilities Commission

February 28, 1994

ORDER acknowledging a change by an interexchange telephone carrier in the name of a service, from "Dimension Service" to "The Business Difference."

1. SERVICE, § 433

[N.H.] Telephone — Tariff revisions — Change in name of service — From "Dimension Service" to "The Business Difference" — Interexchange carrier. p. 145.

BY THE COMMISSION:

ORDER

[1] On February 11, 1994, Long Distance North of New Hampshire, Inc. (LDN) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to make text revisions to its NHPUC Tariff No. 2; and

WHEREAS, the revision is administrative and changes the name of Dimension Service to The Business Difference; and

WHEREAS, LDN proposed the filing become effective March 28, 1994; and

WHEREAS, this filing will not increase any rate or charge, cause the withdrawal of service or conflict with other schedules or rules; it is hereby

ORDERED, that the following tariff pages of LDN Tariff PUC No. 2 are approved for effect March 28, 1994:

1st Revised Page 4

1st Revised Page 19.1

1st Revised Page 20
1st Revised Page 33
1st Revised Page 33.1;

and it is

FURTHER ORDERED, that LDN file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of February, 1994.

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NH.PUC*03/01/94*[70418]*79 NH PUC 146*Contel of New Hampshire, Inc., et al.

[Go to End of 70418]

79 NH PUC 146

Re Contel of New Hampshire, Inc., et al.

DF 93-240, DF 93-241

Order No. 21,147

New Hampshire Public Utilities Commission

March 1, 1994

ORDER granting intervention, approving a procedural schedule, and authorizing protective treatment for employee-related information contained in a stock purchase plan proposed by a group of telephone carriers.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Interim protective treatment — For general terms of a proposed stock purchase plan — Full confidentiality of employee-related terms thereunder — Telephone carriers. p. 146.

2. SECURITY ISSUES, § 1

[N.H.] Proposed stock transfer plan — Issues of confidentiality — Procedural schedule. p. 146.

BY THE COMMISSION:

ORDER

[1, 2] GTE Corporation, Contel Corporation and Contel of New Hampshire, Inc. d/b/a GTE New Hampshire (collectively GTE) and MCTA, Inc., on December 3, 1993 jointly filed with the

New Hampshire Public Utilities Commission (Commission) petitions for Approval of the Sale and Transfer of the Common Stock of Contel of New Hampshire, Inc. d/b/a GTE New Hampshire from Contel Corporation to MCTA, Inc. and Petition for Approval of the Issuance by Contel of New Hampshire, Inc. d/b/a GTE New Hampshire, Inc. of its Secured Guarantee of a Certain Loan from the Rural Telephone Finance Cooperative to MCTA, Inc.

Also on December 3, 1993 GTE and MCTA, Inc. filed a Petition for Approval of the Sale and Transfer of the Common Stock of Contel of Maine, Inc. d/b/a GTE Maine from Contel Corporation to Maine Telecommunications Group, Inc. and a Petition for Approval of the Issuance by Contel of Maine, Inc. d/b/a GTE, of its Secured Guarantee of a Certain Loan from the Rural Telephone Finance Cooperative to Maine Telecommunications Group, Inc.

During the duly noticed prehearing conference on February 16, 1994, the Commission heard arguments regarding the motions for interim confidentiality and protective treatment filed by GTE, and the arguments of the Office of Consumer Advocate (OCA) and Commission Staff (Staff) in partial opposition. There was no opposition to the granting of interim protective treatment for the purpose of allowing the Commission to review the materials in camera. Further, there was no opposition to protective treatment over the employee information contained in the supporting documents to the petitions, in that the material appeared to be exempt under RSA 91-A:5,IV governing personnel information.

The heart of the dispute was over the disclosure of the Stock Purchase Agreement. GTE sought complete non-disclosure of the Stock Purchase Agreement, arguing the materials constitute exempt financial information under RSA 91-A:5,IV. The OCA and Staff opposed non-disclosure, arguing that although financial information is contained in the Stock Purchase Agreement it is not automatically exempt and the public's right to know the details outweighed the risks of disclosure to GTE. The Staff, however, agreed to non-disclosure of the stock purchase terms and any other numbers contained within the Stock Purchase Agreement (as well as non-disclosure of the employee information), given that there is reference to significant financial terms of the transactions contained within the petitions themselves sufficient to allow the Commission to fully evaluate the transactions. These financial terms are

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contained within the petitions themselves, which are not confidential.

Also during the prehearing conference, Wilton Telephone Company, Hollis Telephone Company and Telecommunications Systems of New Hampshire requested full intervention, to which there was no opposition. The following procedural schedule was agreed to by the parties and Staff:

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

Prehearing Conference	February 16, 1994
Proponents' testimony due	February 28, 1994
Last day for Staff/Intervenor rolling data requests to proponents	March 11, 1994
Last day for rolling responses to data requests	March 23, 1994

Follow-up Data Requests to proponents by Staff/Intervenors	March 30, 1994
Proponents' responses to Staff/Intervenor data requests	April 8, 1994
Staff/Intervenor testimony due	April 22, 1994
Last day for proponents' rolling data requests to Staff/Intervenors	April 29, 1994
Last day for Staff/Intervenor rolling responses to proponents' data requests	May 11, 1994
Proponents' Rebuttal testimony due (if necessary)	May 16, 1994
Settlement Conference	May 19, 1994, 10 a.m.
Hearing on the merits	May 25-26, 1994 at 10 a.m.

Also argued during the prehearing conference was the issue of the Commission's jurisdiction over this matter. This issue will be addressed in a subsequent order.

Based upon the foregoing, it is hereby

ORDERED, that the request for full intervention of Wilton Telephone Company, Hollis Telephone Company and Telecommunications Systems of New Hampshire is granted; and it is

FURTHER ORDERED, that the procedural schedule agreed to by the parties and Staff is reasonable and will be adopted; and it is

FURTHER ORDERED, that the Commission will grant interim protective treatment as requested by GTE and order GTE to file 3 copies of the material subject to interim protection order no later than Friday, March 4, 1994; and it is

FURTHER ORDERED, that any employee information contained within the supporting documents to the petitions shall be granted protective treatment as the information appears to be within the exemption of RSA 91-A:5,IV; and it is

FURTHER ORDERED, that the Commission will defer ruling on other issues of confidentiality until it has had an opportunity to review the documents in question *in camera*.

By order of the New Hampshire Public Utilities Commission this first day of March, 1994.

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NH.PUC*03/01/94*[70419]*79 NH PUC 147*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 70419]

79 NH PUC 147

Re Sprint Communications Company of New Hampshire, Inc.

DE 94-014
Order No. 21,148

New Hampshire Public Utilities Commission

March 1, 1994

ORDER approving an interexchange telephone carrier's new service offerings for Voice FONCARD (an oral speed dialing service), International VisaPhone (a service allowing international calls to be billed to credit cards), and Instant FONCARD (a prepaid debit card calling service).

1. SERVICE, § 468

[N.H.] Telephone — Toll service — Particular offerings — Oral speed dialing service — Prepaid debit card calling service — Billing of international calls to credit cards. p. 148.

BY THE COMMISSION:

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ORDER

[1] On January 31, 1994, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Voice FONCARD, International VisaPhone, Instant FONCARD, eliminate the minimum average time requirement for 800 service and make various administrative and text changes; and

WHEREAS, Voice FONCARD permits customers to dial a Sprint 800 access number and place a call using spoken speed dial (for example by saying "Call home"); and

WHEREAS, International VisaPhone allows international travelers to use Visa or Mastercard issued by a participating foreign bank to place calls while in the United States which will be billed on the credit card statement from the card-issuing bank; and

WHEREAS, Instant FONCARD is a prepaid card issued by Sprint which allows a customer to pay a fixed amount in advance for long distance calling and is debited each time the card is used; and

WHEREAS, the administrative changes include the replacement of text in the Territory Section which more concisely describes where Sprint provides service in New Hampshire, changes the Mechanized Calling Card Service rates from Sprint Service to FONCARD rates which are currently identical, and eliminates the minimum average time requirement for 800 service; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages for Sprint's NHPUC No. 3 are approved:

19th Revised Page 1 in Lieu of the 18th Revision

2nd Revised Page 5

2nd Revised Page 6

1st Revised Page 9.1

2nd Revised Page 45

Original Page 46.1

Original Page 47.1

Original Page 48.1

3rd Revised Page 49

2nd Revised Page 49.3

2nd Revised Page 59 in Lieu of 1st Revision

5th Revised Page 62

4th Revised Page 62.1 in Lieu of 3rd Revision

Original Page 62.2

1st Revised Page 63.7 in Lieu of Original;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Sprint cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than March 11, 1994 and is to be documented by affidavit filed with this office on or before March 28, 1994; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than March 28, 1994; and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective March 30, 1994, 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 first day of March, 1994.

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NH.PUC*03/01/94*[70420]*79 NH PUC 149*Norstan Network Services of New Hampshire, Inc.

[Go to End of 70420]

79 NH PUC 149

Re Norstan Network Services of New Hampshire, Inc.

DE 94-013

Order No. 21,149

New Hampshire Public Utilities Commission

March 1, 1994

ORDER authorizing an interexchange telephone carrier to offer new "800" toll calling services and to rename certain of its existing "800" services.

1. SERVICE, § 468

[N.H.] Telephone — Toll calling — 800 services — Introduction of new 800 service options — Renaming and restructuring of certain existing 800 service features. p. 149.

BY THE COMMISSION:

ORDER

[1] On January 31, 1994, Norstan Network Services of New Hampshire, Inc. (NORSTAN) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking approval of its NHPUC Tariff No. 2 which replaces its NHPUC Tariff No. 1; and

WHEREAS, NORSTAN's NHPUC Tariff No. 2 incorporates considerable revisions to its original tariff among which include the introduction of outbound toll products called Optima Plus, Classic Plus, Optima One and Classic One, changing the name of VPN Service to Optima VNS and restructuring its billing increments, changing the name of Fonline 800 to Optima 800, changing the name of Ultra 800 to Optima 800 Plus, the introduction of two new 800 products - Classic 800 and Classic 800 Plus, an increase in certain rates and a reduction in others, and changing the returned check fee to comply with N.H. Admin. Code Puc 403.08; and

WHEREAS, on February 22, 1994, NORSTAN filed first revised pages 6, 20, 28, 48 and 49 of its NHPUC Tariff No. 2 in lieu of originals upon Staff's request; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *MSI*, that NORSTAN's NHPUC Tariff No. 2 is approved including 1st Revised Pages 6, 20, 28, 48 and 49 in Lieu of Originals; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, NORSTAN cause

an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than March 11, 1994 and is to be documented by affidavit filed with this office on or before March 28, 1994; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than March 28, 1994; and it is

FURTHER ORDERED, that NORSTAN file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective March 30, 1994, 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 first day of March, 1994.

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NH.PUC*03/01/94*[70421]*79 NH PUC 150*Extended Area Service Rulemaking

[Go to End of 70421]

79 NH PUC 150

Re Extended Area Service Rulemaking

DRM 94-001

Order No. 21,150

New Hampshire Public Utilities Commission

March 1, 1994

ORDER granting confidentiality to certain dialing and calling data made available by local exchange telephone carriers with respect to sales, revenues, customer usage characteristics, and planning forecasts in a docket examining the possible necessity of reconfiguring extended area service venues.

1. RATES, § 573

[N.H.] Telephone service — Extended area service — Investigation into possible reconfiguration — Data requests — Dialing and calling data — Confidential treatment. p. 150.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Data requests — Confidential treatment of information — Dialing and calling data — Docket examining possible realignment of extended area telephone service venues. p. 150.

BY THE COMMISSION:

ORDER

[1, 2] On February 15, 1994, Contel of New Hampshire, Inc. d/b/a/ GTE-BG (GTE) filed a Motion for Protective Order with the New Hampshire Public Utilities Commission (Commission), seeking proprietary treatment of GTE's responses to Staff Data Requests, Set 1, nos. 1-3 (Confidential Information); and

WHEREAS, the Confidential Information requested is part of the Commission's preliminary investigation into possible revision of Extended Area Service in New Hampshire; and

WHEREAS, the Confidential Information is a detailed review of dialing and calling data of GTE broken down by customer classification, minutes of use, revenues, number of messages; as well as sensitive planning information regarding future business plans and forecasts that GTE keeps confidential and which are not obtainable from industry analysts; and

WHEREAS, the Confidential Information represents customer-specific data which could well be used to GTE's competitive disadvantage; and

WHEREAS, the benefits of full review of the information requested, for purposes of the Commission's investigation, and the benefits of avoiding competitive disadvantage which flow to GTE from non-disclosure, outweigh the benefits of disclosure to the public; and

WHEREAS, the Confidential Information falls within the scope of "confidential, commercial and financial information" exempt from public disclosure pursuant to RSA 91-A: 5(IV); now therefore, it is

ORDERED, that the GTE's Motion is hereby granted to the same extent that protection has been granted to other companies which are part of the Commission's investigation, that is, subject to the public's rights adjudicated under RSA 91-A.

By order of the Public Utilities Commission of New Hampshire this first day of March, 1994.

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NH.PUC*03/02/94*[70422]*79 NH PUC 151*Springwood Hills Water Company, Inc.

[Go to End of 70422]

79 NH PUC 151

Re Springwood Hills Water Company, Inc.

Additional applicant: Southern New Hampshire Water Company, Inc.

DE 93-203

Order No. 21,151

New Hampshire Public Utilities Commission

March 2, 1994

ORDER finding that the commission should consider an alternative purchase proposal by a local

civic association in a proceeding addressing a proposal by Southern New Hampshire Water Company, Inc., to purchase Springwood Hills Water Company, Inc.

1. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Factors affecting approval — Public good — Competing or alternative purchase proposals — Weighing of benefits and burdens — Rejection of "no net harm" test as alone determinative — Water utility transactions. p. 152.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On October 25, 1993, Springwood Hills Water Company, Inc. (Springwood) and Southern New Hampshire Water Company, Inc. (Southern), duly franchised public water utilities, filed a joint petition with the Commission for the approval of the sale by Springwood of its water supply and distribution system located in the Town of Londonderry to Southern, pursuant to RSA 374:22, 374:26, and 374:30. On November 23, 1993, the Commission issued an Order of Notice scheduling a prehearing conference for December 15, 1993, to establish a procedural schedule to govern its investigation into the joint petition and to address any motions to intervene.

On December 15, 1993, the Commission held the scheduled prehearing conference at which Southern, Springwood and the Springwood Hills Neighborhood Association (Association) appeared. In its motion to intervene and orally at the prehearing conference, the Association stated that it opposed the proposed sale of the water supply and distribution system to Southern and requested that the Commission consider the Association as an alternative purchaser. At the same hearing the parties and Staff stipulated to a procedural schedule.

On December 23, 1993, the Commission issued Report and Order No. 21,078 in which it formally granted the Association's motion to intervene and adopted the proposed procedural schedule. The procedural schedule *inter alia* required the parties to file briefs on the scope of the issues to be addressed in this proceeding. The Association and Southern filed briefs setting forth their positions on the scope of this proceeding. This report and order addresses that issue.

II. POSITIONS OF THE PARTIES

A. *Southern*

Southern takes the position that the "public interest" or "public good" standard to be applied in this proceeding can not include an examination of alternative proposals for the potential acquisition of the Springwood water supply and distribution system such as the proposal put forward by the Association. Rather, relying on the Commission's decision *Re Eastern Utility Associates, Inc.*, 76 NH PUC 236 (1991), Southern maintains that the standard of review in this proceeding is the "no [net] harm" test.

Southern argues that, pursuant to this standard of review and in light of the particular facts of this case, the only relevant issue to be addressed by the Commission in this proceeding is whether Southern's acquisition will harm

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customers. That is, Southern maintains that the Commission can not engage in a "net benefits, net harm" balancing of competing alternatives, but must limit its inquiry and analysis to any possible harm to customers resulting from Southern's acquisition of the water supply and distribution system.

B. Association

Relying on the New Hampshire Supreme Court's decision in *Parker-Young Company v. State*, 83 NH 551 (1929), the Association contends that the "public interest" or "public good" standard involves a "weighing of the relative benefits and burdens which would be conferred and imposed by the two competing companies...". *Parker-Young, Supra* at 563.

Thus, the Association argues that the Commission must consider the Association as an alternative owner and operator of the Springwood water supply and distribution system in its inquiry and investigation into Southern's proposed acquisition of the system.

III. COMMISSION ANALYSIS

[1] The issue before the Commission is whether, under the "public good" or "public interest" standard to be applied in this docket, we should consider a potential alternative acquisition in addition to the proposal that gave rise to this proceeding. Having considered the arguments raised in the pleadings and having considered our role as regulators we hold that we must take into account the alternative proposal in order to arrive at a solution that would be in the "public good". To find otherwise, in our estimation, would be to interpret the "public good" standard too narrowly and would run the risk of the "public good" not ultimately being served. Knowing that an association representing a number of the customers who would be served by Southern is interested in purchasing and managing the system, our analysis of whether Southern's purchase is in the public good necessarily must include consideration of all relevant information, including the Association's alternative.

It is perplexing that Southern would have us ignore the concerns of a large group of customers that it may ultimately serve, arguing that we should not allow them to present their proposal for the purchase and operation of the water system. We believe the public good would not be served if we were to ignore the concerns presented by many of the potential customers of a company that is seeking our approval as the owner and operator of the system. We believe that the far better approach is to provide an opportunity for a full discussion of those concerns, as well as any reasonable alternatives to Southern's proposal so that, whatever the result, the public will be reassured that we have acted in their best interest.

In arriving at this decision we are fully cognizant of prior rulings of this Commission and decisions of the New Hampshire Supreme Court that have been cited by the parties. We find no prior ruling directly on point, though we do find some direction in *Parker-Young Co. v. State*, 83 NH 551 (1929). In that case the Supreme Court specifically indicated that "a conscientious

weighing of the relative benefits and burdens which would be conferred and imposed upon each by the respective developments proposed by the two competing companies..." was the appropriate analysis where there were two public utilities competing for the same service territory. *Id.* at 563-564. Although the Association is not a public utility, its apparent interest in acquiring the water system renders the *Parker-Young* analysis applicable to the instant proceeding. Accordingly, we will weigh the relative benefits and burdens of Southern's proposal and the available alternatives in reaching a decision that is in the public good.

Finally, Thomas Wurm, a resident of Springwood Hills, requested the right to intervene as a full party to this proceeding, rather than as a limited intervenor as originally requested. Although Mr. Wurm is a member of the Association he does not believe that the position it has taken in this proceeding is representative of his position as a customer of the utility. Given this assertion we will grant his motion to intervene.

Our order will issue accordingly.

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ORDER

Upon consideration of the foregoing Report, which is incorporated herein; it is hereby

ORDERED, that the standard of review to be applied in this proceeding is the "net benefits test" as set forth by the New Hampshire Supreme Court in *Parker-Young Co. v State*, 83 N.H. 551 (1929); and it is

FURTHER ORDERED, that the motion to intervene as a full party filed by Thomas Wurm is granted; and it is

FURTHER ORDERED, that the Springwood Hills Neighborhood Association shall provide the Springwood Hills Water Company, Inc. assurance that its alternative proposal to purchase the water supply and distribution system is a bona fide offer.

By order of the New Hampshire Public Utilities Commission this second day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Springwood Hills Water Co., Inc., DE 93-203, Order No. 21,078, 78 NH PUC 741, Dec. 29, 1993.

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NH.PUC*03/08/94*[70423]*79 NH PUC 153*EnergyNorth Natural Gas, Inc.

[Go to End of 70423]

79 NH PUC 153

Re EnergyNorth Natural Gas, Inc.

DR 94-030
Order No. 21,152

New Hampshire Public Utilities Commission

March 8, 1994

ORDER, in a gas cost adjustment proceeding, granting a natural gas local distribution company protective treatment for certain gas supply contract terms, in recognition of the increasing sensitivity of such information as gas markets have been deregulated.

1. GAS, § 7

[N.H.] Operation — Gas supply contracts — Confidentiality of contract terms — Factors — Increasing sensitivity in era of deregulated gas markets. p. 153.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Gas supply contract terms — In cost of gas adjustment proceeding — Factors — Increasing sensitivity in era of deregulated gas markets. p. 153.

BY THE COMMISSION:

ORDER

[1, 2] On March 1, 1994, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a motion for protective treatment and for interim proprietary treatment of identifying information regarding EnergyNorth's potential gas suppliers and terms of gas supply contracts provided in ENGI's Cost of Gas Adjustment (CGA) filing (collectively, the CGA identifying information and terms), which information has become increasingly sensitive since the deregulation of the natural gas industry via FERC Order 636; and

WHEREAS, ENGI seeks to submit a redacted CGA filing and providing unredacted copies to the Commission and Staff subject to protective order; and

WHEREAS, in its motion ENGI states that the CGA identifying information and terms, the ongoing CGA reports and Commission audits relevant to the unregulated gas market are confidential commercial information and trade secrets which ENGI needs to protect in order to maintain its competitive position and to obtain the best price and terms for its ratepayers; and

WHEREAS, in its motion ENGI states that it does not disclose the identifying information and terms to anyone outside of its corporate affiliates and their representatives; and

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WHEREAS, ENGI has specifically identified the pages within its CGA filing for which it seeks protection; and

WHEREAS, ENGI has not specifically identified what portions of its ongoing CGA reports and Commission audits are relevant to the unregulated gas market for which it seeks protection; and

WHEREAS, the Commission recognizes that demand and commodity rates negotiated in gas supply contracts are market sensitive and subject to fluctuation based on competitive pressures; and

WHEREAS, the CGA identifying information and terms and the ongoing CGA reports are a necessary part of ENGI's filing in support of its cost of gas adjustment, and important for Commission Staff to review in evaluating the cost of gas adjustment filing; and

WHEREAS, the Commission recognizes the importance of Staff having the opportunity to review fully the materials which support a cost of gas adjustment filing in order to responsibly carry out its duties; it is hereby

ORDERED, that the Motion for Protective Order is granted in order to allow Staff full review of the CGA identifying information and terms and the ongoing CGA reports and Commission audits relevant to the unregulated gas market; and it is

FURTHER ORDERED, that with regard to the CGA identifying information and terms ENGI shall submit a redacted CGA filing and provide unredacted copies to the Commission, Staff and OCA; and it is

FURTHER ORDERED, that with regard to the ongoing CGA reports ENGI shall submit reports with clearly marked and separated confidential sections which are removable from the body of the reports; and it is

FURTHER ORDERED, that with regard to the Commission audits relevant to the unregulated gas market, ENGI shall clearly mark and separate information relevant to the unregulated gas market so that auditors may carry out a thorough and responsible audit with full knowledge of what material is protected; and it is

FURTHER ORDERED, that this order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Commission Staff or any other party or member of the public, to reconsider this order in light of the standards of RSA 91-A and N. H. Admin. Rules, Puc 204.07.

By order of the New Hampshire Public Utilities Commission this eighth day of March, 1994.

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NH.PUC*03/09/94*[70425]*79 NH PUC 154*AT&T Communications of New Hampshire, Inc.

[Go to End of 70425]

79 NH PUC 154

Re AT&T Communications of New Hampshire, Inc.

DE 94-020
Order No. 21,154

New Hampshire Public Utilities Commission

March 9, 1994

ORDER authorizing an interexchange telephone carrier to introduce further options and discount calling plans among its CustomNet services.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — "CustomNet" services — Additional options and discount calling plans. p. 154.

BY THE COMMISSION:

ORDER

[1] On February 9, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Option S for its CustomNet Service; and

WHEREAS, Option S offers new and existing CustomNet subscribers a new alternative discount plan among the other CustomNet Options which are selected based on usage

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requirements; and

WHEREAS, Option S offers per minute of use intrastate inward and outward calling rates and is an add on to AT&T's CustomNet Option S interstate offering; and

WHEREAS, the proposed tariff expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than April 4, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order Nisi to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than March 21, 1994 and is to be documented by affidavit filed with this office on or before April 4, 1994; and it is

FURTHER ORDERED *NSI*, that the following tariff pages of AT&T Tariff No. 1 - CUSTOM NETWORK SERVICES, are approved:

Table of Contents: 2nd Revised Page 16

Section 14: Original Page 10

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 6, 1994 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 ninth day of March, 1994.

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NH.PUC*03/10/94*[70426]*79 NH PUC 155*Extended Area Service Rulemaking

[Go to End of 70426]

79 NH PUC 155

Re Extended Area Service Rulemaking

DRM 94-001

Order No. 21,155

New Hampshire Public Utilities Commission

March 10, 1994

ORDER granting confidentiality to certain route- and exchange-specific information made available by local exchange telephone carriers with respect to sales, revenues, customer usage characteristics, and planning forecasts in a docket examining the possible necessity of reconfiguring extended area service venues, but denying confidentiality to other related information considered to be in the public domain and not in need of a protective order.

1. RATES, § 573

[N.H.] Telephone service — Extended area service — Investigation into possible reconfiguration — Data requests — Route- and exchange-specific information — Confidential treatment for certain proprietary data — No protective order for data already in the public domain. p. 156.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Data requests — Confidential treatment of proprietary information — No protective order for data already in the public domain — Docket examining possible realignment of extended area telephone service venues. p. 156.

BY THE COMMISSION:

ORDER

[1, 2] Kearsarge Telephone Company (Kearsarge), The Chichester Telephone Company (Chichester), and Meriden Telephone Company, Inc. (Meriden) filed with the New Hampshire Public Utilities Commission (Commission) Motions for Protective Treatment on February 24, 1994, seeking protection of their responses to Commission Staff Data Requests Set 1. Union Telephone Company (Union) filed with the Commission a Motion for Proprietary Treatment on February 23, 1994, seeking protection of its responses to Commission Staff Data Requests Set 1, data request no. 1. (Collectively, the motions referenced in this paragraph are hereinafter referred to as Set 1 Motions; the information for which protection is sought is, collectively, Set 1 Information.)

Union and New England Telephone and Telegraph Company (NET) filed with the Commission Motions for Proprietary Treatment on February 23 and February 29, 1994, respectively, seeking protection of their responses to Commission Staff Data Requests Set 2, data requests nos. 2,3,4, and 5 (Set 2 Motions; Set 2 Information).

WHEREAS, both the Set 1 and Set 2 Information are part of the Commission's preliminary investigation into possible revision of Extended Area Service in New Hampshire; and

WHEREAS, the Set 1 Information includes some information which represents a detailed and disaggregated view of minutes of use, revenues and usage characteristics pertaining to services in each exchange on a route-specific basis (Set 1 Confidential Information); and

WHEREAS, the Set 1 Information also includes some information which, in the Commission's opinion, is public information (Set 1 Public information): specifically the time period investigated and columns A through F of spreadsheet A representing the row identification, the originating and terminating exchanges, whether the exchanges are contiguous, the type of route, and the number of airline miles between the two exchanges; and

WHEREAS, the Set 2 Information is also detailed and provides exchange-specific information regarding the number of subscribers by class of service for optional toll calling services which would be of value to competitors' marketing strategies; and

WHEREAS, neither the Set 1 Confidential Information nor the Set 2 Information is normally obtainable or producible by competitors; and

WHEREAS, the benefits of full review of the information requested, for purposes of the Commission's investigation, and the benefits of avoiding competitive disadvantage which flow to the Kearsarge, Chichester, Meriden, Union, and NET from non-disclosure, outweigh the benefits of disclosure to the public; and

WHEREAS, both Set 1 Confidential Information and the Set 2 Information fall within the scope of "confidential, commercial and financial information" exempt from public disclosure pursuant to RSA 91-A: 5(IV); now therefore, it is

ORDERED, that the Motions of Kearsarge, Chichester, Meriden, and Union for Proprietary

Treatment of Set 1 Information are hereby granted as to Set 1 Confidential Information and denied as to Set 1 Public Information; and it is

FURTHER ORDERED, that the Motions of Union and NET for Proprietary Treatment of Set 2 Information are hereby granted.

By order of the Public Utilities Commission of New Hampshire this tenth day of March, 1994.

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NH.PUC*03/10/94*[70427]*79 NH PUC 157*Extended Area Service Rulemaking

[Go to End of 70427]

79 NH PUC 157

Re Extended Area Service Rulemaking

DRM 94-001

Order No. 21,156

New Hampshire Public Utilities Commission

March 10, 1994

ORDER clarifying and limiting previous grants of confidentiality to certain route- and exchange-specific information made available by local exchange telephone carriers with respect to sales, revenues, customer usage characteristics, and planning forecasts in a docket examining the possible necessity of reconfiguring extended area service venues.

1. RATES, § 573

[N.H.] Telephone service — Extended area service — Investigation into possible reconfiguration — Data requests — Route- and exchange-specific information — Confidential treatment for certain proprietary data — Limits — No protective order for data already regarded as public information. p. 157.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Data requests — Confidential treatment of proprietary information — Limits — No protective order for data already regarded as public information — Docket examining possible realignment of extended area telephone service venues. p. 157.

BY THE COMMISSION:

ORDER

[1, 2] In its preliminary investigation into possible revision of Extended Area Service in New Hampshire, the New Hampshire Public Utilities Commission (Commission) has granted

proprietary treatment of Data Responses to Commission Staff Data Requests Set 1, data request no. 1 (Set 1 Information) by Orders No. 21,150 and Order No. 21,127; and

WHEREAS, the Set 1 Information includes some information which represents a detailed and disaggregated view of minutes of use, revenues and usage characteristics pertaining to services in each exchange on a route-specific basis (Set 1 Confidential Information); and

WHEREAS, the Set 1 Information also includes some information which, in the Commission's opinion, is public information: specifically the time period investigated and columns A through F of spreadsheet A representing the row identification, the originating and terminating exchanges, whether the exchanges are contiguous, the type of route, and the number of airline miles between the two exchanges (Set 1 Public Information); and

WHEREAS, the public interest is best served and the requirements of RSA 91-A are met by defining confidential information as narrowly as possible; now therefore, it is hereby

CLARIFIED, that the proprietary treatment granted in Orders No. 21,150 and No. 21,127 regarding Data Requests Set 1, data request no. 1, is limited to the Set 1 Confidential Information and does not include the Set 1 Public Information.

By order of the Public Utilities Commission of New Hampshire this tenth day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Extended Area Service Rulemaking, DRM 94-001, Order No. 21,127, 79 NH PUC 75, Feb. 14, 1994. [N.H.] Re Extended Area Service Rulemaking, DRM 94-001, Order No. 21,150, 79 NH PUC 150, Mar. 1, 1994.

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NH.PUC*03/15/94*[70428]*79 NH PUC 158*GTE NH

[Go to End of 70428]

79 NH PUC 158

Re GTE NH

Additional applicant: GTE Maine

DR 89-010
Order No. 21,157

New Hampshire Public Utilities Commission

March 15, 1994

ORDER authorizing two interexchange telephone carriers to continue billing in one-minute, distance-sensitive increments rather than in one-second increments, as is policy for other interexchange carriers.

1. RATES, § 582

[N.H.] Telephone rate design — Intrastate toll service — Billing increments — Policy — Increments of one second. p. 159.

2. RATES, § 582

[N.H.] Telephone rate design — Intrastate toll service — Billing increments — Policy — Exceptions for particular carriers — Continuation of one-minute, distance-sensitive increments — Factors — Disproportionate investment to accomplish standard one-second billing increments. p. 159.

3. RATES, § 260

[N.H.] Surcharges — For recovery of lost toll revenue — Associated with change in billing increments — Rejection — Interexchange carriers. p. 159.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On January 13, 1992, New England Telephone and Telegraph Company (NET) filed tariff pages for effect January 20, 1992, in compliance with Order No. 20,082 dated March 11, 1991, in docket DR 89-010. At that time, all other local exchange carriers (LECs) concurred in NET's toll tariff and were required to file revised tariff pages to include the changes resulting from Order No. 20,082. Subsequently, Contel of NH, Inc., d/b/a GTE NH and Contel of Maine, Inc., d/b/a GTE ME (collectively GTE) informed the New Hampshire Public Utilities Commission Staff (Staff) that GTE was not capable of billing toll usage to its customers exactly as approved for NET in DR 89-010. As a result of DR 89-010, NET restructured its toll billing from one minute timing which was distance sensitive, to a flat per minute rate, independent of distance, and billed in one second increments. GTE is unable to bill in one second increments.

In March 1992, GTE submitted a draft compliance tariff to the Staff which included one minute rates for the first minute, equivalent to a full NET first minute rate, and rates for additional time in six second increments. In February 1993, in response to a Staff request, GTE produced a study which indicated that billing toll usage in six second increments would produce, on average, 9.5 percent more toll revenue than if GTE were able to bill using one second increments. In the absence of approval of GTE's proposed six second tariff, GTE continued to bill toll using the old one minute, distance sensitive rates which were in effect prior to January 20, 1992 for all LECs.

Staff and GTE had several meetings to discuss possible alternatives to one second timing but were unable to reach an acceptable resolution.

On November 8, 1993, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,031, which found GTE's six second timing proposal unacceptable and

required GTE to produce a study comparing actual rates charged to customers since January 20, 1992 to the currently approved NET rates using one second timing. Further, Order No. 21,031, required GTE to submit a proposal recommending a resolution of GTE's inability

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to comply with Order No. 20,082 including a recommendation on how to compensate customers who were overcharged for toll calls since January 20, 1992. The study, the proposal and the recommendation were required to be filed no later than November 22, 1993.

On November 22, 1993, GTE submitted a letter asserting it should not be required to refund customers, proposing a solution to GTE's inability to comply with Order No. 20,082, and further proposing to conduct a study using actual GTE bill samples compared to a model of the NET one second system to determine the percentage difference between one second timing and GTE's proposed solution. In addition, the letter stated that GTE had not yet commenced the study required by Order No. 21,031 because it was not given enough time and it believed that such a study would be imprudent if it were not likely to lead to a tariff that would be approved by the Commission. The Commission considered GTE's failure to submit the study required by Order No. 21,031 as a Motion for Reconsideration.

Order No. 21,055, dated December 7, 1993, denied GTE's Motion for Reconsideration and required GTE to file the study required by Order No. 21,031 by January 21, 1994 and encouraged GTE to perform the additional study outlined in its November 22, 1993 letter.

II. *GTE STUDY*

[1-3] On January 24, 1994 GTE submitted the results of the study required by Order No. 21,031. The results indicated that on average, GTE customers being billed using the old, one minute timing, distance sensitive method did not pay more than they would have if GTE were able to bill using the new one second timing method. In fact, the study concluded that GTE customers actually paid, on average, about 1.5 percent less for in-state toll usage than they would have using the one second NET method.

GTE concludes that its customers neither experienced a windfall in rate discounts nor suffered a burden of rate overcharges compared to other LECs' toll customers in the state. As a result, it recommends that the rates currently being billed remain in effect. However, because of the small revenue shortfall using the one minute distance sensitive billing method, GTE concludes it should impose a 1.6 percent per month surcharge on customer bills, retroactively from October 1, 1993, until GTE is sold to another LEC with the ability to bill in one second increments.

III. *COMMISSION ANALYSIS*

We have reviewed GTE's filings on this issue as well as its study. We note that the study, submitted on January 24, 1994, indicates that its customers are not being overcharged for toll usage under the old, one minute distance sensitive billing method. Further, we recognize GTE's statement that it remains unable to comply with the new one second billing method without further investment and that GTE appears to be in process of selling its exchanges in New Hampshire.

We conclude, therefore, that it would be appropriate to give GTE a choice. GTE may either continue to use the one minute distance sensitive billing method or it may implement one second timing to comply with Order No. 20,082. We will not, however, allow GTE to recover any lost toll revenue because of its inability to implement one second timing and therefore, we will deny GTE's request to have a 1.6 percent surcharge imposed on customers. Further we will require GTE to submit a tariff in compliance with this order which contains either the toll rates and structure in effect prior to January 20, 1992 or the toll rates and structure in effect today in NET's Tariff No. 75 Section 9.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that GTE file a toll tariff with toll usage rates that are either identical to the toll tariff in effect prior to January 20, 1992, or identical to NET's toll tariff NHPUC No. 75 Part A Section 9 page 7; and it is

FURTHER ORDERED, that GTE's request to impose a 1.6 percent surcharge on its

Page 159

customers to balance the rate difference between one minute distance sensitive billing and one second flat billing is denied; and it is

FURTHER ORDERED, that GTE file properly annotated tariff pages in compliance with this Commission order no later than fourteen days from the issuance of this order.

By order of the New Hampshire Public Utilities Commission this fifteenth day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re GTE NH and GTE Maine, DR 89-010, Order No. 21,031, 78 NH PUC 674, Nov. 8, 1993. [N.H.] Re New England Teleph. & Teleg. Co., DR 89-010, DR 85-182, Order No. 20,082, 76 NH PUC 150, Mar. 11, 1991.

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NH.PUC*03/16/94*[70429]*79 NH PUC 160*New England Telephone Company

[Go to End of 70429]

79 NH PUC 160

Re New England Telephone Company

DR 93-176
Order No. 21,158

New Hampshire Public Utilities Commission

March 16, 1994

ORDER approving a local exchange telephone carrier's special contract arrangements with New Hampshire Electric Cooperative for the provision of Centrex service.

1. SERVICE, § 467

[N.H.] Telephone — Switching functions — Centrex service — Special contract arrangements. p. 160.

BY THE COMMISSION:

ORDER

[1] On September 24, 1993 New England Telephone Company (NET or the Company) petitioned for Commission approval of the First Amendment to Special Contract No. 93-3 for Centrex Service with the New Hampshire Electric Cooperative (NHEC); and

WHEREAS, NET requested proprietary treatment of Special Contract No. 93-3 and its supporting material; and

WHEREAS, on October 12, 1993, the Commission issued Order No. 20,990 granting NET's request for proprietary treatment; and

WHEREAS, the agreement for which NET now seeks approval amends Appendix A and Appendix B, and fully incorporates all of the other terms and conditions of the original special contract approved by Order No. 20,596 on September 9, 1992; and

WHEREAS, Staff has reviewed the filing, including supporting cost information, and recommended the contract be approved; and

WHEREAS, upon review of the petition and the Staff recommendation, the Commission finds the proposed special contract to be in the public interest; it is therefore

ORDERED *NISI*, that New England Telephone's Special Centrex contract with NHEC is approved; 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 statewide circulation, such publication to be no later than March 28, 1994 and it is to be documented by affidavit filed with this office on or before April 15, 1994; 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 April 12, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 15, 1994, unless the Commission provides otherwise in a supplemental order prior to the effective date.

By order of the New Hampshire Public Utilities Commission this sixteenth day of March,

1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 92-098, Order No. 20,596, 77 NH PUC 530, Sept. 9, 1992. [N.H.] Re New England Teleph. Co., DR 93-176, Order No. 20,990, 78 NH PUC 569, Oct. 12, 1993.

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NH.PUC*03/16/94*[70431]*79 NH PUC 161*Granite State Telephone Company, Inc.

[Go to End of 70431]

79 NH PUC 161

Re Granite State Telephone Company, Inc.

DR 94-036

Order No. 21,160

New Hampshire Public Utilities Commission

March 16, 1994

ORDER accepting a local exchange telephone carrier's compliance tariff filing associated with seven-digit blocking service, as required by Order No. 21,129 (79 NH PUC 77, supra).

1. RATES, § 311

[N.H.] Installation and connection charges — Telephone service — Moves and changes in service — Seven-digit blocking service — Compliance tariff filing — Independent local exchange carrier. p. 161.

BY THE COMMISSION:

ORDER

[1] On March 7, 1994, Granite State Telephone Company, Inc. (Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to make text revisions to NHPUC Tariff No. 6; and

WHEREAS, the revisions are administrative and update the tariff to reflect compliance with order no. 21,129 in Docket DE 93-003, which addresses the issue of 7 Digit Blocking; and

WHEREAS, this filing will not increase any rate or charge, cause the withdrawal of service or conflict with other schedules or rules; it is hereby

ORDERED, that NHPUC Tariff No. 6, Section 3, 3rd Revised Sheet 31 is approved; and it is

FURTHER ORDERED, that Granite State Telephone Company, Inc. file a properly annotated tariff page in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this sixteenth day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DE 93-003, Order No. 21,129, 79 NH PUC 77, Feb. 15, 1994.

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NH.PUC*03/16/94*[70432]*79 NH PUC 161*AT&T Communications of New Hampshire, Inc.

[Go to End of 70432]

79 NH PUC 161

Re AT&T Communications of New Hampshire, Inc.

DE 94-024

Order No. 21,161

New Hampshire Public Utilities Commission

March 16, 1994

ORDER approving certain textual changes in an interexchange telephone carrier's tariffs for "800 READYLINE" and "800 Gold" services, which changes would serve only to clarify that calls made under such service plans may be completed either on a local exchange line or an access line.

Page 161

1. RATES, § 582

[N.H.] Telephone rate design — Toll services — "800 READYLINE" and "800 Gold" services — Tariff clarification — Completion of calls using either a local exchange line or an access line. p. 162.

BY THE COMMISSION:

ORDER

[1] On February 15, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to add text to its AT&T READYLINE and Gold Service - Switched tariff which clarifies that READYLINE calls may be completed either on a local exchange line or on an access line (similar to a WATS access line) purchased from AT&T's F.C.C. tariff; and

WHEREAS, this filing is administrative and clarifies an existing service but does not change any terms, conditions or rates; and

WHEREAS, AT&T filed this revision to become effective March 17, 1994; it is hereby

ORDERED, that the following tariff page of AT&T Tariff No. 1, AT&T Custom Network Service, is approved for effect as filed:

Section 5: 4th Revised Page 2 in Lieu of 3rd Revision;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this sixteenth day of March, 1994.

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NH.PUC*03/16/94*[70433]*79 NH PUC 162*North Country Water Supply, Inc.

[Go to End of 70433]

79 NH PUC 162

Re North Country Water Supply, Inc.

DE 92-076

Order No. 21,162

New Hampshire Public Utilities Commission

March 16, 1994

ORDER directing a water utility to revise and resubmit a compliance tariff filing with respect to connection and reconnection charges, where such terms as tendered were inconsistent with a previously approved rate order.

1. RATES, § 304

[N.H.] Installation, connection, and reconnection charges — Compliance tariff filing — Necessity of refileing — Factors — Inconsistency with prior rate order — Water utility. p. 162.

BY THE COMMISSION:

ORDER

[1] On November 12, 1993, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,036 to North Country Water Supply, Inc. (the Company) addressing rate base, permanent rates, rate case expenses and temporary rate recovery; and

WHEREAS, on February 15, 1994, the Company filed a proposed tariff with the Commission in accordance with issues addressed in the above mentioned order; and

WHEREAS, original page No. 4, section 11, which refers to connection and reconnection charges, is inconsistent with rates approved; it is hereby

ORDERED, that the Company submit a revised page No. 4, in lieu of the original page, along with cost documentation to support

Page 162

charges; and it is

FURTHER ORDERED, that revisions be submitted for review within fourteen days from the date of this order; and it is

FURTHER ORDERED, that the following tariff pages of North Country Water Company, Inc. are approved;

- Original Title Page
- Original Page No.1
- Original Page No.2
- Original Page No. 3
- Original Page No. 4A
- 1st Revised Page No.5
- Supplement page No.1 and No.2.

By order of the New Hampshire Public Utilities Commission this sixteenth day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re North Country Water Supply, Inc., DE 92-076, Order No. 21,036, 78 NH PUC 678, Nov. 12, 1993.

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NH.PUC*03/16/94*[70434]*79 NH PUC 163*Public Service Company of New Hampshire

[Go to End of 70434]

79 NH PUC 163

Re Public Service Company of New Hampshire

DR 93-276

Order No. 21,163

New Hampshire Public Utilities Commission

March 16, 1994

ORDER approving an electric utility's proposal for a net energy billing plan for those residential customers having self-generation capabilities through renewable resources. A customer would either be billed on the basis of a single meter running backwards, or dual meters, one of which would measure kilowatt-hours purchased by the customer from the utility and the other of which would measure kilowatt-hours sold to the utility.

1. ELECTRICITY, § 3

[N.H.] Generating plant — Self-generating residential customers — Use of renewable resources — Eligibility for net energy billing. p. 163.

2. PAYMENT, § 17

[N.H.] Billing and metering — Net energy billing — For residential electric customers with own renewable resource-generated power — Single meter running backwards — Or dual meters measuring consumption and output separately. p. 163.

BY THE COMMISSION:

ORDER

[1, 2] At the Commission's public meeting on December 27, 1993, the Commission opened docket DR 93-276 to address issues related to net energy billing for residential renewable energy projects in Public Service Company of New Hampshire's (PSNH) service territory; and

WHEREAS, as a result of the efforts of the parties and Staff, PSNH filed on March 1, 1994, its proposed net energy billing policy effective April 1, 1994, which is attached hereto, for residential customers with renewable generation facilities; and

WHEREAS, PSNH currently estimates it has 16 customers with 158 kilowatts of installed generation that would qualify for service under its proposed net energy billing policy; and

WHEREAS, PSNH is proposing to limit its net energy billing service to individual, residential renewable projects that are less than 25 kilowatts and set a maximum of 500 kilowatts of installed residential, renewable generation on the PSNH system; and

WHEREAS, the NH Wind Turbine Owners Group agrees generally with PSNH's

proposal on its net energy billing policy except that the NH Wind Turbine Owners Group would remove the 500 kW limit and require PSNH to file tariff pages supporting its proposal; and

WHEREAS, the Commission endorses cost-effective renewable energy and has approved reverse metering if mutually agreed to by the utility and the affected Qualifying Facility (DE 80-246, Supplemental Order No. 14,797, March 20, 1981); and

WHEREAS, PSNH's proposal could provide valuable information on residential, renewable energy projects with little or no adverse effect on PSNH's rates at the limits proposed herein; it is hereby

ORDERED, that the proposed net energy billing policy submitted to the Commission on March 1, 1994, is approved effective April 1, 1994; and it is

FURTHER ORDERED, that in lieu of filing tariff pages, PSNH notify its customers of said policy once each year by including the language in a bill insert; and it is

FURTHER ORDERED, that PSNH report to the Commission by April 1 of each year the number of customers with renewable fueled generation, the total installed generation on the system, the amount of energy PSNH received in excess of the customer's usage, and the number of customers and the anticipated capacity PSNH expects to receive service under the net energy billing service in the upcoming year; and it is

FURTHER ORDERED, should PSNH deny service by reason of the 500 kW cap, the Company shall immediately notify the Commission.

By order of the New Hampshire Public Utilities Commission this sixteenth day of March, 1994.

Attachment

NET ENERGY BILLING SERVICE

Net energy billing is available to any residential customer with renewable fueled generation whose total installed nameplate capacity is 25 kilowatts or less. Customers electing service under this policy will, at PSNH's option, be metered by a single meter which may be allowed to run backwards, or the customer will be required to provide a suitable socket to permit the Company to install a second meter to measure kilowatt-hours sold to the Company. In the event of dual metering, kilowatt-hours sold to the Company during any billing month shall be deducted from the amount of kilowatt-hours purchased from the Company prior to determining the customer's monthly bill. The customer's bill shall be determined under the normally applicable rate.

The Company will not pay the customer for energy generated in excess of usage in any billing period, nor will such excess generation be credited toward future monthly bills.

Any generator interconnected under this service must meet the standard electrical interconnection requirements for Small Power Producers.

The availability of service under this policy is limited to 500 kilowatts of installed generation

on the PSNH system.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Small Power Producers and Cogenerators, DE 80-246, Order No. 14,797, 66 NH PUC 83, Mar. 20, 1981.

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NH.PUC*03/17/94*[70435]*79 NH PUC 165*Granite State Telephone

[Go to End of 70435]

79 NH PUC 165

Re Granite State Telephone

DR 93-245

Order No. 21,164

New Hampshire Public Utilities Commission

March 17, 1994

ORDER approving a local exchange telephone carrier's plan for introducing eight additional custom calling features, including Caller ID, Call Trace, Repeat Dialing, and Selective Call Forwarding services.

1. SERVICE, § 449

[N.H.] Telephone — Special service — Custom calling features — New service options — Caller ID — Call forwarding and tracing — Repeat dialing and priority ringing. p. 165.

BY THE COMMISSION:

ORDER

[1] On December 6, 1993, Granite State Telephone (GST or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to revise its Custom Calling Services tariff for effect January 3, 1994; and

WHEREAS, the proposed tariffs were suspended by Order No. 21,082 on December 30, 1993 to allow Staff to investigate the filing and supporting materials; and

WHEREAS, GST proposes to offer eight new services including Repeat Dialing, Caller ID, Caller ID Blocking, Call Trace, Selective Call Acceptance, Selective Call Forwarding, Selective Call Rejection, and Priority Ringing; and

WHEREAS, the proposed revisions for Caller ID and Caller ID Blocking are consistent with the guidelines for those services established for New England Telephone in docket DR 91-105 (PhoneSmart); and

WHEREAS, GST has provided cost support which indicates that the new services recover their costs; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revisions to be in the public good; it is therefore

ORDERED, that the following tariff pages of Granite State Telephone are approved:

NHPUC - No. 6, Section 3

- Sheet 9N
- Sheet 9N.1
- Sheet 9N.2
- Sheet 90
- Sheet 90.1

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of March 17, 1994; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 6 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this seventeenth day of March, 1994.

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NH.PUC*03/17/94*[70436]*79 NH PUC 165*AT&T Communications of New Hampshire, Inc.

[Go to End of 70436]

79 NH PUC 165

Re AT&T Communications of New Hampshire, Inc.

DE 94-027

Order No. 21,165

New Hampshire Public Utilities Commission

March 17, 1994

ORDER approving an interexchange telephone carrier's proposal for a "loyalty promotion" program under which residential customers making at least \$25 in toll calls a month are eligible for either long-distance minutes or travel awards.

1. RATES, § 584

[N.H.] Telephone rate design — Toll service — Message telecommunications service — Special "loyalty promotion" program — Eligibility — Residential customers — Minimum of \$25 in calls a month — Earning of points redeemable for long-distance minutes or travel awards. p. 166.

BY THE COMMISSION:

ORDER

[1] On February 18, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce AT&T Long Distance Message Telecommunications Service (LDMTS) Loyalty Program Promotion and to make minor text changes to its Long Distance Service Tariff; and

WHEREAS, the AT&T LDMTS Loyalty Promotion is proposed to be available up to and including December 19, 1994; and

WHEREAS, the AT&T LDMTS Loyalty Promotion is intended to reward AT&T residence customers who are billed \$25 or more per month for AT&T long distance with points that are redeemable at the customers' discretion for either long distance minutes or travel awards; and

WHEREAS, the proposed tariff expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than April 12, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than March 28, 1994 and is to be documented by affidavit filed with this office on or before April 13, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 4, AT&T Long Distance Service, are approved:

Section 1:

Original Page 28.3

Original Page 28.4

Section 2:

3rd Revised Page 14;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 13, 1994, 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 seventeenth day of March, 1994.

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NH.PUC*03/17/94*[70437]*79 NH PUC 167*MCI Telecommunications Corporation of New Hampshire

[Go to End of 70437]

79 NH PUC 167

Re MCI Telecommunications Corporation of New Hampshire

DE 94-029

Order No. 21,166

New Hampshire Public Utilities Commission

March 17, 1994

ORDER approving an interexchange telephone carrier's request to extend a special promotional offering under its "Friends and Family" program under which customers may designate one day a year for free domestic calling to any members of their calling circles also using MCI as their primary interexchange carrier. Also, the carrier is allowed to introduce a "Vision and Preferred IntraLATA" promotion under which customers making at least \$150 in new intraLATA calls within a month during the first three months of subscription will receive a credit for the fourth month.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special promotional offerings — "Friends and Family" calling circles — Designated free calling day — Introduction of "Preferred IntraLATA" promotion — Minimum of \$150 in calls in any month in a quarter — Earning of credits for bills in fourth month. p. 167.

BY THE COMMISSION:

ORDER

[1] On February 18, 1994, MCI Telecommunications Corporation of New Hampshire (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to extend the MCI Vision and Preferred IntraLATA Promotion, introduce the Friends and Family Day Promotion and change the usage structure associated with MCI 800 Service Business Line Termination; and

WHEREAS, MCI filed these tariff pages for effect March 20, 1994; and

WHEREAS, the MCI Vision and Preferred IntraLATA Promotion offers customers who enroll in the promotion and meet or exceed \$150 in new IntraLATA monthly usage at least once during the first three months of use, a credit in the fourth month's invoice based on the amount of usage and the customer's number of lines and is proposed to be extended through April 30, 1994; and

WHEREAS, MCI proposes to introduce the Friends and Family Day Promotion which will allow new and existing customers who subscribe to Friends & Family to register one day of the year with MCI as the customer's designated Friends & Family Day. On the designated day, all domestic calls placed from the customer to members of his Friends & Family Calling Circle for whom MCI is the primary interexchange carrier will be free for the entire day. MCI proposed this promotion to be effective through July 31, 1994; and

WHEREAS, the usage structure associated with Option F (MCI 800 Service) Business Line Termination is proposed to be changed from 6 second increments to an 18 second minimum initial period and 6 second additional increments; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages for MCI's NHPUC No. 1 - are approved:

27th Revised Page 1
 15th Revised Page 2
 14th Revised Page 3
 5th Revised Page 22
 1st Revised Page 22.1
 1st Revised Page 35;

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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 of New Hampshire in which operations are proposed to be conducted,

such publication to be no later than March 28, 1994 and is to be documented by affidavit filed with this office on or before April 13, 1994; and it is

FURTHER 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 April 12, 1994; and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 13, 1994, 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 seventeenth day of March, 1994.

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NH.PUC*03/22/94*[70438]*79 NH PUC 168*Springwood Hills Water Company, Inc.

[Go to End of 70438]

79 NH PUC 168

Re Springwood Hills Water Company, Inc.

DE 90-051

Order No. 21,167

New Hampshire Public Utilities Commission

March 22, 1994

ORDER granting a water utility's request for a hearing on its liability for state business enterprise and federal income taxes, as to their effect on revenue requirement. Additionally, Southern New Hampshire Water Company, Inc., is granted intervenor status, given its pending petition to acquire the applicant water utility.

1. CORPORATIONS, § 1

[N.H.] Type and organization — S-corporation versus C-corporation — Questions of tax liability — Water utility. p. 168.

2. EXPENSES, § 109

[N.H.] Taxes — State business enterprise taxes — Federal income taxes — Liability for or lack thereof — Impact on revenue requirement — Hearings — Water utility. p. 168.

3. PARTIES, § 18

[N.H.] Intervenors — Standing — Factors — Interest in acquiring primary party in

proceeding. p. 168.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

[1-3] On March 20, 1990, Springwood Hills Water Company, Inc. (Springwood Hills) filed a petition to provide water service to a limited area in the Town of Londonderry, New Hampshire and to establish rates therein. On November 9, 1990, the Commission issued Report and Order No. 19,982 granting a conditional franchise to Springwood Hills and setting temporary rates at \$160.00 per year (\$40.00 per quarter) per customer.

On May 17, 1991, the Commission issued Report and Order No. 19,981, granting a permanent franchise and rates based on a Stipulated Agreement entered into by Staff and Springwood Hills.

On September 22, 1992, the Commission issued Order Nisi No. 20,609 granting authority to Springwood Hills to recover certain unbilled revenues through a surcharge. At the request of

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the customers of Springwood Hills the Commission held a public meeting on November 9, 1992 in Londonderry, New Hampshire. At that public hearing the Commission was informed that the rate used to calculate the tax liability of Springwood Hills was incorrect. The Commission asked Staff to investigate this information.

On December 14, 1993, the Commission issued *Nisi* Order No. 21,062 requiring Springwood Hills to lower its monthly rates from \$52 to \$39 due to its status as a sub-chapter S-corporation with no tax liability.

On February 28, 1994, Springwood Hills requested a hearing on the issue of the proper revenue requirement in light of the tax adjustment made by the Commission in *Nisi* Order No. 21,062. After the Order was issued, Springwood Hills informed the Commission that it was not an S-Corporation but a C-Corporation and supplied copies of the front pages of its last three years of federal income tax returns, Form 1120.

On March 2, 1994, Southern New Hampshire Water Company, Inc. (Southern) filed a motion to intervene in this docket.

II. COMMISSION ANALYSIS

Springwood Hills' request for a hearing is granted. The hearing shall address whether Springwood Hills is entitled to a "grossed up" revenue requirement, that is, should the Commission consider the effects of the New Hampshire Business Enterprise Tax and federal income tax, or lack thereof, on the revenue requirement established by this Commission in Report and Order No. 20,134 for Springwood Hills.

Southern's motion to intervene in this docket is granted given Southern's pending petition to

acquire Springwood Hills. See DR 93-203.

Our order will issue accordingly.

ORDER

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

ORDERED, that a hearing be held on the 30th day of March, 1994 at 10:00 o'clock in the forenoon to consider the proper tax adjustment to Springwood Hills Water Company, Inc.'s revenue requirement; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc.'s motion to intervene in this proceeding is granted; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Springwood Hills Water Company, Inc. notify all persons desiring to be heard at this hearing by publishing a copy of this order of notice no later than March 26, 1994, in a newspaper of general circulation in the portion of the state in which the system is located. Publication shall be documented by affidavit filed with the Commission on or before March 29, 1994; 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 an original and eight copies to the Commission of a petition to intervene on or before March 29, 1994.

By order of the New Hampshire Public Utilities Commission this twenty-second day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Spring Wood Hills Water Co., Inc., DE 90-051, Order No. 19,982, 75 NH PUC 717, Nov. 9, 1990. [N.H.] Re Springwood Hills Water Co., DE 90-051, Order No. 21,062, 78 NH PUC 719, Dec. 14, 1993.

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NH.PUC*03/22/94*[70439]*79 NH PUC 170*Public Service Company of New Hampshire

[Go to End of 70439]

79 NH PUC 170

Re Public Service Company of New Hampshire

DR 93-149

Order No. 21,168

New Hampshire Public Utilities Commission

March 22, 1994

ORDER adopting stipulation providing an electric utility with a fuel and purchased power adjustment clause rate of 0.316 cents per kilowatt-hour. The utility is allowed to defer recovery

of scheduled Seabrook nuclear power plant refueling costs, but not to recover any interest associated therewith.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Electric utility — Fuel and purchased power adjustment clause rate — Factors — Short-term, off-system capacity sales — Joint dispatch savings — Sharing of benefits — Deferral of nuclear plant refueling costs. p. 173.

2. REVENUES, § 5

[N.H.] Short-term, off-system capacity sales — Electric utility — Allocation of impacts for purposes of fuel and purchased power adjustment proceeding — Stipulation. p. 173.

3. EXPENSES, § 122

[N.H.] Electric utility — Commodity costs — Fuel and purchased power adjustment proceeding — Planned nuclear plant refueling — Deferral of cost recovery — Akin to purchase of goodwill — No recovery of interest costs associated with deferral. p. 173.

APPEARANCES: Day, Berry and Howard by Robert P. Knickerbocker, Esq. and Gerald A. Garfield, Esq., and Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Office of the Consumer Advocate by Michael W. Holmes, Esq. on behalf of residential ratepayers; Susan Chamberlin, Esq. and Eugene F. Sullivan III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On August 10, 1993, Public Service Company of New Hampshire (PSNH) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking recovery of the costs of purchasing and generating power pursuant to RSA chapter 378. This filing, commonly referred to as the Fuel and Purchased Power Adjustment Clause (FPPAC), proposed a rate of 0.223 ¢ per kwh or an increase of 0.113¢ per kwh of electricity resulting in a rate increase of 1% beginning on December 1, 1993 (or 5.5% for the fiscal year beginning June 1, 1993).

PSNH, the Office of Consumer Advocate (OCA) and the Staff of the Commission (Staff) engaged in discovery and negotiations from August to November of 1993. On November 8th and 9th, 1993, the Commission heard evidence relative to FPPAC costs incurred during the last recovery period and projected FPPAC costs for the next six months.

Briefs were filed by PSNH, OCA and Staff on November 19, 1993. On December 2, 1993, the Commission issued Order No. 21,049 approving the Stipulation and Recommendation on Capacity Sales Issues and approved an FPPAC rate of 0.316¢ per kWh, effective December 1,

1993. This report will detail the positions of the parties and the Commission's analysis of the evidence.

II. POSITIONS OF THE PARTIES AND STAFF

At the hearing, the Commission heard

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evidence relative to PSNH's proposed rate increase. The Staff and PSNH entered into a Stipulation and Recommendation on Capacity Sales Issues (Stipulation), attached hereto as Appendix A, and presented testimony in support of the Stipulation.

PSNH and Staff presented testimony relative to the proposal by PSNH to defer for an unspecified length of time the collection of approximately \$14 million in projected power costs attributable primarily to the planned refueling of the Seabrook Nuclear Power Plant (Seabrook) which occurs every 18 months. This issue, which was briefed by PSNH, Staff and the OCA, included the question of whether interest on the deferral is appropriate in the present proceeding.

Although not contested issues, testimony was also presented concerning outages and replacement power costs, the Schiller plant's coal pile survey, and PSNH's efforts to attain FPPAC synergies in accordance with the Rate Agreement.

A. Capacity Sales

1. *Stipulation on Capacity Sales Issues.*

PSNH presented two witnesses, James R. Shuckerow, Jr. and Frank P. Sabatino, to testify in support of a Stipulation with Staff resolving two separate issues concerning the treatment of capacity sales (Stipulation).

The first issue, whether energy reservation charge or capacity charge revenues associated with capacity sales of less than one week should be apportioned to shareholders or PSNH ratepayers, emanates from the Commission's invitation in its decision in the previous FPPAC docket, DR 93-023, to seek further comments on this issue. The Stipulation specifies that all revenues from capacity charges or energy reservation charges associated with capacity sales of less than one week will be aggregated and then allocated, as it is done now, between PSNH and the Initial System based upon each system's respective share of the benefits of the Combined System's energy transactions each month. After the revenues are shared between the Initial System and PSNH, PSNH will then further divide its share equally between customers and shareholders. PSNH customers will receive the benefits via the use of their share of revenues as an offset to FPPAC costs.

The second issue addressed in the Stipulation, which also was deferred from docket DR 93-023, concerns the interpretation of Paragraph 4(ii) of the June 22, 1990 Joint Recommendation for Commission Order that was submitted to the Commission in docket DR 89-244.

1(18) Mr. Sabatino described that the dispute between PSNH and Staff revolved around the indirect way in which capacity sales can affect PSNH's energy expenses. Particularly, joint dispatch savings can either increase or decrease from off-system capacity sales made from either

the Initial System or PSNH. PSNH's interpretation, espoused in pre-filed testimony and in DR 93-023, is that the indirect or secondary effects of off-system sales should be normalized in order to keep ratepayers whole. Mr. Sabatino explained that Staff's position was that the effects of off-system sales on joint dispatch savings and energy and pass-through transactions should be disaggregated into those new capacity transactions that increase and those that decrease joint dispatch savings. New capacity transactions that increase ratepayer benefits would flow to customers. Ratepayers would be insulated from all new capacity sales that result in decreased joint dispatch savings and energy and pass-through savings.

The Stipulation indicates PSNH will calculate the joint dispatch savings and energy and pass-through savings on a monthly basis. If new capacity sales increase benefits, the benefits retained by PSNH will be split equally between shareholders and PSNH ratepayers. PSNH will neutralize customers from any decreased benefits in joint dispatch and energy and pass-through savings due to new capacity sales by a credit in FPPAC equal to the reduced benefits.

B. FPPAC Cost Deferral and Interest Recovery

1. PSNH

PSNH presented one witness, Stephen R. Hall, who testified in support of PSNH's

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proposal to implement a new FPPAC rate of 0.223¢ per kWh effective December 1, 1993 and to defer with interest the resulting forecasted underrecovery of FPPAC costs. Ex. 16 at 6-7. Mr. Hall explained that PSNH's proposed FPPAC rate would result in a 1 percent increase in rates on December 1, 1993. Ex. 16 at 7. If PSNH were to recover all its FPPAC costs in the December 1, 1993 through May 31, 1994 period, the FPPAC rate would be 0.632¢ per kWh, an increase of approximately 4.5 percent.

Mr. Hall explained that PSNH was waiving its right to recover presently all of the replacement power costs associated with the Seabrook refueling scheduled for April and May 1994, although PSNH is seeking assurance that it be allowed to recover the deferral with interest at a future time when PSNH believes it is more appropriate to do so. The basis for the deferral is PSNH's concern about rate stability and its objective to keep annual rate changes as close as possible to the 5.5 percent annual rate changes of the Rate Agreement.

PSNH argues that it did not propose a specific time frame or rate mechanism for recovery of the deferral in pre-filed testimony in order to remain flexible to changes that, should they occur, could affect the under-recovery. Brief at 4. PSNH cites the inherent uncertainty in fuel cost projections, load growth forecasts and plant maintenance changes as factors that can significantly affect FPPAC over a six-month period. More specifically, PSNH believes potential savings in small power costs could reduce the deferral before recovery begins. In response to Staff's proposed recovery period, which PSNH viewed as viable, PSNH proposed several other options. Exhibit 27.

Concerning interest on the underrecovery, PSNH contends it is entitled to recovery at the prime rate. PSNH further contends that the treatment of interest on FPPAC under- or over-recoveries has a long history before this Commission which holds both customers and the

utility harmless to the time value of money. Brief at 5.

2. Staff

Staff does not contest PSNH's legal right to collect its prudently incurred FPPAC costs. Brief at 2. Staff's witness, Thomas C. Frantz, did recommend that the Commission not approve PSNH's proposal to defer FPPAC costs until an unspecified future time. Rather, Mr. Frantz testified that he believed any deferral of FPPAC costs, a deferral that was not legally required, should be spread over the eighteen month period coinciding with the Seabrook refueling outage, which is the primary cost driver of the increased FPPAC costs in the present FPPAC period. Staff bases its recommendation on the uncertainty of future FPPAC costs and the necessity to provide some assurance that ratepayers are not burdened with a possibly larger rate increase at some future period. Brief at 4. Moreover, Staff believes that the eighteen month period provides PSNH with rate stability, its primary goal in proposing a deferral mechanism.

Additionally, Staff recommends that PSNH not be allowed to recover any interest on any deferred recoveries. Staff witness Frantz testified that PSNH is seeking to avoid, as Mr. Hall said in testimony, the swift and unfavorable public outcry that would result if PSNH were to raise rates more than the 5.5 percent annual increase specified in the Rate Agreement. Transcript at 122. Staff considers PSNH's voluntary deferral proposal to be a purchase of "goodwill" and, therefore, a cost of doing business properly borne by shareholders, not ratepayers. In support of this position, Staff asserted that any business operating in a competitive marketplace must bear the cost of goodwill, and, therefore, the monopolist should not be immune from such costs. Brief at 5.

Staff further asserted that the benefits to PSNH of the proposed deferral far outweigh any benefits customers may derive, and the "cost" of the deferral should reflect that fact. Brief at 7.

Finally, Staff raised an issue relative to the traditional use of the "prime rate" as the proper rate to use in the instant proceeding and recommended that should the Commission allow PSNH to earn interest on the deferred funds that PSNH's actual borrowing rate be used.

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3. OCA

The OCA did not present testimony on the deferral/interest issue, but did support Staff's position of allowing recovery of the deferral without a return. Brief at 1. OCA cites the lack of any record on an appropriate ratepayer discount rate in which to judge whether ratepayers are better or worse off from PSNH's proposal to defer Seabrook refueling related costs at the prime rate. Additionally, absent any demonstration by PSNH that its customers are better off with the deferral with interest and the inherent benefits OCA believes PSNH derives from its voluntary deferral by keeping rates in line with those anticipated in the Rate Plan, OCA believes PSNH's shareholders should bear the carrying costs associated with the deferral.

III. COMMISSION ANALYSIS

[1-3] The issue before the Commission is the accuracy of PSNH's projected power cost for the next six months. Subsumed within this issue are the reasonableness of the Stipulation relative to joint dispatch, and the proper treatment of PSNH's proposed FPPAC recovery deferral.

The first issue we will address is the Stipulation concerning joint dispatch savings. The Stipulation addresses two issues which were deferred from the previous FPPAC proceeding: 1) the appropriate treatment of revenues from either an energy reservation charge or a capacity charge that are associated with capacity sales of less than one week; and 2) the interpretation of paragraph 4(ii) of the Joint Recommendation for Commission Order in docket DR 89-244 which requires PSNH to insulate customers from the incremental cost of energy due to capacity sales.

The Stipulation provides that revenues from the sales of capacity and energy reservation charges associated with sales of capacity less than one week in duration shall be shared between PSNH and the Initial System based upon their respective shares of the benefits of the Combined System' energy transactions each month, and, further, that PSNH's share of these revenues shall be split equally between ratepayers and stockholders.

We find this apportionment of the disputed revenues to be an equitable resolution of the issue, and, therefore, just and reasonable.

The Stipulation further provides that any increase in benefits due to increased capacity sales will be split equally between stockholders and ratepayers, and that any decrease in benefits will be borne entirely by stockholders. Thus, ratepayers are insulated from any harm due to increases in capacity sales and will share equally in any benefits.

Again, we find this resolution to be equitable. It insulates ratepayers from harm while at the same time providing an incentive to PSNH to engage in additional capacity sales by allowing shareholders to share in any benefits.

In regard to PSNH's requested deferral on the recovery of projected costs during the next FPPAC recovery period, we adopt the position of Staff. While it is true, as set forth in PSNH's brief, that the traditional practice of this Commission is to allow the recovery of interest by both PSNH and its customers at the so-called prime rate on under and overrecoveries, this case does not present a conventional underrecovery.

2(19)

In this proceeding, PSNH has consciously chosen not to seek the recovery of certain FPPAC costs to avoid increasing its rates more than 5.5%. Neither the Staff nor the OCA has contested PSNH's right to collect this revenue immediately even though this would result in a rate increase above 5.5%.

Thus, we conclude that PSNH has chosen this method of cost recovery to avoid any potential harm to its standing in the community, that is, PSNH is purchasing goodwill. Just as any company operating in a competitive market must bear the cost of goodwill in the hope of long-term gains, both tangible and intangible, so should the monopolist. Therefore, the "cost" of any deferrals in this proceeding shall be borne by the shareholders.

Finally, we would like to note that we appreciate Staff's thorough review of the FPPAC synergies and agree with the conclusions that, based on the information available, PSNH/NU appear to be using its best efforts to achieve the projected FPPAC synergies

anticipated in the Rate Agreement. We expect PSNH/NU to continue to use its best efforts to meet or exceed the FPPAC synergies and will direct Staff to review those efforts on a periodic basis.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof and consistent with Order No. 21,049 (December 2, 1993); it is hereby

ORDERED, that the Stipulation and Recommendation on Capacity Sales Issues, attached hereto as Appendix A, is approved; and it is

FURTHER ORDERED, that effective December 1, 1993, the Fuel and Purchased Power Adjustment Clause rate will be 0.316¢ per kWh, an increase of 0.206¢ per kWh over the currently effective rate; and it is

FURTHER ORDERED, that PSNH calculate its FPPAC costs in Exhibit 4 of the FPPAC Monthly Data Filing without interest commencing December 1, 1993; and it is

By order of the New Hampshire Public Utilities Commission this twenty-second day of March, 1994.

STIPULATION AND RECOMMENDATION ON CAPACITY SALES ISSUES

WHEREAS, the Commission held hearings in this proceeding on November 8 and 9, 1993;

WHEREAS, the issues with respect to capacity sales that were contested in this proceeding are the following:

- Whether revenues from either an energy reservation charge or a capacity charge that are associated with capacity sales of less than one week should be assigned to shareholders or customers; and
- The interpretation of Paragraph 4(ii) of the Joint Recommendation for Commission Order in Docket No. DR 89-244, requiring PSNH to insulate customers from the incremental cost of energy due to capacity sales.

WHEREAS, the first of these issues was a matter as to which the Commission invited further comment from the parties in its decision in the prior FPPAC proceeding, Docket No. DR 93-023, and the second issue was agreed to be deferred by the parties until this proceeding in a stipulation dated June 8, 1993 and accepted by the Commission in said Docket No. DR 93-023; and

WHEREAS, the Staff and PSNH have reached agreement on the two issues described above;

NOW THEREFORE, the Staff and PSNH agree and recommend as follows:

Allocation of Capacity Charges and Energy Reservation Charges Associated with Capacity Sales of Less than One Week

That revenues from capacity charges and energy reservation charges associated with capacity sales of less than one week made on or after the first day of the month following the date of the Commission's decision accepting this stipulation will be allocated between PSNH and the Initial

System based upon their respective shares of the benefits of the Combined System's energy transactions each month. PSNH's share of such revenues will be split equally between PSNH's customers and shareholders by crediting one-half of such revenues to FPPAC expense.

Allocation of the Impact on Joint Dispatch Savings and Energy and Pass-Through Transactions Resulting from New Capacity Sales

That joint dispatch savings and the benefits from energy and pass-through transactions will change as a result of new capacity sales. If these new capacity sales *increase* benefits from joint dispatch savings and energy and pass-through transactions, then this increase will be split equally between customers and shareholders. If new capacity sales *decrease* benefits from joint dispatch savings and energy and pass-through transactions, customers will be insulated from any such impacts. Accordingly, to carry out this agreement, Paragraph 4(ii) of the June 22, 1990 Joint

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Recommendation for Commission Order in Docket No. DR 89-244 will be interpreted in the following manner:

1. All capacity sales that are entered into on or after the date of the Commission's decision accepting this stipulation, whether from PSNH or the Initial System, will be aggregated each month and modeled to determine their net effect upon energy expenses of the Combined System, including replacement energy expense, joint dispatch savings and energy and pass-through transactions (Own Loads 1, 2, 3 and 4 will be compared with and without the capacity sales).

2. Such capacity sales will be allocated between PSNH and the Initial System in accordance with the provisions of the June 8, 1993 Stipulation and Recommendation on Capacity Sales Issues approved by the Commission in Docket No. DR 93-023.

3. PSNH's replacement energy expense (determined by comparing Own Load 4 with and without the capacity sales allocated to PSNH) will be credited to FPPAC expense to insulate customers from the effects of such sales on PSNH's own-load fuel expense.

4. If PSNH's allocated share of the remaining energy expense impacts (after adjusting for PSNH own-load replacement energy expense) of such capacity sales is a net benefit (i.e., PSNH's benefits from joint dispatch savings and energy and pass-through transactions are increased because of such sales), one-half of such net benefits will be credited to PSNH customers in FPPAC and the remainder will be retained by shareholders. If PSNH's allocated share of such remaining energy expense impacts is negative (i.e., PSNH's benefits from joint dispatch savings and energy and pass-through transactions are reduced because of such sales), PSNH customers shall be protected from 100 percent of such impacts by a credit to FPPAC.

Reservation of Rights as to Issues Beyond the Scope of this Stipulation and Recommendation

The terms of this Stipulation are without prejudice to the right of Staff or any party to raise new issues without limitation in the future that may relate to capacity versus energy transactions, interpretation or implementation of Paragraph 4(ii), or the calculation of the so-called "production cost penalty", so long as such issues have not been specifically resolved by this Stipulation, prior Stipulations or Commission order.

WHEREFORE, the Staff and PSNH recommend that the Commission adopt this Stipulation and Recommendation as a means of resolving the issues described.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE

NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION STAFF

FOOTNOTES

¹Paragraph 4(ii) of the Joint Recommendation states that:

The FPPAC shall be interpreted ... so that the term "actual prudent energy and purchased power costs" as used in the first paragraph of Exhibit C of the Rate Agreement would be deemed not to include ... the incremental cost of energy required to replace energy from resources sold pursuant to capacity sales contracts entered into after the First Effective Date.

Northeast Utilities/Public Service of New Hampshire 114 PUR4th 385 (1990).

²We need not address the appropriate interest rate to be applied to FPPAC over and under recoveries at this time because the issue is moot.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-149, Order No. 21,049, 78 NH PUC 699, Dec. 2, 1993.

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NH.PUC*03/22/94*[70440]*79 NH PUC 176*AT&T Communications of New Hampshire, Inc.

[Go to End of 70440]

79 NH PUC 176

Re AT&T Communications of New Hampshire, Inc.

DE 94-035
Order No. 21,169

New Hampshire Public Utilities Commission

March 22, 1994

ORDER authorizing an interexchange telephone carrier to amend its tariffs for its "800 READYLINE" and "800 Gold" services by eliminating a 30-second minimum average time requirement, so that it would bill customers for an initial period of 30 seconds and in one-second increments thereafter.

1. RATES, § 582

[N.H.] Telephone rate design — Toll services — "800 READYLINE" and "800 Gold" services — Billing increments — Elimination of 30-second minimum average time requirement. p. 176.

BY THE COMMISSION:

ORDER

[1] On February 28, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to revise its 800 READYLINE and 800 Gold Service-Switched tariffs by eliminating the 30 second minimum average time requirement; and

WHEREAS, the revisions propose that rates for calls after the MATR is eliminated will include an initial period of 30 seconds and additional one second increments; and

WHEREAS, the AT&T Billing System has been programmed to implement the changes for its interstate service as well, on a nationwide basis, on April 20, 1994; and

WHEREAS, AT&T requested this filing become effective April 20, 1994 due to the change in its billing system; and

WHEREAS, the proposed tariff expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than April 18, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than April 1, 1994 and is to be documented by affidavit filed with this office on or before April 18, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 1, AT&T Custom Network Service, are approved:

Section 5:

2nd Revised Page 7

2nd Revised Page 8;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 20, 1994 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-second day of March, 1994.

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NH.PUC*03/22/94*[70441]*79 NH PUC 177*AT&T Communications of New Hampshire, Inc.

[Go to End of 70441]

79 NH PUC 177

Re AT&T Communications of New Hampshire, Inc.

DE 94-028

Order No. 21,170

New Hampshire Public Utilities Commission

March 22, 1994

ORDER approving an interexchange telephone carrier's plan for the introduction of "Community 800" (intrastate 800) service at a 15% discounted rate during an initial promotional period.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access options — "Community 800" (intrastate 800) service — Promotional discounts. p. 177.

BY THE COMMISSION:

ORDER

[1] On February 22, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce its Community 800 Promotion; and

WHEREAS, AT&T will offer this promotion to AT&T 800 READYLINE, AT&T CustomNet and AT&T UniPlan Service (switched access option) customers; and

WHEREAS, the Community 800 Promotion will offer a 15 percent discount on billed usage for calls placed to an 800 number in New Hampshire, which originate in the state, when a customer enters into a new or extends an existing term plan; and

WHEREAS, AT&T filed this promotion to become effective April 1, 1994 and continue through March 31, 1995; and

WHEREAS, the proposed tariff expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than April 18, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than April 1, 1994 and is to be documented by affidavit filed with this office on or before April 18, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff page of AT&T Tariff No. 1, AT&T Custom Network Service, is approved:

Section 1:

1st Revised Page 7.1;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 20, 1994 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-second day of March, 1994.

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NH.PUC*03/22/94*[70442]*79 NH PUC 178*Long Distance North of New Hampshire, Inc.

[Go to End of 70442]

79 NH PUC 178

Re Long Distance North of New Hampshire, Inc.

DE 94-031

Order No. 21,171

New Hampshire Public Utilities Commission

March 22, 1994

ORDER authorizing an interexchange telephone carrier to introduce five special service options relating to switched inbound or outbound "800" services.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched-line services — Inbound or outbound "800" services — Special service and discount options. p. 178.

BY THE COMMISSION:

ORDER

[1] On February 23, 1994, Long Distance North of New Hampshire, Inc. (LDN) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce its Simplicity, Dimension, Fronrunner, Consumer CTS Card, and Home Connection Services and increase the Excel 800 rates; and

WHEREAS, Simplicity Service is a switched service, including outbound or inbound 800 options, that allows subscribers to originate or terminate calls via local telephone access lines and includes discount options based on total monthly usage, term commitments and discounts to the area code with the highest outbound usage; and

WHEREAS, Dimension Service is a customized product that incorporates dedicated or switched outbound and dedicated or switched 800 inbound and CTS Card origination usage and includes discount options based on total monthly usage, term commitments and discounts to the area code with the highest outbound usage; and

WHEREAS, Fronrunner Service is a switched outbound service with discount options based on total monthly usage, and discounts to the area code with the highest outbound usage; and

WHEREAS, Consumer CTS Card Service is a calling card service that allows customers to originate calls via an LDN provided 800 number and includes a discount based on total monthly usage; and

WHEREAS, Home Connection Service is a residential service with a rate structure that is not mileage sensitive and to which no discounts apply; and

WHEREAS, LDN requested an effective date of March 30, 1994; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NI*, that the following tariff pages for NHPUC No. 2 are approved:

3rd Revised Page 2 in Lieu of 2nd Revision

2nd Revised Page 4
3rd Revised Page 19.1 in Lieu of 2nd Revision
1st Revised Page 19.2 in Lieu of Original
2nd Revised Page 20
1st Revised Page 31
Original Page 33.3
1st Revised Page 33.4 in Lieu of Original
Original Page 33.5
Original Page 33.6
1st Revised Page 33.7 in Lieu of Original
Original Page 33.8
Original Page 33.9

Page 178

Original Page 33.10
Original Page 33.11;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, LDN cause an attested copy of this Order *Nisi* to be published in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than April 1, 1994 and is to be documented by affidavit filed with this office on or before April 18, 1994; and it is

FURTHER 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 April 18, 1994; and it is

FURTHER ORDERED, that LDN file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 21, 1994, 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-second day of March, 1994.

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NH.PUC*03/22/94*[70443]*79 NH PUC 179*New England Telephone Company

[Go to End of 70443]

79 NH PUC 179

Re New England Telephone Company

DR 94-032

Order No. 21,172

New Hampshire Public Utilities Commission

March 22, 1994

ORDER requiring a local exchange telephone carrier to revise its proposed late payment charge with respect to residential customers, to assure that the annual effective interest rate thereon would not exceed the 10% state-mandated limit for residential late payment penalties (although late payment charges for nonresidential customers may reflect an annual effective interest rate of 18%).

1. PAYMENT, § 53

[N.H.] Penalties — Late payment charges — Residential customers — Annual effective interest rate limit of 10% — Local exchange telephone carrier. p. 179.

2. PAYMENT, § 53

[N.H.] Penalties — Late payment charges — Nonresidential customers — Annual effective interest rate limit of 18% — Local exchange telephone carrier. p. 179.

BY THE COMMISSION:

ORDER

[1, 2] On February 24, 1994, New England Telephone (NET or the company) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking approval of a Late Payment Charge (LPC) to be applied to both residence and business customers (Petition); and

WHEREAS, NET's proposed tariff would establish a 1.388% monthly surcharge, which compounded results in 18% annually, to be applied to all balances outstanding twenty-five (25) days or more from the date on which the bill was mailed; and

WHEREAS, the filing was filed in accordance with a provision of the Stipulation & Agreement of the Parties (Stipulation), dated March 16, 1993 and Modified July 29, 1993, in the Generic Competition Docket, Docket No. DE 90-002; and

WHEREAS, in Docket No. DE 90-002, Order No. 20,864 dated June 10, 1993, the Commission approved the March 16, 1993

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Stipulation subject to certain conditions and found that the Stipulation's authorization for the LPC was in the public interest, and stated further that the Commission would open a rulemaking

docket to investigate LPCs; and

WHEREAS, N.H. Code of Administrative Rules Puc 403.06 (b)(2)(d) provides that a 1 and 1/2% per month, which results in 18% per year, LPC is applicable to all *non-residential bills* which remain unpaid over 30 days from the postmarked date of the bill; and

WHEREAS, the New Hampshire Code of Administrative Rules Puc 400 are silent on provisions of LPC for residential customers; and

WHEREAS, the proposed tariff requests a LPC be applied on all amounts, including both residential and non-residential customers, outstanding 25 days or more from the date on which the bill for such amounts is mailed, which appears to be inconsistent with N.H. Code of Administrative Rule Puc 403.06; and

WHEREAS, the Commission will treat NET's statement that the company billing system does not provide the capability to hold the unpaid balance for 30 days from the postmarked date and then calculate the LPC as a waiver request from NH Code of Administrative Rules Puc 403.06; and

WHEREAS, Docket No. DRM 93-221 was established to investigate certain rules for all utilities, including the appropriate terms and conditions of a LPC and its applicability to residential bills; and

WHEREAS, the Commission will reserve judgment on whether the terms and conditions used in the current tariff filing are the most appropriate terms and conditions for the imposition of LPCs pending the completion of DRM 93-221; and

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

ORDERED *NISI*, that NET file a revised LPC Tariff, reflecting a 1.388% monthly surcharge, which compounded results in a maximum interest rate of 18% annually, applicable to all *non-residential bills* which remain unpaid and outstanding twenty-five (25) days or more from the postmarked date of the bill; and it is

FURTHER ORDERED, that NET file a revised LPC Tariff for residential customers which compounded results in a maximum interest rate of 10% annually, a rate which would be consistent with the benchmark established in RSA 336:1; and it is

FURTHER ORDERED, that NET's request for a waiver from NH Code of Administrative Rules 403.06 is granted pending the completion of DRM 93-221 and NET shall be allowed to impose an LPC on such amounts which remain unpaid and outstanding twenty-five (25) days or more from the postmarked date of the bill; and it is

FURTHER ORDERED, that NET shall file a revised LPC Tariff, if necessary, to conform to the rule resulting from Docket No. DRM 93-221; and it is

FURTHER ORDERED, that pursuant to N.H. Administrative Rules PUC 203.01, the company cause an attested copy of this Order Nisi to be published once in a newspaper of general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than April 1, 1994 and it is to be documented by affidavit filed with this office on or before April 18, 1994; and it is

FURTHER ORDERED, that all persons interested in responding to this petition may file written comments or request an opportunity to be heard in this matter no later than April 18, 1994; and it is

FURTHER ORDERED, that NET file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that NET notify all of its customers of the terms and conditions of LPCs at least 30 days prior to implementation of the LPC; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 21, 1994 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-second day of March, 1994.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,864, 78 NH PUC 283, June 10, 1993.

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NH.PUC*03/24/94*[70444]*79 NH PUC 181*Public Service Company of New Hampshire

[Go to End of 70444]

79 NH PUC 181

Re Public Service Company of New Hampshire

DR 93-179

Order No. 21,173

New Hampshire Public Utilities Commission

March 24, 1994

ORDER determining the scope of issues to be addressed in a docket examining the renegotiation of rates payable by an electric utility for power purchased from eight wood-fired small power producers.

1. ELECTRICITY, § 3

[N.H.] Wood-fired generating plant — Small power producers — Renegotiation of rates — Issues to be addressed — Contract terms — Calculation of expected ratepayer savings — Cost

recovery methods — Economic and job impacts of forestry and woodburning industries. p. 184.

2. ELECTRICITY, § 3

[N.H.] Wood-fired generating plant — Small power producers — Renegotiation of rates — Issues *not* to be addressed — Seabrook nuclear power as part of fuel mix — Health and safety impacts of woodburning plant — Environmental externalities — Wildlife, forestry, and woodchipping practices. p. 184.

3. ELECTRICITY, § 3

[N.H.] Wood-fired generating plant — Small power producers — Renegotiation of rates — General assumptions that need not be addressed in testimony — Least-cost planning principles — Provisions of the Limited Electrical Energy Producers Act — Costs of compliance with Clean Air Act Amendments — Importance of renewables and diverse fuel mixes — "Public good" standard as test of reasonableness. p. 184.

APPEARANCES: Rath, Young, Pignatelli and Oyer by M. Curtis Whittaker, Esq. and Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Castaldo and Malmberg by David Marshall, Esq. for New Hampshire Timberland Owners Association; David Harrigan, Esq. for Society for the Protection of New Hampshire Forests; D. Dickenson Henry, Jr. for Audubon Society of New Hampshire; Armond Cohen, Esq. for Conservation Law Foundation; Broderick and Dean by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Backus, Meyer and Solomon by Robert Backus, Esq. for Campaign for Ratepayers Rights; Kenneth A. Colburn for Business and Industry Association; Richard C. Walker for Town of Springfield, New Hampshire; Donald Ferren for Southern New Hampshire Resource Conservation and Development Area; Michael B. Jenish for PREMCO, Inc.; Robert Berti for North Country Procurement, Inc.; Brooks McCandlish for Society of American Foresters, Granite State Division; Michael Lambert for Northeast Forest Users Coalition; James Anderson, Esq. for Office of Consumer Advocate on behalf of residential ratepayers; Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission

BY THE COMMISSION:

I. PROCEDURAL HISTORY

The Public Utilities Commission

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(Commission) on October 15, 1993 issued an order of notice initiating a docket to consider the status of negotiations between Public Service Company of New Hampshire (PSNH) and thirteen small power producers. The docket is the result of a provision within the Rate Agreement between the State of New Hampshire and PSNH/Northeast Utilities, as accepted by the State in RSA 362-C:2, I and approved by the Commission in DR 89-244, *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385 (1990). Under the Rate Agreement, Northeast Utilities is required to use its best efforts to renegotiate the rates of the following thirteen small power producers: Briar Hydro/Essex Hydro, Errol Dam, Greggs Falls,

Pembroke Hydro, Pennacook Upper Falls (the five hydropower SPPs), Alexandria Power, Bio-Energy Corporation, Bridgewater Steam Power, TIMCO, Hemphill Power and Light, Bethlehem Pinetree Power, Tamworth Pinetree Power, Whitefield Power (the eight woodburning SPPs) (collectively the SPPs).

The following were granted full intervention status: New Hampshire Timberland Owners Association (Timberland Owners), Society for the Protection of New Hampshire Forests (The Forest Society), Audubon Society of New Hampshire (Audubon), Conservation Law Foundation (CLF), New Hampshire Electric Cooperative, Inc. (NHEC), Campaign for Ratepayers Rights (CRR), Business and Industry Association (BIA), Town of Springfield, New Hampshire (Springfield), Southern New Hampshire Resource Conservation and Development Area, PREMCO, Inc. (PREMCO), North Country Procurement, Inc. (North Country), Society of American Foresters, Granite State Division (American Foresters), Northeast Forest Users Coalition (Northeast Forest Users), Office of Consumer Advocate (OCA).

The Commission, by Report and Order No. 21,089 (January 4, 1994) created a separate docket, DR 94-002, to consider the negotiations between PSNH and the five hydropower SPPs. The scope of the hydropower docket is detailed in Report and Order No. 21,126 (February 14, 1994).

This report and order will address the issues surrounding the woodburning SPPs who have reached agreement with PSNH by addressing the recommendations on the scope of the docket filed by the parties and Commission Staff (Staff), including supplemental comments filed by February 14, 1994 after PSNH's February 7, 1994 filing of signed agreements with TIMCO, Inc. and Bristol Energy Corporation. PSNH also submitted an unsigned agreement with Bridgewater Steam Corporation (Bridgewater) but on February 7, 1994 informed the Commission by letter that the management of Bridgewater was discussing the agreement and was not yet ready to sign it.

II. PARTIES AND STAFF'S POSITION ON SCOPE OF ISSUES

The parties and Staff filed comments on the scope of the docket. Rather than recount all filings, which were highly detailed, comments have been grouped into five categories and are summarized below.

A. *Importance of Renewables and Diverse Fuel Mix*

A number of parties argue the scope of the proceeding should follow the standards of the Limited Electric Energy Producers Act, or LEEPA, RSA 362-A.

CRR, American Foresters and Audubon argue the importance of a diverse fuel supply, which is specifically cited in LEEPA. CRR notes the risk posed by an uncertain fuel supply. Audubon argues that an indigenous source of fuel is important and should be encouraged. Staff and Timberland Owners argue that least cost integrated resource planning principles should be considered as part of this docket, to be certain that the agreements, if approved, are consistent with PSNH's Least Cost Integrated Resource Plan.

CRR, North Country, OCA, Springfield and Timberland Owners argue that the "true" costs of Seabrook Station, that is, total costs when all decommissioning and other costs are included, should be considered. PSNH and Staff argue that old decisions regarding the construction and

operation of Seabrook Station

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should not be relitigated.

CRR, Springfield and Timberland argue that the Commission should consider other available sources of power and the costs associated with those power sources. The Forest Society argues that the public health and safety consequences of replacing generation from woodburning SPPs should be considered in this docket.

B. Environmental Considerations

North Country and CRR argue that the costs of Clean Air Act Amendments of 1990 to bring PSNH's Merrimack I and II plants into compliance must be considered as part of this docket, so that the Commission can fairly evaluate the costs of woodburning plants against other sources of power. PSNH and the Staff disagree with this suggestion.

Timberland further argues that if the Commission feels it needs additional expertise on environmental and economic considerations, the Commission has the authority to engage a consultant, but Timberland requests that it have the right to consent to any consultant retained.

North Country and CRR argue that the Commission should consider as part of this docket the adequacy of PSNH's load management programs, believing PSNH should be encouraged to pursue load management more aggressively.

C. Economic Impacts

PREMCO, OCA, Springfield, Timberland Owners, and PSNH argue that job impacts of the agreements should be considered in this docket. Springfield argues that the tax consequences of a plant shutdown on town tax revenues should be considered. The Municipal Association, which is not an intervenor, filed a letter also encouraging consideration of job impacts and tax consequences of a shutdown on towns in which plants are located.

Audubon and OCA argue that the woodburning SPPs' books be opened to the public, for better understanding of the economics of the woodburning SPPs.

Timberland Owners, in its supplemental filing, argues that the agreements, if approved, are likely to cause shutdown of those plants, and that the Commission should evaluate the effects of shutdowns on competition. Timberland Owners also ask that the Commission address the projected demand for power over the period of the rate orders and the PSNH's accuracy of projections since LEIPA's enactment. CRR and the Forest Society joined Timberland Owners in this filing. North Country argues similar points in a supplemental filing, regarding the economic impact of a shutdown in the near term and the effects on capacity in the long term, in what will likely be a more competitive and deregulated industry.

D. Wood Industry and Forest Practices

Timberland Owners, PREMCO, North Country, American Foresters and Audubon argue that forest management practices and the benefits of chip harvesting should be considered in this docket. North Country argues that timberland values should be considered, while PSNH and Staff argued they should not. North Country also argues that it is important to ensure a supply of

sawlogs for sawmills, and that the effect of plant shutdowns should be considered. The Forest Society and PSNH argue that the beneficial use of wood ash, a by-product of the woodburning SPPs, should be considered. The Forest Society and PSNH also argue that forest wildlife is important and should be considered as part of this docket.

The Forest Society and North Country also argue that the Commission should consider the effect on tourism of losing woodburning plants, presumably as a result of the lost benefits to forest lands if chip harvesting is no longer taking place.

E. Terms of Agreements

OCA, PSNH and Staff argue that the financing terms of the agreements should be considered in this docket. OCA and PSNH argue that how the savings are to be treated should be considered. Staff also argues that the terms of agreements, including potential market for small power producers' output, the rates

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which result from agreements and their effect on PSNH's deferral account after the fixed rate period, a cost/benefit analysis of the contracts in comparison to existing rates, and a sensitivity analysis of on-going viability of facilities and operation characteristics at the new rates be considered. Finally, Staff recommends that the agreements be considered in light of PSNH's least cost planning, including analysis of the diversity of PSNH's fuel mix. Staff recommends that the docket not consider environmental and economic "externalities".

PSNH argues that the recovery mechanism for funds to be paid to the settling woodburning plants should be considered.

PREMCO, in its supplemental filing, argues that PSNH's proposed mitigation fund is unacceptable and any sharing of profits if the plants remain in operation is improper and should be considered in this docket. Timberland Owners (with CRR and the Forest Society) join in the argument that the operations of the mitigation fund should be examined, and argue that the issue of prudence should not be removed from the Commission's consideration, though agree that the prudence of PSNH's efforts should be considered in a separate docket. They also argue that certain terms contained within the agreements are anti-competitive, defeat the purposes of PURPA and are contrary to public policy.

Timberland Owners (joined by CRR and the Forest Society) also argue that the Commission should wait until Senate Bill 790 has been acted on by the legislature before the Commission takes any action. PREMCO makes a similar argument regarding SB 790, and further argues that terms being set in DR 94-002, the docket addressing negotiations with five hydropower SPPs will affect this docket, which PREMCO believes is inappropriate.

III. COMMISSION ANALYSIS

A. Importance of Renewables and Diverse Fuel Mix

[1-3] We agree that renewables are an important source of power, and that our analysis must recognize this fact, particularly in light of the legislative mandate of the Limited Electrical Energy Producers Act, RSA 362-A (LEEPA). RSA 362-A:1 states that it is "in the public interest

to provide for small scale and diversified sources of supplemental electrical power to lessen the state's dependence upon other sources which may, from time to time, be uncertain." Our efforts in pursuing renegotiation of hydropower and woodburning SPP rates is not to lessen the importance of SPPs in the state's power mix; rather we initiated this docket to ensure that Northeast Utilities lives up to Paragraph 12 of the Rate Agreement, and ultimately to bring those rates more in line with current market conditions and to lessen the burden on the ratepayers of the state.

We recognize the importance of renewables and fuel diversity as well as our legislative mandate under LEEPA and, therefore, find it unnecessary to take testimony on that issue. This is particularly true given that no participant has disagreed with assertions that these are important considerations or that LEEPA should play a significant role in our hearings and deliberations. We think it is wiser to concentrate the efforts of all involved on those issues concerning which there is no uniformity of view.

We believe it is important to consider as well whether the agreements are consistent with least cost planning principles. As we stated in our scoping order in the hydropower SPP case, DR 94-002, we are considering the hydropower SPP agreements "in accordance with the 'public good' standards of RSA 362-C, within the context of the policy considerations of RSA 362-A [LEEPA] and RSA 378:39 [least cost planning]." Order No. 21,126 (February 11, 1994). We see no reason to apply a different legal standard or different policy considerations in this proceeding. Of course, we must be mindful of the rates resulting to the customers of the purchasing utility to ensure that they will be just and reasonable. *See* RSA 378:7.

We do not find it appropriate to consider whether Seabrook should be part of the fuel mix, or how use of nuclear power affects New Hampshire's economy or environment. While some may still have strong feelings regarding Seabrook's construction and operation, it is not appropriate to relitigate these issues here. We

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therefore see no reason to further extend this docket by exploring issues which we do not consider relevant to the consideration of the woodburning SPP agreements.

Similarly, we do not intend to hear evidence on the possible effects on public health and safety if the woodburning plants were closed and other supply-side or demand-side resources were called on to make up the difference. To take on all possible issues that could flow from the shut down of the plants, we believe, would be too speculative and a poor use of time and resources. If we are to make any progress in this docket, we must draw the line at certain issues. Public health and safety consequences of closing down SPPs and the resulting possibility of a greater reliance on other sources of power, therefore, will not be a consideration in this proceeding.

B. Environmental Considerations

We recognize that PSNH is now evaluating methods by which to comply with the Clean Air Act Amendments of 1990, particularly at its Merrimack I and II coal fired plants in Bow, New Hampshire. We accept that there will be costs associated with bringing those plants into compliance and expect that we will be called upon to evaluate those costs and compliance

strategies and their effect on ratepayers in coming months or years. We can assume that bringing Merrimack I and II into compliance with the Clean Air Act will result in an increase in the overall cost of operating these plants. Our analysis will not be whether SPPs are "better" than coal plants, but rather whether the agreements serve the public good. For this reason, and the fact that Clean Air Act compliance must occur irrespective of these agreements, we do not believe it is necessary to hear evidence of particular Clean Air Act compliance plans or their effect on ratepayers in this docket, except as they relate to a potential reduction in capacity from Merrimack which could affect the economics of the buy-out proposals.

We also reject the suggestion that we consider in this docket whether PSNH should be encouraged to pursue more conservation and load management programs. While this is a legitimate question, there are other proceedings in which it should, and will, be explored.

We are concerned that there may be confusion regarding the term "environmental externalities." Although the term is used by some in a very general way to mean "environmental considerations", in fact, "environmental externalities" as we use the term is much more specific and limited in meaning. As we have and will continue to use the term, it refers to those environmental effects, both positive and negative, which have an identifiable societal cost, but which would not normally be included in the calculation of the price of electricity. The proper context in which to address environmental externalities remains the least cost planning process.

A few commissions as a matter of policy have adopted the use of environmental "adders", that is, monetary values used as a proxy to recognize costs not already reflected in the price of producing electricity. This Commission has not taken such a step. We do not think it appropriate to evaluate the pros and cons of the use of environmental externalities in this docket. We will, however, evaluate evidence of the environmental effects of renewable and other sources of power, provided we do not stray too far from the issues at hand, that is, whether the agreements reached between PSNH and the settling woodburning SPPs are in the public good and are consistent with least cost planning principles.

C. Economic Impacts

We have received numerous letters noting the importance of the woodchipping industry to the state, particularly the northern portions of the state. We recognize that jobs and businesses would be impacted if the woodburning SPPs were to cease operation. We also recognize that high electric rates have an impact on retaining jobs and attracting new jobs to the state, and believe that the economic impact on commercial and residential ratepayers similarly must be addressed to understand the full context of the SPP negotiations. We will, therefore, take testimony on economic impacts posed by the SPP rate renegotiations, particularly consideration of

jobs lost and businesses affected, both in the wood industry and throughout the state.

We also recognize that there are significant benefits to towns in which these plants are located. While we are willing to consider the impact on town revenues if these plants were no longer to operate, we do not see a need for extensive evidence on this issue. Moreover, this seems to be the kind of information that can be quantified rather easily and submitted in a

stipulation on the facts.

We have been asked to consider the importance of tourism to the state's economy and the impact plant shut down and turning to other sources of power could have on the tourism industry. We accept the importance of tourism in our state economy and recognize that healthy forests may enhance the state's tourism industry, but believe the link between tourism and these agreements is so attenuated that we will not entertain testimony on the issue. Further, consistent with our discussion of health and safety issues above, we will not take evidence on the impact that changing fuel sources might have on the tourism trade. We believe that is too speculative an analysis and too far afield from the issues which are of primary importance in this docket.

We have been asked by some that as part of this docket we require the SPPs to open their books and allow the parties and public an opportunity to evaluate all financial aspects of these plants. We will not address this question in this order, given the on-going proceedings on this issue in our docket on the Energy Policy Act of 1992, DE 93-071. We reserve the right, however, to consider this issue at a later time in this docket.

D. Wood Industry and Forest Practices

We note the arguments that whole tree chipping can be beneficial to forests, if done responsibly, by culling out lower grade trees, which in turn can enhance forest wildlife. We do not feel we need testimony on the importance of wildlife or whole tree chipping's role in sound forest management, and will accept as a given in these proceedings that selective whole tree chipping, when done properly, can enhance forest management and wildlife.

We understand that there are beneficial uses of wood ash for agriculture. We do not intend, therefore, to take testimony on uses of wood ash, unless there is testimony to suggest that wood ash generated by the woodburning SPPs is not in fact an environmentally sound practice.

By recognizing these benefits and considering them when arriving at our decision, we can assure the parties and the public that we have heard and understood the arguments submitted in the form of pleadings and letters regarding the importance of these benefits to the public good, while at the same time balancing the need to have an efficient hearing process.

E. Terms of Agreements

There can be no dispute that the terms of the agreements themselves should be considered in this docket. We intend to evaluate the proposed terms, including financing, and the on-going viability of facilities and operation characteristics at the new rates.

Among the terms to be evaluated will be the prohibition on sale of electricity to existing customers of PSNH and the potential market for small power producers' output. We will consider how these agreements affect PSNH's deferral account after the fixed rate period under the Rate Agreement. We will explore potential savings and costs under the agreements, however, we defer for consideration at a later date the question of how those savings and costs should be treated. We also agree that the terms and operation of the "mitigation fund" proposed by PSNH should be considered, as well as ratepayer recovery for funds to be paid to settling woodburning SPPs.

We have been urged by some parties to consider the terms of the agreements in light of an increasingly competitive world. We will accept testimony on that issue, provided it is focused on

the terms of the agreements themselves, rather than far ranging discussions of policy considerations posed by competition in the electric industry. When and if there is a petition for competition in retail electric services, we will develop a full record on those matters,

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but do not believe it is a wise use of resources to explore them as part of this proceeding.

We will not evaluate PSNH's track record in forecasting demand for electricity, as that is an issue more appropriately handled within PSNH's least cost plan review. RSA 378:38, I. However, we consider forecasts made today of the demand for electricity over the term of these agreements to be relevant and will entertain evidence on that issue.

As we stated at the prehearing conference on November 3, 1993, we will not, in this docket, evaluate the prudence of PSNH's efforts in renegotiation in this docket. We reserve the right, however, to evaluate PSNH's efforts in negotiation in light of the Bankruptcy Court's requirement that PSNH use its "best efforts" in renegotiation. The proceeding in which such an analysis should occur has not yet been determined.

It has been suggested that we await the outcome of Senate Bill 790, now pending in the General Court, before taking further steps in this case. We believe we can best meet our obligations under the Rate Agreement and current law by moving forward in this docket. We will of course be guided by further legislative action when and if it occurs.

In order to expedite the completion of this docket, we will set a scheduling conference to develop a procedural schedule for the duration of this case. The scheduling conference will be held on April 4, 1994 at 10:30 a.m. at the Commission.

Our order will issue accordingly.

ORDER

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

ORDERED, that the scope of the docket shall include those issues identified herein; and it is

FURTHER ORDERED, that a scheduling conference shall be held on April 4, 1994 at 10:30 a.m. to develop a schedule for the duration of this docket.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,126, 79 NH PUC 72, Feb. 11, 1994.

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NH.PUC*03/28/94*[70445]*79 NH PUC 187*EnergyNorth Natural Gas, Inc.

[Go to End of 70445]

79 NH PUC 187

Re EnergyNorth Natural Gas, Inc.

DR 94-030

Order No. 21,174

New Hampshire Public Utilities Commission

March 28, 1994

ORDER adopting a summer cost-of-gas adjustment (CGA) rate of 2.29 cents per therm (exclusive of franchise tax effects) for a natural gas local distribution company. Although the rate represents a reduction from the winter CGA, it is higher than the previous summer's CGA rate, due primarily to changes in demand charge allocations and gas supply realignment costs stemming from the Federal Energy Regulatory Commission's Order 636.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment rate — Local distribution company — Summer/winter differential — Factors — Franchise taxes — New federal rules — Changes in demand charge allocations — Changes in gas supply realignment costs. p. 188.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 25

[N.H.] Indirect energy costs — Pipeline take-or-pay charges — Incorporation into cost-of-gas adjustment rate — Local distribution

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company. p. 189.

APPEARANCES: Jacqueline Lake Killgore, Esquire of McLane, Graf, Raulerson, and Middleton, on behalf of EnergyNorth Natural Gas, Inc.; Kenneth Traum on behalf of the Office of the Consumer Advocate; Robert J. Frank, Esquire and Robert Egan on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On February 23, 1994 EnergyNorth Natural Gas, Inc. (ENGI), a public utility engaged in the business of supplying natural gas in the State of New Hampshire, filed with the Public Utilities Commission (Commission) its Summer 1994 Cost of Gas Adjustment.

ENGI filed a Motion for Protective Order on March 1, 1994, and on the same date, filed

redacted, revised tariff pages, further indicating that if the Commission ruled favorably on ENGI's Motion for Protective Treatment, unredacted filings would be filed forthwith. On March 8, 1994, the Commission issued Order Number 21,152 granting ENGI's request for protective treatment. ENGI thereafter filed an unredacted 1994 Summer Period Cost of Gas Adjustment on March 10, 1994 in accordance with the above-referenced order granting protective treatment to such filings.

[1] ENGI seeks a CGA of \$0.0229 (exclusive of the New Hampshire State Franchise Tax) for the summer period from April 20, 1994 through October 31, 1994. After accounting for the Franchise Tax (by taking the CGA rate of \$0.0229 per therm and dividing it by .99), the adjusted CGA rate proposed by ENGI is \$0.0231. This represents a decrease of \$0.0329 per therm from the current winter period (November 1993 through March 1994) CGA rate of \$0.0560. The proposed summer 1994 CGA rate further reflects an increase of \$0.0036 from the previous summer period (April 1993 through November 1993).

On March 1, 1994, accompanying its Motion for Protective Order, ENGI filed direct testimony of Christopher P. Fleming and Carolyn Y. Huber, along with the following revised rate tariff pages: Third Revised Page 1; Third Revised Page 2; Fourth Revised Page 3; Fourth Revised Page 4; Fourth Revised Page 5; Third Revised Page 6; Second Revised Page 7; Fourth Revised Page 8; Third Revised Page 8A; and Third Revised Page 11. A duly noticed hearing was held on March 21, 1994.

II. POSITIONS OF PARTIES AND STAFF

A. ENGI

Pre-filed direct testimony of Carolyn J. Huber, ENGI's Manager of Regulatory Affairs and Budgets, outlined the proposed cost of gas adjustment calculations. Ms. Huber indicated that due to the implementation of FERC Order 636, ENGI had changed its method of allocating demand charges between summer and winter months. The result of this modification is that now seven months of demand charges are included in the proposed Summer 1994 filing, resulting in an increase in the cost of gas from the prior summer period of \$0.0698 per therm.

Ms. Huber's testimony further included an explication of ENGI's Gas Supply Realignment (GSR) costs which Tennessee Gas Pipeline began collecting in September 1993 as a result of FERC Order 636. According to Ms. Huber, GSR costs increased to \$5.30 per decatherm on March 1, 1994; such costs are a surcharge added to the Firm Transportation Service demand charge.

Ms. Huber also offered testimony regarding ENGI's prior period undercollection of \$871,637. She explained that the CGA for last summer was prepared before ENGI was able to assess the final impact of FERC Order 636. Ms. Huber further indicated that actual therm sales for the period of April 1993 through October 1993 were 1,069,718 below the CGA forecast for that period. This undercollection increased the instant CGA by \$0.0246 per therm.

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Christopher P. Fleming, ENGI's Vice President of Gas Supply/Corporate Development, also submitted pre-filed testimony upon which he elaborated at the hearing. Mr. Fleming testified

generally about ENGI's initial experience with pipeline capacity release, which became possible on September 1, 1993 when FERC Order 636 went into effect. He further testified that ENGI was continuing to develop analyses regarding capacity release as it gained more experience in the area. During the hearing, Mr. Fleming also generally described the operational impact of FERC Order 636.

Mr. Fleming elaborated on the method ENGI employed to predict gas supply prices, explaining that ENGI utilizes Cargill Investor Services as one means of forecasting future supply prices.

B. OCA

OCA did not file testimony in this case, but did pursue clarification in several areas related to ENGI's CGA calculations. On cross-examination, Mr. Fleming generally described the current landscape of the futures market, which he characterized as "volatile". He attributed this volatility to weather factors and FERC Order 636. Mr. Fleming explained that ENGI has responded to these market changes through its participation in a New England region consortium of gas companies.

C. Staff

Staff did not file testimony in this matter, but did request clarification regarding several aspects of ENGI's filing.

During cross-examination, Ms. Huber discussed ENGI's lost and unaccounted-for gas calculation, which appears in Attachment A of ENGI's redacted Fourteenth Revised Page 1. The unaccounted-for figure is booked as a negative number, but Ms. Huber explained that this is due to the nature of ENGI's billing cycle. Ms. Huber identified ENGI's Department of Transportation reports for the year ending June 30, 1993 which indicate that ENGI had 1.7% unaccounted-for gas during that period.

Ms. Huber further testified on cross-examination that ENGI expected to complete its take-or-pay costs by this summer.

Mr. Fleming testified further on cross-examination about the general impact of FERC Order 636. He detailed the operational challenges which confront ENGI on a daily basis and the manner in which ENGI has responded to these market changes.

III. COMMISSION ANALYSIS

Upon review of the evidence, we find that ENGI has utilized its available resources in a manner which minimizes its natural gas costs. We also find the proposed CGA rate of \$0.0229 per therm (before adjustment for the Franchise Tax) to be just, reasonable, and in the public interest.

[2] We note that ENGI expects its take-or-pay-costs to end this summer. We previously had allowed these costs to be incorporated into ENGI's CGA in the Summer 1993 filing and will do so again for this period.

We also recognize the impact that FERC Order 636 has had on the operational components of securing gas supplies. ENGI appears to be adapting to these market changes in an appropriate and proficient manner.

Our order will issue accordingly.

ORDER

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

ORDERED, that Fourteenth Revised Page 1, superseding Thirteenth Revised Page 1, Tariff, N.H.P.U.C. No. 1 Gas, filed by EnergyNorth Natural Gas, Inc. (ENGI), providing for a Cost of Gas Adjustment of \$0.0229 per therm for the period April 1, 1994 through October 31, 1994 be, and hereby is, approved; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs deviate from the 10% trigger mechanism, ENGI shall file a revised Cost of Gas Adjustment; 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

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83-205, Order No. 16,524.

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 94-030, Order No. 21,152, 79 NH PUC 153, Mar. 8, 1994. [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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NH.PUC*03/28/94*[70446]*79 NH PUC 190*New England Telephone

[Go to End of 70446]

79 NH PUC 190

Re New England Telephone

DR 93-236
Order No. 21,175

New Hampshire Public Utilities Commission

March 28, 1994

ORDER authorizing a local exchange telephone carrier to eliminate separate service and equipment charges currently applicable to each discretionary service ordered by a customer and to replace them with a single one-time charge for all enhanced service features when they are

ordered at the same time.

1. RATES, § 311

[N.H.] Installation and connection charges — Local exchange telephone carrier — Moves and changes in service — Ordering of discretionary or enhanced features — Elimination of separate service and equipment charges for each feature — Replacement with single one-time charge for all features ordered at same time. p. 190.

BY THE COMMISSION:

ORDER

[1] On December 1, 1993, New England Telephone (NET) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to modify the application of nonrecurring charges to certain discretionary services, when ordered subsequent to the installation of a network access line, by replacing the current Service and Equipment (S&E) Charges with a One-Time Charge; and

WHEREAS, the proposed tariff pages were suspended on December 30, 1993 by Order No. 21,080 to allow Staff time to investigate the filing including accompanying cost support; and

WHEREAS, under the current tariff, customers of NET who choose to enhance their basic service by adding various discretionary features incur S&E charges for each item ordered, even when ordered at the same time; and

WHEREAS, the average time to negotiate and process each request does not vary significantly, and efficiencies are realized when multiple discretionary services are ordered simultaneously; and

WHEREAS, NET's proposal includes a One-Time Charge for residential customers of \$5.70 for the following services: Additional Listing, Change Listing, Custom Calling Service (CCS), CCS Call Forwarding II, Ringmate Service, Phonesmart Services, and Call Around 603; and

WHEREAS, NET's initial proposal included a One-Time Charge for business customers of \$12.00 and covered the same services as for residential customers, with the exception of Additional Listing and Change Listing; and

WHEREAS, in discussions with the Staff, NET has agreed to revise its filing to include the Additional Listing and Change Listing Services with the other services covered by the One-Time Charge for business customers; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revisions to be in the public good; it is therefore

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ORDERED, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 75

Part A - Section 3

Fourth Revision of Table of Contents Page 1

Fourth Revision of Page 1

Sixth Revision of Page 2

Eighth Revision of Page 3

Eighth Revision of Page 4

Part A - Section 5

Eighth Revision of Page 39

Part A - Section 6

Sixth Revision of Page 1

Ninth Revision of Page 2

Second Revision of Page 2.1

First Revision of Page 12

First Revision of Page 13

Second Revision of Page 16

Part A - Section 9

Third Revision of Page 73

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of the date of this Order; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 93-236, Order No. 21,080, 78 NH PUC 747, Dec. 30, 1993.

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NH.PUC*03/28/94*[70447]*79 NH PUC 191*New England Telephone Company

[Go to End of 70447]

79 NH PUC 191

Re New England Telephone Company

DR 93-239
Order No. 21,176

New Hampshire Public Utilities Commission

March 28, 1994

ORDER continuing the suspension of a local exchange telephone carrier's proposed tariff revisions for its Digipath Digital II service, to allow for further review by commission staff. The proposed changes would introduce a new payment option, reduce certain existing equipment charges, reduce early termination charges, and eliminate the 10-channel minimum for service eligibility.

1. RATES, § 553

[N.H.] Telephone rate design — "Digipath" digital service — Suspension of proposed tariff revisions — Payment option and rate structure proposals — Need for further staff review. p. 191.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Continuation — Factors — Need for additional response time — Need for further staff review — Telephone digital service tariffs. p. 191.

BY THE COMMISSION:

ORDER

[1, 2] On December 2, 1993 New England Telephone Company (NET or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to modify its Digipath Digital Service II (DDSII) tariff

Page 191

for effect January 1, 1994; and

WHEREAS, NET's proposed changes include the introduction of a new payment option, reduced Service and Equipment charges, elimination of a 10 channel requirement to obtain a contract, and reductions in contract termination liability charges; and

WHEREAS, the proposed tariff pages were suspended by Order No. 21,081 on December 30, 1993 to allow the Staff to investigate the proposed rates and accompanying cost support; and

WHEREAS, NET requires additional time to respond to Staff's recently posed questions regarding the cost support and projected revenue effects; it is

ORDERED, that the proposed revisions to NHPUC No. 75

Part C - Section 9

First Revision of Page 2
First Revision of Pages 5 through 12

are suspended pending further investigation.

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of March, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 93-239, Order No. 21,081, 78 NH PUC 747, Dec. 30, 1993.

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NH.PUC*03/29/94*[70448]*79 NH PUC 192*AT&T Communications of New Hampshire, Inc.

[Go to End of 70448]

79 NH PUC 192

Re AT&T Communications of New Hampshire, Inc.

DE 94-037

Order No. 21,177

New Hampshire Public Utilities Commission

March 29, 1994

ORDER approving an interexchange telephone carrier's request to make certain limited-time promotional offerings available on only seven days' notice.

1. RATES, § 243

[N.H.] Schedules and procedure — Publication and notice — Seven days' notice — Special limited-time promotional offerings — Interexchange telephone carrier. p. 192.

BY THE COMMISSION:

ORDER

[1] On March 8, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to add language to the general regulations section of its 56/64 KBPS SWITCHED DIGITAL SERVICE and AT&T LONG DISTANCE SERVICE Tariffs which would allow AT&T to offer promotions limited to certain dates, times and locations on seven days notice to the Commission; and

WHEREAS, notice to the Commission will specify rates, terms, conditions and time intervals applicable to each promotional offering; and

WHEREAS, AT&T requested this filing become effective April 7, 1994; and

WHEREAS, Promotional Offerings are

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only available for a limited time; and

WHEREAS, the proposed tariff expands AT&T's flexibility in offering promotions to stimulate existing customer usage, attract new customers, win back former customers or increase awareness of AT&T services, thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than April 25, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than April 8, 1994 and is to be documented by affidavit filed with this office on or before April 27, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages are approved:

AT&T Tariff No. 2 - 56/64 KBPS SWITCHED DIGITAL SERVICE

Table of Contents: 2nd Revised Page 4

Section 2: Original Page 19

AT&T Tariff No. 4 - AT&T LONG DISTANCE SERVICE

Section 1: 1st Revised Page 28;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 27, 1994 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-ninth day of March, 1994.

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NH.PUC*03/30/94*[70449]*79 NH PUC 193*Union Telephone Company

[Go to End of 70449]

79 NH PUC 193

Re Union Telephone Company

DR 94-034

Order No. 21,178

New Hampshire Public Utilities Commission

March 30, 1994

ORDER authorizing a local exchange telephone carrier to extend its offering of selective blocking service to private branch exchange, Centrex, and multi-line business customers, pursuant to evident customer demand for such service.

1. RATES, § 553

[N.H.] Telephone rate design — Calls to "900" numbers — Selective blocking service option — Expansion of blocking service availability — To private branch exchange, Centrex, and multi-line business customers — Factors — Customer requests. p. 193.

BY THE COMMISSION:

ORDER

[1] On March 1, 1994, Union Telephone Company (UTC or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to revise its Selective Blocking Service tariff to extend the offering to its PBX, Centrex and Multi-Line Business customers; and

WHEREAS, UTC has received requests

Page 193

for this service from its current customers; and

WHEREAS, UTC believes the demand for this service will be small, and the revenue effects insignificant; and

WHEREAS, UTC has proposed these rates as an interim solution, pending the outcome of the review of its incremental cost study, or other applicable proceeding; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revisions to be in the public good; it is therefore

ORDERED, that the following tariff pages of Union Telephone Company are approved:

NHPUC - No. 7

Tariff Check Sheet Page 1
Tariff Check Sheet Page 2

Part II - Local
Section 6, Page 1, First Revision
Section 6, Page 2, Original

Part III - General
Section 21, Page 13, Fourth Revision
Section 21, Page 14, Original

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as filed; and it is

FURTHER ORDERED, the rates approved by this Order shall be revised, if necessary, to reflect the outcome of the review of Union Telephone Company's incremental cost study; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 7 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this thirtieth day of March, 1994.

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NH.PUC*04/04/94*[70450]*79 NH PUC 194*Claremont Gas Corporation

[Go to End of 70450]

79 NH PUC 194

Re Claremont Gas Corporation

DR 92-020
Order No. 21,179

New Hampshire Public Utilities Commission

April 4, 1994

ORDER authorizing a natural gas local distribution company to recover from ratepayers via surcharge \$18,734 in rate case expense associated with an emergency rate relief proceeding and related post-case auditing and legal fees.

1. EXPENSES, § 89

[N.H.] Rate case expense — Emergency rate relief proceeding — Post-case auditing and legal costs — Recovery via surcharge — Gas local distribution company. p. 194.

BY THE COMMISSION:

ORDER

[1] Claremont Gas Corporation (Claremont) having filed on October 6, 1993 and February 28, 1994 rate case expenses in the amount of \$25,738.11 in relation to its rate case after the Commission in Order No. 20,674 granted Emergency Rates; and

WHEREAS, in Order No. 20,674 the Commission approved \$4,850.00 of rate case expenses related to work to be performed after the end of the Emergency Rate Case hearings; and

WHEREAS, Staff has reviewed the Rate Case Expense submitted on October 6, 1993 and February 28, 1994; and

WHEREAS, Staff has recommended a disallowance of rate case expenses in the amount of \$2,153.50; and

WHEREAS, the disallowance that Staff

Page 194

recommends is for legal expenses relative to audit requests and work on an affiliated agreement, which are normal corporate functions; it is hereby

ORDERED, that Claremont may surcharge rate case expenses in the amount of \$18,734.61 over the next 24 months; and it is

FURTHER ORDERED, that the collection of the surcharge is to begin with bills rendered on or after May 1, 1994; and it is

FURTHER ORDERED, that Claremont file tariff pages within ten days of the date of this order.

By order of the New Hampshire Public Utilities Commission this fourth day of April, 1994.

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NH.PUC*04/04/94*[70451]*79 NH PUC 195*Public Service Company of New Hampshire

[Go to End of 70451]

79 NH PUC 195

Re Public Service Company of New Hampshire

DF 94-039

Order No. 21,180

New Hampshire Public Utilities Commission

April 4, 1994

ORDER granting an electric utility a two-year extension of time for its \$125 million revolving

credit agreement.

1. SECURITY ISSUES, § 94

[N.H.] Revolving credit agreement — Extension of time — Continuation of existing terms and conditions — Electric utility. p. 195.

BY THE COMMISSION:

ORDER

[1] On March 8, 1994 Public Service Company of New Hampshire (Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition under RSA 369:1, RSA 369:2 and RSA 369:4 for the extension of its Revolving Credit Agreement; and

WHEREAS, the Commission in Order No. 19,889 dated July 20, 1990 approved the Revolving Credit Agreement until May 14, 1994; and

WHEREAS, the Company has proposed to extend the Credit Agreement until May 14, 1996 under substantially the same terms and conditions as in the original agreement; and

WHEREAS, the Company proposes to maintain the Revolving Credit Agreement at its present level of One Hundred and Twenty Five million Dollars (\$125,000,000); and

WHEREAS, the extension requires an extension fee of no more than 15 basis points or \$187,500; and

WHEREAS, the facility fee may be increased from 25 basis points to 37.5 basis points per annum or an increase of not more than \$156,250; and

WHEREAS, the interest rate options will remain the same unless the Company's First Mortgage Bonds are not down-graded from a rating of BB+ by Standard & Poor's Corporation, the applicable interest rate would include an additional margin of 25 basis points; and

WHEREAS, the extension of the Revolving Credit Agreement will require the Company to maintain certain expense and capitalization ratios which are comparable to the existing ratios that the company is presently required to maintain; and

WHEREAS, the Company states that a renegotiation the revolver would increase the cost more than the extension fee due to increase legal and other costs; and

WHEREAS, the Commission finds that the proposed extension of the Revolving Credit Facility under substantially the same term and conditions 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 this matter before the

Commission no later than April 27, 1994; and it is

FURTHER ORDERED, that the Petitioner effect said notification by causing an attested copy of this order to be published no later than April 14, 1994, once in a newspaper having general circulation in the area where the service is provided and documenting compliance with this notice provisions by affidavit to be filed with the Commission on or before April 29, 1994; and it is

FURTHER ORDERED *NISI*, that the extension of the Revolving Credit Agreement be, and hereby is granted, pursuant to RSA 369:1 RSA 369:2 and RSA 369:4, effective April 29, 1994 unless the Commission otherwise directs prior to the proposed effective date.

By order of the New Hampshire Public Utilities Commission this fourth day of April, 1994.

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*04/05/94*[70452]*79 NH PUC 196*Northern Utilities, Inc.

[Go to End of 70452]

79 NH PUC 196

Re Northern Utilities, Inc.

DR 94-043

Order No. 21,181

New Hampshire Public Utilities Commission

April 5, 1994

ORDER granting protective treatment for gas supply contract data associated with a natural gas local distribution company's summer cost-of-gas adjustment (CGA) rate filing, but denying the company's request for prospective protective treatment for similar information in future CGA filings.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Gas supply contract information — In cost-of-gas adjustment proceedings — Grant of confidentiality in instant proceeding only — Denial of prospective protective treatment for similar future filings — Local gas distribution

company. p. 196.

BY THE COMMISSION:

ORDER

[1] On March 11, 1994, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment over certain documents related to its Summer 1994 Cost of Gas Adjustment (CGA); and

WHEREAS, the documents for which Northern seeks protective treatment are "(a) names and identifying information for the gas suppliers with which Northern has or will conduct negotiations; (b) demand and commodity rates in the gas supply contracts; (c) resulting total cost of supply for each contract; and (d) the executed gas supply contracts"; and

WHEREAS, in its motion Northern states that the information is sensitive commercial information which falls within the exemption from public disclosure of RSA 91-A:5 (iv); and

WHEREAS, Northern seeks protection of this information as it relates to the pending CGA as well as an order granting protective treatment on a prospective basis for the same information to be generated in future CGA proceedings; and

WHEREAS, the Commission recognizes that the information identified above is critical to review of the CGA filing by the Commission and Commission Staff; it is hereby

ORDERED, that Northern's Motion for Protective Order is granted to the extent of protecting from public disclosure the information delineated above which is relevant to the pending CGA proceeding; and it is

Page 196

FURTHER ORDERED, that the Commission believes protective orders granted on a prospective basis over certain clearly identified documents or information may be appropriate at times but should be further developed by the Commission Staff and parties to the rulemaking proceeding now underway regarding treatment of information subject to RSA 91-A; and it is

FURTHER ORDERED, that Northern's Motion for Protective Order is denied as it relates to information on a prospective basis for future CGA proceedings, but may subsequently be ordered after full exploration of the issue in the Commission's RSA 91-A rulemaking proceeding; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission to reconsider this order in light of RSA 91-A should circumstances so warrant.

By order of the New Hampshire Public Utilities Commission this fifth day of April, 1994.

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NH.PUC*04/05/94*[70453]*79 NH PUC 197*Public Service Company of New Hampshire

[Go to End of 70453]

79 NH PUC 197

Re Public Service Company of New Hampshire

DR 94-033
Order No. 21,182

New Hampshire Public Utilities Commission

April 5, 1994

ORDER granting protective treatment of an electric utility's proposed special contract service agreement with an industrial customer, OSRAM Sylvania.

1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Proposed special contract rates — Confidentiality. p. 197.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Proposed special contract agreement — Electric utility. p. 197.

BY THE COMMISSION:

ORDER

[1, 2] On February 28, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, special contract NHPUC-92 with OSRAM Sylvania (OSRAM) for the provision of electric service; and

WHEREAS, concurrent with the special contract, PSNH filed a Motion for Protective Order of certain information contained within the special contract with OSRAM and the supporting documents to the contract; and

WHEREAS, in its motion PSNH states that the unredacted contract and the supporting documents should be afforded protective treatment, pursuant to RSA 91-A:5, (IV), in that they contain sensitive information regarding OSRAM's "operating costs, contractual arrangements, electric usage and alternatives"; and

WHEREAS, the Commission recognizes that the information identified above is critical to review of the special contract by the Commission and Commission Staff, as required by RSA 378:18; it is hereby

ORDERED, that PSNH's Motion for Protective Order prohibiting public disclosure of the unredacted copy of the special contract between PSNH and OSRAM Sylvania for the provision of electric service and all supporting documents is granted; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission to reconsider this order in light of RSA 91-A should circumstances so warrant.

By order of the New Hampshire Public Utilities Commission this fifth day of April, 1994.

=====

NH.PUC*04/05/94*[70454]*79 NH PUC 198*LCI International of New Hampshire, Inc.

[Go to End of 70454]

79 NH PUC 198

Re LCI International of New Hampshire, Inc.

DE 94-042

Order No. 21,183

New Hampshire Public Utilities Commission

April 5, 1994

ORDER authorizing an interexchange telephone carrier to introduce a residential inbound "800" service as well as a "Personal Perks" calling plan that links residential customers with certain merchant partners for discounts awarded the customers by the merchants.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched-line services — Inbound residential "800" service — Special merchant link service and associated discount options. p. 198.

BY THE COMMISSION:

ORDER

[1] On March 10, 1994, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International of New Hampshire, Inc. (LCI) seeking to introduce LCI Home 800 and the Personal Perks Calling Plan; and

WHEREAS, LCI Home 800 is a residential inbound 800 service which is billed by the local exchange carrier; and

WHEREAS, the Personal Perks Calling Plan is a residential long distance calling plan that links customers to LCI's long distance merchant partners for purposes of additional discounts given by the merchant partners such as airline tickets and hotel discounts; and

WHEREAS, the filing also includes a revision of the rate structure for LCI's International Debit Card product which adds three new volume discounts but does not change existing rates;

and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages are approved for LCI, NH P.U.C. No. 1:

- 2nd Revised Page 1
- 2nd Revised Page 2
- 2nd Revised Page 3
- Section 2, Original Page 11
- Section 2, Original Page 12
- Section 4, 1st Revised Page 10
- Section 4, Original Page 17
- Section 4, Original Page 18;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, LCI cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than April 15, 1994 and is to be documented by affidavit filed with this office on or before May 4, 1994; and it is

FURTHER 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 2, 1994; and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective May 4, 1994, unless the Commission provides otherwise in a

Page 198

supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this fifth day of April, 1994.

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NH.PUC*04/05/94*[70455]*79 NH PUC 199*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 70455]

Re Sprint Communications Company of New Hampshire, Inc.

DE 94-038
Order No. 21,184

New Hampshire Public Utilities Commission

April 5, 1994

ORDER authorizing an interexchange telephone carrier to introduce several special network management service options for large-volume customers under its "Sprint Premiere" program, and to clarify that most "800" calls are subject to a 30-second minimum average time requirement.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched-line services — Inbound or outbound "800" services — Special network management service options — Large-volume customers — Minimum average time requirement for 800 calling. p. 199.

BY THE COMMISSION:

ORDER

[1] On March 8, 1994, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce the Sprint Premiere platform, change initial billing increments for certain services and make various text changes; and

WHEREAS, the Sprint Premiere platform provides large volume customers with a variety of communications, invoicing, customer service and network management options including VPN Premiere, 800 Premiere, and SDS Premiere voice and data connectivity to Sprint's network for both outbound and inbound services; and

WHEREAS, the proposed revisions clarify that all 800 calls except for Residential 800 and FONLINE 800 are subject to a thirty second minimum average time requirement per service group; and

WHEREAS, the proposed revisions include clarification that Ultra WATS, Dedicated Hospitality Connection, Sprint Clarity (with the exception of Switched Data Service), and FONLINE 800 will be billed an initial 18 second minimum and additional 6 second increment charges; and

WHEREAS, the proposed revisions include clarification that Dial 1 WATS ADVANTAGE, ADVANTAGE FONCARD, and Sprint Clarity Switched Data Service will be billed an initial 30 second minimum and additional six second increment charges;

WHEREAS, Sprint requested these revisions become effective April 6, 1994; and

WHEREAS, the Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competitive entry and competition in the New Hampshire intrastate toll market; and

WHEREAS, the proposed introduction of the Sprint Premiere platform expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; and

WHEREAS, pursuant to Puc 1601.05(b) (2), "when more than 50% of the pages of a complete tariff are effected in a single filing a complete new tariff shall be filed;" and

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

ORDERED *NISI*, that the following tariff

Page 199

pages for Sprint's NHPUC No. 3 are approved:

- 21st Revised Page 1
- 2nd Revised Page 2
- 1st Revised Page 8
- 3rd Revised Page 9
- 1st Revised Page 10
- 2nd Revised Page 11
- 3rd Revised Page 12
- 2nd Revised Page 15
- 1st Revised Page 18
- 1st Revised Page 19
- 2nd Revised Page 20
- 2nd Revised Page 22
- 1st Revised Page 23
- 1st Revised Page 24
- 1st Revised Page 26
- 1st Revised Page 27
- 2nd Revised Page 29
- 1st Revised Page 30
- 2nd Revised Page 33
- 1st Revised Page 34
- 1st Revised Page 35
- 1st Revised Page 36
- 1st Revised Page 37
- 1st Revised Page 38
- 1st Revised Page 39
- 1st Revised Page 40
- 1st Revised Page 41

4th Revised Page 42.1
3rd Revised Page 45
2nd Revised Page 46
1st Revised Page 46.1
Original Page 46.2
5th Revised Page 48
5th Revised Page 49
3rd Revised Page 49.1
1st Revised Page 49.2
3rd Revised Page 49.3
Original Page 49.4
Original Page 49.5
Original Page 49.6
5th Revised Page 50
2nd Revised Page 51
4th Revised Page 52
4th Revised Page 53
2nd Revised Page 54
2nd Revised Page 55
2nd Revised Page 56
2nd Revised Page 57
1st Revised Page 58
5th Revised Page 63
3rd Revised Page 63.1
4th Revised Page 63.2
2nd Revised Page 63.3
2nd Revised Page 63.4
2nd Revised Page 63.5
2nd Revised Page 63.6
Original Page 63.8
Original Page 63.9
Original Page 63.10
Original Page 63.11
Original Page 63.12
Original Page 63.13
Original Page 63.14;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Sprint cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than April 15, 1994 and is to be documented by affidavit filed with this office on or before May 4, 1994; and it is

FURTHER 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 2, 1994; and it is

FURTHER ORDERED, that Sprint file a complete new tariff, Sprint NHPUC No. 4, incorporating the changes approved above with the existing approved pages in Sprint's NHPUC No. 3, in compliance with Puc 1601.05(b) (2), no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective May 4, 1994, 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 April, 1994.

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NH.PUC*04/05/94*[70456]*79 NH PUC 201*WilTel of New Hampshire, Inc.

[Go to End of 70456]

79 NH PUC 201

Re WilTel of New Hampshire, Inc.

DE 94-041

Order No. 21,185

New Hampshire Public Utilities Commission

April 5, 1994

ORDER authorizing an interexchange telephone carrier to introduce its "CustomOne" service options relating to high-volume inbound and outbound "800" services.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched-line services — High-volume inbound and outbound "800" services — Special service and discount options. p. 201.

BY THE COMMISSION:

ORDER

[1] On March 10, 1994 WilTel of New Hampshire, Inc. (WilTel) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce its CustomOne Service and make various textual changes to its tariff; and

WHEREAS, CustomOne is a new high volume combined inbound and outbound service which offers a choice of discount options based on either total monthly usage or an annual commitment amount; and

WHEREAS, the textual changes include eliminating WilPlus II, and WilPlus III services for new subscribers as of April 1, 1994, both of which are combined inbound and outbound services with various discount options; and

WHEREAS, WilTel requested this filing become effective April 10, 1994; and

WHEREAS, the proposed introduction of CustomOne expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 pursuant to N.H. Admin. Rules Puc 203.01, WilTel cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than April 15, 1994 and is to be documented by affidavit filed with this office on or before May 4, 1994; and it is

FURTHER 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 2, 1994; and it is

ORDERED *NISI*, that revisions to WilTel's NHPUC Tariff No. 2 are approved:

- 1st Revised Page 1
- 1st Revised Page 6
- 1st Revised Page 7
- 1st Revised Page 8
- 1st Revised Page 10
- 1st Revised Page 13
- 1st Revised Page 15
- 1st Revised Page 23
- Original Page 23.1
- 1st Revised Page 25
- 1st Revised Page 35
- 1st Revised Page 36
- 1st Revised Page 38
- 1st Revised Page 40
- 1st Revised Page 41
- 1st Revised Page 43
- 1st Revised Page 52
- 1st Revised Page 60
- 1st Revised Page 61
- 1st Revised Page 62
- 1st Revised Page 63
- Original Page 63.1

Original Page 63.2
 Original Page 63.3
 Original Page 63.4;

and it is

FURTHER ORDERED, that WilTel file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective May 4, 1994, 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 April, 1994.

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NH.PUC*04/06/94*[70457]*79 NH PUC 202*EnergyNorth Natural Gas, Inc.

[Go to End of 70457]

79 NH PUC 202

Re EnergyNorth Natural Gas, Inc.

Additional applicant: Northern Utilities, Inc.

DE 91-149
 Order No. 21,186
 153 PUR4th 427

New Hampshire Public Utilities Commission

April 6, 1994

ORDER approving the interruptible gas transportation compliance tariffs of two natural gas local distribution companies (LDCs). Commission agrees to suspend, for a two-year trial period, a previously approved "no-harm, no-foul" policy that had barred the LDCs from levying daily or monthly penalties on out-of-balance transportation customers if the LDCs were themselves in balance with their interstate pipeline suppliers. In place of the "no-harm, no-foul" policy, the LDCs are to provide transportation customers with three grace days each month for the purpose of daily balancing, after which the LDCs may levy penalties on those transportation customers that exceed their prescribed daily tolerances.

With regard to monthly balancing, a transportation customer would be billed for over/undertakes at the appropriate interstate pipeline index price, provided, however, that the customer did not exceed the prescribed monthly tolerance three or more months in any rolling 12-month period. Transportation customers who exceeded the prescribed monthly tolerance three or more times in any year would be subject to monthly imbalance penalties.

To ensure that interruptible standby commodity service remains competitive with alternative

fuels, the LDCs are authorized to flex their commodity prices downward within prescribed limits.

Additionally, the commission accepts an agreement by the LDCs to credit their respective cost-of-gas accounts with the therm-related revenues or margins received from the provision of various interruptible transportation services.

A proposal by EnergyNorth Natural Gas, Inc., to withdraw its interruptible sales service is rejected for lack of evidence, while approval of the compliance tariff of Northern Utilities, Inc., is made subject to the filing of an amended tariff that deletes all references to fuel reimbursement for interruptible transportation service.

1. RATES, § 373

[N.H.] Natural gas rate design — Interruptible transportation service — Local distribution companies. p. 204.

2. RATES, § 384

[N.H.] Natural gas rate design — Interruptible transportation — Balancing terms and conditions — Suspension of "no-harm, no-foul" policy — Imbalance penalties. p. 204.

Page 202

3. RATES, § 384

[N.H.] Natural gas rate design — Interruptible transportation — Interruptible standby commodity service — Flexible commodity pricing — Local distribution companies. p. 205.

4. RATES, § 381

[N.H.] Natural gas rate design — Special factors — Competitive fuels — Interruptible standby commodity service — Flexible commodity pricing — Local distribution companies. p. 205.

5. REVENUES, § 5

[N.H.] Natural gas — Interruptible services — Margins credited to cost-of-gas accounts — Local distribution company. p. 205.

6. AUTOMATIC ADJUSTMENT CLAUSES, § 28

[N.H.] Cost-of-gas accounts — Credits — Interruptible service margins — Natural gas local distribution companies. p. 205.

7. SERVICE, § 332

[N.H.] Natural gas — Interruptible sales service — Proposed withdrawal — Local distribution company — Discussion. p. 206.

8. EXPENSES, § 127

[N.H.] Gas local distribution company — Lost and unaccounted-for gas — Fuel

reimbursement — Interruptible transportation service — Discussion. p. 206.

9. RATES, § 384

[N.H.] Natural gas rate design — Interruptible transportation — Compliance tariff — Deletion of references to fuel reimbursement — Local distribution company. p. 206.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruso, Esquire, on behalf of Anheuser Busch Companies, Inc.; McLane, Graf, Raulerson, and Middleton by Jacqueline L. Killgore, Esquire, on behalf of EnergyNorth Natural Gas, Inc.; LeBoeuf, Lamb, Greene, and MacRae by Meabh Purcell, Esquire, on behalf of Northern Utilities, Inc.; Devine, Millimet, and Branch by Frederick J. Coolbroth, Esquire, on behalf of Sprague Energy Corporation; Kenneth E. Traum of the Office of Consumer Advocate, on behalf of New Hampshire's residential ratepayers; and Amy L. Ignatius, Esquire, on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

In accordance with Order No. 21,018, on December 30, 1993, and January 3, 1994, respectively, EnergyNorth Natural Gas, Inc. (ENGI or EnergyNorth) and Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) several compliance tariff pages regarding the provision of natural gas transportation service, with proposed effective dates of January 29, 1994 for ENGI and February 4, 1994 for Northern. The compliance tariff pages were suspended by Order Nos. 21,116 (ENGI) and 21,115 (Northern) to provide the Commission Staff (Staff) with sufficient time to conduct a thorough compliance review.

On February 3 and 4, 1994, respectively, Northern and ENGI filed revised compliance tariffs, with proposed effective dates of March 1, 1994 for ENGI and March 3, 1994 for Northern. These revised compliance tariff filings incorporated comments from two technical sessions held on January 20 and 21, 1994 between Staff and the parties. These revised compliance tariff pages were suspended by Order Nos. 21,140 (ENGI) and 21,139 (Northern) to provide Staff with additional time to complete its compliance review.

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Northern and ENGI filed second revised compliance tariffs on March 1 and 2, 1994, respectively, after several additional technical meetings were held. Staff reviewed these filings and submitted oral comments and questions to each company separately. This led to ENGI filing a third revised compliance tariff on March 10, 1994, which focused primarily on interruptible transportation and 280 day transportation services, with accompanying "as available gas supply" and "daily demand" support services. Northern also filed a third revised compliance tariff on

March 14, 1994, which focused primarily on interruptible transportation with accompanying "stand-by gas supply" and "demand delivery" support services.

A letter agreement, which outlined the resolution of the major issues arising from EnergyNorth's compliance filing, was signed by Staff, ENGI, the Office of Consumer Advocate, Anheuser-Busch Companies, Inc., Sprague Energy Corporation, and Public Service Company of New Hampshire, and was filed with the Commission on March 11, 1994. At its weekly meeting on March 14, 1994, the Commission ordered that a hearing be held on March 28, 1994 to review the recommendations of Staff and the parties as contained in ENGI's letter agreement and to examine any remaining issues in the compliance tariff for that company.

Similarly, a letter agreement signed by Staff, Northern, the Office of Consumer Advocate, Anheuser-Busch Companies, Inc., Sprague Energy Corporation, and Public Service Company of New Hampshire, which gave the positions of the signatories on the major issues arising from Northern's compliance filing, was filed with the Commission on March 21, 1994. At its weekly meeting on March 22, 1994, the Commission directed that the previously ordered hearing on March 28, 1994 also include a presentation of the recommendations of Staff and the parties as contained in the Northern's letter agreement and to review any remaining issues in the compliance tariff for Northern.

II. POSITIONS OF THE PARTIES AND STAFF

[1] The two letter agreements summarized the positions of the signatories on the primary issues stemming from ENGI's and Northern's compliance filings. Neither local distribution company (LDC) was listed as a signatory of the other's letter agreement. While neither utility opposed the other's tariff filing, ENGI supported Staff and the other parties in opposing Northern's proposed treatment of fuel reimbursement for interruptible transportation service. Both LDCs reserved their right to present their position on this issue before the Commission.

There were two areas of EnergyNorth's and Northern's third revised tariff filings which were, strictly speaking, not in compliance with Commission Order Nos. 20,950 and 20,018. These exceptions related to the "no harm, no foul" philosophy underlying the Commission's transportation balancing policy (Order No. 20,950 at 31) and the rate for interruptible stand-by commodity service (Order No. 21,018 at 5). These issues were addressed in the two letter agreements. Both letter agreements also made recommendations regarding the appropriate treatment of revenues received by the LDC as the result of the introduction of the new transportation services, an issue not addressed in the Commission's previous Orders.

All three areas outlined above were discussed in greater detail by Staff witness George R. McCluskey and EnergyNorth witness Michelle L. Chicoine at the March 28, 1994 hearing.

Balancing Terms and Conditions

[2] The Commission's "no harm, no foul" decision barred both ENGI and Northern from levying daily or monthly penalties on out-of-balance transportation customers when the LDCs themselves were in-balance with their interstate pipeline suppliers. During the course of the tariff review, the participants discovered that developing balancing charges consistent with this philosophy was extremely difficult, given the lack of historical cost data for transportation-related services.

Specifically, real resources, in the form of underground storage facilities, the injection and withdrawal of gas from these facilities, and the

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use of supplemental fuels and related facilities, are expended by the LDC to keep its entire system in-balance with its interstate carrier. These same resources are also used by the utility in supplementing its pipeline gas supply and in meeting peak day requirements. A mechanism to allocate these real joint resource costs among these diverse uses, while maintaining the strict letter of the "no harm, no foul" philosophy, proved quite difficult to fashion, especially given the lack of transportation-related balancing cost data.

Given this difficulty, the signatories of the two letter agreements proposed that the Commission suspend, for the duration of the two year trial period, its "no harm, no foul" decision. In its place, the signatories recommended that transportation customers be provided three grace days each month for the purposes of daily balancing, after which the utility would levy penalties on transportation customers exceeding the prescribed daily tolerance. The penalty charges to transportation customers, since they are assessed only on those volumes which lie outside the daily tolerance bounds, would serve as rough proxies for the balancing costs incurred by the LDC in keeping its entire system in-balance. On days when the utility was out-of-balance, the penalty charges would be allocated in accordance with Order No. 20,950.

With regard to monthly balancing, the signatories agreed that a transportation customer would be billed for over/undertakes at the appropriate interstate pipeline index price provided, however, that the customer did not exceed the prescribed monthly tolerance three or more months in any rolling twelve month period. Transportation customers who exceeded the prescribed monthly tolerance three or more times in any year would be subject to monthly imbalance penalties.

Interruptible Stand-by Commodity Service

[3, 4] The Commission, on page 5 of Order No. 21,018, directed both LDCs to offer an interruptible stand-by commodity service modelled on the service proposed in the Joint Recommendations. That recommendation set the commodity price at the utility's incremental gas cost at the city gate plus a "fixed" margin. However, for this service to remain competitive with alternative fuels, the signatories of the letter agreement recognized that the utility must have the ability to flex its commodity price downward. The signatories thusly recommended that the Commission allow each LDC to flex the margin from this service within prescribed limits.

Treatment of Revenues

[5, 6] As stated in the two letter agreements, both LDCs agreed to credit their respective cost of gas accounts with the therm-related revenues or margins received from the provision of the following services: (i) interruptible transportation; (ii) 280 day transportation (EnergyNorth only); (iii) sales of unbundled gas supply to transportation customers by the utility; (iv) as available gas supply; (v) firm and interruptible daily and monthly balancing charges and penalties; (vi) daily demand service for all transportation customers; (vii) capacity release; and (viii) the gas component of firm stand-by service.

Both LDCs further agreed to book the appropriate revenue accounts with revenues received from the following services: (i) all firm transportation services; (ii) customer charges from both interruptible and 280 day transportation (EnergyNorth only) services; and (iii) the non-gas component of firm stand-by service.

280 Day Sales Service Revenue Treatment

One other revenue issue, not directly related to transportation service, was contained in ENGI's letter agreement and was presented at the hearing by EnergyNorth witness Michelle Chicoine. EnergyNorth requested that the margins from 280 day sales service be treated consistently with those earned from 280 day transportation service, i.e., that the former margins also flow back to ENGI's firm ratepayers through the cost of gas adjustment mechanism.

In making this request, ENGI recognized that it was proposing a complete reversal of the margin treatment of 280 day sales service decided in DR 90-183, which resulted in a

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reduction in base rates. Base rates approved in EnergyNorth's last rate case, DR 91-212, included \$98,438 of margin from 280 day sales customers during the test year. Staff and EnergyNorth agreed that a per-therm surcharge would be applied to firm sales service base rates during the five month winter period beginning November 1, 1994 for the purpose of recovering the \$98,438 of margin for the period April 1, 1994 through March 31, 1995. Staff and EnergyNorth further agreed that this surcharge would continue annually until ENGI's next rate case.

Withdrawal of Interruptible Sales Service

[7] EnergyNorth raised one additional issue at the March 28, 1994 hearing. The LDC requested that approval be granted for withdrawal of its interruptible sales service. Ms. Chicoine, speaking on behalf of ENGI, noted that only four customers presently subscribe to this service, with only one of them using it in any meaningful way. Ms. Chicoine also noted that apart from the 280 day "firm period," the primary difference between interruptible sales service and 280 day sales service is the \$200 per month customer meter charge of the latter service; the former service does not have a monthly customer meter charge. Ms. Chicoine further noted that ENGI included in its initial and subsequent gas transportation compliance tariff filings a statement indicating its desire to withdrawal interruptible sales service. This issue was not addressed in ENGI's letter agreement of March 11, 1994.

*Fuel Reimbursement for Interruptible
Transportation Service*

[8, 9] According to Staff, there was one other area of Northern's third revised tariff filing which was not in compliance with the Commission's Orders. Specifically, this related to the issue of fuel reimbursement for interruptible transportation service (Order No. 20,950 at 19 and 20). Northern disagreed with Staff and the remaining signatories, the so-called "Concurring Parties" defined in Northern's letter agreement of March 21, 1994.

In that letter agreement, Staff and the Concurring Parties argued that the Trial Rates for

interruptible transportation service previously approved by the Commission already took into account the cost of lost and unaccounted for gas. As such, Northern should not be allowed to collect twice for fuel reimbursement.

At the hearing on March 28, 1994, Staff and the Concurring Parties' position on fuel reimbursement for interruptible transportation service was represented by General Counsel Amy Ignatius. Ms. Ignatius reviewed the record from this case, citing several witnesses giving testimony that the Trial Rates do indeed cover the cost of lost and unaccounted for gas.

As stated in the letter agreement of March 21, 1994, Northern's position was that its proposed treatment of lost and unaccounted for gas, namely the retention of a portion of the gas delivered by pipeline for interruptible transportation customers, was standard industry practice and that it complied with the Commission's Orders. The rationale for this fuel retention policy was that the cost of lost and unaccounted for gas to interruptible transportation customers was not included in the Trial Rates.

At the hearing on March 28, 1994, Northern offered an alternative position on fuel reimbursement for interruptible transportation service. Through its counsel, Ms. Meabh Purcell, Northern argued that its review of the record indicated that the issue of fuel reimbursement was not adequately addressed. As such, Northern made the following proposal. Northern would modify its third revised compliance tariff by striking out all references to fuel reimbursement for interruptible transportation service. Northern would file this modified tariff and request that a hearing be scheduled to develop a general fuel reimbursement policy for gas transportation service. This hearing could be held in conjunction with the Commission's review of its firm transportation tariff filing.

III. COMMISSION ANALYSIS

Upon thorough review of the two letter agreements and the record in this proceeding, we find the arguments presented by Staff and the parties regarding ENGI's and Northern's

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proposed balancing provisions, the flexible pricing of interruptible stand-by commodity service, and the treatment of margins and revenues (including those from 280 day sales service) compelling and accept the letter agreements in their entirety.

We note in particular that the two deviations from our previous decisions, the daily and monthly balancing terms and conditions and the pricing provisions for interruptible stand-by commodity service, do not markedly change the general purpose of the gas transportation policies developed in Commission Order Nos. 20,950, 21,016 and 21,018.

In Commission Order No. 21,016, both EnergyNorth and Northern were ordered to file, no later than fifteen months from the implementation of the Trial Rates, a cost of service study on the incremental cost of interruptible transportation. Given the important role that balancing costs play in supporting our "no harm, no foul" philosophy, we direct the two LDCs to include in their cost of service studies a detailed analysis of the costs of transportation-related balancing services to interruptible transportation, 280 day transportation (EnergyNorth only), and firm transportation customers.

We find EnergyNorth's third revised compliance tariff filing to be just and reasonable and in the public interest and will approve it, with an effective date of April 1, 1994.

With regard to EnergyNorth's request to withdraw its interruptible sales service, given that it is not contained in the letter agreement, we find the record insufficient to make a determination at this time. Should ENGI still wish to withdraw its interruptible sales service, it should file an appropriate motion with the Commission to do so, outlining in particular, its rationale for wanting to take this action.

With regard to the issue of fuel reimbursement for interruptible transportation service, we find that the record is indeed adequate to rule that the Trial Rates do allow for full recovery of the cost of lost and unaccounted for gas. See, e.g., Day 8 Transcript, cross-examination of Mr. Don Johnstone, page 99. As such, we accept Staff and the Concurring Parties' position on this issue and we reject Northern's proposal to schedule a hearing to develop a general fuel reimbursement policy for gas transportation.

We find that Northern's third revised compliance tariff, when edited by striking out all references to fuel reimbursement for interruptible transportation service, to be just and reasonable and in the public interest. We thus direct Northern to refile its tariff no later than April 11, 1994, and will approve this modified filing, with an effective date of April 14, 1994.

Our Order will issue accordingly.

ORDER

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

ORDERED, that ENGI's letter agreement of March 11, 1994 be accepted and that EnergyNorth's third revised compliance tariff filing be approved, with an effective date of April 1, 1994; and it is

FURTHER ORDERED, that there be a consistent treatment of margins earned from 280 day transportation and sales service, i.e., that the margins from these two services flow back to ENGI's firm ratepayers through the cost of gas adjustment mechanism; and it is

FURTHER ORDERED, that a per-term monthly surcharge be applied to ENGI's firm sales service base rates during the five month Winter period beginning November 1, 1994 for the purpose of recovering a total of \$98,438, the amount of 280 day sales margin currently included in ENGI's base rates, this surcharge to be continued annually until ENGI's next rate case; and it is

FURTHER ORDERED, that the cost of service studies ENGI and Northern will file with the Commission no later than fifteen months from the date of implementation of the Trial Rates include a detailed analysis of the costs of providing transportation-related balancing services to interruptible transportation, 280 day transportation (EnergyNorth only), and firm transportation customers; and it is

FURTHER ORDERED, that EnergyNorth file compliance tariff pages for firm transportation and related services no later than April 15, 1994; and it is

FURTHER ORDERED, that should EnergyNorth still desire to withdraw its interruptible

sales service, that it file a formal motion with the Commission to do so, outlining in particular, its rationale for wanting to take this action; and it is

FURTHER ORDERED, that Northern's letter agreement of March 21, 1994 be accepted and that Northern file with the Commission a fourth revised compliance tariff, obtained from the third revised filing by striking out all references to fuel reimbursement for interruptible transportation service, no later than April 11, 1994, with an effective date of April 14, 1994; and it is

FURTHER ORDERED, that Northern's fourth revised compliance tariff filing so amended be approved; and it is

FURTHER ORDERED, that the previously approved Trial Rates do recover all lost and unaccounted for gas costs for interruptible transportation service; and it is

FURTHER ORDERED, that Northern's proposal that a hearing be scheduled to develop a general fuel reimbursement policy for gas transportation service is denied; and it is

FURTHER ORDERED, that Northern file compliance tariff pages for firm transportation and related services no later than April 22, 1994.

By order of the Public Utilities Commission of New Hampshire this sixth day of April, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 91-149, Order No. 21,116, 79 NH PUC 50, Jan. 31, 1994. [N.H.] Re EnergyNorth Natural Gas, Inc., DE 91-149, Order No. 21,140, 79 NH PUC 112, Feb. 24, 1994. [N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 20,950, 78 NH PUC 479, Sept. 7, 1993. [N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 21,016, 78 NH PUC 594, Oct. 29, 1993. [N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 21,018, 78 NH PUC 602, Nov. 1, 1993. [N.H.] Re Northern Utilities, Inc., DE 91-149, Order No. 21,115, 79 NH PUC 49, Jan. 31, 1994. [N.H.] Re Northern Utilities, Inc., DE 91-149, Order No. 21,139, 79 NH PUC 111, Feb. 24, 1994.

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NH.PUC*04/11/94*[70458]*79 NH PUC 208*Claremont Gas Corporation

[Go to End of 70458]

79 NH PUC 208

Re Claremont Gas Corporation

DR 94-012
Order No. 21,187

New Hampshire Public Utilities Commission

April 11, 1994

ORDER accepting a settlement agreement under which a natural gas local distribution company is to pay a fine of \$6,000 for failing to abide by all employee anti-drug program requirements under the National Gas Pipeline Safety Act. The company is reminded that even though it has filed a petition for authority to discontinue service, it is not yet relieved of its duties to comply with all anti-drug program requirements.

1. COMMISSIONS, § 32

[N.H.] Jurisdiction — Enforcement of laws — Provisions of the National Gas Pipeline Safety Act — Employee anti-drug measures. p. 209.

2. LABOR, § 1

[N.H.] Employee relations — Drug testing and anti-drug programs — Requirements of the National Gas Pipeline Safety Act — Applicability to local distribution companies. p. 209.

3. GAS, § 5.1

[N.H.] Safety rules and regulations — Drug testing and anti-drug programs — Requirements of the National Gas Pipeline Safety Act — Applicability to local distribution

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companies — Commission enforcement. p. 209.

4. FINES AND PENALTIES, § 5

[N.H.] Grounds — Inadequate employee anti-drug programs — Failure to abide by requirements of the National Gas Pipeline Safety Act — Natural gas local distribution company — Settlement. p. 209.

5. EXPENSES, § 19

[N.H.] Fines and penalties — Relating to inadequate employee anti-drug programs — Nonrecovery in rates — Settlement — Natural gas local distribution company. p. 209.

6. SERVICE, § 213

[N.H.] Abandonment or discontinuance — Natural gas local distribution company — Operations pending authorization to abandon — Necessity of continuing to comply with the National Gas Pipeline Safety Act — Necessity of continuing required anti-drug programs. p. 209.

APPEARANCES: Dom S. D'Ambruoso, Esq. on behalf of Claremont Gas Corporation; Amy Ignatius, Esq. and Robert J. Frank, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

[1-6] The New Hampshire Public Utilities Commission ("Commission") is responsible for enforcing certain federal regulations promulgated pursuant to the National Gas Pipeline Safety Act, including regulations requiring gas pipeline operators to implement specific anti-drug programs. The regulations pertaining to drug testing standards are set forth in 49 CFR 199. This proceeding arises out of the Commission Staff's investigation which revealed probable violations of such regulations by Claremont Gas Corporation ("Claremont").

On July 16, 1993, Staff conducted an inspection of Claremont in order to evaluate Claremont's drug testing program. This inspection revealed that Claremont's program did not comply with federal standards. Staff issued a formal written Notice of Probable Violation ("NOPV") on September 22, 1993. Staff and Claremont held several informal conferences which initially failed to result in a resolution of this matter. The Commission issued a Show Cause Order on January 31, 1994, ordering Claremont to appear before the Commission on February 23, 1994 in order to respond to any alleged probable violations of State and Federal law with regard to its anti-drug policies and programs.

A duly noticed hearing was held on March 8, 1994, at which time Staff presented testimony and a proposed settlement agreement which had been entered into by Staff and Claremont.

II. THE SETTLEMENT AGREEMENT

At the hearing in this matter, Staff presented the proposed settlement agreement (the "Agreement") which contained admissions and fines for the following violations: (1) failure to have a written anti-drug plan as required under 49 CFR 199.7(a); (2) failure to have an adequate employee assistance program in order to detect and assist employees with drug problems as required by 49 CFR 199.19(c); and (3) failure to insure that its contractors had anti-drug policies as required by 49 CFR 199.21(a). The Agreement provides for a fine of Two-Thousand Dollars (\$2000) for each of the foregoing violations, resulting in a total fine of Six-Thousand Dollars (\$6000). The Agreement is attached hereto as Attachment A.

Additionally, Claremont acknowledged the existence of other deficiencies which did not give rise to a penalty, but which Claremont agreed to remedy. These include deficiencies related to 49 CFR 199.11 (inadequate

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drug testing program), 49 CFR 199.23 (inadequate recordkeeping), and 49 CFR 199.5 (non-compliance with federal procedures).

The other pertinent provisions of the Agreement include a stipulation that any fines approved by the Commission would not be included in Claremont's rate base, cost of gas adjustment, or in any way assessed against customers. Claremont also agreed to make any necessary amendments or modifications to Claremont's Pipeline Anti-Drug Policy And Procedures (filed on February 25, 1994) on or before April 1, 1994. Claremont agreed that in the future it would comply with

all future State and Federal requirements regarding anti-drug policies, testing, monitoring and recordkeeping.

During the March 8, 1994 proceeding, Richard Marini, the Commission's Gas Safety Administrator, testified that the proposed settlement was fair and appropriate.

III. COMMISSION ANALYSIS

It should be unnecessary for us to articulate the seriousness of this matter and the level of concern with which we view the conduct giving rise to this docket. This Commission assumes important responsibilities to enforce federal gas pipeline safety regulations, and we view those requirements related to anti-drug programs as an indispensable component of any prudent and comprehensive safety program.

As noted during the hearing, however, we are cognizant of Claremont's attempts, albeit inadequate, to implement a drug testing program. We also give significant weight to Staff's recommendation to accept this settlement. Most important, we accept Claremont's expression of its good faith commitment to comply with all federal anti-drug requirements in the future. It is for these reasons that we accept the settlement agreement and adopt it as our order without modification, except as discussed below.

We note with more than casual concern that subsequent to the hearing in this matter, Claremont filed a petition to discontinue service (DE 94-056). Claremont has requested expedited treatment of this request, stating that the system which it operates has serious safety problems. That petition, and the stated bases for its request, impels us to further underscore the importance of maintaining a drug-free work environment. We accept the settlement agreement, but in no way relieve Claremont of any of its responsibilities and obligations thereunder during the pendency of its petition to discontinue service. Again, the reasons for our concern are obvious. It is not in the public's interest to permit a utility to operate below acceptable safety standards simply because that utility seeks to discontinue service in its franchise area.

Our order will be issued accordingly.

ORDER

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

ORDERED, that the Agreement Regarding Anti-Drug Requirements attached hereto is approved; and it is

FURTHER ORDERED, that the responsibilities and obligations of Claremont Gas Corporation set forth therein shall be fully carried out notwithstanding Claremont's pending Petition to Discontinue Service.

By order of the New Hampshire Public Utilities Commission this eleventh day of April, 1994.

ATTACHMENT A

Agreement Regarding Anti-Drug Requirements

This Agreement is entered into this 8th day of March, 1994, by and between Claremont Gas Corporation ("Claremont") and the Staff of the New Hampshire Public Utilities Commission

("Staff"), to resolve with conditions all of the issues that were raised or could have been raised by Claremont and the Staff regarding the Commission's Show Cause Order issued January 31, 1994.

I. INTRODUCTION

The New Hampshire Public Utilities Commission ("Commission") is delegated certain responsibilities regarding as pipeline safety. The federal Office of Pipeline Safety works in a partnership with the Gas Safety Division of the

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Commission to ensure compliance with a number of federal standards, including drug testing standards (49 CFR 199). Claremont, as an operator of a gas pipeline, is subject to the requirements of 49 CFS Parts 192 and 199 and Commission jurisdiction.

On July 16, 1993, Staff conducted a routine inspection of Claremont's compliance with the drug testing requirements of 49 CFR 199. On September 22, 1993 the Staff issued a Notice of Probable Violation citing violation of 49 CFS 199.7(a), 199.19(c), and 199.21(a). Over the course of the next four months, Staff and Claremont worked to resolve the outstanding issues, without success. On January 31, 1994, the Commission issued a Show Cause Order requiring Claremont to appear before the Commission on February 23, 1994 and show cause why it should not be fined for violation of 49 CFS Part 199.7(a), 199.19(c), and 199.21(a).

Agreement was reached between Claremont and Staff regarding future compliance with 49 CFS Part 199 and establishing fines for failure to comply in a timely manner. This Agreement will be presented to the Commission for its review on March 8, 1994.

II. COMPONENTS OF AGREEMENT

A. 199.7(a) - Anti-drug Plan

Although Claremont, through its parent company Synergy, had certain anti-drug policies in effect, they did not comply with the Natural Gas Pipeline Safety Act by having the anti-drug plan in writing as required by 49 CFS 199.7(a). Claremont agrees to a fine of \$2000 for this violation.

B. 199.19(c) - Employee Assistance Program

Although Claremont notified its supervisors and employees of the dangers of drug use and the ways in which to spot employees who may be involved with drugs and work with them if they have a problem, Claremont failed to meet the requirements of 49 CFR 199.19(c). Claremont agrees to a fine of \$2000 for this violation.

C. 199.21(a) - Contractor Employees

Claremont failed to insure that its contractors had anti-drug policies in effect, as required by 49 CFR 199.21(a). Claremont agrees to a fine of \$2000 for this violation.

OTHER MATTERS

In addition to the above cited deficiencies for which the Show Cause Order was issued the Staff has noted and Claremont has acknowledged that there are other deficiencies which do not

give rise to a penalty but which Claremont acknowledges must be corrected.

1. *199.11 - Inadequate Drug Testing Program*

Although Claremont, through its parent company Synergy, had certain drug testing policies in effect, they did not meet the terms required of natural gas pipelines. Claremont agrees to correct this violation.

2. *199.23 - Inadequate Recordkeeping*

Claremont failed to keep adequate records regarding its drug testing, training and monitoring policies as required by 49 CFR 199.23. Claremont agrees to correct this violation.

3. *199.5 - Non-compliance with Federal Procedures*

Claremont failed to generally comply with federal procedures regarding necessary drug testing, training, monitoring and recordkeeping, as required by 49 CFR 199.5. Claremont agrees to correct this violation.

III. CONDITIONS OF AGREEMENT

This Agreement is expressly conditioned upon the following:

A. *Payment*

Fines shall be paid in full to the Commission within thirty days of the Commission's Order approving this Agreement.

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B. *No Inclusion in Rates*

Any fines approved by the Commission shall not be included in the rate base of Claremont Gas Corporation or included in any cost of gas adjustment proceeding. Such fines shall not be assessed against or charged to any Claremont customers.

C. *Completion of Written Anti-Drug Plan*

Claremont and Staff recognizes that Claremont's Pipeline Anti-Drug Policy and Procedures (the "Anti-Drug Plan") filed on February 25, 1994 requires further Staff review which will be finalized on or before April 1, 1994. After said review, Claremont will make any necessary amendments or modifications to the Anti-Drug Plan in order to conform it to the requirements of 49 CFR 199.

D. *Continued Compliance with State and Federal Requirements*

Claremont shall comply with all State and Federal requirements regarding anti-drug policies, testing, monitoring and recordkeeping in the future. Should Claremont fail to comply with State and Federal requirements, the Commission may order Claremont to show cause why it should not be further fined and/or otherwise held accountable for its misconduct. In addition, for a period of one year from the date of approval of this Agreement, if there is continued violation of the deficiencies noted herein, the Commission may reopen this docket.

IN WITNESS WHEREOF, Claremont and Staff have caused this Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so.

CLAREMONT GAS CORPORATION
By: James M. Trickett, Region Manager

N.H. PUBLIC UTILITIES
COMMISSION STAFF
By: Amy L. Ignatius, General Counsel

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NH.PUC*04/11/94*[70459]*79 NH PUC 212*AT&T Communications of New Hampshire, Inc.

[Go to End of 70459]

79 NH PUC 212

Re AT&T Communications of New Hampshire, Inc.

DE 94-044
Order No. 21,188

New Hampshire Public Utilities Commission

April 11, 1994

ORDER approving an interexchange telephone carrier's rate proposal for software defined network service, modeled on usage-based calling card rates and inclusive of a per-call service charge.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Software defined network service — Incorporation of usage-based calling card rates — Inclusion of a per-call service charge. p. 212.

BY THE COMMISSION:

ORDER

[1] On March 14, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce schedule M and N for its Software Defined Network Service; and

WHEREAS, Schedules M and N are proposed to establish calling card rates for subscribers of Software Defined Network Service; and

WHEREAS, Schedule M establishes usage pricing of Customer Dialed Calling Card/Automated Calls; and

WHEREAS, the rate for schedule M is proposed to be identical for all three rate periods and is \$.2052 for the initial 18 seconds or fraction and \$.0224 for each additional 6

seconds or fraction; and

WHEREAS, Schedule N proposes to establish Service Charges associated with each call at the rate of \$.30 per call; and

WHEREAS, the proposed tariff expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than April 22, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than April 14, 1994 and is to be documented by affidavit filed with this office on or before April 25, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 1 - CUSTOM NETWORK SERVICES, are approved:

Section 2:

6th Revised Page 3
 4th Revised Page 4
 Original Page 10.1
 Original Page 10.2
 Original Page 10.3
 Original Page 10.4

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective April 25, 1994 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 April, 1994.

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NH.PUC*04/19/94*[70461]*79 NH PUC 213*Public Service Company of New Hampshire

[Go to End of 70461]

79 NH PUC 213

Re Public Service Company of New Hampshire

DR 94-002

Order No. 21,190

153 PUR4th 196

New Hampshire Public Utilities Commission

April 19, 1994

ORDER approving renegotiated rate agreements for an electric utility's purchases of power from five qualifying hydropower small power producers (SPPs) operating under 30-year rate orders. The renegotiated agreements, which eliminate existing flat rates and replace them with a mandatory minimum payment and a declining block rate structure, are expected to produce nominal savings of \$11 million over the next 30 years. In exchange for the rate reductions, the terms of the agreements have been extended for an additional five years, but there are no "buy-out" provisions in the agreements.

Commission finds that, by extending the term of the agreements and guaranteeing minimum payments in "low water" years, the renegotiated agreements are consistent with provisions of state law that mandate a regulatory policy that encourages the use of renewable resources and promotes diversity of fuel supply.

A decision on the appropriate use of the savings resulting from the renegotiated agreements is reserved for a future proceeding, as is the issue of whether the utility used its "best efforts" in renegotiation, as required by prior

Page 213

order. Also, the commission refuses to reopen the case for further testimony on the effect of the renegotiated agreements on leases between the state and two of the hydropower SPPs, concluding that the state has more appropriate avenues of redress than the commission if it believes that the leases have been breached by the renegotiations or that the agreements harm the state.

Commission notes that approval of the renegotiated agreements does not constitute a concession regarding claims that it lacks jurisdiction to modify qualifying facility rate orders, nor does it represent any concurrence by the qualifying SPPs that the commission has the right to modify rate orders.

1. COGENERATION, § 17

[N.H.] Contracts — 30-year rate orders — Modification — Renegotiated rate agreements — Hydropower small power producers. p. 218.

2. COGENERATION, § 17

[N.H.] Contracts — 30-year rate orders — Modification — Renegotiated rate agreements — Elimination of flat rates — Adoption of declining block rate structure — Minimum payment obligation — Extended contract term — Hydropower small power producers. p. 218.

3. COGENERATION, § 4

[N.H.] Regulatory jurisdiction — State commissions — Power to modify rate orders — Discussion. p. 218.

4. COGENERATION, § 25

[N.H.] Rate design — Renegotiated agreements — Elimination of flat rates — Adoption of declining block structure — Minimum payment obligation — Purchases from hydropower small power producers. p. 218.

5. COGENERATION, § 17

[N.H.] Contracts — 30-year rate orders — Renegotiated rate agreements — Hydropower small power producers — Encouragement of renewable resources and fuel diversity. p. 218.

6. ELECTRICITY, § 5

[N.H.] Least-cost planning — Hydropower plant — Purchases from small power producers — Renegotiated rate agreements. p. 218.

7. COGENERATION, § 24

[N.H.] Rates — Factors — Peak reduction factor — Effect of renegotiated rate agreements — Discussion. p. 218.

8. COGENERATION, § 17

[N.H.] Contracts — Renegotiated rate agreements — Effect on hydropower leases — Discussion. p. 218.

APPEARANCES: Rath, Young, Pignatelli and Oyer by M. Curtis Whittaker, Esq. and Gerald M. Eaton, Esq. for Northeast Utilities Service Company and Public Service Company of New Hampshire; Orr and Reno by Howard M. Moffett, Esq. for Briar/Essex Hydro, Penacook Upper Falls, Errol Hydro, Pembroke Falls and Greggs Falls Hydro; Castaldo and Malmberg by David W. Marshall, Esq. for New Hampshire Timberland Owners Association; D. Dickenson Henry, Jr. for Audubon Society of New Hampshire; Jeanne M. Sole, Esq. for Conservation Law Foundation; Broderick and Dean by Mark W. Dean Esq. for New Hampshire Electric Cooperative, Inc.; Kenneth A. Colburn for Business and Industry Association; Office of Attorney General by Leslie J. Ludtke, Senior Assistant Attorney General for Water Resources Council; Michael W. Holmes, Esq. for Office of Consumer Advocate for residential ratepayers; Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. PROCEDURAL HISTORY

The Public Utilities Commission (Commission) on October 15, 1993 issued an order of notice initiating a docket to consider the status of negotiations between Public Service Company of New Hampshire (PSNH) and thirteen small power producers. The docket is the result of a provision within the Rate Agreement between the State of New Hampshire and PSNH/Northeast Utilities, as approved by the State pursuant to RSA 362-C:2 I, and as accepted by the Commission in DR 89-244, *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385 (1990). Under the Rate Agreement, Northeast Utilities is required to use its best efforts to renegotiate the rates of the following thirteen small power producers: Briar Hydro/Essex Hydro, Errol Dam, Greggs Falls, Pembroke Hydro, Pennacook Upper Falls (the five hydropower SPPs), Alexandria Power, Bio-Energy Corporation, Bridgewater Steam Power, TIMCO, Hemphill Power and Light, Bethlehem Pinetree Power, Tamworth Pinetree Power, Whitefield Power (the eight woodburning SPPs).

By Report and Order No. 21,089 (January 3, 1994) the Commission separated the hydropower SPP agreements from the woodburning SPP negotiations. At a prehearing conference on January 21, 1994, the Commission granted requests for intervention filed by the New Hampshire Electric Cooperative, Inc. (NHEC), Conservation Law Foundation (CLF), Audubon Society of New Hampshire (Audubon), New Hampshire Timberland Owners Association (Timberland Owners), and the Business and Industry Association (BIA). The Commission requested recommendations of all parties and Commission Staff (Staff) regarding scope of issues to be considered, to be filed no later than February 7, 1994.

By Order No. 21,113 (January 31, 1994) the Commission adopted an expedited procedural schedule, calling for hearing on the merits February 25, 1994. By Report and Order No. 21,126 (February 11, 1994), the Commission ordered that a) the scope of the proceeding would be limited to the terms of the proposed agreements, the methodology for calculating savings to PSNH customers and the method of recovering PSNH's costs under the proposed agreements; b) the standard to be applied would be a "public good" standard in accordance with RSA 362-C:3, in light of the principles of the Limited Electrical Energy Producers Act (LEEPA), found at RSA Chapter 362-A and least cost planning, found at RSA 378:37 through 39; and c) the use of any savings generated as a result of the agreements would not be considered in this docket. Also deferred to another proceeding is an analysis of PSNH's efforts in renegotiation.

Parties and Staff were given until February 25, 1994, the day of the hearing on the merits, to submit their comments or suggestions on the appropriate proceeding in which to consider use of the savings, if the agreements were approved. PSNH, on February 25, 1994, submitted a recommendation that use of savings be considered in its 1994 least cost planning docket. Also on February 25, CLF submitted a recommendation that use of savings be considered in PSNH's 1994 conservation and load management docket. Staff recommended at the February 25, 1994 hearing that the issue be considered in another proceeding, without specifying the particular docket.

The five hydropower SPPs with which PSNH negotiated new terms are Briar Hydro on the Contoocook River, with a nameplate capacity of 6,000 kW; Penacook Upper Falls, also on the

Contoocook River, with a nameplate capacity of 3,020 kW; Greggs Falls Hydro, on the Piscataquog River with a nameplate capacity of 3,512 kW; Pembroke Hydro on the Suncook River, with a nameplate capacity of 2,600 kW and Errol Dam, on the Androscoggin River, with a nameplate capacity of 3,000 kW. They all currently operate under 30 year rate orders issued by the Commission. The current rates under the existing 30 year orders are levelized for energy and capacity and range from 13.10 to 15.81 cents per kWh.

1(20)

The Commission heard evidence on the five hydropower SPP agreements on February 25, 1994.

On March 16, 1994, the State of New

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Hampshire Water Resources Council (Council) filed a request to allow it thirty days to review the agreements in that they "substantially affected the ... lease agreements with the state...". The Commission, on March 22, 1994, granted the request in part, giving the Council until March 28, 1994 to file comments, and other parties and Staff until April 1, 1994 to file responses. The Council made such a filing on March 28, 1994, arguing that lease payments to the State would be reduced and the State's payment of debt obligations would be jeopardized by the agreements. On April 1, 1994, Attorney Moffett on behalf of the hydropower SPPs, filed a response arguing that the Council was aware of the negotiations, the agreements wouldn't necessarily reduce payments and in fact could provide the State greater protection given the guaranteed minimum payment provisions for low water years. Also on April 1, 1994, PSNH filed a response urging the Commission not to reopen the record on this matter.

This report and order will evaluate the agreements in light of the "public good" standard of RSA 362-C:3. It will not address how savings generated by these agreements should be used.

II. POSITIONS OF THE PARTIES AND STAFF

A. PSNH

Richard Soderman, Manager of Regulatory Planning for Northeast Utilities Service Company, described the background of the Rate Agreement and the requirement that PSNH undertake negotiations with these five hydropower SPPs as well as eight woodburning SPPs and the steps taken by PSNH in these negotiations. Mr. Soderman testified to the negotiations themselves, noting PSNH's frustration at not having information regarding operating or fixed costs of the projects as well as its difficulty in persuading the SPPs that settlement was an appropriate course of action. Mr. Soderman described the agreements' reduced price level for energy and capacity, anticipating an immediate savings of approximately \$715,000 and the positive benefits of reduced pressure on PSNH rates generally by driving down the five hydropower SPP rates, which are entirely flowed through FPPAC. He described the general provisions of the agreements, which would be effective retroactive to January 1993.

The agreements provide for energy prices on a declining block rate structure which is different from the flat rates now in effect. Under the agreements, the first block, a mandatory

minimum annual payment from PSNH, covers an amount of generation equal to 85% of the generation in a normal water year. Additional generation is broken into four additional declining blocks, so that "good water years" result in greater benefits for customers; "low water years" will not harm the projects due to the guaranteed minimum annual energy payment. There are no "buy-out" provisions in the agreements.

In exchange for these reductions in rates, the terms of the agreements have been extended for an additional five years. PSNH predicted the nominal savings due to the agreements will be \$11 million over the next 30 years. In net present value, using a discount rate of 10.9%, the savings are \$6 million, which represents a savings of approximately 6% over the life of the contracts, compared with existing rates.

In its prefiled testimony, PSNH proposed that all savings from the agreements be flowed directly to customers through FPPAC, as well as the continued cost of purchases from the hydropower SPPs. PSNH anticipated the savings which could be included in the next FPPAC to be approximately \$715,000 for the June 1994 through November 1994 period, \$310,000 for January 1993 through December 1993 and \$600,000 from the period January 1994 through May 1994, for a total of approximately \$1.6 million. Future FPPAC periods, however, would only include the savings for that six month period and would more closely approximate \$700,000. On February 25, 1994 however, PSNH recommended that use of savings be considered in PSNH's 1994 least cost planning docket.

Mr. Soderman testified that the agreements are in the public interest because they provide for savings to customers, they resolve

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potentially expensive litigation and they improve rate design to better respond to water flow variations.

B. Hydropower SPPs

Richard Norman, managing general partner of Essex Hydro Associates, testified that in his view, the existing rate orders are not subject to unilateral modification by the Commission, but agreed to negotiate with PSNH to resolve costly litigation and provide greater stability to the projects. He described the declining block structure and the guaranteed payment for 85% of expected output. The base energy block is approximately 15% lower than existing rates and the greatest energy block is 40% of the existing rate for his projects. The capacity price is also reduced by about 14% from the existing capacity rate. After 1995, the energy rates escalate by 2.25% a year or a fixed percentage based on 50% of the cumulative change in the Gross National Product deflator, a price index used to measure inflation, whichever is greater, until 2012. The capacity rates do not escalate. From 2013 through 2017, the capacity and energy rates are combined into a single rate equal to PSNH's then avoided cost, as opposed to a fixed rate in the existing rate orders. The agreements also extend the rate order terms by five years. During these last five years, all capacity and energy will be sold at 90% of PSNH's then avoided cost. Mr. Norman noted a decrease in property taxes and lease payments but stated he did not believe the effect would be significant. He stated the agreements are fair and in the public interest, despite his belief that the rate orders are valid as they now stand. He also stated that he recognized the

difficulties in the New Hampshire economy and did not feel it appropriate to ignore the state's economic problems by refusing to renegotiate the rate orders.

Robert L. Winship, Vice President of Schooner Capital Corporation, which is a general partner of Greggs Falls and Pembroke, testified to the benefits ratepayers will see from the agreements with his projects: a reduction of approximately 16.5% in energy rates (assuming average water flows), greater savings in high water years due to the declining block structure, and long term reductions during the last nine years of the agreements due to payment of 100% and then 90% of PSNH's then avoided cost. The agreements provide the projects with greater revenue stability and slight increases during the middle years of the agreements and extend the current rate orders by five years.

Raymond S. Kusche, President of Swift River Hafslund Company, which is an owner of the Errol project, testified that the Errol agreement extends the existing rate order from 2015 through 2023. The initial energy block rate through 1995 is 25.5% lower than the existing on-peak rate for the first 85% of average annual generation. From 1996 through 2012, these rates escalate at 2.25% per year, while capacity payments remain constant. From 2013 through 2017, the energy and capacity rates are based on PSNH's then avoided cost; from 2018 through 2023 they are set at 90% of PSNH's then avoided cost. Mr. Kusche also testified that he believed the rate orders were not vulnerable to Commission modification but settlement was appropriate to avoid costly litigation and to ensure the stability of the projects.

All three hydropower SPP owners stated their lenders would accept the agreements as acceptable substitutes for the existing rate orders.

C. Other Intervenors

Although intervenors in the case, CLF, Audubon, NHEC, Timberland Owners and BIA did not file testimony or participate in the hearing.

D. OCA

Kenneth E. Traum, OCA's Finance Director, testified that OCA did not find PSNH's efforts in renegotiation to have begun soon enough to indicate PSNH has used its best efforts and that OCA continues to put PSNH on notice that ratepayers should not be expected to bear the costs of failure to vigorously pursue renegotiations. OCA is generally supportive of the agreements but troubled by the guarantee of payments even if flows are below average, particularly given the data that in recent years, four

of the five hydropower SPPs have not met the average output figure. He was also concerned about those years in which payments increase. OCA suggested an alternative would be to cap the annual payment during the years 2003 through 2012 to the lower of the payment under the existing rate orders or the terms of the new contract. As another alternative, he suggested that PSNH begin basing payments on its avoided cost in 2003 rather than in 2012 and, in exchange, pay the projects 100% of PSNH's avoided cost in the final years of the agreement, rather than 90%.

Mr. Traum testified that savings generated by the agreements should, at least for now, be

passed in total to ratepayers. He argued that the savings should not go to increased conservation and load management (C&LM) expenditures until PSNH has established more of a track record with the C&LM programs now underway.

Mr. Traum also argued that PSNH should recalculate the peak reduction factor for all other hydropower SPPs as soon as possible.

E. Staff

Commission Utility Analyst Thomas C. Frantz and Economist Scott W. Harrold jointly recommended approval of the agreements, but argued that they had hoped for greater savings, particularly given that nearly all of the savings occur during the first five to six years of the agreements. They described the apparent trade-offs in the negotiations: PSNH is protected from good flow years by the declining block structure, while the hydros are protected from bad flow years by getting 85% of normal output even if the output falls below that amount; PSNH saves by paying a lower capacity rate while the hydros gain a higher capacity value (with the exception of Errol Dam).

Staff questioned PSNH's calculation of projected savings, as the avoided cost figures used by PSNH differ from those approved by the Commission in PSNH's 1992 Least Cost Integrated Plan, DR 92-080. Use of the approved avoided cost figures would lower the projected savings from \$10.5 million to \$5.0 million over the term of the contracts which, on a net present value, shifts the savings from \$5.9 million to \$5.2 million. The actual amount of the savings, they testified, will depend largely on what PSNH's avoided cost turns out to be in the later years of the contracts. In addition, the Staff noted another source of savings due to the agreements: approximately \$170,000 per year would be saved or about \$5 million over the term of the contracts, due to removing the five hydropower SPPs from the capacity pool, thereby reducing the combined value on which PSNH pays all hydropower SPPs each January. Because these five hydropower SPPs have produced a higher output relative to their Commission audited capacity than the other SPPs in the pool, removing them from the pool will reduce the resulting payments by approximately \$170,000 per year.

Mr. Frantz and Mr. Harrold recommended that the Commission approve the agreements and method of recovery. The prudence of PSNH's negotiations, about which Staff expressed concern, was agreed to be deferred to another proceeding.

III. COMMISSION ANALYSIS

[1-8] After review of the evidence, we will approve the agreements between PSNH and the five hydropower SPPs. We consider the agreements to be in the public good in accordance with RSA 362-C:3. The agreements provide for savings of approximately \$11 million over the life of the agreement, which is a benefit to PSNH's ratepayers and the state's economy in general. While we agree with the testimony of the Staff that the reductions are not as significant as might have been hoped for, we will nevertheless approve the agreements as filed.

We recognize that an additional public benefit of these agreements is the avoidance of continued litigation over this issue, which is both time consuming and extremely costly to the SPPs and PSNH.

During this proceeding, the five hydropower SPPs repeatedly expressed their belief that their

rate orders are not modifiable. As we have previously stated, we disagree, in light of the rate orders themselves and New Hampshire

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statutes including, but not limited to, RSA Chapter 362-A, RSA 365:5, RSA 365:28, RSA 374:4, and RSA 378:28. This conclusion is further supported by the New Hampshire Supreme Court. As the Court noted in 1981, it is appropriate for the Commission to evaluate small power producer rates from time to time in light of current circumstances. *Appeal of Granite State Electric Co.*, 121 N.H. 787 (1981). By accepting these agreements with the five hydropower SPPs, we do not concede the SPP's argument regarding our jurisdiction; nor do we make a condition of approval any concurrence by the SPPs with our position regarding the right to modify rate orders.

The agreements are also consistent with the principles of LEEPA, RSA Chapter 362-A, which mandates a regulatory policy which encourages the use of renewable resources and promotes diversity of fuel supply. Ensuring the extended operation of the five largest non-utility hydropower facilities clearly is consistent with LEEPA's mandate. The terms of the agreements enhance the operation of the five hydropower SPPs in that they establish a guaranteed minimum payment to protect them in lower water years and extend for another five years the terms of the rate orders. The hydropower plants have been reliable generators of electricity and demonstrate the benefits of a renewable resource in its most basic form, the use of the force of water to generate electricity.

Reduction in the long term rate orders is also consistent with least cost planning principles, as required by RSA 378:37 through 39. Through these agreements, PSNH will reduce its overall fuel supply cost. We have deferred the question of use of the savings of approximately \$11 million over the life of the agreements (estimated to be between \$5.2 and \$6 million in net present value terms).

OCA's suggestion that the peak reduction factor should be changed for other hydropower SPPs in light of these agreements is well taken. The peak reduction factor was developed in *Re Small Energy Producers and Cogenerators*, DE 83-62. As stated in Order No. 17,104 (July 5, 1984), the peak reduction factor was designed to "maximize the SPP contribution at time of peak load" by grouping "SPPs with similar characteristics in contributing to peak load reduction." 69 NHPUC 352, 359. Because these agreements will remove five of the most reliable hydropower producers from the Time-of-Day hydro class, it may be appropriate to recalculate the historical data (used to calculate the peak reduction factor on a three year rolling average basis). If the peak reduction factor is not recalculated, ratepayers may pay twice for the same capacity, once through the average peak reduction factor and once through the rates in the agreements. We will direct the parties and Staff to file recommendations within 30 days on whether and if so, how, the peak reduction factor calculations should be changed to reflect these new agreements.

The final issue to address is one which was brought to the Commission's attention after discovery and testimony had been taken in the case, that is, the concern of the Water Resources Council. Two of the SPPs reaching agreement with PSNH, Greggs Falls and Briar Hydro, operate hydropower facilities owned by the State, pursuant to long term leases with the Council.

The Council alleges that the State will suffer from reduced lease payments (which are set in relation to the revenues of the facility) and that the State's ability to meet its bond obligations may be at risk.

We are not persuaded that the State will suffer any significant harm over the long term, particularly when viewed in comparison to the benefits to ratepayers. Based on the filings submitted on this issue after the hearings, it appears that in the early years of the agreements, the State will likely see lower lease payments but later years will generate higher lease payments. In addition, we agree with the hydropower SPPs' statement that the guaranteed minimum payment contained in the agreements will serve to protect the State's interests as well as the hydropower SPPs' in low water years. Finally, we believe that the State has other avenues of redress more appropriate than this Commission if it believes that the leases have been breached by the renegotiations or that the agreements harm the State. We will not reopen this case for further testimony on the effect of the agreements on leases between the Council and the hydropower SPPs.

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As stated previously, we will evaluate whether PSNH has used its "best efforts" in renegotiation, as required by the Rate Agreement in another proceeding.

Our order will issue accordingly.

ORDER

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

ORDERED, that the agreements reached between Public Service Company of New Hampshire (PSNH) and Briar Hydro/Essex Hydro, Errol Dam, Greggs Falls, Pembroke Hydro, Pennacook Upper Falls are in the public good in accordance with RSA 362-C:3 and, therefore, are approved; and it is

FURTHER ORDERED, that the agreements are consistent with the principles of the Limited Electrical Energy Producers Act, found at RSA Chapter 362-A; and it is

FURTHER ORDERED, that the agreements are consistent with least cost planning principles, found at RSA 378:37 through 39; and it is

FURTHER ORDERED, that the docket will not be reopened on the issue of the agreements' effect on leases between the State of New Hampshire and two hydropower small power producers, as requested by the Water Resources Council; and it is

FURTHER ORDERED, that the Commission will consider in proceedings to follow the use of savings generated by the agreements and the prudence of PSNH's efforts in renegotiation of the rate orders with the five hydropower producers; and it is

FURTHER ORDERED, that the parties and Staff report to the Commission within 30 days their recommendations on whether and if so, how, the peak reduction factor should be changed to reflect these new agreements.

By order of the New Hampshire Public Utilities Commission this nineteenth day of April, 1994.

FOOTNOTES

¹See Commission Order Nos. 17,229, 17,474, 17,668, 17,875 and 18,086.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Errol Hydroelectric Limited Partnership, DR 85-198, Order No. 17,875, 70 NH PUC 824, Sept. 26, 1985. [N.H.] Re Essex Hydro Associates, DR 85-407, Order No. 18,086, 71 NH PUC 103, Jan. 23, 1986. [N.H.] Re Greggs Falls Hydroelectric Project, DR 84-234, Order No. 17,474, 70 NH PUC 80, Mar. 4, 1985. [N.H.] Re Pembroke Hydroelectric Project, DR 84-233, Order No. 17,229, 69 NH PUC 560, Sept. 27, 1984. [N.H.] Re Penacook Hydro Associates, DR 85-86, Order No. 17,668, 70 NH PUC 546, June 14, 1985. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,089, 79 NH PUC 1, Jan. 3, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,126, 79 NH PUC 72, Feb. 11, 1994. [N.H.] Re Small Energy Producers and Cogenerators, DE 83-62, Order No. 17,104, 69 NH PUC 352, 61 PUR4th 132, July 5, 1984.

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NH.PUC*04/19/94*[70462]*79 NH PUC 220*Public Service Company of New Hampshire

[Go to End of 70462]

79 NH PUC 220

Re Public Service Company of New Hampshire

DR 93-247

Order No. 21,191

New Hampshire Public Utilities Commission

April 19, 1994

ORDER approving an electric utility's proposed tariff for a radio-controlled rate option for separately metered electric service to electric thermal storage devices, finding the service cost-effective and in keeping with goals for conservation, load management, load retention, and ratepayer savings.

Page 220

1. RATES, § 339

[N.H.] Electric rate design — Classes of service — Separately metered service to electric thermal storage devices — Interruptible, discounted radio-controlled rate option — Factors affecting approval — Excess capacity — Cost-effectiveness — Consistency with conservation

and load management policies. p. 222.

APPEARANCES: Catherine E. Shively, Esq. on behalf of Public Service Company of New Hampshire; Kenneth E. Traum of the Office of Consumer Advocate on behalf of residential ratepayers; Thomas C. Frantz on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On December 7, 1993, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a Proposal to Modify Load Controlled Service Rate to Permit a Radio-Controlled Option for Separately Metered and Controlled Electric Service to Electric Thermal Storage Devices (Proposal). The Proposal would affect tariff pages, NHPUC No. 34 - Electricity: 1st Revised Pages 39, 41, 42 and 45 and 2nd Revised Page 40. The Commission issued Order No. 21,096 (January 6, 1994) suspending the proposed tariffs and setting a prehearing conference on February 8, 1994.

At the duly noticed prehearing conference, a procedural schedule was developed for the duration of the docket. PSNH, the Office of Consumer Advocate (OCA) and the Commission Staff (Staff) were the only participants. *See* Report and Order No. 21,132 (February 22, 1994).

On March 24, 1994, the Commission, through a hearings examiner, heard evidence regarding the proposal.

II. POSITIONS OF PARTIES AND STAFF

A. PSNH

Stephen Hall, PSNH's Rate and Regulatory Services Manager described PSNH's proposal for load controlled service (LCS) with electric thermal storage devices. PSNH has had an LCS program since 1980, but PSNH has not considered the program successful. As of January 30, 1994, only 218 customers were receiving service under Rate LCS. The new proposal is designed to be more cost effective and more attractive to customers due to the use of radio controls which allow less interruption as well as the use of smaller storage devices. Under the new proposed Rate LCS, a customer with an electric thermal storage device can take service under Rate LCS, which is subject to interruption whenever the PSNH system is notified that the New England Power Pool (NEPOOL) is operating under NEPEX Action No. 3, Operating Procedure No. 4, better known as OP4. Service can be interrupted no more than 8 hours per day, 5 times per month and 26 times a year. Any particular interruption is limited to 4 hours in duration. The kilowatt-hour charge for LCS service is approximately 40% less than service rendered under standard residential Rate D.

Radio controlled interruptions allow for greater flexibility in shutting off customers when necessary. The present time clock system operates based on a rigid schedule of interruptions irrespective of system wide capacity constraints. Time clock controlled load is also affected by

outages and hardware failure, therefore decreasing its reliability. That would no longer be a problem with radio controls.

PSNH would bear the costs of the radio control equipment, estimated to be \$315 per installation. The customer would be responsible for the purchase and installation of the storage devices and conversion costs. A 5 kW ETS heater is estimated to cost approximately \$800. Installation is expected to cost another \$300. PSNH anticipates the average investment of \$1100 for the storage device, conversion and installation costs would be paid back in savings in slightly less than one year.

In addition, PSNH testified the proposed

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LCS program should be more attractive because individual rooms can be heated with electric thermal storage devices rather than the entire structure as required under the existing LCS program. Customers, therefore, need not invest in so large a storage device, which makes the program's payback that much more attractive.

PSNH stated that it revised its LCS program to mirror the LCS offering by New Hampshire Electric Cooperative (NHEC). Based upon NHEC's experience, PSNH expects 150 to 300 customers to change service to the new Rate LCS during the first year. PSNH believes some of these customers would otherwise convert to other sources of heat and leave the PSNH system except for their electric power and lighting needs.

B. OCA

OCA did not testify in this case but questioned the derivation of the 40% discount for the service and whether PSNH would seek recovery of lost revenues under this program. PSNH stated it did not intend to seek lost revenues and expected revenues in fact to remain level or increase.

C. Staff

Staff filed no testimony in this case but questioned PSNH regarding its calculation of revenue increases in light of the fixed 5.5% increases built into the Rate Agreement, the potential for "free riders" on the system who would not have left PSNH but nevertheless install storage devices and whether PSNH had engaged in elasticity studies to determine the likelihood of usage increasing with the decrease in rates. Under questioning by Staff, PSNH stated that NEPEX had not implemented Action 3 under OP4 during the last few years. Due to the adequate operating capacity in New England and the projection by NEPOOL that operating capacity will not become tight for the remainder of the decade, PSNH does not expect under the current capacity situation to call more than a few interruptions per year.

III. COMMISSION ANALYSIS

[1] Upon consideration of the evidence presented, we find PSNH's proposal for a revised LCS offering to be in the public good and the reduction in the rate to be just and reasonable pursuant to RSA 374:2. We will approve the revised LCS program.

It appears there can be considerable savings to those space heating customers which can

afford to install an electric thermal storage device. Given the current excess capacity on the system, the potential for interruptions does not appear to be problematic, but even if we were to face capacity constraints, the limits on the number and duration of interruptions makes this an attractive and cost-effective service.

We recognize the marketing and load retention purposes of this offering, though it appears that when originally developed, under a very different capacity situation, LCS programs were designed as load management efforts. We are pleased to see a program that seeks to meet at least three important policy goals in one service: conservation and load management (by reducing demand if necessary during peak periods), load retention for PSNH (by keeping customers on the system who might otherwise have converted to another source of heat) and savings to customers (as demonstrated by the one year payback for the program).

We will direct our Staff to monitor PSNH's LCS program, and PSNH to file a report, to determine whether in fact customers find it an attractive offering and further whether the projections for installation, conversion and savings appear to be accurate. If the program proves to be as beneficial as the New Hampshire Electric Cooperative, Inc. and PSNH believe, we may seek expansion of this offering, and encourage other utilities to explore similar programs.

Our order will issue accordingly.

ORDER

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

ORDERED, that Rate LCS as proposed by Public Service Company of New Hampshire for radio controlled service utilizing electric thermal storage devices is approved, as it is in the public interest under rates that are just and

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reasonable pursuant to RSA 374:2; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file compliance tariff page within 10 days of this Order; and it is

FURTHER ORDERED, that PSNH file a report with the Commission by April 1, 1995, describing how many customers have received service under radio controlled ETS devices, the amount of radio controlled load, how many interruptions, if any, were called and the cause of the interruptions, the costs of installation, the costs the customer incurred to switch to Rate LCS, and the payback period based on actual usage.

By order of the New Hampshire Public Utilities Commission this nineteenth day of April, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-247, Order No. 21,096, 79 NH PUC 22, Jan. 6, 1994.

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NH.PUC*04/20/94*[70463]*79 NH PUC 223*Northern Utilities, Inc.

[Go to End of 70463]

79 NH PUC 223

Re Northern Utilities, Inc.

DE 94-040

Order No. 21,192

New Hampshire Public Utilities Commission

April 20, 1994

ORDER authorizing a natural gas local distribution company to expand its service area within the Town of Stratham.

1. SERVICE, § 199

[N.H.] Extensions — Expansion of service area — Natural gas service — Factors affecting approval — New commercial customers — Compliance with "25% investment" test. p. 224.

APPEARANCES: Meabh Purcell, Esq. of LeBoeuf, Lamb, Greene & MacRae, on behalf of Northern Utilities, Inc.; Robert J. Frank, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

REPORT

I. PROCEDURAL HISTORY

This proceeding arises out of a petition filed by Northern Utilities, Inc. ("Northern") for authorization to serve an expanded area within the town of Stratham, New Hampshire. A duly noticed hearing was held on April 14, 1994. There were no requests for intervention filed in this matter.

II. POSITION OF NORTHERN AND STAFF

A. *Northern*

Northern seeks authority to extend its natural gas service area within the Town of Stratham, New Hampshire. Northern currently serves a portion of Stratham pursuant to Commission Orders Nos. 12,298 and 17,256. Northern's Petition includes an appended map which shows the proposed new service area, an area comprised primarily of a group of commercial developments along Portsmouth Avenue in Stratham. The potential customers in this area include three shopping centers and other small commercial establishments.

Northern's filing includes several letters of support from businesses within the new service area, as well as a letter from Stratham's Board of Selectmen endorsing Northern's Petition. The filing also includes the direct testimony of Richard P. Cencini, who is Northern's Regulatory Affairs Director.

At the April 14, 1994 hearing, Mr. Cencini testified generally about Northern's objective to

Page 223

expand its service area within Stratham. He testified that the Town of Stratham is seeking an economic grant to extend the natural gas main in order to make service available to the Town's remaining commercial and industrial areas.

Northern's Petition was also supported by the affidavit by Lynn A. McInnis, Northern's Commercial and Industrial Sales Representative, which indicates that the addition of new customers in the extended service area would have a virtually immeasurable impact on Northern's gas send-out profile. Ms. McInnis also stated in her affidavit that, based on the anticipated 29 customers Northern expects to gain, the proposed expansion fulfills the 25% investment test as well as the discounted cash flow analysis. Mr. Cencini elaborated upon these two tests during his testimony. In addition, Exhibit 2, an exhibit introduced at the hearing by Northern which compares various investment evaluation methodologies, indicated that the proposed expansion would also pass the Staff recommendation for investment evaluation in DR 91-212.

B. Staff

Staff presented no testimony or exhibits, but did ask Mr. Cencini to clarify several aspects of the Petition. During cross-examination, Mr. Cencini explained that Northern's anticipated construction costs (\$145,161.) were projected by Northern's engineering department, and that it was his belief that the actual costs would turn out to be lower. He agreed to file an exhibit reflecting actual construction costs after the project is completed.

During cross-examination Mr. Cencini also testified that the load profile of the projected new customers was sound. There are no so-called "anchor customers".

Staff took the position at the close of evidence that Northern's Petition was justified and should be granted.

III. COMMISSION ANALYSIS

[1] After reviewing Northern's Petition and supporting testimony, we agree that its request to expand the Stratham service area is reasonable, financially prudent, and consistent with the public good. The expanded service area would make natural gas available to a number of commercial customers who will provide a revenue source which justifies the necessary capital expenditures. Northern has also agreed to file an exhibit which reflects its actual construction costs for this project. The projected expansion satisfies the 25% investment test, as well as the more stringent discounted cash flow analysis and the test which Staff applied to EnergyNorth in DR 91-212.

Our order will issue accordingly.

ORDER

On March 9, 1994, Northern Utilities, Inc., filed a Petition for authorization to serve an expanded area in the Town of Stratham, New Hampshire (the "Petition"). After a duly noticed hearing and consideration of the evidence, it is

ORDERED, that the Petition and request of Northern Utilities, Inc., to serve an expanded service area within the Town of Stratham is hereby GRANTED, and it is

FURTHER ORDERED, that Northern Utilities, Inc., shall file an exhibit which indicates its final construction costs for the project approved by this order, within 30 days of the completion of such project.

By order of the New Hampshire Public Utilities Commission this twentieth day of April, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DE 76-72, Order No. 12,298, 61 NH PUC 158, June 11, 1976.

[N.H.] Re Northern Utilities, Inc., DE 84-244, Order No. 17,256, 69 NH PUC 608, Oct. 15, 1984.

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NH.PUC*04/20/94*[70464]*79 NH PUC 225*New England Telephone and Telegraph Company

[Go to End of 70464]

79 NH PUC 225

Re New England Telephone and Telegraph Company

DR 94-058

Order No. 21,193

New Hampshire Public Utilities Commission

April 20, 1994

ORDER granting proprietary treatment of network size, routing, and configuration data associated with a local exchange telephone carrier's application for approval of a special contract for Centrex service to be provided to Concord Hospital.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Proprietary treatment — Telephone network data —

Associated with special contract for Centrex service — Sensitivity of information vis-a-vis competitors. p. 225.

2. RATES, § 571

[N.H.] Telephone rate design — Switched-line service — Centrex service — Special contract rates — Confidentiality of related network data. p. 225.

BY THE COMMISSION:

ORDER

[1, 2] On April 4, 1994, New England Telephone and Telegraph Company (NET) filed a Motion for Proprietary Treatment with the New Hampshire Public Utilities Commission (Commission), seeking proprietary treatment of a special contract for Centrex service between NET and Concord Hospital, Inc. Included in the filing were the contract and supporting materials to explain the purpose of the contract, its cost basis and service details (Confidential Information).

WHEREAS, in its motion NET stated that the Confidential Information contains network size, routing and configuration data, special rate and billing information which falls within the scope of confidential, commercial and financial information exempt from public disclosure pursuant to RSA 91-A:5(IV); and

WHEREAS, the information submitted by NET is a necessary part of its filing and important for Staff to review in evaluating the special contract; and

WHEREAS, the Commission recognizes the need for full review of materials which support a proposed special contract; now therefore it is hereby

ORDERED, that the Motion for Protective Treatment of Concord Hospital, Inc. Special Contract for Centrex Service is granted to allow Staff review of the Special Contract and supporting material; and it is

FURTHER ORDERED, that this order is subject to the ongoing rights of the Commission, on its own motion or on the motion of any other party or member of the public, to reconsider this order in light of the standards of RSA 91-A.

By order of the New Hampshire Public Utilities Commission this twentieth day of April, 1994.

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NH.PUC*04/20/94*[70465]*79 NH PUC 225*Merrimack County Telephone

[Go to End of 70465]

79 NH PUC 225

Re Merrimack County Telephone

DE 94-059
Order No. 21,194

New Hampshire Public Utilities Commission

April 20, 1994

ORDER authorizing a local exchange telephone carrier to extend its special contract with a local fire department for emergency call conferencing service.

Page 225

1. RATES, § 553

[N.H.] Telephone rate design — Types of service — Emergency call conferencing service — For local fire department — Extension of special contract rates. p. 226.

BY THE COMMISSION:

ORDER

[1] On March 30, 1994, Merrimack County Telephone (MCT) filed with the New Hampshire Public Utilities Commission (Commission) an extension of its Special Contract No. MCT-004 under which it proposed to continue the provision of Emergency Call Conferencing for the Fire Department of the Town of Sutton, New Hampshire; and

WHEREAS, such conferencing service contract is an extension of Special Contract MCT-004 which was approved by Commission Order No. 18,671, dated May 13, 1987; and

WHEREAS, the original Special Contract MCT-004, approved by Order No. 18,671, extended by Order No. 20,453 (April 22, 1992) and Order No. 20,819 (April 19, 1993) expires on April 20, 1994; and

WHEREAS, the terms, conditions and rates for such service are the same as those approved by Order Nos. 18,671, 20,453 and 20,819; and

WHEREAS, the service provided will be used for the provision of communications for the protection of life and property and is therefore in the public good; it is hereby

ORDERED, that the Extension of Special Contract No. MCT-004, between Merrimack County Telephone and the Town of Sutton for effect from April 21, 1994 until April 20, 1995 be, and hereby is approved.

By order of the New Hampshire Public Utilities Commission this twentieth day of April, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Merrimack County Telephone, DE 87-67, Order No. 18,671, 72 NH PUC 174, May 13, 1987. [N.H.] Re Merrimack County Telephone, DE 92-071, Order No. 20,453, 77 NH PUC 193, Apr. 22, 1992. [N.H.] Re Merrimack County Telephone, DE 93-072, Order No. 20,819, 78 NH PUC 231, Apr. 19, 1993.

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NH.PUC*04/20/94*[70466]*79 NH PUC 226*Contel of New Hampshire, Inc., et al.

[Go to End of 70466]

79 NH PUC 226

Re Contel of New Hampshire, Inc., et al.

DF 93-240, DF 93-241
Order No. 21,195

New Hampshire Public Utilities Commission

April 20, 1994

ORDER making permanent an interim grant of protective treatment for employee-related information and purchase price terms contained in a stock purchase plan proposed by a group of telephone carriers. For the interim protective order, see Order No. 21,147, 79 NH PUC 146, supra.

1. CONSOLIDATION, MERGER, AND SALE, § 11

[N.H.] Commission jurisdiction — Public utility versus holding company transactions — Authority over franchise transfer plans — Authority over stock transfer plans — Jurisdiction over related financing matters. p. 228.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — For general terms of a proposed stock purchase plan — Confidentiality of employee-related terms thereunder —

Page 226

Confidentiality of stock purchase price and related terms — Telephone carriers. p. 228.

3. SECURITY ISSUES, § 1

[N.H.] Proposed stock transfer plan — Issues of confidentiality — Partial protective treatment. p. 228.

APPEARANCES: Orr and Reno, by Thomas C. Platt III, Esq. on behalf of GTE Corporation, et al.; Devine, Millimet and Branch by Frederick Coolbroth, Esq. and Anu Mather, Esq. on behalf

of MCTA, Inc.; McLane, Graf, Raulerson and Middleton by Steven Camerino, Esq. and Deborah Morazzi, Esq. on behalf of Wilton Telephone Company et al.; James Anderson, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; Amy Ignatius, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

GTE Corporation, Contel Corporation and Contel of New Hampshire, Inc. d/b/a GTE New Hampshire (collectively GTE) and MCTA, Inc., on December 3, 1993 jointly filed with the New Hampshire Public Utilities Commission (Commission) petitions for Approval of the Sale and Transfer of the Common Stock of Contel of New Hampshire, Inc. d/b/a GTE New Hampshire from Contel Corporation to MCTA, Inc. and Petition for Approval of the Issuance by Contel of New Hampshire, Inc. d/b/a GTE New Hampshire, Inc. of its Secured Guarantee of a Certain Loan from the Rural Telephone Finance Cooperative to MCTA, Inc. This was docketed as DF 93-240.

Also on December 3, 1993 GTE and MCTA, Inc. filed a Petition for Approval of the Sale and Transfer of the Common Stock of Contel of Maine, Inc. d/b/a GTE Maine from Contel Corporation to Maine Telecommunications Group, Inc. and a Petition for Approval of the Issuance by Contel of Maine, Inc. d/b/a GTE, of its Secured Guarantee of a Certain Loan from the Rural Telephone Finance Cooperative to Maine Telecommunications Group, Inc. This was docketed as DF 93-241 and the two cases were consolidated.

Also docketed was DF 94-021, which concerns the February 9, 1994 Joint Petition of MCTA, Inc., Wilton Telephone Company, Inc. and Hollis Telephone Company, Inc. for Approval of the Transfer for the Franchise, Business and Properties Comprising the Hollis Exchange of Contel of New Hampshire, Inc., to Hollis Telephone Company, Inc. and Petition for authorization and approval for reorganization. The procedural schedule in this docket closely tracks that of DF 93-240 and DF 93-241. The Petition was subsequently amended by a March 15, 1994 filing by MCTA, *et al.*

Finally, DF 94-071 concerns the joint petition of Maine Telecommunications, Inc. and ST Enterprises, Ltd. for Approval of the Transfer of the Business and Properties of Contel of Maine, Inc. to STE Enterprises, Ltd. or an Affiliate Thereof and a Joint Petition for Authority for STE Enterprises, Ltd. or an Affiliate Thereof to Operate as a Public Utility and To Issue its Promissory Note or Notes and Mortgage its Assets as Security Therefor and For the Establishment of Permanent Rates, filed on March 1, 1994.

During the duly noticed prehearing conference on February 16, 1994, the Commission heard arguments regarding the motions for interim confidentiality and protective treatment filed by GTE, and the arguments of the Office of Consumer Advocate (OCA) and Commission Staff (Staff) in partial opposition. Also argued was GTE's assertion that the Commission lacked jurisdiction over the transfer of Contel Common Stock to MCTA, Inc.

The Commission, on March 1, 1994, established a procedural schedule, granted requests for intervention, granted full protective treatment over employee information contained in the Stock

Purchase Agreement and in the documents supporting the Petitions and granted

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interim protective treatment over the Stock Purchase Agreement pending further consideration. See Order No. 21,147 (March 1, 1994).

This report and order will address the issues of the Commission's jurisdiction and confidentiality.

II. JURISDICTION

During the February 16, 1994 hearing, GTE argued that the Commission certainly had jurisdiction over the financing of the transfer and the reorganization matters once the Stock Purchase Agreement was complete but did not have jurisdiction over the transfer between GTE and MCTA, Inc. because MCTA, Inc. was not then anticipated to be a public utility but only a public utility holding company. The Commission Staff (Staff) noted that under *Appeal of Easton*, 125 N.H. 708 (1985), one could not so easily distinguish between review of financing terms and the case and the underlying purposes for the financing. Without full understanding of the stock transfer, the Commission could not evaluate the financing sought by MCTA, Inc. In addition, there are assets of Merrimack County Telephone Company, a regulated public utility, which are to be pledged as part of the transaction. For these two reasons, Staff argued the Commission had an obligation to evaluate the underlying stock transfer between GTE and MCTA, Inc. The Office of Consumer Advocate (OCA) concurred with these arguments.

On March 15, 1994, MCTA, Inc. filed a Motion to Amend Petition which the Commission granted on March 22, 1994. According to the motion, MCTA, Inc. would no longer act as an intermediate holding company but instead would operate as a public utility, to be renamed Contoocook Valley Telephone Company.

III. CONFIDENTIALITY

The remaining confidentiality dispute is over disclosure of terms and conditions other than the stock purchase amount and employee matters in the Stock Purchase Agreement. GTE sought complete non-disclosure of the Stock Purchase Agreement, arguing the materials constitute exempt financial information under RSA 91-A:5,IV. GTE further argued that it is engaged in other negotiations and evaluations of agreements in other states and to allow public disclosure of the full terms in the Stock Purchase Agreement could jeopardize those negotiations and proceedings.

OCA and Staff agreed to protective treatment over the employee information, which the Commission granted in Order No. 21,147. OCA and Staff opposed non-disclosure of other terms, however, arguing that although financial information is contained in the Stock Purchase Agreement it is not automatically exempt and the public's right to know the details outweighed the risks of disclosure to GTE. The Staff, however, agreed to non-disclosure of the stock purchase price and any other numbers contained within the Stock Purchase Agreement, given the significant financial information regarding the terms of the transactions contained within the petitions themselves. The financial terms contained within the petitions are not confidential.

IV. COMMISSION ANALYSIS

[1] We have reviewed the filings of the parties and Staff and considered the arguments advanced at the February 16, 1994 hearing. We find the Commission has jurisdiction to approve or disapprove the transfer of Contel common stock to MCTA, Inc. We believe that the transfer, particularly in light of the amended petition, constitutes a transfer of the "franchise, system and works" of one regulated New Hampshire utility to another. RSA 397:30.

Further, under *Easton*, we do not believe it would be appropriate to evaluate the financing involved in this transaction without full discovery and analysis of the transfer itself. Therefore, we find we have jurisdiction over the stock transfer as well as other aspects of the financing, reorganization and operations of the emerging public utilities.

[2, 3] We will grant the request for confidentiality made by GTE, *et al.* This will make permanent the protective treatment already granted on an interim basis in Order No. 21,147 (March 1, 1994). We recognize that

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GTE is negotiating and attempting to complete similar transactions throughout the country and that disclosure of the stock purchase terms could place them in a difficult position and could be sensitive in light of other negotiations. The stock purchase price and other terms appear to fall within the exemption provided in RSA 91-A:5,IV.

We believe that the information contained within the petitions themselves, which are not protected, supply sufficient detail regarding the significant terms of the transactions to allow all parties and the Staff to evaluate the impact of the transactions on the ultimate operating utilities and their ratepayers. We will not, therefore, authorize disclosure of the Stock Purchase Agreement itself.

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 GTE Corporation, Contel Corporation and Contel of New Hampshire, Inc. d/b/a GTE New Hampshire that the New Hampshire Public Utilities Commission lacks jurisdiction over the transfer of Contel of New Hampshire common stock to MCTA, Inc. is denied; and it is

FURTHER ORDERED, that the request of GTE Corporation, Contel Corporation and Contel of New Hampshire, Inc. d/b/a GTE New Hampshire and MCTA, Inc. for protective treatment over the terms and conditions contained within the Stock Purchase Agreement, which has previously been subject to interim protective treatment is granted, as the information appears to be within the exemption of RSA 91-A:5,IV.

By order of the New Hampshire Public Utilities Commission this twentieth day of April, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Contel of New Hampshire, Inc., DF 93-240, Order No. 21,147, 79 NH PUC 146, Mar. 1, 1994.

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NH.PUC*04/20/94*[70467]*79 NH PUC 229*Corporate Telemanagement Group of New Hampshire, Inc.

[Go to End of 70467]

79 NH PUC 229

Re Corporate Telemanagement Group of New Hampshire, Inc.

DE 94-061

Order No. 21,196

New Hampshire Public Utilities Commission

April 20, 1994

ORDER authorizing an interexchange telephone carrier to introduce three new service offerings relating to "800" calling for travelers and teleconferencing service options.

1. SERVICE, § 468

[N.H.] Telephone — Toll services — Introduction of new options — "800" calling for travelers — Enhanced teleconferencing features. p. 229.

BY THE COMMISSION:

ORDER

[1] On April 7, 1994, Corporate Telemanagement Group of New Hampshire, Inc. (CTG) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce three new products: "800 Check-In," "800 Travel-The Silver Card," and "Teleconferencing;" and

WHEREAS, CTG filed tariff pages containing the necessary tariff changes to reflect the offering; and

WHEREAS, "800 Check-In" is a switched

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access, incoming only, usage sensitive offering requiring a local telephone line, whereby the customer can dial a preassigned four-digit code in order to route calls to the customer's local telephone number; and

WHEREAS, "800 Travel-The Silver Card" allows the customer to call an 800 number and an authorization code to gain access to CTG's network from anywhere in the United States; and

WHEREAS, "Teleconferencing" is a package of conference calling features, offering automated operation, two levels of operator assistance, and a menu of customized conference call services; and

WHEREAS, the offering expands the choice of telephone services available to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; and

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

ORDERED *NISI*, that CTG's petition to offer "800 Check-In," "800 Travel-The Silver Card," and "Teleconferencing" hereby is approved; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of CTG's NHPUC Tariff No. 1 are approved:

- Sheet 1, Fifth Revision
- Sheet 4, Third Revision
- Sheet 33, First Revision
- Sheet 33.1, Original
- Sheet 34, First Revision
- Sheet 36, Third Revision
- Sheet 38, Original
- Sheet 38, Original
- Sheet 38, Original;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, CTG publish an attested copy of this Order *Nisi* in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 2, 1994 and is to be documented by affidavit filed with this office on or before May 17, 1994; and it is

FURTHER 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 17, 1994; and it is

FURTHER ORDERED, that CTG file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective May 20, 1994, 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 April, 1994.

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NH.PUC*04/20/94*[70468]*79 NH PUC 230*Granite State Electric Company

[Go to End of 70468]

79 NH PUC 230

Re Granite State Electric Company

DE 94-015

Order No. 21,197

New Hampshire Public Utilities Commission

April 20, 1994

ORDER formally authorizing a heretofore inadvertently unlicensed existing aerial electric distribution line crossing over Mascoma Lake.

1. ELECTRICITY, § 6

[N.H.] Wires and cables — Aerial distribution lines — Issues of licensing and authorization — Ratification of inadvertently unlicensed line — Crossing of public waters as a factor. p. 231.

BY THE COMMISSION:

Page 230

ORDER

[1] On January 28, 1994 Granite State Electric Company (Petitioner) filed with the New Hampshire Public Utilities Commission (Commission) a petition under RSA 371:17 for the licensing of an existing aerial electric distribution line over and across certain Public Waters in the Town of Enfield, New Hampshire; and

WHEREAS, on March 7, 1994, March 16, 1994, April 7, 1994, and April 15, 1994, the Petitioner filed revised petitions and documentation to clarify its request; and

WHEREAS, in order to meet the requirements of service to the public, the Petitioner must maintain electric distribution lines over and across those certain Public Waters, which lines are an integral part of its electrical system; and

WHEREAS, in order to discharge its obligations to the public to provide safe electric service, the Petitioner has reviewed all of its installations of lines crossing Public Waters; and

WHEREAS, the review has disclosed an instance where a crossing had not been licensed; and

WHEREAS, the location, construction, and design of this crossing the Petitioner is seeking to license are specifically identified in this petition; and

WHEREAS, the definition of "Public Waters" contained in the limited purposes of RSA 371:17 includes "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe"; and

WHEREAS, the Commission prescribes this subject crossing to be over and across Public Waters; and

WHEREAS, the Mascoma Lake crossing consists of an aerial single phase conductor of Circuit No. 4401 operated at 4.16 kV from the pole on eastern shore of Lake Mascoma westward to the southward of two islands, a span of approximately 630 feet; and

WHEREAS, a map and profile of the crossing is on file with this commission; and

WHEREAS, the electric line clearance as depicted on Granite State Electric Company's table meets the applicable standards and specifications of the 1993 National Electrical Safety Code; and

WHEREAS, Staff has verified that this clearance exceeds the minimum requirements of the 1993 National Electrical Safety Code; and

WHEREAS, the Commission finds such water crossing necessary for the Petitioner to meet its obligations to serve customers within its authorized franchise area, thus being 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 this matter before the Commission no later than May 17, 1994; and it is

FURTHER ORDERED, that the Petitioner effect said notification by: (1) causing an attested copy of this order to be published no later than May 2, 1994, once in a newspaper having general circulation in the area where the crossing is located; (2) providing, pursuant to RSA 541-A:22, a copy of this order to the Enfield, New Hampshire Town Clerk, by First Class U.S. mail, postmarked on or before May 2, 1994; and (3) documenting compliance with these notice provisions by affidavit(s) to be filed with the Commission on or before May 17, 1994; and it is

FURTHER ORDERED *NISI*, that authority be, and hereby is granted, pursuant to RSA 371:17 *et seq.* to Granite State Electric Company to maintain and operate the aforementioned crossing of a aerial electric line over the Mascoma Lake in the Town of Enfield, New Hampshire, effective May 20, 1994 unless the Commission otherwise directs prior to the proposed effective date; and it is

FURTHER ORDERED, that all reconstruction hereafter performed conform to the requirements of the National Electrical Safety Code and all other applicable safety standards in

existence at that time.

By order of the New Hampshire Public Utilities Commission this twentieth day of

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April, 1994.

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NH.PUC*04/20/94*[70469]*79 NH PUC 232*New England Power Company

[Go to End of 70469]

79 NH PUC 232

Re New England Power Company

DE 94-016

Order No. 21,198

New Hampshire Public Utilities Commission

April 20, 1994

ORDER formally authorizing heretofore inadvertently unlicensed existing aerial electric transmission lines crossing over Comerford Pond.

1. ELECTRICITY, § 7

[N.H.] Wires and cables — Aerial transmission lines — Issues of licensing and authorization — Ratification of inadvertently unlicensed lines — Crossing of public waters as a factor. p. 232.

BY THE COMMISSION:

ORDER

[1] On January 28, 1994 New England Power Company (Petitioner) filed with the New Hampshire Public Utilities Commission (Commission) a petition under RSA 371:17 for the licensing of lines over certain Public Waters in the Town of Littleton, New Hampshire; and

WHEREAS, on March 7, 1994, March 16, 1994, and April 7, 1994, the Petitioner filed revised petitions and documentation to clarify its request; and

WHEREAS, in order to meet the requirements of service to the public, the Petitioner must maintain electric transmission lines over those certain Public Waters, which lines are an integral part of its electrical system; and

WHEREAS, in order to discharge its obligations to the public to provide safe electric service, the Petitioner has reviewed all of its installations of lines crossing Public Waters; and

WHEREAS, the review has disclosed instances where a crossing has not been licensed; and

WHEREAS, the location, construction, and design of these crossings the Petitioner is seeking to license are specifically identified in the petition; and

WHEREAS, the definition of "Public Waters" contained in the limited purposes of RSA 371:17 includes "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe"; and

WHEREAS, the Commission prescribes this subject crossing to be over Public Waters; and

WHEREAS, the Comerford Pond crossing consists of three aerial conductors of Circuit No. C-203 operated at 230.0 kV from structure #33 to structure #34, and three aerial conductors of Circuit No. D-204 operated at 230.0 kV from structure #32 to structure #33; and

WHEREAS, a map and plan of the crossing are on file with this commission; and

WHEREAS, the electric line clearances as depicted on the New England Power Company's table meet the applicable standards and specifications of the 1984 National Electrical Safety Code which was in effect in 1986 when the height of the lines was increased; and

WHEREAS, Staff has verified that these clearances do exceed the minimum requirements of the 1984 National Electrical Safety Code that was in effect when the height of the lines was increased in 1986, thus meeting the applicable standards and specifications of the 1993 National Electrical Safety Code Rule 013.B.3; and

WHEREAS, the Commission finds such water crossing necessary for the Petitioner to meet its obligations to serve customers within its authorized franchise area, thus being in the public good; and

WHEREAS, the public should be offered the opportunity to respond in support of, or in

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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 May 17, 1994; and it is

FURTHER ORDERED, that the Petitioner effect said notification by: (1) causing an attested copy of this order to be published no later than May 2, 1994, once in a newspaper having general circulation in the area where the crossing is located; (2) providing, pursuant to RSA 541-A:22, a copy of this order to the Littleton, New Hampshire Town Clerk, by First Class U.S. mail, postmarked on or before May 2, 1994; and (3) documenting compliance with these notice provisions by affidavit(s) to be filed with the Commission on or before May 17, 1994; and it is

FURTHER ORDERED *NISI*, that authority be, and hereby is granted, pursuant to RSA 371:17 *et seq.* to New England Power Company to maintain and operate the aforementioned crossing of aerial electric lines over the Comerford Pond in the Town of Littleton, New Hampshire, effective May 20, 1994 unless the Commission otherwise directs prior to the proposed effective date; and it is

FURTHER ORDERED, that all reconstruction hereafter performed conform to the requirements of the National Electrical Safety Code and all other applicable safety standards in existence at that time.

By order of the New Hampshire Public Utilities Commission this twentieth day of April, 1994.

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NH.PUC*04/21/94*[70470]*79 NH PUC 233*MCI Telecommunications Corporation of New Hampshire

[Go to End of 70470]

79 NH PUC 233

Re MCI Telecommunications Corporation of New Hampshire

DE 94-062

Order No. 21,199

New Hampshire Public Utilities Commission

April 21, 1994

ORDER authorizing an interexchange telephone carrier to extend the availability of certain short-term discounted promotional rates for a regional intraLATA toll calling plan as well as its "Best Friends" promotion.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — Short-term discounted promotional rates — Regional intraLATA calling plan — "Best Friends" calling plan — Extension of promotional period — Factors — Fostering of competition. p. 233.

BY THE COMMISSION:

ORDER

[1] On April 12, 1994, MCI Telecommunications Corporation of New Hampshire (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to extend the MCI Vision Regional Promotion and the fee waiver associated with the Best Friends Promotion; and

WHEREAS, the MCI Vision Regional Promotion offers customers who enroll in the promotion an intrastate outbound usage rate of \$.2280 for switched access and \$.1390 for dedicated access and is proposed to be extended through June 30, 1994; and

WHEREAS, the Best Friends Promotion waives the \$1.00 monthly fee for the first three full or partial months of service for new customers of Execunet and Credit Card Services and

MCI proposes to extend the waiver promotion through July 1, 1994; and

WHEREAS, the proposed promotion extensions expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; it is therefore

ORDERED, that MCI's request to extend its Vision Regional Promotion through June 30, 1994, and the waiver of its monthly fee associated with the Best Friends Promotion through July 1, 1994, hereby is approved; and it is

FURTHER ORDERED, that the following tariff pages for MCI's NHPUC No. 1 - are approved:

6th Revised Page 22
2nd Revised Page 22.1;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-first day of April, 1994.

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NH.PUC*04/21/94*[70471]*79 NH PUC 234*MCI Telecommunications Corporation of New Hampshire

[Go to End of 70471]

79 NH PUC 234

Re MCI Telecommunications Corporation of New Hampshire

DE 94-062
Order No. 21,200

New Hampshire Public Utilities Commission

April 21, 1994

ORDER approving an interexchange telephone carrier's proposals for short-term discounted promotional rates for certain intraLATA toll calling plans as well as for a prepaid calling card service.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special intraLATA calling plans —

Short-term discounted promotional rates — Earning of credits for minimum monthly incremental usage — Introduction of prepaid calling card option. p. 234.

BY THE COMMISSION:

ORDER

[1] On April 12, 1994, MCI Telecommunications Corporation of New Hampshire (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce the MCI Vnet IntraLATA Promotion and Option V (MCI Prepaid Calling Card Service); and

WHEREAS, MCI filed these tariff pages for effect May 12, 1994; and

WHEREAS, the MCI Vnet IntraLATA Promotion offers a credit to customers who commit to a monthly incremental increase in outbound intraLATA usage; and

WHEREAS, the Vnet Customer's account will be credited an amount based upon its minimum incremental intraLATA usage commitment and the number of lines carrying intraLATA service at each location as follows:

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

<i>Incremental Commitment</i>	<i>Maximum Lines</i>	<i>Credit</i>
\$150.00	4	\$ 350.00
\$150.00	8	\$ 700.00
\$150.00	12	\$1,050.00
\$500.00	16	\$1,400.00
\$875.00	17+	\$1,750.00; and

WHEREAS, the credits will be applied in the Customer's fourth month's invoice following enrollment in the promotion; and

WHEREAS, MCI proposes to introduce Option V - MCI Prepaid Calling Card Service and customers will be able to originate and

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terminate calls in the State of New Hampshire; and

WHEREAS, the MCI Prepaid Calling Card Service cards may be obtained from MCI or from agents of MCI in various units of denominations with a per-unit value of \$.60, inclusive of all taxes; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages for MCI's NHPUC No. 1 - are approved:

- 29th Revised Page 1
- 16th Revised Page 2
- 18th Revised Page 3.1
- 7th Revised Page 4
- Original Page 22.2
- Original Page 22.3
- Original Page 22.4
- 2nd Revised Page 24
- Original Page 59.7;

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 of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 2, 1994 and is to be documented by affidavit filed with this office on or before May 17, 1994; and it is

FURTHER 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 17, 1994; and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective May 23, 1994, 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 April, 1994.

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NH.PUC*04/21/94*[70472]*79 NH PUC 235*AT&T Communications of New Hampshire, Inc.

[Go to End of 70472]

79 NH PUC 235

Re AT&T Communications of New Hampshire, Inc.

DE 94-053
Order No. 21,201

New Hampshire Public Utilities Commission

April 21, 1994

ORDER authorizing an interexchange telephone carrier to extend the period during which short-term discounted promotional rates are available under certain intraLATA toll calling plans

for customers who use private branch exchange or automatic route selection systems, or who use automatic dialing devices.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — Short-term discounted promotional rates — Rerouting of intraLATA calls — Credit for reprogramming costs — Use of private branch exchange, automatic route selection, or automatic dialing equipment — Extension of promotional time frame. p. 236.

BY THE COMMISSION:

ORDER

Page 235

[1] On March 18, 1994, AT&T filed with the Commission a petition seeking to extend its intraLATA Dialing Plan Promotion through June 30, 1994; and

WHEREAS, on January 18, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce its intraLATA Dialing Plan Promotion; and

WHEREAS, this promotion was specifically for customers who use Private Branch Exchange (PBX), Automatic Route Selection (ARS) systems or Automatic Dialers (AD) to route intraLATA traffic; and

WHEREAS, the promotion offers customers who reprogram their PBX, ARS or AD to route all intraLATA traffic to AT&T, a credit of \$250 to offset reprogramming costs and an additional onetime credit to customers who use ADs and meet or exceed specified monthly incremental usage levels; and

WHEREAS, On February 15, 1994, the Commission granted AT&T *nisi* approval to offer the intraLATA Dialing Plan Promotion by Order No. 21,130 for effect March 16, 1994 through March 31, 1994; and

WHEREAS, the promotion is available to new and existing customers who subscribe to AT&T Software Defined Network Service, AT&T MEGACOM PLUS, AT&T MEGACOM PLUS with the UniPlan Discount Option, or AT&T OPTIMUM, as well as existing AT&T MEGACOM WATS customers; and

WHEREAS, the extension of the promotional offering expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that AT&T's request to extend its intraLATA Dialing Plan Promotion through June 30, 1994, hereby is approved; and

FURTHER ORDERED, that the following tariff pages of AT&T Tariff No. 1 - CUSTOM NETWORK SERVICES, are approved:

Section 2: 3rd Revised Page 11

Section 3: 2nd Revised Page 12; 1st Revised Page 13

Section 11: 3rd Revised Page 9;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-first day of April, 1994.

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NH.PUC*04/21/94*[70473]*79 NH PUC 236*AT&T Communications of New Hampshire, Inc.

[Go to End of 70473]

79 NH PUC 236

Re AT&T Communications of New Hampshire, Inc.

DE 94-054

Order No. 21,202

New Hampshire Public Utilities Commission

April 21, 1994

ORDER approving an interexchange telephone carrier's plan to eliminate holiday discount offerings for business services such as MEGACOM, 800 Readyline, and "Plan Q" services, since holiday discounts were originally designed for the benefit of residential customers, who have fewer other discount and promotional options than do business customers.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Interexchange carrier — Holiday rate discounts — Elimination as to business services — Retention as to residential services. p. 237.

BY THE COMMISSION:

ORDER

Page 236

[1] On March 18, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to eliminate holiday discounts for business services; and

WHEREAS, holiday discounts were historically designed to benefit residential customers; and

WHEREAS, business customers have additional access to specifically targeted promotions, term plans, and volume discounts; and

WHEREAS, the elimination of holiday discounts is applicable to AT&T: MEGACOM WATS; MEGACOM PLUS; UniPlanSM, and associated 800 READYLINE[®], and MEGACOM 800; One Line WATS; Distributed Network Services (DNS); Optimum; and Plan Q Service; and

WHEREAS, the petition focuses the choice of telephone services available to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; and

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

ORDERED *NISI*, that AT&T's petition to eliminate holiday discounts on business services hereby is approved; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 1 are approved:

Section 3:

1st Revised Page 6

3rd Revised Page 11

Section 7:

1st Revised Page 5

Section 8:

1st Revised Page 5

Section 11:

1st Revised Page 6;

and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 4 are approved:

Table of Contents

2nd Revised Page 7

Section 3:

1st Revised Page 11;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T publish an attested copy of this Order *Nisi* in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 2, 1994 and is to be documented by affidavit filed with this office on or before May 17, 1994; and it is

FURTHER 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 17, 1994; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than thirty days from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective May 23, 1994, 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 April, 1994.

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NH.PUC*04/22/94*[70474]*79 NH PUC 238*Public Service Company of New Hampshire

[Go to End of 70474]

79 NH PUC 238

Re Public Service Company of New Hampshire

DR 94-018

Order No. 21,203

New Hampshire Public Utilities Commission

April 22, 1994

ORDER granting protective treatment of certain coal rail and municipal service contract information filed in the course of an electric utility's fuel and purchased power adjustment clause proceeding.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of coal rail and municipal service contract terms — In fuel and purchased power adjustment clause proceeding — Factors — Commercial and competitive disadvantages if disclosed. p. 238.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 63

[N.H.] Procedure — Evidence — In fuel and purchased power adjustment clause proceeding

— Protective treatment — Of coal rail and municipal service contract terms — Electric utility. p. 238.

BY THE COMMISSION:

ORDER

[1, 2] On February 7, 1994, Public Service Company of New Hampshire ("PSNH") filed its proposed Fuel and Purchased Power Adjustment Clause ("FPPAC") to be effective from June 1, 1994 through November 30, 1994. A procedural schedule was approved on March 16, 1994 (Order No. 21,159).

PSNH subsequently filed three motions for protective orders relating to data requests propounded by Commission Staff and the Office of Consumer Advocate ("OCA"). Two such motions were filed on April 12, 1994 and the third was filed on April 15, 1994. These motions seek protective treatment for information which relates to inquiries into the following areas: Merrimack coal rail prices; transaction arrangements with Town of Madison (Maine) Department of Electric Works; and certain slides used in the Competitive Task Force's presentation to PSNH management.

PSNH contends that the material requested for which it seeks protective treatment constitutes confidential information, which if disclosed, would compromise its competitive bargaining positions in the circumstances described.

Staff has no objection to these motions. Staff represents that OCA has no objection to these motions provided that such concurrence does not prejudice its position in other proceedings.

The Commission recognizes that it is important for Staff and OCA to have the opportunity to request and review certain confidential information in order to carry out their duties. The Right-to-Know Law, RSA Chapter 91-A, generally prescribes public access to Commission records and filings, but materials that are deemed confidential commercial information are expressly exempt from the Chapter's access requirements. RSA 91-A:5,IV. In evaluating whether information filed with the Commission is to be deemed exempt from the requirements of the Right-to-Know Law, the Commission must weigh the benefits of disclosure to the public against the benefits of nondisclosure. *Mans v. Lebanon School Board*, 112 N.H. 160 (1972). In the instant case, PSNH has made a sufficient showing that the requested materials constitute confidential and commercially sensitive information which should be exempt from public disclosure. In light of the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order Re: Madison Electric Works Data, is hereby GRANTED; and it is

FURTHER ORDERED, that PSNH's Motion for Protective Order Re: Rail Prices for Merrimack Coal, is hereby GRANTED; and it is

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FURTHER ORDERED, that PSNH's Motion for Protective Order Re: Competitive Task

Force Slide Presentation, is hereby GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Commission Staff, or on the motion of any other party or member of the public, to reconsider this Order in light of the standards of RSA 91-A.

By order of the New Hampshire Public Utilities Commission this twenty-second day of April, 1994.

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NH.PUC*04/25/94*[70475]*79 NH PUC 239*Energy Policy Act of 1992

[Go to End of 70475]

79 NH PUC 239

Re Energy Policy Act of 1992

DE 93-071

Order No. 21,204

New Hampshire Public Utilities Commission

April 25, 1994

ORDER, in a legislatively mandated proceeding designed to evaluate the reliability of qualifying cogeneration and small power production facilities, refusing to discontinue the protective treatment accorded associated data responses by prior order, but also declining to expand the scope of such protective treatment. The parties to the proceeding, including the "Bio-Mass" qualifying facilities, therefore are directed to comply with all previous data requests under the Energy Policy Act of 1992 as to ownership, project financing, operations, fuel supply, and budgets.

For the prior related orders, see Order No. 21,114 (79 NH PUC 48) and Order No. 21,131 (79 NH PUC 80), supra.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of responses to data requests as to qualifying facility status — Continuation of protective treatment — Factors — Legislatively initiated proceeding — Reliance by parties on previous protective orders — But no expansion of scope of protection. p. 242.

2. COGENERATION, § 5

[N.H.] Qualifying facility status — Energy Policy Act of 1992 — Necessity of answering data requests — Issues of project ownership, financing, and operation — Limited protective treatment. p. 242.

APPEARANCES: Brown, Olson & Wilson by Bryan K. Gould, Esq. and Robert A. Olson, Esq. on behalf of Bristol Energy Corporation, Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power - Tamworth, Inc., TIMCO, Inc. and Whitefield Power and Light Company, and by Daniel W. Allegretti, Esq. on behalf of American Hydro, Inc. - Peterborough and Energy Tactics, Inc.; Rath, Young, Pignatelli and Oyer by Brian T. Tucker, Esq. on behalf of Public Service Company of New Hampshire; Orr and Reno by Howard M. Moffett, Esq., on behalf of Granite State Hydropower Association; Michael W. Holmes, Esq. of the Office of the Consumer Advocate on behalf of residential ratepayers; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

The New Hampshire Public Utilities Commission (Commission) opened DE 93-071 under mandate of the United States Congress to

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evaluate the reliability of qualifying facilities. See Energy Policy Act of 1992 (EPACT). As part of its investigation, the Commission issued data requests to qualifying facilities throughout the state. Most responded; some challenged the Commission's right to compel such information.

On January 18, 1994, the United States Court of Appeals for the First Circuit affirmed the United States District Court for the State of New Hampshire in its dismissal of the action of Bristol Energy Corporation d/b/a Alexandria Power Associates, Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power Inc., Pinetree Power-Tamworth, Inc., TIMCO, Inc., Whitefield Power and Light Company (collectively the Bio-mass Group), American Hydro, Inc. - Peterborough (American) and Energy Tactics, Inc. (Energy Tactics) against the New Hampshire Public Utilities Commission (Commission). *See Bristol Energy Corp. et al. v. State of New Hampshire Public Service Commission*, No. 93-1835, Slip Op. (1st Cir. January 18, 1994).

On January 31, 1994, the Commission ordered the ten qualifying facilities to supply to the Commission by February 14, 1994 the information originally requested in the Staff data requests of May 28, 1993. These responses would be subject to protective order granted all qualifying facilities in Commission Report and Order No. 20,906 (July 12, 1993).

On February 2, 1994, the Bio-mass Group filed an Amended Motion to Expand Protective Order and for Immediate Consideration (Motion to Expand), and on February 9, 1994 were joined in the Motion to Expand by American and Energy Tactics.

In response, on February 14, 1994 Staff filed a Request to Rescind Established Protective Order and a Memorandum in Support of Staff's Objection to Expanded Protective Treatment and

Request to Rescind Previous Protective Order (Motion to Rescind). Public Service Company of New Hampshire (PSNH) also filed an Objection to Biomass Group Motion to Expand Protective Order and a Motion to Eliminate Protective Treatment on February 14, 1994.

On February 18, 1994 the Commission issued Report and Order No. 21,131 suspending the date by which data responses must be filed pending resolution of the pleadings on protective treatment and ordering that further comments be submitted by February 28, 1994 and scheduling oral argument for March 4, 1994. On February 28, 1994, the Bio-mass Group, American and Energy Tactics filed comments and objections to the Commission Staff (Staff) and PSNH Motions and reiterated their arguments in support of their Motion to Expand. The Office of Consumer Advocate (OCA) filed a Concurrence to Staff's Motion to Rescind or, in the alternative, requested access to the filed data under protective treatment.

Following oral arguments on March 4, 1994, the Commission established a schedule for response and comments. On March 17, 1994, Granite State Hydropower Association filed Comments and Objections to Rescission of Protective Order. The Bio-mass Group *et al.* filed its Response to Oral Arguments on March 21, 1994. OCA and Staff filed their comments on the Bio-mass Group's Response on March 25 and March 28, 1994 respectively. On April 1, 1994 the Bio-mass Group filed an untimely Response to Previously Undisclosed Facts and Arguments.

This report and order will address the requests for expanded confidentiality filed by the Bio-mass Group *et al.* and for rescission of confidential treatment filed by PSNH, OCA and Staff.

II. POSITIONS OF THE PARTIES AND STAFF

This controversy has generated lengthy filings from most participants. For a full understanding of all issues, please consult the filings. The following summaries are designed to highlight major arguments.

A. *Bio-mass Group, et al.*

Bio-mass, American and Energy Tactics argue in February 2 and February 9, 1994 filings that the data responses should be accorded protective treatment beyond that

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already ordered or that customarily given by this Commission. This "extra" protection would include review of the materials only by those staff directly involved in the case, execution of individual non-disclosure agreements, maintaining a log of those viewing the materials, returning all documents and notes at the end of the proceeding, restrictions on the method of compiling and aggregating data, such that no individual providers could be identified and a right of Bio-mass to review and object to the Staff's compilation report prior to dissemination.

In its February 28, 1994 response to the February 14, 1994 requests for rescission of protective treatment filed by PSNH and Staff, the debate shifted from the form of protective treatment to whether the information itself is a trade secret and should be subject to protection under RSA 350-B as well as protected as sensitive commercial or financial data under RSA 91-A:5, IV. This focus has continued in subsequent filings by many participants.

In response to Staff's presentation at the March 4, 1994 hearing, the Bio-mass Group, on March 21, 1994 filed its Response to Oral Arguments. That filing challenged the relevance of the Staff's exhibits, noting some applied to particular facilities but not to all, the information contained did not constitute voluntary disclosure and they do not justify rescission of the prior protective order. This filing also asked that Exhibit 1 be stricken from the record.

On April 1, 1994 the Bio-mass Group filed a response to filings of the Staff, Hydropower SPPs and OCA, further arguing that the arguments advanced do not support rescission of the protective order.

B. Public Service Company of New Hampshire

PSNH, on February 14, 1994, objected to the expanded protective treatment requested by the Bio-mass Group, arguing that neither the Energy Policy Act of 1992 (EPACT) nor the Bristol Energy decision mandate protective treatment. In fact, PSNH asserted, the evaluation required by EPACT would be "emasculated" by non-disclosure of qualifying facilities' financial and operational conditions.

PSNH also argued that an aggregate summary of qualifying facility responses would not be adequate. PSNH asserted that the exemptions in RSA 91-A:5,IV should not apply to this information and the Commission was in error in granting protective treatment in its July 1993 protective order. PSNH requested that the original protective order be rescinded as it related to the Bio-mass Group, with the exception of TIMCO, Inc. and Bristol Energy Corporation with which it has reached agreements. PSNH also excluded those qualifying facilities which filed responses in reliance on the prior Commission order granting protective treatment.

C. Granite State Hydropower Association

On March 17, 1994, after the hearing, the Association filed Comments and Objections to Rescission of Protective Order. The Association argued that its members relied upon the Commission's prior order granting protective treatment and there have been no arguments advanced to lead the Commission to a different conclusion regarding the applicability of RSA 91-A:5,IV to the qualifying facilities' data responses.

D. Office of the Consumer Advocate

OCA filed a Concurrence to Staff's Motion to Rescind or, in the alternative, requested access to the filed data under protective treatment. OCA argued the information was commercial information but because the Bio-mass Group could not sell power on the open market, it could not be competitively disadvantaged and therefore, the exemption for sensitive commercial information does not apply.

At the March 4, 1994 hearing, OCA argued that under EPACT, the materials should not be protected. OCA cited 16 U.S.C. § 2631(a) and (b) which mandate consumer advocates and other intervenors access to all information available to other parties if such information is relevant to the issues on which one intervened.

On March 25, 1994 OCA responded to the Bio-mass Group's filing, arguing that their

critique of documents introduced by Staff at the March 4, 1994 hearing are not persuasive and that the air of secrecy exhibited by the Bio-mass Group in a federally mandated proceeding further compelled disclosure.

E. Staff

Staff's February 14, 1994 filing sought to rescind the existing protective order as it relates to all data responses, except those filed as a result of litigation. Staff asserted that the information did not fall within the exemption of RSA 91-A. While the data responses contain commercial information, staff argued there is no cognizable harm to the Bio-mass Group if the information were disclosed, as they have no competitors and there are no further negotiations taking place which could be affected by disclosure.

At the March 4, 1994 hearing, Staff presented evidence that there has already been considerable disclosure of information regarding woodburning plants, such as type of boiler used, the legal and organizational structure and financing to develop such plants. Staff also argued that because the same law firm (and in some cases the same lawyer) has represented the individual small power producers, whatever protection sensitive information might have warranted no longer seems appropriate. According to Staff, therefore, assertions that this information is a trade secret under RSA 350-B or RSA 91-A, or that it is commercially or financially sensitive under RSA 91-A, are without merit.

Staff further noted in its March 28, 1994 filing that Bio-mass dismissed the materials produced at the March 16, 1994 hearing as having little probative value but did not specifically deny the documents' accuracy.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the numerous filings of the parties and Staff in this matter and considered the arguments advanced at the March 16, 1994 hearing. Because we ruled on this issue over six months ago, and understand that numerous parties and qualifying facilities have relied on our prior order, we feel bound by the terms of that order, unless there are changed circumstances so significant as to lead us to a different conclusion. We remain convinced that the information contained within the data responses should remain subject to protective order, as previously granted in Report and Order No. 20,906 (July 12, 1993). Nothing advanced thus far convinces us we should reach a different conclusion today, particularly in light of the nature of this proceeding, that is, one that is legislative in nature and not one in which rights of parties are in jeopardy. On the whole, the balance required in any question of disclosure under the Right to Know law still tips in favor of protection as previously ordered.

We recognize the Staff's arguments that information regarding the organizational and financial structure of the small power producers we are now dealing with have been made public in the past, in part by the small power producers themselves and we accept that information regarding engineering standards and boiler operations appears to be well known. We do not, however, believe that these public disclosures address the same information requested in the data requests themselves. We still believe that the information requested in the data requests fall within the exemption for commercial and financial information, RSA 91-A:5,IV. We find no basis, however, to conclude that the information is a trade secret under RSA 350-B or RSA 91-A. For the reasons stated below, we will deny the requests of PSNH, OCA and Staff to

rescind some or all of our prior protective order.

The balancing required under *Zenith Radio Corporation v. Matsushita Electric Industrial Co.*, 529 F. Supp. 866 (D.Pa. 1981) and as adopted in *Re New England Telephone and Telegraph Co., Inc.*, 74 NH PUC 307 (1989), leads us to conclude that the harm of disclosure outweighs the benefits of public disclosure of the data responses. The conditions that led us to conclude the data responses should be protected are still in effect today. The only condition which might have changed in the intervening months is whether negotiations are still on-going. We asked that the small power producers and PSNH make one additional effort at

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negotiation during our scheduling hearing on April 4, 1994 in DR 93-179, and, according to the April 19, 1994 letter of PSNH President W. T. Frain, Jr., the parties to the negotiations are making such an effort. We recognize the potential for disruption of those negotiations by releasing the data responses. It strikes us as appropriate, therefore, to continue to treat the data responses as protected.

Having found a continuing need to protect the data responses, we must disagree with the Bio-mass Group that there is a need for "extra" protection. We have in place procedures for protection of confidential materials which has served us and the parties before us well for years. We have denied requests somewhat similar to that of the Bio-mass Group in the past, most recently in DE 93-204, New England Telephone Company's "Spring View". We will not grant any special protection beyond that customarily given, that is, confidential materials will be kept segregated from the public and when not being used, kept in locked cabinets. Staff members reviewing the materials are bound by the Commission's order not to disclose the contents of the materials, other than as required in the compilation report to be prepared as part of the EPACT mandated analysis of qualifying facilities.

We will deny Bio-mass' request for review (and presumably editing) of the Staff's report prior to its filing. If the small power producers believe the information is inaccurate or misleading, they have an opportunity to file such comments with the Commission as part of its analysis of the report, and cross examine the Staff witnesses during the hearings in this case.

In every phase of this case we have been, and will continue to be responsive to the concerns of the qualifying facilities while still meeting our mandate under EPACT to engage in a full evaluation of the reliability of qualifying facilities. We believe we have struck a workable balance. Of course, if in the development of the record it becomes apparent that we must pursue particular information in greater detail in order to meet our mandate, the standards for disclosure may have to be amended. We expect that not to be the case, however.

We will deny the request of Bio-mass that Staff's Exhibit 1, a report of Duff and Phelps entitled Fixed Income Research for Pinetree Power, Inc. be stricken from the record. The letter submitted by Staff on March 28, 1994, found at Attachment B, indicates that Duff and Phelps has no objection to the use of the document in this proceeding which we believe refutes the arguments of Bio-mass that the material has been misappropriated.

We disagree with the arguments of OCA in this matter, that EPACT compels disclosure of the data responses to it and all other intervenors. The sections cited by OCA, §2631(a) and (b),

relate to ratemaking and rate design cases. This is not one of those cases. We consider this docket to be legislative in nature, conducting a general evaluation as mandated by Congress, in accordance with 16 U.S.C. §2612(d)(10)(A). There are no property or other rights at stake. Rates are not being set as a result of our evaluation; neither is rate design an element of our evaluation. We will deny, therefore, OCA's request that the data responses be disclosed to them and other intervenors.

There was a request made by Staff in its March 28, 1994 filing on pages 20-21, following on comments of Bio-mass in its March 21, 1994 filing on pages 15-16, which we think is important to note. Staff stated it would not object to a log being kept of confidential materials being checked in and out of locked cabinets, provided there were an explicit waiver by the Bio-mass Group that it would not seek to recuse those people signing out the confidential materials. The request raises an important point that bears noting at this time: irrespective of whether a log is kept, we do not consider review of the data responses to be a basis for separation of Commission Staff or recusal of individual Commissioners in DR 93-179. We routinely are exposed to information in one docket that relates to another, but keep the records distinct and do not apply the information developed in one case to our consideration of the other. The same holds true for our Staff. We will order, therefore, that all data responses still outstanding be filed within ten days.

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 data responses of qualifying facilities not yet filed shall be filed within ten days of the date of this order; and it is

FURTHER ORDERED, that those data responses will be protected from public disclosure in accordance with Commission Report and Order No. 20,906 (July 12, 1993); and it is

FURTHER ORDERED, that the request of Bio-mass that Staff's Exhibit 1, a report of Duff and Phelps entitled Fixed Income Research for Pinetree Power, Inc. be stricken from the record is denied.

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of April, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Investigation into 1992 Energy Policy Act Requirements, DE 93-071, Order No. 20,906, 78 NH PUC 344, July 12, 1993. [N.H.] Re Energy Policy Act of 1992, DE 93-071, Order No. 21,131, 79 NH PUC 80, Feb. 18, 1994.

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NH.PUC*04/25/94*[70476]*79 NH PUC 244*Public Service Company of New Hampshire

[Go to End of 70476]

79 NH PUC 244

Re Public Service Company of New Hampshire

DR 94-074

Order No. 21,205

New Hampshire Public Utilities Commission

April 25, 1994

ORDER approving an electric utility's special rate contract with Wyman-Gordon Investment Casting, Inc., and granting protective treatment thereof, but declining to adopt utility-designated measures for maintaining such confidentiality.

1. RATES, § 321

[N.H.] Electric rate design — Special rate contract — With commercial customer — Protective treatment. p. 244.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Special discounted rate contracts — No designation of particular methods by which to maintain such confidentiality. p. 244.

BY THE COMMISSION:

ORDER

[1, 2] On April 15, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, special contract NHPUC-94 with Wyman-Gordon Investment Casting, Inc. (Wyman-Gordon) for the provision of electric service; and

WHEREAS, concurrent with the special contract, PSNH filed a Motion for Protective Order of certain information contained within the special contract with Wyman-Gordon and the supporting documents to the contract; and

WHEREAS, in its motion PSNH states that the unredacted contract and the supporting documents should be afforded protective treatment, pursuant to RSA 91-A:5, (IV), in that they contain sensitive information regarding Wyman-Gordon's "circumstances, operating costs, contractual arrangements, electric usage and alternatives"; and

WHEREAS, the motion also requests particular methods by which the Commission should keep the protected information confidential (such as designating the number of copies

disseminated, etc.); and

WHEREAS, the Commission recognizes that the information identified above is critical to review of the special contract by the Commission and Commission Staff, as required by

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RSA 378:18; and

WHEREAS, the Commission has adequate methods of safeguarding confidential information; and

WHEREAS, the Commission has denied other requests in the past dictating different methods for keeping protected information confidential; and

WHEREAS, the Commission finds it administratively unworkable to grant various requests for different treatment of confidential information; it is hereby

ORDERED, that PSNH's Motion for Protective Order prohibiting public disclosure of the unredacted copy of the special contract between PSNH and Wyman-Gordon Investment Casting, Inc. for the provision of electric service and all supporting documents is GRANTED; and it is

FURTHER ORDERED, that the request of PSNH regarding the method by which the Commission will keep the protected information confidential is DENIED; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission to reconsider this order in light of RSA 91-A should circumstances so warrant.

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of April, 1994.

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NH.PUC*04/25/94*[70477]*79 NH PUC 245*New England Telephone

[Go to End of 70477]

79 NH PUC 245

Re New England Telephone

DE 94-065

Order No. 21,206

New Hampshire Public Utilities Commission

April 25, 1994

ORDER accepting a local exchange telephone carrier's proposed tariff revisions which clarify the nonregulated nature of inside wiring and customer premises equipment.

1. SERVICE, § 450

[N.H.] Telephone — Trouble or repair service — Nonregulated status of inside wiring — Nonregulated status of customer premises equipment — Clarification. p. 245.

2. RATES, § 553

[N.H.] Telephone rate design — Trouble or repair service — Factors affecting pricing — Nonregulated status of inside wiring — Nonregulated status of customer premises equipment — Tariff revisions — Local exchange carrier. p. 245.

BY THE COMMISSION:

ORDER

[1, 2] On April 7, 1994, New England Telephone (NET) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to remove references to the Maintenance of Service charge which applies when a customer reports trouble and the technician proves the trouble to be inside wire or customer premises equipment (CPE) related; and

WHEREAS, the FCC requires that the costs associated with inside wire or CPE be treated as nonregulated; and

WHEREAS, the Company classifies the associated revenues as nonregulated; and

WHEREAS, the proposed tariff contains language in Part A-Section 3, Page 13, Section 3.4.4.A.5 which limits the liability of the Company for performing work on CPE and in Section 3.4.4.A.6 which allows the Company to determine the charge for modifying CPE; and

WHEREAS, the language in Part A-Section 3, Page 13, Sections 3.4.4.A.5 and 3.4.4.A.6 should be removed to be consistent with the treatment of inside wire and CPE as nonregulated; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revision to be in the public good; it is therefore

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ORDERED, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 75 - Part A - Section 3

Fifth Revision of Table of Contents

Page 2

Sixth Revision of Page 12

Fourth Revision of Page 14

Section 4

Fourth Revision of Page 1

Third Revision of Page 2

Part B - Section 1

Third Revision of Page 14

and it is

FURTHER ORDERED, that Part A-Section 3, Page 13, Sections 3.4.4.A. be revised such that subparagraph 5 is deleted, the phrase in subparagraph 6 "and the charge for such modification" be deleted, and subparagraph 6 be renumbered as subparagraph 5; and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of May 7, 1994; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of April, 1994.

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NH.PUC*04/25/94*[70478]*79 NH PUC 246*WilTel of New Hampshire, Inc.

[Go to End of 70478]

79 NH PUC 246

Re WilTel of New Hampshire, Inc.

DE 94-067

Order No. 21,207

New Hampshire Public Utilities Commission

April 25, 1994

ORDER authorizing a telecommunications carrier to make resale service available to nonfacilities-based wholesale customers, including such features as switched and dedicated access, "800" calling, and travel card and directory assistance services.

1. SERVICE, § 171

[N.H.] Resale of service — Telephone service — Service package available to nonfacilities-based wholesale customers — Features and options — Switched and dedicated access — "800" calling — Travel card service — Directory assistance. p. 246.

BY THE COMMISSION:

ORDER

[1] On April 12, 1994, WilTel of New Hampshire, Inc. (WilTel) filed with the New

Hampshire Public Utilities Commission (Commission) a petition seeking to introduce WilMAX service and make associated textual changes; and

WHEREAS, WilMAX is comprised of two different product offerings, WilMAX Reseller Service and WilMAX Carrier Service; and

WHEREAS, WilMAX service is only available to wholesale customers who both subscribe to WilMAX interstate service and are authorized by the Commission to provide telecommunications service as a public utility; and

WHEREAS, WilMAX Reseller Service is comprised of an integrated package of switched, dedicated access, 800, travel card, and directory assistance services, targeted for "non-facilities based" resellers; and

WHEREAS, WilMAX Carrier Service is comprised of switched, dedicated, extended network termination, extended network 800, travel card, and directory assistance services, available on an a la carte basis, targeted to complement the geographic expansion of "facilities based" carriers; and

WHEREAS, the offering expands the choice of telephone services available to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; and

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

ORDERED *NISI*, that WilTel's petition to offer WilMAX service is approved; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of WilTel's NHPUC Tariff No. 2 are approved:

- Page 1 2nd Revision
- Page 6 2nd Revision
- Page 7 2nd Revision
- Page 25 2nd Revision
- Page 35 2nd Revision
- Page 36 2nd Revision
- Page 38 2nd Revision
- Page 40 2nd Revision
- Page 41 2nd Revision
- Page 43 2nd Revision
- Page 52 2nd Revision
- Page 55 1st Revision
- Page 63.1 1st Revision
- Page 63.4 1st Revision
- Page 63.5 Original
- Page 63.6 Original

Page 63.7 Original;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, WilTel publish an attested copy of this Order *Nisi* in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 5, 1994 and is to be documented by affidavit filed with this office on or before May 25, 1994; and it is

FURTHER 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 20, 1994; and it is

FURTHER ORDERED, that WilTel file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective May 25, 1994, 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-fifth day of April, 1994.

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NH.PUC*04/25/94*[70479]*79 NH PUC 247*AT&T Communications of New Hampshire, Inc.

[Go to End of 70479]

79 NH PUC 247

Re AT&T Communications of New Hampshire, Inc.

DE 94-073

Order No. 21,208

New Hampshire Public Utilities Commission

April 25, 1994

ORDER approving an interexchange telephone carrier's plan to eliminate holiday discount offerings for high-speed switched digital business services, since holiday discounts were originally designed for the benefit of residential customers, who have fewer other discount and promotional options than do business customers.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Interexchange carrier — Holiday rate discounts — Elimination as to high-speed switched digital business services — Retention as to residential services. p. 247.

BY THE COMMISSION:

ORDER

[1] On April 13, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to eliminate holiday discounts for business

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services, specifically 56/64 Kilobits/second (Kbps) Switched Digital Services; and

WHEREAS, AT&T filed tariff pages containing the necessary tariff changes to reflect the offering; and

WHEREAS, holiday discounts were historically designed to benefit residential customers; and

WHEREAS, business customers have additional access to specifically targeted promotions, term plans, and volume discounts; and

WHEREAS, the elimination of holiday discounts is applicable to AT&T 56/64 Kbps Switched Digital Services; and

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

ORDERED *NISI*, that AT&T's petition to eliminate holiday discounts on 56/64 Kbps Switched Digital Services is approved; and it is

FURTHER ORDERED *NISI*, that the following tariff page of AT&T Tariff P.U.C. No. 2 is approved: Section 3, 1st Revised Page 5; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T publish an attested copy of this Order *Nisi* in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 5, 1994 and is to be documented by affidavit filed with this office on or before May 25, 1994; and it is

FURTHER 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 20, 1994; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than thirty days from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective May 25, 1994, 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-fifth day of April, 1994.

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NH.PUC*04/28/94*[70480]*79 NH PUC 248*Northern Utilities, Inc.

[Go to End of 70480]

79 NH PUC 248

Re Northern Utilities, Inc.

DR 94-043

Order No. 21,209

New Hampshire Public Utilities Commission

April 28, 1994

ORDER approving a summer cost-of-gas adjustment (CGA) rate of 1.77 cents per therm for a natural gas local distribution company's New Hampshire Division. The rate is higher than the company's last summer CGA rate, with such change attributable to higher demand costs as a result of Federal Energy Regulatory Commission Order 636.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting increase — Projected excess capacity — Order 636 transition costs — Associated higher demand costs — Allocation of capacity release revenues — Local distribution company. p. 250.

APPEARANCES: Meabh Purcell, Esq. of LaBoeuf, Lamb, Greene & MacRae behalf of Northern Utilities, Inc.; Robert J. Frank, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

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I. PROCEDURAL HISTORY

On March 11, 1994, Northern Utilities, Inc., New Hampshire Division ("Northern") filed its Cost of Gas Adjustment ("CGA") for the Summer Period of May 1, 1994 through October 31, 1994. On the same date, Northern filed a Motion for Protective Order, which the Commission partially granted on April 4, 1994. On March 31, 1994, Northern filed the direct testimony of Senior Rate Analyst, Elizabeth S. McDonough, related exhibits, and tariff sheets incorporating its proposed Summer 1994 CGA (Seventh Revised Page 32, Sheets 1-6, superseding Sixth Revised Page 32). On April 19, 1994, Northern filed a revised CGA and exhibits, along with a

revised tariff sheet (Eighth Revised Page 32, Sheet No. 1).

There were no requests for intervention filed in this matter. A duly noticed hearing was held on April 19, 1994.

II. POSITION OF NORTHERN AND STAFF

A. *Northern*

Northern seeks a 1994 Summer CGA of \$0.0177 per therm. This proposed CGA was revised from the original filing in which Northern requested a rate of \$0.0162 per therm. The revised filing was the result of inquiries and analysis initiated by the Commission Staff, as related by Ms. McDonough during the hearing. These revisions deal with the following components of the filing: (1) 636 related transition costs, (2) projected excess capacity available for release, and (3) the allocation of projected capacity release revenues. The net result of these revisions was to raise the proposed CGA by \$0.0015 per therm.

Ms. McDonough further testified generally about the various components of the CGA calculation, including Northern's projected gas sales and the costs associated with anticipated purchases. Northern's total anticipated costs associated with these purchases is \$4,986,884.00. Ms. McDonough testified that this figure includes a \$25,012 credit as a result of projected capacity release revenues. Northern reports a prior period undercollection of \$520,470 and related interest of \$30,133.00. Thus, Northern seeks to collect a total of \$5,537,487 through the 1994 Summer CGA period. After projecting total therm sales of 16,154,370, the resulting rate is \$0.3428 per therm. After further deductions consisting of Northern's take-or-pay recovery (\$0.005/therm), Order 636 transition recovery (\$0.0017/therm), and Northern's base unit cost of gas (\$0.3318/therm), the resulting CGA rate is \$0.0177 per therm.

Several other areas were addressed during Ms. McDonough's testimony. The proposed CGA rate represents a \$0.0049 increase over last summer's CGA, an increase which Northern attributes primarily to higher demand costs. Northern also conducted a bill impact analysis for the proposed CGA which showed a .87% increase for a two-hundred-therm-per-month customer. On cross-examination, Ms. McDonough also explained that the proposed CGA reflects a lost and unaccounted for gas percentage of 2.78%, which is based on a four-year average.

B. *Staff*

Staff did not pre-file testimony in this case, but Staff Utility Analyst, Robert Egan, testified during the hearing. Mr. Egan explained Staff's concerns in the initial filing about the amount of capacity which was projected to be released during the Summer period. As a result of conferences with Mr. Egan and Staff Utility Analyst, Kenneth Yasuda, Northern revised its capacity release projections in a manner which, according to Staff, comports with the standards set forth in DR 91-149 Order No. 20,950.

Mr. Egan also testified about Staff's concerns with Northern's Progas contract, which is a long-term take-or-pay contract with a Northern affiliate. Based on Staff's review of this contract, and the volumes which it has displaced to date, the contract has resulted in a net benefit to the ratepayers. Mr. Egan indicated that Northern has agreed to furnish Staff with periodic reports which detail when these gas supplies are utilized and which identify what supplies are displaced as a result thereof.

Mr. Egan further explained that Northern

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has not included in its filing any projected rebates which might occur as a result of the Tennessee Gas Pipeline's rate case before the FERC. Should such rebates occur, it is Staff's position that the timing of the decision would in large measure determine how those revenues should be rebated to customers.

Another Staff concern was a generic one, which relates to all local distribution companies ("LDCs"). Mr. Egan expressed Staff's desire to encourage the development of a reporting methodology so that Staff can track the pricing mechanisms which the LDCs utilize for setting the monthly interruptible transportation rate, the interruptible sales rates and the value of excess capacity.

III. COMMISSION ANALYSIS

[1] Upon review of Northern's revised filing, the supporting testimony of Elizabeth McDonough and the Staff testimony of Robert Egan, we find that Northern's requested CGA of \$0.0177 is just and reasonable. We recognize the impact of FERC Order 636 on the market landscape and Staff's related concerns. We encourage Staff and Northern to work together in developing mechanisms whereby pricing information is reported in an efficient and appropriate manner.

Our order will be issued accordingly.

ORDER

Upon consideration of the foregoing report, which is incorporated herein, it is hereby

ORDERED, that Eighth Revised Page 32, superseding Sixth Revised Page 32, N. H. P. U. C. No. 8 Gas, providing for a Cost of Gas Adjustment of \$0.0177 per therm for the Summer period May 1, 1994 through October 31, 1994, is hereby APPROVED; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs activate the 10% trigger mechanism, Northern shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, that the above-referenced rate is to be adjusted by a factor of approximately 1% according to the applicable classification in the Franchise Tax Docket, DR 83-205, Order No. 16, 524.

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of April 1994.

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. [N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 20,950, 78 NH PUC 479, Sept. 7, 1993.

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NH.PUC*04/28/94*[70481]*79 NH PUC 250*Northern Utilities, Inc.

[Go to End of 70481]

79 NH PUC 250

Re Northern Utilities, Inc.

DR 94-050
Order No. 21,210

New Hampshire Public Utilities Commission

April 28, 1994

ORDER approving a summer cost-of-gas adjustment (CGA) rate of 19.44 cents per therm for a natural gas local distribution company's Salem Division. The rate is higher than the company's last summer CGA rate, with such change attributable to a prior period undercollection.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting increase — Additional purchases of propane — Prior period undercollection — Local distribution company. p. 251.

Page 250

APPEARANCES: Meabh Purcell, Esq. of Leboeuf, Lamb, Greene & MacRae, on behalf of Northern Utilities, Inc.; Robert J. Frank, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. PROCEDURAL HISTORY

Northern Utilities, Inc. ("Northern") filed on March 11, 1994 its Salem Division's Cost of Gas Adjustment ("CGA") for the Summer Period, May 1, 1994 through October 31, 1994. The filing consists of a three page cover letter, a tariff page with Northern's proposed CGA (4th Revised Page 33, Superseding 3rd Revised Page 33), and several other attachments related to the CGA calculation.

There were no requests for intervention filed in this proceeding. A duly noticed hearing was held on April 19, 1994.

II. POSITION OF NORTHERN AND STAFF

A. Northern

Northern seeks a Summer 1994 CGA rate of \$0.1944 per therm. During the hearing, Northern's Senior Rate Analyst, Elizabeth S. McDonough, testified generally about the proposed CGA. Ms. McDonough testified that Northern is projecting firm gas sales of 16,330 therms, and to satisfy that demand it intends to purchase propane from Northern Propane totaling \$7,722. Northern also is carrying forward a prior period undercollection of \$843 plus \$28 of associated interest. The resulting CGA is \$0.1944 per therm after taking into account the unit cost of gas of \$0.3318.

B. Staff

Staff presented no testimony and indicated that it had reviewed the filing and determined that the proposed CGA was consistent with previous CGA filings.

III. COMMISSION ANALYSIS

[1] Upon review of Northern's filings, we find that the proposed Summer 1994 CGA of \$0.1944 per therm is reasonable and supported by the evidence. The proposed CGA rate is slightly higher than last summer's rate, but as pointed out during Ms. McDonough's testimony, the increase is attributable almost entirely to the prior period undercollection.

Our order will be issued accordingly.

ORDER

Upon consideration of the foregoing report, which is incorporated herein, it is hereby

ORDERED, that 4th Revised Page 33 superseding 3rd Revised Page 33, N. H. P. U. C. No. 8 Gas, filed by Northern Utilities, Inc., Salem Division ("Northern"), providing for a Cost of Gas Adjustment of \$0.1944 per therm for the period of May 1, 1994 through October 31, 1994, is hereby APPROVED; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs trigger the 10% trigger mechanism, Northern shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, that the above-referenced rate is to be adjusted by a factor of approximately 1% according to the applicable classification in the Franchise Tax Docket (DR 83-205, Order No. 16, 524).

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of April, 1994.

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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NH.PUC*04/28/94*[70482]*79 NH PUC 252*Claremont Gas Corporation

[Go to End of 70482]

79 NH PUC 252

Re Claremont Gas Corporation

DR 94-051

Order No. 21,211

New Hampshire Public Utilities Commission

April 28, 1994

ORDER approving a summer cost-of-gas adjustment rate of (7.48 cents) per therm for a natural gas local distribution company. The rate is lower than the company's request, due to correction of the fixed price figure taken from a propane futures contract.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting change — Fixed price provisions of propane futures contract — Local distribution company. p. 252.

BY THE COMMISSION:

ORDER

[1] On April 1, 1994, Claremont Gas Corporation (Claremont or the Company) filed with the New Hampshire Public Utilities Commission (Commission) its 1994 Summer period Cost of Gas Adjustment (CGA). An Order of Notice was issued on April 4, 1994, which set a hearing for April 20, 1994; and

WHEREAS, the Company filed with the Commission a revised 1994 Summer CGA on April 20, 1994, due, in part, to errors discovered by the Commission Staff (Staff) in the original filing; and

WHEREAS, the revised 1994 Summer CGA filing included a fixed price of \$0.35 per gallon for propane used by Claremont during the 1993 Summer CGA period, this fixed price provision stemming from a 1993 futures contract executed by Synergy Gas Corporation (Synergy) on behalf of Claremont; and

WHEREAS, at the April 20, 1994 hearing, a number of questions were raised by Staff and the Company about (i) the execution date of the aforementioned 1993 futures contract and (ii) the terms of the 1993 futures contract; and

WHEREAS, the Commission requested that the Company provide clarification on both the execution date and terms of the 1993 futures contract; and

WHEREAS, on April 22, 1994, the Company filed with the Commission a one page inter-office memorandum from Joe Broomell to Marty Trickett, dated April 20, 1994, which stated that (i) the propane futures contract was bought on March 26, 1993 and (ii) the purchase price was \$0.35 per gallon; and

WHEREAS, on April 27, 1994, Staff filed with the Commission its responses to the Company's April 22, 1994 filing, namely that (i) the oral testimony of Company witness Joseph Broomell on April 15, 1993 in DR 93-038, Claremont's 1993 Summer period CGA, clearly showed that the futures contract in question was executed on behalf of Claremont by Synergy on April 1, 1993 and that the terms of the futures contract specified a price of \$0.34 per gallon, (ii) the actual Synergy invoices showed that Claremont paid Synergy a price of \$0.34 per gallon for propane during the 1993 Summer period, and (iii) Claremont's 1993 Summer period reconciliation report, filed with the Commission on January 14, 1994, showed an actual per therm price equivalent to \$0.34 per gallon for propane used by Claremont during the 1993 Summer period; and

WHEREAS, we find the arguments advanced by Staff, to support a \$0.34 per gallon price for propane used by Claremont during the 1993 Summer period, compelling; and

WHEREAS, a 1994 Summer period CGA figure needs to be determined for Claremont by May 1, 1994; and

WHEREAS, Staff, in a filing submitted to the Commission on April 28, 1994, has calculated a 1994 Summer period CGA figure of

Page 252

\$(0.0748) per therm for Claremont, exclusive of the New Hampshire State Franchise Tax, using the propane product price of \$0.34 per gallon for those volumes used by Claremont during the 1993 Summer period; it is hereby

ORDERED, that Claremont refile with the Commission its 1994 Summer period CGA using the propane product price of \$0.34 per gallon for the 1993 Summer CGA period; and it is

FURTHER ORDERED, that Claremont use Staff's Cost of Gas Adjustment figure of \$(0.0748) per therm for the summer period May 1, 1994 through October 31, 1994; and it is

FURTHER ORDERED, that the CGA rate of \$(0.0748) approved by this Order become effective with all billings issued on or after May 1, 1994; and it is

FURTHER ORDERED, the above rate of \$(0.0748) 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 New Hampshire Public Utilities Commission this twenty-eighth day of April, 1994.

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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NH.PUC*04/28/94*[70483]*79 NH PUC 253*Keene Gas Corporation

[Go to End of 70483]

79 NH PUC 253

Re Keene Gas Corporation

DR 94-052
Order No. 21,212

New Hampshire Public Utilities Commission

April 28, 1994

ORDER approving a summer cost-of-gas adjustment (CGA) rate of 2.26 cents per therm for a natural gas local distribution company. The rate is significantly lower than the company's last summer CGA rate, with such change attributable to lower propane costs and undercollections as well as reduced leaks and unaccounted-for gas.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting decrease — Lower spot-market propane costs — Lower prior period undercollections — Reductions in leakage and unaccounted-for gas problems — Local distribution company. p. 254.

APPEARANCES: John F. DiBernardo, Assistant 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

I. *PROCEDURAL HISTORY*

On March 31, 1994, Keene Gas Corporation, (Keene Gas 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 1994 Summer Cost of Gas Adjustment (CGA), effective May 1, 1994. The filing requests a CGA rate of \$0.0226 per therm, excluding the New Hampshire State Franchise Tax, which is a significant decrease from the rate of \$0.1702 per therm approved by the Commission for the 1993 Summer period.

A duly noticed public hearing was held at the Commission's office in Concord, New Hampshire on April 20, 1994.

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II. POSITIONS OF KEENE GAS AND STAFF

Company witness John F. DiBernardo, Assistant General Manager, presented the proposed new CGA tariff and answered a number of questions by Staff regarding the derivation of the numbers, as well as the projections about the forthcoming Summer period. With regard to the almost \$0.15 per therm difference between last Summer's CGA and this Summer's proposed adjustment, it was determined that this was due primarily to the large under collection leading into last Summer and also that period's significantly higher propane costs. Mr. DiBernardo also testified that Keene Gas has not obtained any gas contracts for the forthcoming Summer period. He explained that Company President Harry B. Sheldon, Jr., the individual in charge of product procurement, felt that conditions were not conducive to enter into firm gas contracts for this upcoming Summer period.

As Keene Gas lost its largest commercial customer last year, several questions were asked by Staff to learn if the Company had been successful in replacing that lost business. The Company has had some success in acquiring additional commercial accounts but has not yet replaced what was lost. Several new restaurants have or will become gas customers and there is also a laundromat scheduled to join as well. Although this new business does not make up for the lost volumes, the Company continues to market to others whenever the opportunity arises.

Also discussed at the hearing was the issue of unaccounted for gas. Keene Gas reported their unaccounted for gas in 1993 was 7.5 percent. This is a reduction from the 9 percent level experienced in 1992. Another related issue discussed was leaks. As a result of their 1993 major leak survey, Keene noted a dramatic decrease in leaks from prior years. The difference between class 1, 2, and 3 leaks was explained as well as the nature of the Company response required for each class of leaks. At the request of Commissioner Ellsworth, the Company agreed to provide a summary of the number of leaks discovered and repaired in each of the three classes over the past four years.

III. COMMISSION ANALYSIS

[1] We find it reasonable that a gas company would purchase propane from the spot market during the Summer period instead of acquiring product through firm contracts.

The projected costs, sales, and adjustments to the CGA filing are consistent with those approved by the Commission in past CGAs. The Commission finds that Keene Gas Corporation's proposed CGA of \$0.0226 per therm is just and reasonable and in the public good and therefore accepts such as filed.

Our order will be issued accordingly.

ORDER

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

ORDERED, that the 15th Revised Page 27, Superseding 14th Revised Page 27 of Keene Gas

Corporation Tariff, NHPUC No. 1 - Gas, providing for a Cost of Gas Adjustment of \$0.0226 per therm for the period May 1, 1994 through October 31, 1994 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, 1994; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs activate the 10 percent trigger mechanism, Keene Gas shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, the above rate 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; and it is

FURTHER ORDERED, that Keene Gas file with the Commission within 90 days of the issuance of this Order a report summarizing the number of leaks discovered and reported for each of the three leak classes during the past four years.

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of April, 1994.

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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NH.PUC*05/02/94*[70484]*79 NH PUC 255*Public Service Company of New Hampshire

[Go to End of 70484]

79 NH PUC 255

Re Public Service Company of New Hampshire

DR 94-033

Order No. 21,213

New Hampshire Public Utilities Commission

May 2, 1994

ORDER approving an electric utility's special rate contract with OSRAM Sylvania, Inc., a high-intensity discharge lighting manufacturer, which contract will retain load and induce the manufacturer not to relocate its facilities out-of-state. The rate concessions will be in the form of a waiver of the demand charge for approximately 30% of the customer's load.

1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Waiver — Pursuant to special rate contract — To retain industrial load. p. 255.

2. DISCRIMINATION, § 60

[N.H.] Rates — Special discounted rate contracts — Concessions to industrial customers — Via waiver of demand charges — In order to retain load — Electric service. p. 255.

BY THE COMMISSION:

ORDER

[1, 2] On February 28, 1994, Public Service Company of New Hampshire (PSNH) filed a request, pursuant to RSA 378:18, for approval of a special contract, Special Contract No. NHPUC- 92, between PSNH and OSRAM Sylvania, Inc.(OSRAM) effective March 15, 1994, or upon approval by the Commission; and

WHEREAS, OSRAM is a Delaware corporation and a subsidiary of OSRAM GmbH, a Munich, Germany-based company with a facility in Manchester, New Hampshire, engaged primarily in the manufacturing of high-intensity discharge (HID) lighting products; and

WHEREAS, Special Contract No. NHPUC-92 is designed to retain the portion of electric service from OSRAM associated with the life testing racks of its HID lighting products for a period of five years from the effective date of Special Contract No. NHPUC-92; and

WHEREAS, PSNH contends OSRAM would, absent this special contract, relocate its life testing load to another facility in St. Mary's, Pennsylvania; and

WHEREAS, PSNH estimates that the payback period for OSRAM to relocate its testing facility to Pennsylvania would be less than 3 months; and

WHEREAS, PSNH also represents by letter dated April 29, 1994 that OSRAM has committed to expand production capacity at its Manchester facility, thereby creating additional jobs for the community and resulting in increased electrical load for PSNH; and

WHEREAS, PSNH is proposing to provide separately metered, discounted electric service to OSRAM for the load associated with testing HID lighting; and

WHEREAS, the discounted electric service is in the form of a waiver of the demand charge for the life testing load, which approximates 30% of OSRAM's total load, and a variance from the tariffed rates for the life testing load's energy usage which will be billed at a rate equal to two cents above PSNH's total Fuel and Purchased Power Adjustment Clause (FPPAC) costs, the base amount plus the FPPAC rate; and

WHEREAS, OSRAM agrees to certain

conditions during the term of Special Contract NHPUC-92, such as interrupting electric service to its life testing load when requested by PSNH or, if unable to interrupt, pay the higher of FPPAC plus 2 cents or 125% of PSNH's incremental cost at the time determined on an hourly basis; and

WHEREAS, OSRAM agrees to seek assistance from the New Hampshire Department of Resources and Economic Development (DRED) concerning job training and business expansion financing; and

WHEREAS, OSRAM also agrees that PSNH will continue to be its only provider of electric service for the five-year term of the contract unless OSRAM can demonstrate to the Commission that a legally proper and financially viable alternative provider of electricity is available and absent that alternative OSRAM would cease its life testing operations in New Hampshire; and

WHEREAS, PSNH has evaluated the OSRAM facilities and determined that OSRAM has little opportunity for energy conservation measures at the life testing load, but OSRAM has undertaken considerable conservation measures throughout the other portions of its Manchester facility; and

WHEREAS, the total discount to the life testing load at OSRAM is 30%, approximately; and

WHEREAS, by maintaining this load, PSNH has maintained contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers; and

WHEREAS, PSNH contends that this filing is consistent with its 1992 Integrated Resource Plan and is made in accordance with the Commission's established economic development policy and adheres to the Commission's "Final Checklist for Economic Development and Business Retention Discounted Rates" (Checklist) as specified in Order No. 20,882 in docket DR 91-172, the Generic Discounted Rates docket; and

WHEREAS, upon review of the filing and the Staff analysis, the Commission finds that Special Contract NHPUC-92 meets the criteria for a discounted rate as we outlined in DR 91-172; and

WHEREAS, Special Contract NHPUC-92 between Public Service Company of New Hampshire and OSRAM Sylvania is in the public interest; it is hereby

ORDERED *Nisi*, that Special Contract NHPUC-92 is approved as filed effective June 1, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, PSNH notify all persons desiring to be heard by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than May 12, 1994 and documented by affidavit filed with this office on or before May 27, 1994; 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 May 27, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 1, 1994, unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the New Hampshire Public Utilities Commission this second day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,882, 78 NH PUC 316, June 23, 1993.

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NH.PUC*05/02/94*[70485]*79 NH PUC 257*Integrated Water Systems, Inc.

[Go to End of 70485]

79 NH PUC 257

Re Integrated Water Systems, Inc.

DR 93-164
Order No. 21,214

New Hampshire Public Utilities Commission

May 2, 1994

ORDER accepting a water utility's proposed tariff revisions, as amended, which establish a series of fees for service applications, inspections, meter testing, connections, disconnections, reconnections, returned checks, and after hours service calls.

1. RATES, § 304

[N.H.] Installation and disconnection work — Fee schedules — Application fees and returned check charges — Meter inspection and testing charges — Connection, disconnection, and reconnection fees — Water utility. p. 257.

BY THE COMMISSION:

ORDER

[1] On September 16, 1993, Integrated Water Systems, Inc. (Integrated or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of a proposed tariff which reorganized, clarified certain terms and conditions and proposed a number of miscellaneous service fees governing water service in a limited area of Barnstead, New Hampshire, known as Locke Lake Colony; and

WHEREAS, on October 13, 1993, by Order No. 20,995 the Commission suspended the taking effect of proposed changes pending further investigation, and on January 14, 1994, by Order No. 21,100 extended the time of suspension for an additional five months; and

WHEREAS, during the investigation of the proposed tariff revisions the staff, in addition to meeting with the Company on a number of occasions, conferred with and requested and received comments by a representative of the Locke Lake Colony Association (Association); and

WHEREAS, the Company agreed to incorporate all changes offered by the Staff and the Association; and

WHEREAS, on April 14, 1994, the Company submitted a final revision entitled Integrated Water Systems Inc., NHPUC No.4, which incorporated the changes offered by Staff and the Association including the following new miscellaneous service fees:

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

A. Applications fee for service	\$25.00
B. Service connection inspection fee	\$25.00
C. Water meter testing fee deposit (actual cost of test will be reconciled with deposit)	\$45.00
D. Connection (\$20) and disconnection (\$20) of water service at customer request with 48 hours notice	
E. Connection (\$30) and disconnection (\$30) of water service at customer request without 48 hours notice	
F. Reconnection fee (at the time of reconnection in addition to payment of past due charges)	\$60.00
G. Returned check fee - greater of \$15.00 or 5% of face value	\$15.00
H. After hours service call fee	\$45.00;

and

WHEREAS, the parties recommend that the changes incorporated in Integrated Water Systems, Inc., NHPUC No. 4 as filed with the Commission on April 14, 1994 be adopted; it is hereby

ORDERED *NISI*, that Integrated Water Systems, Inc., NHPUC No. 4, Water be, and hereby is, approved; and it is

FURTHER ORDERED, that Integrated Water Systems, Inc. mail a copy of this Order to each customer by First Class U.S. mail no later than May 6, 1994; and it is

FURTHER ORDERED, that all persons

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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 16, 1994; and it is

FURTHER ORDERED, that the Company submit a revised tariff title page within ten days of the date of this order annotated with this Order Number and signed by a duly authorized representative of the Company; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on May 18, 1994, 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 second day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water System, Inc., DR 93-164, Order No. 20,995, 78 NH PUC 572, Oct. 13, 1993. [N.H.] Re Integrated Water System, Inc., DR 93-164, Order No. 21,100, 79 NH PUC 27, Jan. 14, 1994.

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NH.PUC*05/03/94*[70486]*79 NH PUC 258*Southern New Hampshire Water Company

[Go to End of 70486]

79 NH PUC 258

Re Southern New Hampshire Water Company

DE 91-074

Order No. 21,215

New Hampshire Public Utilities Commission

May 3, 1994

ORDER declining to impose fines on a water utility for its failure to file "E-22" forms for its past construction/expansion projects. Commission explains that its own rules were not clear as to when such forms are required, and notes further that some of the subject projects were already partially disallowed from rate base, such that any additional fines would constitute double punishment.

Moreover, the utility is cited for its much better compliance and performance record now than during the time when it failed to file the required forms, and the commission finds no reason to penalize the utility for poor performance six years after the fact when it had improved so much.

1. FINES AND PENALTIES, § 8

[N.H.] Grounds for imposing — Failure to file "E-22" construction forms — Mitigating circumstances — Unclear filing instructions — Partial rate base disallowance of subject construction projects — Subsequent improvement in performance — Water utility. p. 258.

BY THE COMMISSION:

ORDER

[1] In April, 1991 the New Hampshire Public Utilities Commission (Commission) heard evidence regarding the 1990 petition for rate increase filed by Southern New Hampshire Water Company (SNHW), DR 89-224. One of the issues arising in the case was whether SNHW filed E-22 forms on proposed construction or expansion projects as required by RSA 374:5 and N.H. Admin. Rules, Puc 609.07. The Commission, in Report and Order No. 20,196 (July 29, 1991) reserved for a later proceeding any decision regarding fines for failure to file E- 22s. As stated in that order,

... 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.

Report and Order No. 20,196 at 11. Docket DE

Page 258

91-074 was opened to develop that record.

We have reviewed the report of the Commission Staff (Staff) regarding E-22s which were and should have been filed in 1988 and 1989. We conclude that although some E-22s should have been filed by SNHW, we do not think it appropriate to issue fines against the company or its officers, for the reasons delineated below.

We note that SNHW's records indicate that 11 of the 19 "missing" E-22s were filed with the Commission although they could not be located in our records. While we cannot reconstruct today what exactly happened with each E-22 form, it is clear that Commission procedures for logging in and responding to E-22s have not been as structured and reliable as they should have been. We accept some of the responsibility for confusion regarding the filing and review of E-22s.

We also recognize that the types of projects which required the filing of E-22s in 1988 and 1989 were not always clear, and that many of the "missing" E-22s are in "gray areas" for filing. For example, the Commission established standards for filing E-22s when contributions in aid of construction (CIAC) were present as part of Report and Order No. 20,196. This order was well after the date by which the six of the "missing" E-22s that involved CIAC should have been filed. We do not believe it would be appropriate to fine SNHW for failure to file E-22s on projects for which we did not make clear what our standards for filing were.

There were a number of SNHW projects, however, which did not fall within a "gray area" and/or for which SNHW may have failed to file E-22s. Six of these have already been subject to partial disallowance, for a total of \$642,215, for failure to comply with tariff provisions or failure to file special contracts regarding main extensions. See Order Nos. 20,196 and 20,313.

The statute authorizes disallowance from rate base for projects for which an E-22 should have been submitted. 10 E-22 projects, including the six cited above, while not disallowed due to failure to file E-22s, were nevertheless subject to disallowances from rate base for other reasons. Because the Commission has already taken the step of disallowance in these projects, we do not think it necessary to order further disallowance or fines.

We reach these conclusions in part due to the marked improvement in SNHW's record in filing E-22s since issuance of the Show Cause order in July 1991. SNHW's performance now surpasses that of many utilities in filing E-22s. Penalizing SNHW in 1994, when compliance is very good, for poor performance in 1988 and 1989 does not seem a wise use of resources at this time. We prefer to look to the future, anticipating and expecting continued compliance from SNHW and improvement of our E-22 filing and review process within the Commission.

We will order our Staff, therefore, to file a report no later than June 1, 1994 evaluating our current process for filing and review of E-22s and recommendations for improvement. These recommendations might include change to our internal process, education of utility personnel, and amendment of our rules and statutory authority.

Based upon the foregoing, it is hereby

ORDERED, that the Commission will not assess fines against SNHW for failure to file E-22 forms for construction and expansion projects in 1988 and 1989; and it is

FURTHER ORDERED, that Staff submit a report evaluating the E-22 process and making recommendations for improvement no later than June 1, 1994.

By order of the New Hampshire Public Utilities Commission this third day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., DR 89-244, Order No. 20,196, 76 NH PUC 521, July 29, 1991; revised July 31, 1991.

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NH.PUC*05/03/94*[70487]*79 NH PUC 260*Great Bay Power Corporation

[Go to End of 70487]

79 NH PUC 260

Re Great Bay Power Corporation

DF 93-132

Order No. 21,216

New Hampshire Public Utilities Commission

May 3, 1994

ORDER approving an electric utility's modified plan of reorganization pursuant to bankruptcy, in which 60% of its shares of common stock would be issued to Omega Advisors, Inc., in exchange for an investment of \$35 million.

1. CORPORATIONS, § 21

[N.H.] Reorganization — Pursuant to bankruptcy — Debt financing plan — Sale of 60% of stock — Electric utility. p. 260.

2. SECURITY ISSUES, § 91

[N.H.] Type and amount — Debt financing plan — Sale of 60% of common stock — Pursuant to bankruptcy and reorganization — Electric utility. p. 260.

BY THE COMMISSION:

ORDER

[1, 2] On March 21, 1994, Great Bay Power Corporation filed a Motion for Amended Approval of Plan of Reorganization of Great Bay Power Corporation and Modification of Commission Order (Motion), seeking approval of amendments to the Plan of Bankruptcy Reorganization (Plan) of Great Bay Power Corporation; and

WHEREAS, Great Bay Power Corporation stated that the only material modification is that the financing for the Plan has changed from \$45 million for the issuance of debt and up to 15 percent of common shares of Great Bay Power Corporation to the issuance of 60 percent of the shares of Great Bay Power Corporation for \$35 million; and

WHEREAS, the remaining common equity of Great Bay Power Corporation will be issued to holders of Great Bay Power Corporation's secured notes and to holders of unsecured claims; and

WHEREAS, Great Bay Power Corporation stated that an executed stock purchase agreement and registration rights agreement would be included in the disclosure statement to be mailed to creditors on or before April 7, and that a copy of the disclosure statement would be provided to the Commission at the same time; and

WHEREAS, the Bondholders' Committee hoped to have Commission approval by mid-May so that the RSA 541 appeal period will have run by mid-June, the anticipated closing of the Plan of Reorganization financing; and

WHEREAS, on April 14, 1994, Great Bay Power Corporation filed the Supplemental Disclosure Statement dated February 11, 1994 relating to first modification to Bondholders' Committee's Fifth Amended Plan of Reorganization as mailed to all creditors of Great Bay Power Corporation on or about April 7, 1994; and

WHEREAS, the Supplemental Disclosure Statement Dated February 11, 1994 relating to First Modification to Bondholders' Committee's Fifth Amended Plan of Reorganization (II. Overview, A. Executive Summary, page 4) stated that Lehman Brothers, the company hired to place the proposed debt financing, was unable to obtain financing on terms in the Fifth Amendment; and

WHEREAS, Lehman Brothers was able to obtain an agreement with a letter of commitment from Omega Advisors, Inc., a New York-based hedge fund manager, on behalf of various funds which it manages, and a subsequent agreement from Elliott Associates, L.P., a private investment partnership, to invest \$35 million in exchange for 60% of the common stock, 49% of which would belong to Omega Advisors, Inc. and 11% to Elliott Associates, L.P.; and

WHEREAS, the Bondholders' Committee believes that the proposed \$35 million equity investment will provide 1) more than sufficient cash resources to pay its operating costs until such time as its share of electricity and capacity from Seabrook can be sold on a long-term basis and 2) a stronger capital structure than one which relies on debt; and

WHEREAS, the Bondholders' Committee believes that the modified financing plan is the best alternative available to creditors of Great Bay Power Corporation; and

WHEREAS, the modified financing results in the Bondholders owning 40% of the common equity, of which 85% would be available for Class One creditors and 15% for Class Three creditors, the same proportion as provided for in the Fifth Amendment Plan; and

WHEREAS, Great Bay Power Corporation will emerge from Chapter 11 without any debt obligations and \$35 million of proceeds from the Omega Advisors, Inc. financing as working capital for future operations, less amount required to pay principal and interest on the Third Stipulation (now in default) estimated at approximately \$9.1 million as of June 30, 1994 and administrative expenses and reorganization costs estimated at \$4.5 million; and

WHEREAS, the Third Stipulation, approved by this Commission by Order No. 20,841 issued May 18, 1993, is an agreement by which United Illuminating Company and Connecticut Light & Power agreed to advance up to \$20 million for the purpose of paying Great Bay Power Corporation's share of expenses related to the power plant and certain other expenses in an arrangement similar to the First Stipulation; and

WHEREAS, the Bondholders' Committee and Great Bay Power Corporation have filed with the Bankruptcy Court a joint motion to amend the retention of Lehman Brothers to reflect Lehman Brothers' involvement in placing the Omega Advisors, Inc. financing and to pay the \$937,500 success fee (included in the \$4.5 million of administrative expenses and reorganization costs); and

WHEREAS, Great Bay Power Corporation has the obligation to pay on a current basis the reasonable and necessary out-of-pocket costs and expenses incurred by Omega Advisors, Inc. and Elliott Associates, L.P. and certain fees and expenses of the law firm of Skadden, Arps, Slate, Meagher & Flom in the amount of \$116,600 for services rendered to Lehman Brothers relating to the placement of the financing; and

WHEREAS, as part of the efforts of the Bondholders' Committee to consummate the First Modification to the Fifth Amended Plan, requests for approval have been filed with the New Hampshire Public Utilities Commission; it is therefore

ORDERED, that Great Bay Power Corporation is authorized to modify the Fifth Amended Plan of Reorganization; and it is

FURTHER ORDERED, that Great Bay Power Corporation is authorized to issue 60 percent of its common equity on a fully diluted basis in the amount of \$35 million as determined in the modified Fifth Amended Plan; and it is

FURTHER ORDERED, that Great Bay Power Corporation is authorized to issue 40 percent

of its common equity to the Bondholders on a fully diluted basis on the same allocation method, 85% to Class One and 15% to Class Three; and it is

FURTHER ORDERED, that all other authorizations issued in Order No. 20,975 shall remain in effect.

By order of the New Hampshire Public Utilities Commission this third day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Great Bay Power Corp., DF 93-132, Order No. 20,975, 78 NH PUC 533, Sept. 21, 1993.

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NH.PUC*05/03/94*[70488]*79 NH PUC 262*AT&T Communications of New Hampshire, Inc.

[Go to End of 70488]

79 NH PUC 262

Re AT&T Communications of New Hampshire, Inc.

DE 94-076

Order No. 21,217

New Hampshire Public Utilities Commission

May 3, 1994

ORDER approving an interexchange telephone carrier's proposal for certain administrative changes in its "Community 800" (intrastate 800) service plan and allowing certain short-term promotional offerings to go into effect on seven days' notice.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access options — "Community 800" (intrastate 800) service — Administrative changes. p. 262.

2. RATES, § 243

[N.H.] Schedules and procedure — Notice and publication — Seven days' notice — For special short-term promotional offerings — Interexchange telephone carrier. p. 262.

BY THE COMMISSION:

ORDER

[1, 2] On April 21, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed

with the New Hampshire Public Utilities Commission (Commission) a petition seeking to add language to the general regulations section of its Custom Network Services Tariffs which would allow AT&T to offer promotions limited to certain dates, times and locations on seven days notice to the Commission and to make administrative changes to the Community 800 promotion and Combined Outward Calling and Inward Calling Discount Option; and

WHEREAS, the promotion notice to the Commission will specify rates, terms, conditions and time intervals applicable to each promotional offering; and

WHEREAS, the proposed administrative change to the Community 800 promotion consists of changing the tariff language from "when a Customer enters into a new or extends existing term plan" to "when a Customer enters into a new or has an existing term plan"; and

WHEREAS, the proposed change to the Combined Outward Calling and Inward Calling Discount Option tariff language consists of deleting "Inward calling under this option must employ new 800 numbers."; and

WHEREAS, AT&T requested this filing become effective May 23, 1994; and

WHEREAS, Promotional Offerings are only available for a limited time; and

WHEREAS, the proposed tariff expands AT&T's flexibility in offering promotions to stimulate existing customer usage, attract new customers, win back former customers or increase awareness of AT&T services, thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than May 31, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 13, 1994 and is to be documented by affidavit filed with this office on or before May 31, 1994; and it is

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FURTHER ORDERED *NISI*, that the following tariff page of AT&T Tariff No. 1 - Custom Network Services, are approved:

Section 1: 2nd Revised Page 7.1

Section 14: 4th Revised Page 7;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 2, 1994 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 third day of May, 1994.

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NH.PUC*05/03/94*[70489]*79 NH PUC 263*AT&T Communications of New Hampshire, Inc.

[Go to End of 70489]

79 NH PUC 263

Re AT&T Communications of New Hampshire, Inc.

DE 94-076

Order No. 21,218

New Hampshire Public Utilities Commission

May 3, 1994

ORDER approving an interexchange telephone carrier's special promotion for certain CustomNet services, whereby a customer using a private branch exchange and making at least \$25 in intrastate calling a month by their second full month of redirecting their intrastate traffic to AT&T will receive a credit of \$250, with higher credits available for higher levels of monthly usage.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — "CustomNet" services — Short-term promotions — Rerouting of intraLATA calls — Credits for minimum monthly usage — Use of private branch exchange as a requirement. p. 263.

BY THE COMMISSION:

ORDER

[1] On April 21, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce the CustomNet Promotion and a new feature for Option S, the AT&T CIID/891 card; and

WHEREAS, AT&T filed these tariff pages for effect May 23, 1994; and

WHEREAS, the AT&T CustomNet Promotion offers a credit of \$250.00 to customers using a PBX who meet or exceed \$25.00 in intrastate monthly usage by their second full monthly bill after directing intrastate traffic to AT&T; and

WHEREAS, the AT&T CustomNet Promotion also offers customers who meet or exceed

\$100.00 in intrastate monthly usage a promotional credit based on the number of lines and usage as illustrated:

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

<i>Number of Lines</i>	<i>Intrastate Usage</i>	<i>Credit</i>
1 to 4	\$100.00	\$ 355.00
5 to 8	\$100.00	\$ 710.00
9 to 12	\$100.00	\$1,065.00
13 to 16	\$350.00	\$1,420.00
17 to 20	\$575.00	\$1,775.00; and

WHEREAS, the credits will be applied in the Customer's third or fourth month's bill after enrollment; and

WHEREAS, AT&T proposes to introduce the CIID/891 card as a new feature of Option S to originate and terminate calls in the State of New Hampshire; and

WHEREAS, the usage associated with the

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AT&T CIID/891 Card will be billed at a rate of \$.3830 per minute for all rate periods and with a service charge of \$.80 per call; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages of AT&T Tariff No. 1 - Custom Network Services, are approved:

Section 1:

Original Page 7.2

Section 14:

1st Revised Page 10

Original Page 11;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 13, 1994 and is to be documented by affidavit filed with this office on or before May 31, 1994; and it is

FURTHER 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, 1994; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 2, 1994, 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 third day of May, 1994.

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NH.PUC*05/10/94*[70490]*79 NH PUC 264*Southern New Hampshire Water Company, Inc.

[Go to End of 70490]

79 NH PUC 264

Re Southern New Hampshire Water Company, Inc.

Additional applicant: Springwood Hills Water Company, Inc.

DE 93-203

Order No. 21,219

153 PUR4th 422

New Hampshire Public Utilities Commission

May 10, 1994

ORDER authorizing a purchase and sale of water utility assets, whereby Southern New Hampshire Water Company, Inc., will acquire the utility assets of Springwood Hills Water Company, Inc. The commission rejects an alternative proposal by an association of homeowners to acquire the same assets.

Commission finds that Southern, as demonstrated by its operation of numerous other water systems, has the technical ability and financial resources to run a water system and provide reliable water service to customers, whereas the association of homeowners is found to lack the organizational structure and the financial resources needed to run a water utility. Moreover, the commission notes the unwillingness of Springwood Hills to sell its utility assets to the association.

1. CONSOLIDATION, MERGER, AND SALE, § 6

[N.H.] Commission jurisdiction — Power to choose between alternative purchase proposals — Public good standard — Net benefits test

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— Water utility sale. p. 266.

2. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Grounds for approval — Water utility purchase and sale — Public good standard — Net benefits test. p. 266.

3. CONSOLIDATION, MERGER, AND SALE, § 10

[N.H.] Commission jurisdiction — Power to compel sale — Discussion. p. 266.

4. CONSOLIDATION, MERGER, AND SALE, § 25

[N.H.] Grounds for disapproval — Unwillingness of utility to sell to proposed purchaser — Water utility purchase and sale — Association of homeowners as proposed purchaser. p. 266.

5. CONSOLIDATION, MERGER, AND SALE, § 28

[N.H.] Grounds for disapproval — Financial and technical inability of purchaser — Water utility purchase and sale — Association of homeowners as proposed purchaser. p. 266.

6. PUBLIC UTILITIES, § 39

[N.H.] Regulatory status — Exemption from public utility status — Factors — Restricted service — Fewer than 10 customers — Service to association members only — Consideration of all members as only a single customer. p. 266.

7. MUTUAL COMPANIES, § 3

[N.H.] Members — Service via association of homeowners — Service to association members only — Consideration of all members as only a single customer — Exemption from regulation as public utility. p. 266.

8. CONSOLIDATION, MERGER, AND SALE, § 22

[N.H.] Grounds for approval — Financial and technical ability of purchaser — Operational experience — Water utility purchase and sale. p. 266.

APPEARANCES: Robert H. Fryer, Esq. on behalf of Springwood Hills Water Co., Inc.; Larry S. Eckhaus, Esq. on behalf of Southern New Hampshire Water Company, Inc.; Mary Ellen Goggin, Esq. on behalf of Springwood Hills Neighborhood Association; Thomas Wurm, 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 October 25, 1993, Springwood Hills Water Company, Inc. (Springwood) and Southern New Hampshire Water Company, Inc. (Southern), duly franchised public water utilities, filed a joint petition with the Commission for the approval of the sale by Springwood of its water supply and distribution system to Southern. The water supply and distribution system is located in that portion of the Town of Londonderry known as the Springwood Hills Development. The petition was filed pursuant to RSA 374:22, 374:26, and 374:30.

On November 23, 1993, the Commission issued an Order of Notice scheduling a prehearing conference for December 15, 1993, to establish a procedural schedule to govern its investigation into the joint petition and to address any motions to intervene.

On December 15, 1993, the Commission held the scheduled prehearing conference at which Southern, Springwood and the Springwood Hills Neighborhood Association (Association), which represented a number of the homeowners served by the water distribution system, appeared. The Association, having

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timely filed a motion to intervene, argued that it opposed the proposed sale of the water supply and distribution system to Southern and requested that the Commission consider the Association as an alternative purchaser and operator of the system.

On December 23, 1993, the Commission issued Report and Order No. 21,078 in which it formally granted the Association's motion to intervene and adopted a procedural schedule to govern its investigation into the proposed purchase and sale. The procedural schedule, inter alia, required the parties to file briefs on the scope of the issues to be addressed in this proceeding. Subsequently, the Commission granted full intervenor status to Thomas Wurm, a resident of the development that indicated the Association was not representing his interests.

In Report and Order No. 21,151 dated March 2, 1994, we ruled that the scope of this proceeding was governed by a "public good" standard. We went on to hold that under this "public good" standard we would consider the alternative option put forward by the Association to purchase the water distribution system in evaluating the joint petition filed by Springwood and Southern under a "net benefits" test.

II. POSITIONS OF THE PARTIES AND STAFF

Southern

Southern took the position that it is fully qualified to own and operate the water system and that it is therefore in the public good to approve the petition. Southern argued that the Association did not represent the interests or the views of all the customers served by the water distribution system, a number of whom wanted Southern to purchase the system. Southern further argued that the Association was not competent to own, operate and manage the system, and that the Association's charter did not provide it with the legal authority to purchase or operate the system.

Springwood

Springwood took the same position as Southern, and also stated that it would not sell the system to the Association.

Thomas Wurm

Mr. Wurm supported the positions of Southern and Springwood, objecting to the proposal that the Association purchase the system.

Association

The Association argued that it represented an overwhelming majority of the homeowners. It further represented it had already raised the funds necessary to purchase the system which would be owned by a sister corporation and operated under contract by the same Company running the system for Springwood.

Staff

Staff took no position, but sought to create as thorough a record as possible for Commission deliberation.

III. COMMISSION ANALYSIS

[1-8] In Report and Order No. 21,151 (March 2, 1994) which addresses the scope in this proceeding we quoted from *Parker-Young Co. v. State*, 83 NH 551 (1929) and indicated that the "conscientious weighing of the relative benefits and burdens which would be conferred and imposed upon each by the respective developments proposed by the two competing companies..." was the appropriate analysis to use in this case. Even though the Association is not a public utility we indicated that we need to weigh the relative benefits and burdens of both Southern's proposal and the alternative of the Association to arrive at a decision that is in the public good. Having now completed the hearings and weighed the evidence, we are convinced that the sale of the Springwood Hills Water Company to Southern and the subsequent provision of water by Southern to the current customers of Springwood is in the public good. We therefore rule accordingly.

In arriving at this result we have carefully considered and given weight to the seriousness

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and commitment of at least a core group of the Association. It is not easy to find against an Association that has worked so hard to try to establish itself as a viable alternative to Southern. A number of members and officers of the Association have devoted considerable time and financial resources to this effort, going so far as to hire their own legal counsel and to participate fully in the hearing process, as well as to undertake a significant number of related responsibilities. Nonetheless, we believe that when all the evidence is weighed, it leads inevitably to the conclusion that the public will be better served by Southern, an established water utility.

A number of issues were raised throughout the hearings that we believe militate against the Association taking over the system. First, according to the testimony of Frank Caparco, President of Springwood Hills Water Company, he is not willing to sell the water system to the Association and he would rather continue to run the company than have it run by the Association. Transcript, Day IV, at pp. 112-116. This being the case, it is unclear how the Association could legally take over the system since our responsibilities and authority in this area do not include the ability to be able to order the company to sell the water system absent a showing that it was not providing the service that it must. See RSA 374:28 and RSA 374:41-47-a. For this reason alone the Association is not a viable alternative.

Even if, however, Mr. Caparco agreed to sell to the Association, we find a number of other reasons that lead us to believe that operation by the Association would not be in the public good.

Although the Association has been active in recent years it has only meager by-laws and an organizational structure that do not lend themselves to running a water company. *See* Exhibit 19. The Association does have plans to make changes in the bylaws and other changes in the way it is run. *See, e.g.*, for example, Transcript, Day III, p. 165; Day IV, p. 9. Nonetheless, we must decide based on the record before us now and the entities that are in existence now, not what has been proposed, suggested or planned. We realize that this to some degree puts the Association in a "Catch 22" in that it does not want to take steps to formalize its structure and other related steps until it knows that we would authorize it to take over the water system. However, even assuming that there was a purchase and sale agreement, we could not in good conscience approve a transfer to an organization that is not firmly established and about which there is uncertainty as to its continued existence and validity.

The Association provided much testimony to indicate that it had the backing of a significant number of the homeowners in the neighborhood. However, when viewed in its entirety we believe that the evidence shows that the issue of a takeover of the water system by the Association and all of the ramifications of such a step was never clearly put before all of the homeowners. *See* Transcript, Day III, p. 140-141; Day III, pp. 178-180; Day IV, pp. 16-20. We can not be assured, based on the record before us, that the homeowners understand what it takes to run a water system, the financial commitment necessary, the time commitment necessary, and the regulatory environment in which it must be operated. *See* Transcript, Day III, pp. 185-186; Day IV, pp. 33-34. We find no clear evidence, in fact, that the homeowners were ever specifically asked for a commitment to buy the system.

Moreover, the record contains a number of informative letters and statements from homeowners who are opposed to having the Association run the water system. *See* Exhibits 9, 10, 39, 46, and 48. One of those statements was by a homeowner who encountered a service problem that he believed could not have been efficiently resolved by the service company which both currently handles the water system and which the Association indicated was the company it intended to hire for a similar purpose. Transcript, Day III, p. 154. His problem was solved quickly and inexpensively by Southern, which currently has an agreement to provide certain services to the Company. Transcript, Day IV, pp. 63-68. This statement supports the importance to the customers, and thus ultimately to the public good, of having a qualified company responsible for the system.

One of the most convincing arguments

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against allowing the Association to run the system is the financial backing and related issues. It is beyond dispute that running a water system today, in light of the Safe Drinking Water Act and other related federal and state requirements, can be a very expensive proposition. Even if the company were willing to sell to the Association, the record indicates that it would take more than the \$60,000 which Southern is paying to the Company as the purchase price. Southern has already invested financial resources in the system which make the actual price higher. Transcript, Day IV, at p. 116; also Transcript, Day I, p. 41 and pp. 67 and 68. Although the Association made gallant efforts to find financial backing for this undertaking, it clearly does not

have the resources available yet to be able to purchase the system. *See* Transcript, Day III, pp. 114-125. Moreover, it is unclear where it would obtain the resources to finance any significant capital expenditures that might be encountered in the future as result of federal or state requirements or an emergency that might occur. *See* Transcript, Day III, p. 148-152; Exhibit 36; Day IV, pp. 31-33.

In addition, the officers of the Association indicated they had plans, if they did obtain the system, of trying to tie in with Manchester Water Works, an undertaking which appears unlikely to occur, but if it did would require another significant capital expenditure. Transcript, Day III, pp. 137-139; Day III, pp. 192, 193; Day IV, pp. 29-31. We believe that when the evidence is viewed as a whole it indicates a lack of financial stability or security that could seriously affect the public good.

Under RSA 362:4 we have the authority to exempt from utility regulation a company that supplies fewer than 10 customers. Over the years the Commission has interpreted this to mean, in part, that a neighborhood association that supplies only its members is really only supplying one customer and thus it need not be regulated. Once that association starts providing service to non-members, however, each nonmember counts for one customer toward the limit in RSA 362:4. In this case, the record indicates that more than 9 homeowners would elect not to be members of the Association and thus the system would be subject to our regulation. Exhibits 9, 10, 39, 46 and 48; Transcript, Day IV, p. 70. This raises a number of additional issues. The Association indicated it had plans to charge a higher rate to customers who did not invest in the system than those that did. Transcript, Day III, pp. 159, 182-185. The record does not support the approval of such a rate if this system were subject to our regulation. Additionally, this means that the Association would incur the additional responsibility and expense of regulation which we are not persuaded by the evidence that they are prepared to do. *See* Transcript, Day IV, pp. 20-29.

We also believe that we need to be mindful of future customers of the water company, not just present ones. Even if we assume that there are enough present customers who are willing to invest the time and financial resources to get this undertaking off the ground, and as we have indicated above we do not believe this is necessarily the case, it is extremely uncertain how future customers might react to this proposition. In this day and age there is typically a fairly large turnover in the ownership of homes in a neighborhood. *See* Transcript, Day III, p. 132. We must consider the public good in a larger sense than just those homeowners who are there today. We must also consider the homeowners of tomorrow and we believe when we do so that it helps us once again to decide in favor of Southern.

We should also note that the issue of regionalization as a policy of this Commission and the State in general came up at the hearings. Transcript, Day I, p. 30, and pp. 96-102. It was addressed through testimony and also through briefs. After reviewing this information we believe that while regionalization may be a policy which has been pursued either by this Commission or the state in the past, that it is not a policy that we need to address in this particular case given the other arguments which we have discussed above. We will say, however, that we find the Company's willingness to provide service to customers in stand-alone systems which are often fraught with problems to be of assistance in resolving difficult situations and we do not want to discourage that willingness.

Having spent much time above discussing

our reasons for not choosing the Association, we now focus on why we believe Southern is qualified to purchase and maintain the system. Clearly Southern, as exhibited by its operation of numerous other water systems in this state, has the ability to run a water system and provide reliable water service to customers. In addition, as we have noted above, financial resources are a major consideration given the public health and other requirements imposed on any water system today. Southern clearly has the ability to purchase the system, as well as the ability to finance capital expenditure, both anticipated and not, that will happen in the future. Transcript, Day I, pp. 28-36. This is a key ingredient in our review of any transfer of utility ownership and the responsibility that goes with it.

The one area of concern that we do have with Southern is in the area of customer relations. In this particular case it is clearly going to be difficult for them to work with customers against whom they have been litigating. From the hearing it became obvious that there were strong emotions tied up with this docket. In order to promote better customer relations between Southern and the Springwood Hills customers we believe there needs to be an advisory board which will provide a sounding board for customer complaints and which will open the door to better communications between the utility and the customers. Hampton Water Works, though not ordered to do so by this Commission, has created this type of board which we believe provides a model for Southern to follow. We see a particular need in this case for such a forum, and we also believe that it would be of benefit to Southern and its relationship with all of its customers. For this reason we will order Southern within 60 days of the date of this report and order to submit for our review a proposal for the establishment and operation of an advisory board composed of representatives of customers throughout its New Hampshire franchises.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report which is incorporated herein; it is hereby

ORDERED, that the joint petition of Southern New Hampshire Water Company, Inc. (Southern) and Springwood Hills Water Company, Inc. (Springwood) for the purchase and sale, respectively, of the assets of the Springwood Water Company, Inc. is in the public good, and is, therefore, granted; and it is

FURTHER ORDERED, that Southern is granted the rights and responsibilities of a franchise to serve as a public water utility in that area of Londonderry, New Hampshire formerly served by Springwood; and it is

FURTHER ORDERED, that Southern shall charge customers \$39 per month until such time as meters are installed, at which time it shall charge "General Metered Service Rate A" (GMSA); and it is

FURTHER ORDERED, that Southern submit to the Commission within 60 days of the date of this order a proposal for the establishment and operation of an advisory board as described in the foregoing report.

By order of the New Hampshire Public Utilities Commission this tenth day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Springwood Hills Water Co., Inc., DE 93-203, Order No. 21,078, 78 NH PUC 741, Dec. 29, 1993. [N.H.] Re Springwood Hills Water Co., Inc., DE 93-203, Order No. 21,151, 79 NH PUC 151, Mar. 2, 1994.

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NH.PUC*05/10/94*[70491]*79 NH PUC 270*Public Service Company of New Hampshire

[Go to End of 70491]

79 NH PUC 270

Re Public Service Company of New Hampshire

DR 93-179

Order No. 21,220

New Hampshire Public Utilities Commission

May 10, 1994

ORDER denying a petition for reconsideration of Order No. 21,173, wherein the commission had determined the scope of issues to be addressed in a docket examining the renegotiation of rates payable by an electric utility for power purchased from eight wood-fired small power producers. For the earlier scoping order, see 79 NH PUC 181, *supra*.

1. ELECTRICITY, § 3

[N.H.] Wood-fired generating plant — Small power producers — Renegotiation of rates — Affirmation of scope of proceeding — Issues *not* to be addressed — Evaluation of all alternative sources of power — Quantification of the value placed on renewables — Economic, environmental, and social externalities. p. 271.

APPEARANCES: As previously noted

BY THE COMMISSION:

I. PROCEDURAL HISTORY

The Public Utilities Commission (Commission) on October 15, 1993 issued an order of notice initiating a docket to consider the status of negotiations between Public Service Company of New Hampshire (PSNH) and thirteen small power producers. The docket is the result of a provision within the Rate Agreement between PSNH and Northeast Utilities, as defined in RSA

362-C:2 I, and as accepted by the Commission in DR 89-244, *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385 (1990), under which Northeast Utilities is required to use its best efforts to renegotiate the rates of the following thirteen small power producers: Briar Hydro/Essex Hydro, Errol Dam, Greggs Falls, Pembroke Hydro, Penacook Upper Falls (the five hydropower SPPs), Alexandria Power, Bio-Energy Corporation, Bridgewater Steam Power, TIMCO, Hemphill Power and Light, Bethlehem Pinetree Power, Tamworth Pinetree Power, Whitefield Power (the eight woodburning SPPs).

The Commission, by Report and Order No. 21,190 (April 19, 1994) approved agreements between PSNH and the five hydropower SPPs.

On March 24, 1994, the Commission issued an order limiting the scope of the proceedings in consideration of the agreements between PSNH and the "settling" woodburning SPPs. *See* Report and Order No. 21,173 (March 24, 1994). Campaign for Ratepayers Rights (CRR), on April 4, 1994 filed a Motion for Partial Reconsideration of 3/24/94 Scoping Order. New Hampshire Timberland Owners Association (Timberland Owners), on April 11, 1994 filed a Motion for Partial Reconsideration on the scoping order as well. The Society for Protection of New Hampshire Forests (Forest Society) on April 19, 1994 concurred in portions of the two Motions. For a full procedural history, see Report and Order No. 21,173 (March 24, 1994).

The Commission, at its April 25, 1994 public meeting, denied the motions for partial reconsideration. This report and order will address the motions and the reasons for their denial.

II. PARTIES AND STAFF'S POSITION ON SCOPE OF ISSUES

A. *Campaign for Ratepayers Rights*

CRR, in its Motion for Partial Reconsideration of 3/24/94 Scoping Order, argued that the Commission should consider the likelihood of plant shutdowns if the two settling woodburning SPP agreements were approved, and

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further whether these agreements should be evaluated in light of their possible application to other woodburning SPPs in the State. The results of these two inquiries would then guide the Commission in its evaluation of LEEPA, least cost planning and just and reasonable rates. CRR also argues that the Commission should consider the continued operation of Merrimack II and the availability of nuclear power and Hydro- Quebec power in the future and should develop in greater detail the value it places on renewable resources.

B. *Timberland Owners Association*

Timberland Owners, in its Motion for Partial Reconsideration, concurred with the arguments of CRR in its motion. Timberland Owners emphasized the need for Commission evaluation of the state's energy supply system as a whole, "comparing the costs and benefits of its component parts", and asked that the Commission define how and why woodburning SPP operations are important. Timberland Owners asked that it be permitted to submit evidence on environmental and economic costs and benefits of wood operations and other components of the State's energy system, renewables, fuel diversity, enhanced forest management and wildlife.

C. Other Parties

The Forest Society, on April 19, 1994, filed a statement concurring with paragraphs 5 through 9 of the CRR motion and paragraphs 2 and 3 of the Timberland Owners motion. There were no other motions for reconsideration or responses filed thereto.

D. Commission Staff

Commission Staff (Staff) on April 15, 1994, objected to the Timberland Owners' Motion for Partial Reconsideration, arguing that the Motion presumes without justification that agreements are likely to cause the shutdown of woodburning SPPs and that the Commission has appropriately narrowed the scope of the proceeding.

III. COMMISSION ANALYSIS

[1] Having reviewed the requests of CRR, Timberland Owners and the Forest Society, we find no basis on which to grant reconsideration of our scoping order and therefore, the motions for partial reconsideration will be denied.

CRR would have us evaluate all sources of power and the future availability before we can address the two SPP/PSNH agreements. We do not think it necessary to evaluate all sources of power and their future availability in order to move forward with these two agreements. As we stated in our original scoping order, there must be some limit placed on this case, in order for discovery and hearings to be workable.

In addition, CRR would have us quantify the value we place on renewable resources. We disagree. We do not consider the issue of renewable resources' place in the fuel mix to be so exact as to warrant hard quantification. In any analysis of the public good we are called upon to weigh competing policy considerations. Although these can rarely be quantified with exactitude, they are essential to any weighing of policy considerations which we are routinely called upon to do, within the guidance provided us by the General Court.

Timberland Owners asked that it be allowed to "1) ... offer evidence on all issues that are relevant to a thorough examination of the relative costs and benefits, both economic and environmental, of the Wood SPPs and the various other components of New Hampshire's energy System during the period of the affected rate orders; [and] 2) to permit the parties to offer evidence relating to renewables, fuel diversity, enhanced forest management and wildlife..." Further, Timberland Owners asks that we develop on the record how and why woodburning SPP operations are important. We disagree. To grant Timberland Owners' motion we would effectively impose no limitation on the scope of this docket at all. As we have repeatedly stated, it is necessary to assert some limitation on these matters, in order to make the hearing process workable. We cannot litigate every economic, environmental and social issue that is potentially raised by these two agreements. The exercise we have been engaged in during the last

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five months to limit the scope of the proceeding would be for naught if we were to grant these motions for partial reconsideration.

Finally, the motions do not identify any issues or policy considerations not already advanced

in prior scoping filings and addressed in Report and Order No. 21,173. Pursuant to RSA 541:3, therefore, we find no good cause shown to reconsider our decision.

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 Partial Reconsideration of 3/24/94 Scoping Order filed by Campaign for Ratepayers Rights is DENIED; and it is

FURTHER ORDERED, that the Motion for Partial Reconsideration filed by New Hampshire Timberland Owners Association is DENIED.

By order of the New Hampshire Public Utilities Commission this tenth day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,173, 79 NH PUC 181, Mar. 24, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,190, 79 NH PUC 213, Apr. 19, 1994.

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NH.PUC*05/10/94*[70492]*79 NH PUC 272*Southern New Hampshire Water Company, Inc.

[Go to End of 70492]

79 NH PUC 272

Re Southern New Hampshire Water Company, Inc.

DR 94-060
Order No. 21,221

New Hampshire Public Utilities Commission

May 10, 1994

ORDER establishing a procedural schedule in a docket addressing a water utility's request to eliminate connection fees for new customers in certain areas of Pelham, Londonderry, and Hudson. Commission affirms that, pending resolution of the matter, new customers should continue to pay the connection fees, with the knowledge that such may or may not be refunded, depending on the outcome of the proceeding.

1. RATES, § 304

[N.H.] Connection fees — Proposal for elimination — Water utility — Status quo pending outcome of proceeding. p. 273.

2. SERVICE, § 188

[N.H.] Extensions — Burden of cost — New customers — Connection fees — Proposal for elimination — Water utility — Status quo pending outcome of proceeding — Possibility of refunds. p. 273.

APPEARANCES: Larry S. Eckhaus, Esq. for Southern New Hampshire Water Company, Inc.; Kenneth Traum for the Office of Consumer Advocate; and Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

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REPORT

I. *PROCEDURAL HISTORY*

On April 5, 1994, Southern New Hampshire Water Company, Inc. ("Southern" or the "Company") filed a petition to eliminate certain connection fees payable to Southern from new customers along certain roads in the towns of Pelham, Londonderry and Hudson. The petition requests amendment of Commission Orders No. 19,168 in docket DE 88-077, No. 18,883 in docket DR 87-171 and No. 17,111 in docket DE 84-176.

On April 11, 1994, the Commission issued an Order of Notice scheduling a prehearing conference for May 4, 1994, to establish a procedural schedule to govern the Commission's examination of the Company's petition, and to address any motions to intervene in the proceedings. In addition, the Order of Notice required the Company to prefile direct testimony and exhibits with the Commission and known parties on or before April 29, 1994 in support of its claim of the changed circumstances that justify the elimination of the connection fees, and providing details of the consequences of such elimination.

On April 29, 1994, the Commission received the prefiled direct testimony of Robert W. Phelps, President.

II. *POSITIONS OF THE PARTIES*

The Company requested at the hearing that, during the pendency of this case, potential customers affected by the connection fees in the subject areas of this docket be treated the same as Mr. Robert Andrew. The Company had previously petitioned the Commission in DE 94-019 to waive the connection fee for the 18 unit apartment building proposed by Mr. Andrew in Pelham. In that docket, the Commission ordered that Mr. Andrew would pay the connection fee, subject to the outcome of the proceedings in this docket. The Company's request was to indicate to prospective customers that the same circumstances would apply.

The Staff presented the following schedule to govern the investigation into Southern's request, to which the Company and OCA agreed:

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

May 20, 1994	Staff & OCA Data Requests
June 3, 1994	Company Data Responses
June 17, 1994	Staff & OCA Testimony
June 24, 1994	Company Data Requests
July 8, 1994	Staff & OCA Data Responses
July 18, 1994	Settlement Conference, 10 a.m.
August 9 & 10, 1994	Hearing on the Merits

III. COMMISSION ANALYSIS

[1, 2] We accept the Company's suggestion to treat potential new customers in a similar manner as that of Mr. Andrew. We would also echo the Staff's concern that any potential new customer be made aware of this docket and clearly advised that their connection fee may or may not be refunded, depending on the outcome of this docket, so that the customer is not led to believe that he or she will definitely have it returned.

We further accept the stipulated schedule set forth above to govern this proceeding. Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the schedule set forth in the preceding report is adopted to govern this proceeding.

By order of the New Hampshire Public Utilities Commission this 10th day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., Inc., DE 84-176, Order No. 17,111, 69 NH PUC 381, July 16, 1984. [N.H.] Re Southern New Hampshire Water Co., Inc., DE 87-171, Order No. 18,883, 72 NH PUC 511, Oct. 22, 1987. [N.H.] Re Southern New Hampshire Water Co., Inc.,

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DE 88-078, Order No. 19,168, 73 NH PUC 352, Sept. 8, 1988.

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NH.PUC*05/10/94*[70493]*79 NH PUC 274*Ashland Electric Company

[Go to End of 70493]

79 NH PUC 274

Re Ashland Electric Company

DE 94-005
Order No. 21,222

New Hampshire Public Utilities Commission

May 10, 1994

ORDER scheduling hearings for the purpose of taking oral argument on the issue of a municipal's right to expand into a service area franchised to another.

1. PROCEDURE, § 20

[N.H.] Hearings — For taking of oral argument — Issues of legal rights — Municipal expansion into another's franchised area. p. 274.

2. SERVICE, § 203

[N.H.] Extensions — By municipal — Expansion into another's franchised area — Hearings as to legal rights. p. 274.

BY THE COMMISSION:

ORDER

[1, 2] The New Hampshire Public Utilities Commission ("Commission"), by Order of Notice dated April 8, 1994, adopted a procedural schedule for a paper proceeding to address the Ashland Electric Department's ("Ashland") request for a declaratory ruling relative to expanding its electric distribution facilities on North Ashland Road which is currently franchised and served by the New Hampshire Electric Cooperative, wherein memoranda of law would be submitted on May 11, 1994; and

WHEREAS, on April 25, 1994, Granite State Electric Company filed a Motion to Intervene citing its interest in the "issues regarding the legal rights of a municipal utility to expand into a service franchise", which request was granted by the Commission at its meeting on May 2, 1994; and

WHEREAS, Ashland, by letter filed on May 4, 1994 requests that it be provided with an opportunity to respond, either orally or in writing, to memoranda filed on behalf of opposing parties, including intervenors; it is hereby

ORDERED, that a hearing be held for the purpose of oral argument on the previously submitted memoranda of law, pursuant to N.H. Admin. Rules Puc 203.05, before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on June 7, 1994, at 10:00 a.m.

By order of the New Hampshire Public Utilities Commission this tenth day of May, 1994.

Any individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the American with Disabilities Act Coordinator, NHPUC, 8 Old Suncook Road, Concord, New Hampshire 03301-7319; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Preferably, notification of the need for assistance should be made on or before May 24, 1994.

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NH.PUC*05/11/94*[70495]*79 NH PUC 275*Springwood Hills Water Company, Inc.

[Go to End of 70495]

79 NH PUC 275

Re Springwood Hills Water Company, Inc.

DE 90-051

Order No. 21,224

New Hampshire Public Utilities Commission

May 11, 1994

ORDER establishing a water utility's revenue requirement after consideration of its liability for state business enterprise and federal income taxes. Commission concludes that no "gross up" of revenue requirement for tax effects is needed, given the utility's significant tax loss carry-forwards from 1990 and 1991.

1. EXPENSES, § 109

[N.H.] Taxes — State business enterprise taxes — Federal income taxes — Liability for or lack thereof — Impact on revenue requirement — Need for "gross up" — Discussion. p. 276.

2. REVENUES, § 2

[N.H.] Estimates for the future — Determination of revenue requirement — Factors — Tax liability — Practice of "grossing up" — Impact of prior tax loss carry-forwards — No need for gross up — Water utility. p. 276.

3. REVENUES, § 16

[N.H.] Uncollected revenue — Unbilled revenue — No right to collect at later time — Factors — Utility's own choice not to bill at time of service — Water utility. p. 276.

4. WAIVER AND ESTOPPEL

[N.H.] Doctrine of laches or estoppel by laches — Failure to assert a right at the proper time — Unbilled revenue — No right to collect at later time — Factors — Utility's own choice not to bill at time of service — Water utility. p. 276.

5. CORPORATIONS, § 1

[N.H.] Type and organization — C-corporation — Accrual method of accounting for tax purposes — Water utility. p. 276.

APPEARANCES: Robert H. Fryer, Esq. on behalf of Springwood Hills Water Co., Inc.; Larry S. Eckhaus, Esq. on behalf of Southern New Hampshire Water Company, Inc.; Springwood Hills

Neighborhood Association, Pro Se; and Eugene F. Sullivan III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. PROCEDURAL HISTORY

On March 20, 1990, Springwood Hills Water Company, Inc. (Springwood Hills or the Company) filed a petition to provide water service to a limited area in the Town of Londonderry, New Hampshire known as the Springwood Hills Development, and to establish rates therein.

On November 9, 1990, the Commission issued Report and Order No. 19,982 granting a franchise to Springwood Hills and setting temporary rates at \$160.00 per year (\$40.00 per quarter) per customer, after a duly noticed hearing.

Subsequent to an investigation into the proposed rates by the Commission Staff and hearing, the Commission issued Report and Order No. 19,981 on May 17, 1991, granting a franchise and permanent rates to the Company based on a Stipulated Agreement entered into between Staff and Springwood Hills. The permanent rates were set at a flat \$52 per month, with a \$13 per month temporary rate recoupment surcharge. RSA 378:27; 378:28; 378:29.

Although Springwood Hills had the right to collect \$40 per quarter from November 9, 1990, through May 17, 1991, and \$65 per month from its customers from May 17, 1991, through November 23, 1992, it chose not to bill customers until January of 1992 because it was in negotiations with other utilities to sell its

Page 275

franchise and assets. In fact, even though the Company keeps its books on an "accrual" basis, it did not book the revenues which it was entitled to receive, and did not bill for in 1990 and 1991; rather it reported a loss for the purposes of federal income taxation.

On September 22, 1992, the Commission issued Order *Nisi* No. 20,609 at the request of the Company authorizing Springwood Hills to recover certain unbilled revenues through a surcharge. At the request of the customers of Springwood Hills, the Commission held a public meeting on November 9, 1992 in Londonderry, New Hampshire. At that public hearing the Commission was informed that the rate used to calculate the tax liability of Springwood Hills was incorrect. The Commission asked Staff to investigate this information.

On December 14, 1993, the Commission issued *Nisi* Order No. 21,062 requiring Springwood Hills to lower its monthly rates from \$52 to \$39 due to its status as a sub-chapter S-corporation with no tax liability pursuant to RSA 378:7.

On February 28, 1994, Springwood Hills requested a hearing on the issue of the proper revenue requirement in light of the tax adjustment made by the Commission in *Nisi* Order No. 21,062 because it asserted it was, in fact, a "C" corporation. In support of this assertion Springwood Hills supplied the Commission with copies of the front pages of its last three years of federal income tax returns, Form 1120.

On March 22, 1994, the Commission issued Report and Order No. 21,167 granting Springwood Hills' motion for rehearing of Order No. 21,062 and set a hearing for March 30,

1994, to take evidence on the Company's proper revenue requirement. The order of notice set forth the specific issue of the proper treatment of certain tax loss carry forwards and their effect on setting an appropriate revenue requirement. Subsequently, Southern New Hampshire Water Company, Inc. (Southern) sought and was granted intervenor status in this docket because of another docket currently pending before the Commission in which it is seeking approval of its purchase of the assets of Springwood Hills.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Springwood Hills*

Springwood Hills takes the position that the tax losses, reported to the Internal Revenue Service ("IRS"), are irrelevant to the Commission's determination of an appropriate revenue requirement.

B. *Southern*

Southern supports the position of Springwood Hills.

C. *Staff*

Staff recommends that the Commission set the Company's revenue requirement based on its current federal tax standing and provide reparations to customers.

D. *Homeowners Association*

The Homeowners Association takes the same position as Staff.

III. COMMISSION ANALYSIS

[1-5] The primary issue before the Commission is the proper revenue requirement for Springwood Hills on a prospective basis, and hence, the rates it may now charge its customers. Ancillary to that issue, is the issue of the "retroactive" application of that rate via customer surcharges or reparations. Before addressing these ancillary issues, we will address the appropriate revenue requirement on a prospective basis.

We find that \$34,925 is the "just and reasonable" annual revenue requirement of Springwood Hills. RSA 378:7. Thus, the rate per month, per customer from this date forward shall be \$39 until meters are installed, at which time a volumetric charge reflecting this revenue requirement shall be established.

We base this finding on exhibit 8 prepared by our Staff, which includes no adjustment for the effect of State and federal taxation to the Company's overall revenue requirement. Generally, it is our practice to adjust a utility's

established revenue requirement via a methodology commonly referred to as "gross up". *But see, Re Public Service Company of New Hampshire*, Report and Order No. 21,069 (January 3, 1994). The practice of "grossing up" a utility's revenue requirement provides it with some assurance that it will have an opportunity to earn its allowed rate of return after taxes.

The methodology is effectuated by computing a utility's State and federal tax rate and applying that tax rate to its revenue requirement; the revenue requirement is then increased to

nullify the effects of taxation on the initial revenue requirement. Of course, this additional revenue is also subject to taxation; consequently, revenues must again be increased. This process continues with incremental increases in revenues until the effect of taxation is insignificant, and the initially established revenue requirement is reached.

We have included no "gross up" in the revenue calculation established above because the Company has significant tax loss carry forwards from its operations in 1990 and 1991. Thus, there is no need to "gross up" the Company's revenues to allow it an opportunity to earn its just and reasonable return on its investment as it will experience no income tax liability for some indeterminate period into the future¹⁽²¹⁾.

Furthermore, at such time as the tax loss carry forward no longer exists, the Company is free to file for a rate increase, assuming it can establish a revenue deficiency resulting in a return on its investment outside the "zone of reasonableness".

A. Initial Revenue Requirement.

On the basis of the entire record of this proceeding, we find it appropriate to "re-calculate" the initial revenue requirement of \$46,259 established in Report and Order No. 19,981, dated May 17, 1991. We find, that the Company's proper revenue requirement on May 17, 1991 was \$39,409 based on our traditional rate setting methodology

²⁽²²⁾. The \$6,850 difference in revenue is the result of the use of the wrong tax bracket in computing the revenue "gross up" for the Company.

One should not conclude from this finding, however, that the \$46,259 revenue requirement set by the Commission in Report and Order No. 19,981 resulted in revenues to the Company outside the constitutional "zone of reasonableness" or in statutorily "unjust and unreasonable" rates. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); RSA 378:28.

We reach this conclusion based on the fact that although the Company could have collected the revenues established in Report and Order No. 19,981 from November of 1990, through November of 1991 it did not do so. Thus, customers received free service for one year because the Company failed to collect an entire year of revenues.

In light of the Company's provision of free service for one entire year it is unnecessary, and would be inappropriate, to require it to now make reparations to customers for any "over-collections" that may have resulted from billings in 1992 and 1993. Based on this analysis, we must also conclude that the Company is not now entitled to collect the 12 months of revenues it opted not to collect in 1991.

Furthermore, assuming *arguendo*, the Company has some claim to these revenues, we further find that the Company is not entitled to recover these unbilled revenues on the principle *laches* or *estoppel by laches*, the fact that the Company did not intend to collect these revenues at the time it opted not to bill its customers, its violation of the prohibition against the provision of free service contained in RSA 378:14, and its failure to comply with a Commission order and the tariff issued in compliance therewith. Report and Order No. 19,981.

The doctrine of *laches* or *estoppel by laches* is defined as neglect to assert a right or a claim, or failure to do something which should be done at a proper time, to the prejudice of another.

State v. Weeks, 134 N.H. 237, 240 (1991). The question of the applicability of the doctrine is one of fact which need not be ruled by the statute of limitations where it would be inequitable ("unjust and unreasonable") to do so. *Id.*

Given the one to two year delay in billing, and the inevitable customer turnover through the sale and construction of new homes over

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that time period, it would be inequitable to now attempt to recover the so-called uncollected revenues from customers that may not have taken service during the period when bills were not rendered.

Springwood Hills is organized as a "C" corporation which maintains its books under the accrual method of accounting for tax purposes. Utilities, computing their income under an accrual method of accounting, must report any income attributable to the "sale or furnishing" of utility services in the year the services are provided. 26 U.S.C.A §451 (f) (Supp. 1994). Furthermore, under the accrual method of accounting it is the right or entitlement to an item of income and not the actual receipt of the income that makes the income taxable. *Schlude v. Commissioner of Internal Revenue*, 372 U.S. 128 (1963).

The record reveals that the Company's accountant, a C.P.A., prepared its 1990 and 1991 tax returns which did not include the revenues the Company was entitled to collect pursuant to Report and Order No.19,981. Exhibit 7. Thus, giving rise to the tax loss carry forwards at issue herein.

Given the expertise of the tax preparer, the Commission concludes that the Company did not intend to collect these revenues, and had, in fact, opted to give up or abandon these revenues. We believe that the Company's intent at the time it opted not to collect these revenues weighs heavily against its right to now collect these revenues. As we have noted previously, we do not believe a utility should be allowed to represent one position to the IRS and another to this Commission for rate making purposes. *Re Mountain High Water and Gas, Inc.*, 76 NH PUC 415 (1991).

Thus, we find, once again, that the Company has no right to collect the revenues it opted to forgo in 1990 and 1991 based on its tax returns for those years.

IV. CONCLUSION

As set forth above, Springwood Hills is allowed the opportunity to collect \$34,925 or \$39 per month, per customer until the installation of meters at which time an appropriate volumetric charge shall be set. The Company will not be allowed to collect any revenues for which it failed to bill for from November 1990 to November 1991, or any surcharges that were not billed thereafter. Furthermore, the company is not required to pay reparations to any customers for any over collections.

Our Order will issue accordingly.

ORDER

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

ORDERED, Springwood Hills Water Company, Inc. is allowed the opportunity to collect \$34,925 or \$39 per month, per customer until the installation of meters at which time an appropriate volumetric charge shall be set; and it is

FURTHER ORDERED, that Springwood Hills Water Company, Inc. shall not collect unbilled revenues, and shall not provide any customer reparations.

By order of the New Hampshire Public Utilities Commission this eleventh day of May, 1994.

FOOTNOTES

¹The length of time is "indeterminate" because there is no absolute method for computing the Company's actual operation and maintenance expenses, or revenues in the future.

²At the March 30, 1994, hearing a ratepayer questioned whether the costs of installing the community water system had been recovered from the sale of the homes which are serviced by the system. The Commission's initial investigation in this proceeding conducted in 1990 established that over \$600,000 was expended to install the water distribution system and of that amount, \$120,000 was not expensed against the revenues from the sale of homes for tax purposes. Thus, the Commission used the 120,000 figure to establish the Company's ratebase. *See, Appeal of Eastman Sewer*, 137 N.H. — (January 27, 1994).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Telephone, DR 93-159,

Page 278

Order No. 21,069, 78 NH PUC 731, Dec. 20, 1993. [N.H.] Re Spring Wood Hills Water Co., Inc., DE 90-051, Order No. 19,982, 75 NH PUC 717, Nov. 9, 1990. [N.H.] Re Springwood Hills Water Co., DE 90-051, Order No. 21,062, 78 NH PUC 719, Dec. 14, 1993. [N.H.] Re Springwood Hills Water Co., DE 90-051, Order No. 21,167, 79 NH PUC 168, Mar. 22, 1994.

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NH.PUC*05/12/94*[70496]*79 NH PUC 279*Manchester Water Works

[Go to End of 70496]

79 NH PUC 279

Re Manchester Water Works

DE 94-064

Order No. 21,225

New Hampshire Public Utilities Commission

May 12, 1994

ORDER authorizing a water utility to expand its service area to include a new residential

development in Londonderry, where such service had been requested by the developer, no other water utility was located in the area, and the Town of Londonderry had endorsed the expansion.

1. SERVICE, § 210

[N.H.] Extensions — Expansion of service area — Water utility — Factors affecting approval — Affirmative request for service — Approval by local government — Lack of alternative water service. p. 279.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on April 11, 1994, Manchester Water Works (Manchester) filed a petition to expand its existing service area in the Town of Londonderry; and

WHEREAS, the petition is primarily the result of a request for service to a proposed approximately 60-lot single family development within the area; and

WHEREAS, the area will be served under Manchester's existing tariff; and

WHEREAS, the Town of Londonderry has provided their written approval of the proposed expansion; and

WHEREAS, there are no other water utilities in the vicinity of the proposed expansion; and

WHEREAS, upon investigation and consideration, the Commission finds that allowing Manchester to expand its franchise area as requested is in the public good; and

WHEREAS, the public should be afforded an opportunity to respond to this petition; it is hereby

ORDERED *Nisi*, that Manchester is granted authorization, pursuant to RSA 374:22 and 26, effective June 10, 1994, to expand its franchise into an additional limited area of Londonderry consisting of Lots 11, 13, 13-2 through 13-11, 14, 15 and 15-1 through 15-4 on Londonderry Tax Map 18, as also shown on the map attached as Appendix 1 to this order; and it is

FURTHER ORDERED, that all persons interested in responding be notified that they may submit their comments or file a written request for a hearing before the Commission by June 9, 1994; and it is

FURTHER ORDERED, that Manchester effect such notification by (1) causing an attested copy of this order to be published no later than May 25, 1994, once in a newspaper having general circulation in the Manchester and Londonderry area; (2) providing a copy of this order by first class mail to the Londonderry Town Clerk, postmarked on or before May 25, 1994; and (3) documenting compliance with these notice provisions by affidavits to be filed with the Commission on or before June 9, 1994; and it is

FURTHER ORDERED, that this authorization is conditioned on Manchester's submission of approvals from the Department of Environmental Services pursuant to RSA 374:22 III regarding

the proposed expansion.

By order of the Public Utilities Commission of New Hampshire this twelfth day of May, 1994.

MAP - APPENDIX 1 - IN COMMISSION FILES.

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NH.PUC*05/16/94*[70499]*79 NH PUC 280*Northern Utilities, Inc.

[Go to End of 70499]

79 NH PUC 280

Re Northern Utilities, Inc.

Additional applicant: Public Service Company of New Hampshire

DR 94-090

Order No. 21,228

New Hampshire Public Utilities Commission

May 16, 1994

ORDER approving an interim amended interruptible gas sales contract between a natural gas local distribution company and an electric utility, which amendments were necessary to account for unbundling and other transportation pricing changes occasioned by issuance of Order 636 by the Federal Energy Regulatory Commission.

1. RATES, § 384

[N.H.] Gas rate design — Interruptible service — Sales to electric utility — Necessity of contract amendments — Factors — Issuance of Order 636 — Unbundling requirements — Other transportation pricing changes — Nominating and balancing provisions. p. 280.

BY THE COMMISSION:

ORDER

[1] Northern Utilities, Inc. (Northern) and Public Service Company of New Hampshire (PSNH) entered into an Interruptible Gas Sales Agreement (Gas Sales Agreement) on May 1, 1992, which was approved by the New Hampshire Public Utilities Commission (Commission) by Order No. 20,488 (May 26, 1992) in Docket DR 91-095.

Contained within the 1992 Gas Sales Agreement was a provision for pricing natural gas that

reflected the standards then in effect under Federal Energy Regulatory Commission (FERC) regulation of interstate natural gas pipelines. Since then, the pricing and operations of interstate natural gas pipelines has significantly changed, due in large measure to FERC Order No. 636 which, among other things, required the unbundling of gas sales and transportation on interstate natural gas pipelines. The pricing provisions of the Gas Sales Agreement, therefore, no longer are appropriate.

Also since the approval of the Gas Sales Agreement, the Commission investigated natural gas transportation pricing and rates for local distribution companies in New Hampshire. With Report and Order No. 20,950 (September 7, 1993) in Docket No. DE 91-149, the Commission authorized natural gas transportation services on an intrastate basis.

PSNH operates Newington Station, a utility boiler which is dual fueled and can operate on either oil or natural gas. It has been burning oil in recent months for financial reasons, but desires to operate with natural gas in the coming weeks if the pricing language of the Gas Sales Agreement is altered to reflect current FERC standards for interstate gas pipelines.

On May 10, 1994, Northern filed a Newington Station Conversion Cost Recovery Amended and Restated Interruptible Gas Sales and Interruptible Transportation Agreement (Restated Agreement) executed by Northern and PSNH for Commission approval. The Restated Agreement was designed to reflect current FERC regulation and Commission approved transportation policies. Northern and PSNH asked that the Restated Agreement be approved on an interim basis, effective immediately, to allow gas to be burned at Newington Station, while the terms of the Restated Agreement were being more fully evaluated.

As a result of a meeting between Northern, PSNH, the Office of Consumer Advocate (OCA), and the Commission Staff (Staff) on

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May 12, 1994, it was agreed that Northern and PSNH will withdraw the Restated Agreement and submit instead a more modified amendment to the Gas Sales Agreement which addresses only the pricing requirements under current FERC regulation (which would include certain nominating and balancing provisions) for PSNH and Northern for consideration on an interim approval basis, and submit, no later than June 1, 1994, a revised Restated Agreement for full consideration. At that point, the revised Restated Agreement will be subject to review and comment by OCA, Staff and other interested parties.

On May 13, 1994, Northern and PSNH submitted an executed Interim Amendment to the Newington Station Conversion Cost Recovery Interruptible Sales Agreement (Interim Amendment) which contains the following provisions:

- 1) pricing of natural gas sales to PSNH for Newington Station, to allow for interruptible sale of natural gas priced at "101.5% of Northern's supply area commodity cost, plus all interstate pipeline transportation costs, plus all taxes applicable to the total delivered commodity cost of Northern";
- 2) "nomination, scheduling and balancing penalties attributable to the operation of the Newington Station";

3) commitment by Northern and PSNH to file a revised Restated Agreement no later than June 1, 1994; and

4) commitment by Northern and PSNH that the interim approval of the Gas Sales Amendment will expire 60 days from Commission approval, unless extended by the Commission.

OCA and the Staff have indicated their acceptance of the interim approval of the Interim Amendment, in order to allow PSNH to burn natural gas at Newington Station while the fully Restated Agreement is considered.

Based upon the foregoing, it is hereby

ORDERED, that effective immediately, the Interim Amendment dated May 13, 1994 between Northern and PSNH is GRANTED ON AN INTERIM BASIS; and it is

FURTHER ORDERED, that such interim approval shall expire 60 days from the date of this order unless extended by the Commission; and it is

FURTHER ORDERED, that Northern and PSNH shall submit no later than June 1, 1994 a revised Restated Agreement for use of natural gas at Newington Station.

By order of the New Hampshire Public Utilities Commission this sixteenth day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 20,950, 78 NH PUC 479, Sept. 7, 1993. [N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DR 91-095, Order No. 20,488, 77 NH PUC 250, May 26, 1992.

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NH.PUC*05/17/94*[70500]*79 NH PUC 281*State of Vermont — Department of Public Safety, Emergency Management Division

[Go to End of 70500]

79 NH PUC 281

Re State of Vermont — Department of Public Safety, Emergency Management Division

DE 94-093
Order No. 21,229

New Hampshire Public Utilities Commission

May 17, 1994

ORDER authorizing a Vermont state government agency to lease space from Warner Cable

Television for the installation and operation of radio equipment for use in emergency services.

1. LEASES, § 1

[N.H.] Rental of pole space — By out-of-state governmental agency — From cable television company — For placement of emergency radio equipment. p. 282.

Page 281

2. INTERCORPORATE RELATIONS, § 4

[N.H.] Joint use of wires and poles — Lease agreement — For placement of emergency radio equipment — By out-of-state governmental agency — On facilities owned by cable television company. p. 282.

3. RADIO AND TELEVISION, § 1

[N.H.] Rental of pole space — By out-of-state governmental agency — From cable television company — For placement of emergency radio equipment — Factors affecting reasonableness — Aesthetics and environmental compliance. p. 282.

BY THE COMMISSION:

ORDER

[1-3] On February 22, 1994, the State of Vermont Department of Public Safety, Emergency Management Division (Division), requested approval by the New Hampshire Public Utilities Commission (Commission) of a lease agreement between Warner Cable Television (Warner) and the Division by which the Division could lease space to install and operate radio equipment on Warner's facilities on Mount Wantastiquet, New Hampshire; and

WHEREAS, in *Re Warner Cable Communications, Inc.*, 72 NH PUC 387, (Order No. 18,819, dated September 8, 1987), the Commission required that lease of Warner's facilities "will require approval of the Public Utilities Commission following consultation with the Department of Resources and Economic Development (DRED);" and

WHEREAS, the Division consulted with DRED which then forwarded the matter to the Commission; and

WHEREAS, a review of the terms of the lease agreement indicates that:

1. The Division's radio equipment shall consist of a five foot vertical antenna running sixteen inches away from and parallel to the current Warner tower, approximately fifty feet above the ground, incurring no other physical changes to the Warner facilities; and

2. The installation and operation of the Division's radio equipment shall be solely for the governmental entity of the State of Vermont and aimed at delivering improved public safety and protection; and

WHEREAS, the terms of the lease agreement are acceptable; it is hereby

ORDERED, that the proposed lease agreement between Warner and the Division is approved; and it is

FURTHER ORDERED, that the Division adhere to all technical and environmental requirements and maintain its antenna in a clean and presentable manner with due consideration to mountain top aesthetics.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1994.

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NH.PUC*05/17/94*[70501]*79 NH PUC 282*Concord Electric Company

[Go to End of 70501]

79 NH PUC 282

Re Concord Electric Company

DR 93-214

Order No. 21,230

New Hampshire Public Utilities Commission

May 17, 1994

ORDER approving a special interruptible service agreement between an electric utility and a municipal department of water resources, providing for a demand credit of \$2 per kilowatt of daily average load relief for each interruption.

1. SERVICE, § 324

[N.H.] Electric — Interruptible service — Special municipal agreement — Demand credits per interruption. p. 283.

BY THE COMMISSION:

ORDER

Page 282

[1] On October 29, 1993, UNITIL Service Corporation on behalf of Concord Electric Company (Concord Electric or the Company) filed pursuant to RSA 378:18 a Special Interruptible Load Agreement (Agreement), Contract No. 5-A, between the Company and the City of Concord, Department of Water Resources (Customer); and

WHEREAS, Contract No. 5-A provides for 160 kW of interruptible load in accordance with NEPOOL Operating Procedure No. 4 - Action During a Capacity Deficiency, commonly referred to as OP4; and

WHEREAS, Contract No. 5-A provides that Concord Electric will determine the amount of daily average load relief achieved by the Customer during the interruption period; and

WHEREAS, Contract No. 5-A provides a demand credit of \$2.00 per kW of daily average load relief for each interruption; 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 reasonable and consistent with the public interest; and

WHEREAS, the Commission finds the terms and conditions of proposed Contract No. 5-A are consistent with the public interest; it is hereby

ORDERED *Nisi*, that Concord Electric is authorized to implement Contract No. 5-A effective retroactive to November 1, 1993; 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; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Concord Electric notify all persons desiring to be heard by publishing a copy of this order once in a paper having general circulation in that part of the State in which operations are proposed to be conducted, such publication to be no later than May 27, 1994, said publication to be documented by affidavit filed with this office on or before June 13, 1994; 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 June 13, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on June 16, 1994, unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the New Hampshire Public Utilities Commission this seventeenth day of May, 1994.

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NH.PUC*05/17/94*[70502]*79 NH PUC 283*Concord Electric Company

[Go to End of 70502]

79 NH PUC 283

Re Concord Electric Company

DR 93-215
Order No. 21,231

New Hampshire Public Utilities Commission

May 17, 1994

ORDER approving a special interruptible service agreement between an electric utility and Concord Steam Corporation, providing for a demand credit of \$2 per kilowatt of daily average load relief for each interruption.

1. SERVICE, § 324

[N.H.] Electric — Interruptible service — Special service agreement — Demand credits per interruption. p. 283.

BY THE COMMISSION:

ORDER

[1] On October 29, 1993, UNITIL Service Corporation on behalf of Concord Electric Company (Concord Electric or the Company) filed pursuant to RSA 378:18 a Special Interruptible Load Agreement (Agreement), Contract No. 4-A, between the Company and Concord Steam Corporation (Customer); and

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WHEREAS, Contract No. 4-A provides for 254 kW of interruptible load in accordance with NEPOOL Operating Procedure No. 4 - Action During a Capacity Deficiency, commonly referred to as OP4; and

WHEREAS, Contract No. 4-A provides that Concord Electric will determine the amount of daily average load relief achieved by the Customer during the interruption period; and

WHEREAS, Contract No. 4-A provides a demand credit of \$2.00 per kW of daily average load relief for each interruption; 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 reasonable and consistent with the public interest; and

WHEREAS, the Commission finds the terms and conditions of proposed Contract No. 4-A are consistent with the public interest; it is hereby

ORDERED *Nisi*, that Concord Electric is authorized to implement Contract No. 4-A effective retroactive to November 1, 1993; 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; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Concord Electric notify all persons desiring to be heard by publishing a copy of this order once in a paper having general circulation in that part of the State in which operations are proposed to be conducted, such publication to be no later than May 27, 1994, said publication to be documented by affidavit filed with this office on or before June 13, 1994; 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 June 13, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on June 16, 1994, unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the New Hampshire Public Utilities Commission this seventeenth day of May, 1994.

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NH.PUC*05/17/94*[70503]*79 NH PUC 284*Lane's End, Inc.

[Go to End of 70503]

79 NH PUC 284

Re Lane's End, Inc.

DE 94-068

Order No. 21,232

New Hampshire Public Utilities Commission

May 17, 1994

ORDER declaring a small water utility providing seasonal service to several sites and cabins to be exempt from regulation as a public utility, since it serves only seven customers, including itself, and since the commission generally asserts jurisdiction only if more than 10 customers are served.

1. PUBLIC UTILITIES, § 42

[N.H.] Regulatory status — Factors — Size of business — Number of customers — Exemptions for small utilities serving 10 or fewer customers — Exemption of water utility serving only 7 customers. p. 284.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on April 14, 1994, Lane's End, Inc. (Lane's End), a water utility serving itself and Lane's End Condominium Unit Owners' Association (Association) in the Town of

Tuftonboro, New Hampshire, filed a petition requesting exemption from Commission jurisdiction pursuant to RSA 362:4 (Supp. 1993); and

WHEREAS, the water system serves 35 sites and cabins rented on a seasonal basis for which water is included in the overall rent

Page 284

charge, and an office duplex, all owned by Lane's End itself; and

WHEREAS, the water system additionally serves the Association for the benefit of only six consumers consisting of Association Units 1, 2, 3, 4, 5, & 6, the remaining units being served by a separate system owned by the Association; and

WHEREAS, Lane's End will charge its Association customers \$9.25 per month plus any pro rata share of maintenance expenses; and

WHEREAS, under the provisions of RSA 362:4 the Commission may exempt a water company from public utility status if its water system supplies less than ten consumers; and

WHEREAS, Lane's End serves only 7 customers including itself; and

WHEREAS, investigation by Commission Staff has revealed that Lane's End has met Department of Environmental Services requirements for water distribution, and verified that no water quality, service or other problems exist that would preclude the requested exemption; and

WHEREAS, the Commission finds that an exemption from regulation pursuant to RSA 362:4 is in the public good; and

WHEREAS, all members of the Association, not just those for whom water service is provided, as well as other members of the public, should be afforded an opportunity to respond to this petition; it is hereby

ORDERED *NISI*, that Lane's End is granted exemption from Commission jurisdiction pursuant to RSA 362:4, effective June 21, 1994; and it is

FURTHER ORDERED, that all persons interested in responding be notified that they may submit their comments or file a written request for a hearing before the Commission by June 20, 1994; and it is

FURTHER ORDERED, that Lane's End effect such notification by (1) causing an attested copy of this order to be published no later than June 6, 1994, once in a newspaper having general circulation in the Tuftonboro area; (2) providing a copy of this order by first class mail to each member of the Association and to the Tuftonboro Town Clerk, postmarked on or before June 6, 1994; and (3) documenting compliance with these notice provisions by affidavits to be filed with the Commission on or before June 20, 1994; and it is

FURTHER ORDERED, that Lane's End will keep adequate records of their plant costs in order to ensure they are available in the event that the exempt status should change in the future.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1994.

=====

NH.PUC*05/23/94*[70505]*79 NH PUC 285*Public Service Company of New Hampshire

[Go to End of 70505]

79 NH PUC 285

Re Public Service Company of New Hampshire

DR 93-179

Order No. 21,234

New Hampshire Public Utilities Commission

May 23, 1994

ORDER denying a petition for appointment of a mediator to assist in the renegotiation of rates payable by an electric utility for power purchased from eight wood-fired small power producers (SPPs). The petition is deemed superfluous given the provisions for a mediator contained in Senate Bill 790 relating to the state's woodburning SPP industry.

1. ELECTRICITY, § 3

[N.H.] Wood-fired generating plant — Small power producers — Renegotiation of rates — Provisions of Senate Bill 790 — Appointment of independent mediator — No need for commission-appointed mediator as well. p. 286.

BY THE COMMISSION:

ORDER

Page 285

The Public Utilities Commission (Commission) opened docket DE 93-179 to address negotiations between Public Service Company of New Hampshire (PSNH) and thirteen small power producers (SPPs), required under a provision within the Rate Agreement between PSNH and Northeast Utilities, as defined in RSA 362-C:2 I, and as accepted by the Commission in DR 89-244, *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385 (1990). Under this provision, Northeast Utilities is required to use its best efforts to renegotiate the rates of the thirteen largest SPPs.

[1] After months of Commission proceedings on the scope of the docket and other preliminary matters, the Society for the Protection of New Hampshire Forests (The Forest Society) on April 19, 1994 filed a Motion for Appointment of Mediator to assist in resolving negotiations between PSNH and the SPPs.

After the Forest Society's request was filed, Senate Bill 790 which concerned a number of

issues relating to the woodburning SPP industry and rate orders worked its way through House of Representatives Committee hearings. The final bill as passed includes a provision for a mediator. As finally enacted, SB 790 would allow the Commission to continue evaluating the two settling SPP agreements but refrain from further action on the rate orders of the six non-settling SPPs until December 1, 1994. During that time, PSNH and the six non-settling SPPs would engage in good faith negotiations, until July 13, 1994, with the oversight of a legislative committee. If at that point there were no negotiated settlement, the oversight committee could recommend the parties submit to a mediator. If by November 14, 1994 they still have not reached agreement, the oversight committee would recommend what, if any, further action it thinks appropriate.

Given the provisions of SB 790 which call on PSNH and the SPPs to engage in negotiations, with the possibility of a mediator if they are unsuccessful, we do not think it would help matters if the Commission were to appoint its own mediator. For that reason, we will deny the request of the Forest Society.

In order to finalize review of the agreements submitted by the two settling SPPs, the following schedule was proposed at the April 4, 1994 scheduling conference:

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

PSNH testimony due	May 8, 1994
Technical Session	May 16, 1994
Data Requests to PSNH due	May 18, 1994
PSNH Data Responses due	May 31, 1994
Follow up Data Requests due	June 6, 1994
Responses to Follow-up Data Requests due	June 13, 1994
Staff/Intervenor testimony due	June 21, 1994
Data Requests to Staff/Intervenors due	July 1, 1994
Staff/Intervenor Data Responses due	July 15, 1994
PSNH Rebuttal testimony due (if necessary)	July 22, 1994
Prehearing Conference (to develop Statement of Issues and address other pre-hearing matters)	July 27, 1994 10 a.m.
Statement of Issues due	July 29, 1994
Hearing on the merits	August 1 through 5, 1994 10 a.m.

Data requests and responses to be conducted on a rolling basis. The dates stated herein are final dates; requests and responses are encouraged prior to the final dates listed.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as stated above will be in effect for the duration of the proceeding, unless otherwise amended; and it is

FURTHER ORDERED, that the Forest Society's Motion for Appointment of Mediator will be denied, in light of the passage of SB 790; and it is

FURTHER ORDERED, that the Commission will accept the extension by the settling woodburning SPPs of the date by which the settlements would no longer be honored, now to run until October 1, 1994.

By order of the New Hampshire Public Utilities Commission this twenty-third day of May, 1994.

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NH.PUC*05/23/94*[70506]*79 NH PUC 287*Public Service Company of New Hampshire

[Go to End of 70506]

79 NH PUC 287

Re Public Service Company of New Hampshire

DR 94-002

Order No. 21,235

New Hampshire Public Utilities Commission

May 23, 1994

ORDER acknowledging receipt of copies of executed rate agreements for an electric utility's purchases of power from five qualifying hydropower small power producers, pursuant to Order No. 21,190 (79 NH PUC 213, supra).

1. COGENERATION, § 17

[N.H.] Contracts — Modification — Renegotiated rate agreements — Hydropower small power producers — Acknowledgment. p. 287.

2. ELECTRICITY, § 5

[N.H.] Hydropower plant — Purchases from small power producers — Renegotiated rate agreements — Acknowledgment. p. 287.

BY THE COMMISSION:

[1, 2] On April 19, 1994 the New Hampshire Public Utilities Commission (Commission) by Report and Order No. 21,190 found that the agreements reached between Public Service Company of New Hampshire (PSNH) and Briar/Hydro/Essex Hydro, Penacook Upper Falls, Errol Dam, Gregg Falls and Pembroke Hydro (Hydros) were in the public good and consistent with the principles of the Limited Electrical Energy Producers Act and with Least Cost Planning, and that the docket would not be re-opened on the issue of the effect of the agreements on leases between the State of New Hampshire and two of the hydros; and

WHEREAS, on May 16, 1994 the Commission received copies of the executed agreements and Memoranda of Termination of Rate Order and Interconnection Agreement for each of the five hydros; and

WHEREAS, the agreements replace the Commission approved rate orders as follows:

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

Briar Hydro	Orders No. 18,086 of January 23, 1986 and No. 18,125 of February 20, 1986 in Docket DR 85-407
Penacook Upper Falls	Order No. 17,668 of June 14, 1985 in Docket DR 85-86
Errol Hydro	Order No. 17,875 of September 26, 1985 in Docket DR 85-198
Gregg Falls	Orders No. 17,230 of September 27, 1984, No. 17,285 of October 29, 1984, No. 17,474 on March 4, 1985, No. 17,522 of April 2, 1985 and No. 17,616 of May 24, 1985 in Docket DR 84-234
Pembroke Hydro	Orders No. 17,229 of September 27, 1984, No. 17,284 of October 29, 1984, No. 17,473 of March 4, 1985 and No. 17,616 of May 24, 1985 in Docket DR 84-233

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Based on the foregoing, it is hereby

ORDERED, that receipt of the executed contracts between Public Service Company of New Hampshire and Briar Hydro, Penacook Upper Falls, Errol Hydro, Gregg Falls and Pembroke Hydro is acknowledged; and it is

FURTHER ORDERED, that the aforementioned orders are rescinded.

By order of the New Hampshire Public Utilities Commission this twenty-third day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Errol Hydroelectric Limited Partnership, DR 85-198, Order No. 17,875, 70 NH PUC 824, Sept. 26, 1985. [N.H.] Re Essex Hydro Associates, DR 85-407, Order No. 18,086, 71 NH PUC 103, Jan. 23, 1986. [N.H.] Re Essex Hydro Associates, DR 85-407, Order No. 18,125, 71 NH PUC 129, Feb. 20, 1986. [N.H.] Re Greggs Falls Hydroelectric Project, DR 84-234, Order No. 17,230, 69 NH PUC 561, Sept. 27, 1984. [N.H.] Re Greggs Falls Hydroelectric Project, DR 84-234, Order No. 17,285, 69 NH PUC 620, Oct. 29, 1984. [N.H.] Re Greggs Falls Hydroelectric Project, DR 84-234, Order No. 17,474, 70 NH PUC 80, Mar. 4, 1985. [N.H.] Re Greggs Falls Hydroelectric Project, DR 84-234, Order No. 17,522, 70 NH PUC 138, Apr. 2, 1985. [N.H.] Re Greggs Falls Hydroelectric Project, DR 84-234, Order No. 17,616, 70 NH PUC 402, May 24, 1985. [N.H.] Re Pembroke Hydroelectric Project, DR 84-233, Order No. 17,229, 69 NH PUC 560, Sept. 27, 1984. [N.H.] Re Pembroke Hydroelectric Project, DR 84-233, Order No. 17,284, 69 NH PUC 619, Oct. 29, 1984. [N.H.] Re Pembroke Hydroelectric Project, DR 84-233, Order No. 17,473, 70 NH PUC 79, Mar. 4, 1985. [N.H.] Re Pembroke Hydroelectric Project, DR 84-233, Order No. 17,616, 70 NH PUC 402, May 24, 1985. [N.H.] Re Penacook Hydro Associates, DR 85-86, Order No. 17,668, 70 NH PUC 546, June 14, 1985. [N.H.] Re

Public Service Co. of New Hampshire, DR 94-002, Order No. 21,190, 79 NH PUC 213, Apr. 19, 1994.

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NH.PUC*05/23/94*[70507]*79 NH PUC 288*Public Service Company of New Hampshire

[Go to End of 70507]

79 NH PUC 288

Re Public Service Company of New Hampshire

DR 94-082

Order No. 21,236

New Hampshire Public Utilities Commission

May 23, 1994

ORDER authorizing an electric utility to continue in effect a 10% rate discount available to elderly customers who have been taking service under the discount since 1982, when the program was frozen as to new customers. However, the utility is directed to more carefully monitor eligibility for the discount, since the numbers of customers using the discount have not diminished appreciably, despite the age requirements and the closing of the discount to new customers 12 years earlier.

1. DISCRIMINATION, § 75

[N.H.] Rates — Concessions and discounts — To longtime customers — To elderly customers of at least 70 years of age — Continuation of 10% discount for old customers — Discount long closed to new customers — Monitoring of eligibility — Electric utility. p. 288.

BY THE COMMISSION:

ORDER

[1] On April 29, 1994, Public Service Company of New Hampshire (PSNH) filed a [Page 288](#)

request to allow the Elderly Customer Discount to remain in effect at 10% rather than reducing the discount to 8% as scheduled on June 1, 1994, by filing revised tariff pages

NHPUC No. 34 - Electricity
Public Service Company of New Hampshire

2nd Revised Page 23

1st Revised Page 29

effective May 29, 1994, or upon approval by the Commission. The Elderly Customer Discount had been addressed in DR 91-001, PSNH's most recent Retail Rate Design proceeding, in which it was agreed by the parties and approved by the Commission that the rate would be re-designed to apply to all eligible customers on Residential Rate D, rather than a discount off of a separately designed average rate, and that the resulting revenue deficiency would be made up by reducing the discount from 10% to 8% as of June 1, 1993. Eligibility for the rate is limited to those customers 70 years of age or older who were owners or renters of their principal residence who were receiving the discount on February 1, 1982 and who have continuously received it since that date, or the customer's otherwise eligible surviving spouse. Thus, it has been closed to new customers since 1982.

On May 4, 1993 PSNH requested that implementation of the reduction in the discount be delayed from June 1, 1993 to June 1, 1994. The Commission approved the postponement of the implementation of the reduction by Order No. 20,859 on the condition, proposed by Staff and acquiesced by PSNH, that any reduction in revenue resulting from the delay not be charged to PSNH's other ratepayers; and

WHEREAS, PSNH states that it has not found any reasonable way to implement the reduction to the discount without causing confusion and undesirable billing impacts on this class of customers; and

WHEREAS, PSNH proposes that the discount remain at 10% until further action is taken as part of a rate design proceeding or at such time that the number of customers served this rate has declined to the point that the discount can be eliminated; and

WHEREAS, PSNH offers to continue to abide by the condition that other customers will not be charged for the reduction in revenue attributable to keeping the discount at 10%; and

WHEREAS, PSNH also states that it will continue its efforts to periodically re-qualify customers receiving the discount and that it expects that the number of customers receiving the discount will continue to decline; and

WHEREAS, the Commission is concerned that the reduction in the size of the class is not occurring as rapidly as might have been reasonably expected when the class was closed to new elderly customers in 1982 and that this phenomenon may be due to the lack of effective monitoring of eligibility requirements; it is hereby

ORDERED, that

NHPUC No. 34 - Electricity
Public Service Company of New Hampshire

2nd Revised Page 23

1st Revised Page 29

is approved as filed effective May 29, 1994; and it is

FURTHER ORDERED, that PSNH will report to the Commission no later than six months of the date of this order its program for monitoring eligibility for the discount and for re-certifying customers receiving the discount, such re-certification occurring no later than the filing of PSNH's next rate design proceeding or other independent proposal to reduce or

eliminate the discount.

By order of the New Hampshire Public Utilities Commission this twenty-third day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-086, Order No. 20,859, 78 NH PUC 277, June 1, 1993.

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NH.PUC*05/23/94*[70508]*79 NH PUC 290*EnergyNorth Natural Gas, Inc.

[Go to End of 70508]

79 NH PUC 290

Re EnergyNorth Natural Gas, Inc.

Additional applicant: Northern Utilities, Inc.

DE 91-149

Order No. 21,237

New Hampshire Public Utilities Commission

May 23, 1994

ORDER scheduling a hearing for the sole purpose of determining if a natural gas local distribution company's proposed treatment of the maximum daily total contractual capacity quantity complies with recent commission orders on gas transportation service rate design.

1. RATES, § 384

[N.H.] Natural gas rate design — Transportation service — Maximum daily transportation quantity — Maximum daily total contractual capacity quantity — Average versus peak-day usage levels — Compliance with recent transportation rate orders — Necessity of hearing. p. 290.

BY THE COMMISSION:

ORDER

[1] In accordance with Order No. 21,186, on April 15, 1994, EnergyNorth Natural Gas, Inc. (ENGI) submitted with the New Hampshire Public Utilities Commission (Commission) several compliance tariff pages regarding the provision of firm transportation and related services. A technical session was held on April 18, 1994 to review and evaluate the submission; in

attendance were members from ENGI, the Commission Staff (Staff), Northern Utilities, Inc. (Northern), and Sprague Energy Corporation (Sprague).

A significant issue arose between Staff and ENGI regarding the establishment of the Maximum Daily Total Contractual Capacity Quantity (MCCQ), the maximum quantity of gas which a firm transportation customer has a right to use and ENGI is obligated to deliver during any gas day. The manner in which the MCCQ is operationally defined is of fundamental importance, as it has the potential for either promoting or severely restricting the availability of firm transportation service in New Hampshire.

ENGI stated in its compliance tariff filing that the MCCQ should be established on the basis of the customer's *average* daily use for the calendar year 1993, or a part thereof, for customers who first received firm sales service in 1993. Moreover, customer usage requirements above the established MCCQ would be supplied by ENGI at its applicable firm sales tariff rate up to the quantity of System Supply Entitlement (SSE) selected by the customer. Usage above the selected SSE level would be billed in accordance with the terms and conditions contained in the firm transportation agreement and the applicable tariff provisions.

Staff contended in a memorandum to the Commission, dated May 19, 1994, that for those customers who converted to firm transportation service from firm sales service, the MCCQ should be based on the customer-specific *peak day* requirements. Given that there are no quantity restrictions for existing firm sales customers, Staff argued that firm transportation customers should be treated in like fashion. Staff further asserted that to define the MCCQ apart from peak day considerations would, in all likelihood, severely diminish the efficacy of firm transportation service, thus undermining the intent of the Commission in its various Orders.

Because the issue of how the MCCQ should be established could not be resolved at the April 18, 1994 technical session, it was agreed that ENGI would examine how Northern dealt with this issue in the latter's filing made on April 22, 1994. It was further agreed that should Northern's treatment of this issue prove unhelpful, Staff and ENGI would seek a ruling from the Commission on whether ENGI's use of its MCCQ definition is in compliance with

Page 290

Commission Orders.

With respect to Northern's April 22, 1994 compliance tariff filing, made in accordance with Order No. 21,186, Staff concluded, after conducting a thorough review, that it complies with the Commission's Orders. As such, Staff recommended approval of Northern's filing. In particular, Northern did not place any restrictions on its Maximum Daily Transportation Quantity, a term equivalent to ENGI's MCCQ.

Based upon the foregoing, it is hereby

ORDERED, that Northern's firm transportation compliance tariff filing is approved, with an effective date of June 1, 1994; and it is

FURTHER ORDERED, that ENGI file testimony, no longer than ten pages in length, which supports and justifies its MCCQ definition, by June 6, 1994; and it is

FURTHER ORDERED, that Staff file testimony, also limited to ten pages in length, which comments on ENGI's testimony, by June 20, 1994; and it is

FURTHER ORDERED, that a narrowly scoped hearing is set for 10:00 a.m. on June 23, 1994, to determine whether ENGI's treatment of the MCCQ in its firm transportation tariff filing is in compliance with the various Commission Gas Transportation Orders.

By order of the New Hampshire Public Utilities Commission this twenty-third day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 91-149, Order No. 21,186, 79 NH PUC 202, Apr. 6, 1994.

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NH.PUC*05/24/94*[70509]*79 NH PUC 291*Beaver Village Realty Trust

[Go to End of 70509]

79 NH PUC 291

Re Beaver Village Realty Trust

DE 92-226

Order No. 21,238

New Hampshire Public Utilities Commission

May 24, 1994

ORDER extending until August 31, 1994, the appointment of Southern New Hampshire Water Company as receiver of a small water utility serving the Porcupine Park area of Salem, pending resolution of the operational status of the small utility.

1. RECEIVERS, § 1

[N.H.] Appointment as receiver — Extension of period of receivership — Factors — Pending proceeding to resolve issues of ownership and operation — Larger water utility as receiver for small water utility. p. 291.

BY THE COMMISSION:

ORDER

[1] WHEREAS, the New Hampshire Public Utilities Commission's (Commission) Report

and Order No. 20,795, dated March 25, 1993, provided the full procedural history of this docket up to that time, which will not be repeated herein, and appointed a receiver for the Beaver Village Realty Trust water system (water system) located in a subdivision known as Porcupine Park in the Town of Salem ; and

WHEREAS, Order No. 21,048, dated November 30, 1993, appointed Southern New Hampshire Water Company (Southern) to replace the initial receiver of the water system for a 30 day period; and

WHEREAS, following a hearing held on December 14, 1993, Order No. 21,076, dated

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December 28, 1993, continued Southern's receivership until May 31, 1994; and

WHEREAS, a Commission Staff (Staff) Progress Report dated May 19, 1994 described various efforts involving Staff, the Attorney General's Office, the Department of Environmental Services, Porcupine Park customers, the developer (William Dickey) and Southern to resolve the water system's deficiencies; and

WHEREAS, the only communication the Commission has received from customers has been positive regarding both Southern's operation of the Porcupine Park system under receivership and the possibility of Southern's acquisition of the system; and

WHEREAS, there is no reason to believe that the customers' desire for Southern's continued operation of the system for the short term has changed since the December 14, 1993 hearing; and

WHEREAS, it is in the public good to ensure safe drinking water by having Southern continue operation of the system without an additional hearing, based on the hearings and record in this docket to date; and

WHEREAS, the appointment of Southern by Order No. 21,048 was subject to certain terms and conditions regarding, *inter alia*, billing, "jobbing" rates, repairs, and property taxes; and

WHEREAS, the system cannot be allowed to operate indefinitely under receivership; and

WHEREAS, a letter from Staff to the customers dated May 4, 1994 outlined three options available, the last being discontinuance of the system by the Commission and installation of individual wells should the other options fail; and

WHEREAS, investigation of the various issues and options requires additional effort by the various parties before any resolution is possible; it is hereby

ORDERED, that Southern's receivership of the water system be continued until August 31, 1994, subject to the same terms and conditions contained in Order No. 21,048; and it is

FURTHER ORDERED, that Southern immediately mail a copy of this order to each Porcupine Park customer; and it is

FURTHER ORDERED, that all parties are encouraged to resolve the outstanding issues regarding ownership and operation of the Porcupine Park system as quickly as possible; and it is

FURTHER ORDERED, that Staff submit a progress report to the Commission by July 29, 1994.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 20,795, 78 NH PUC 169, Mar. 25, 1993. [N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 21,048, 78 NH PUC 697, Nov. 30, 1993. [N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 21,076, 78 NH PUC 740, Dec. 28, 1993.

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NH.PUC*05/24/94*[70510]*79 NH PUC 292*New England Power Company

[Go to End of 70510]

79 NH PUC 292

Re New England Power Company

DE 94-016
Order No. 21,239

New Hampshire Public Utilities Commission

May 24, 1994

ORDER certifying that newly licensed aerial electric transmission lines crossing over Comerford Pond along a modified route meet the minimum clearance standards established by the National Electrical Safety Code.

1. ELECTRICITY, § 7

[N.H.] Wires and cables — Aerial trans-

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mission lines — Routing and clearance standards — Crossing of public waters as a factor. p. 293.

BY THE COMMISSION:

ORDER

[1] On January 28, 1994 New England Power Company (Petitioner) filed with the New Hampshire Public Utilities Commission (Commission) a petition under RSA 371:17 for the

licensing of lines over certain Public Waters in the Town of Littleton, New Hampshire; and

WHEREAS, on March 7, 1994, March 16, 1994, and April 7, 1994, the Petitioner filed revised petitions and documentation to clarify its request; and

WHEREAS, on April 20, 1994 the Commission issued Order No. 21,198 licensing the two lines crossing Comerford Pond effective May 20, 1994; and

WHEREAS, subsequently the Petitioner informed the Commission, on April 29, 1994, that the information pertaining to Circuit No. C-203 filed with the Commission was in error and did not meet the clearances of the 1984 National Electrical Safety Code; and

WHEREAS, on May 17, 1994 the Petitioner informed the Commission that work had been completed on Circuit No. C-203 and that the data in the Revised Exhibit 1 of its April 29, 1994 letter describes the modified crossing of Circuit No. C- 203; and

WHEREAS, the electric line clearances as depicted on the New England Power Company's profiles and Revised Exhibit 1, of its April 29, 1994 filing, meet the applicable standards and specifications of the 1993 National Electrical Safety Code; and

WHEREAS, Staff has verified that these clearances do meet the minimum requirements of the 1993 National Electrical Safety Code; it is hereby

ORDERED, that authority be, and hereby is granted, pursuant to RSA 371:17 *et seq.* to New England Power Company to maintain and operate the aforementioned crossings of aerial electric lines over the Comerford Pond in the Town of Littleton, New Hampshire, as amended by its April 29, 1994 and May 17, 1994 filing, effective May 20, 1994; and it is

FURTHER ORDERED, that all other terms of Order No. 21,198 remain in effect.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Power Co., DE 94-016, Order No. 21,198, 79 NH PUC 232, Apr. 20, 1994.

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NH.PUC*05/24/94*[70511]*79 NH PUC 293*Public Service Company of New Hampshire

[Go to End of 70511]

79 NH PUC 293

Re Public Service Company of New Hampshire

DR 94-096
Order No. 21,240

New Hampshire Public Utilities Commission

May 24, 1994

ORDER authorizing an electric utility to continue in effect a nuclear decommissioning charge of 0.012 cents per kilowatt-hour.

1. NUCLEAR PLANT DECOMMISSIONING, § 16

[N.H.] Funding — Decommissioning charge — Continuation of previously approved charge — Revenue-neutral effect. p. 294.

BY THE COMMISSION:

Page 293

ORDER

[1] Public Service Company of New Hampshire (PSNH), on April 29, 1994 filed with the New Hampshire Public Utilities Commission (Commission) a request for continuation of the current authorized nuclear decommissioning charge, to be effective June 1, 1994 through May 31, 1995. The charge would continue to be \$0.00012 per kilowatt hour (kwh), which is the amount authorized by the Commission by Order No. 20,856 (May 28, 1993); and

WHEREAS, PSNH filed with its request a Technical Statement which details the basis for its calculations and continuation of the current charge; and

WHEREAS, if the current charge is continued, there will be no impact on PSNH rates; and

WHEREAS, continuation of the approved rate for June 1, 1994 through May 31, 1995 is in the public interest; and

WHEREAS, the Nuclear Decommissioning Finance Committee is presently reviewing the Seabrook decommissioning fund in Docket NDFC 93-1 and re-evaluating the funding schedule, which may require a change in the decommissioning charge during the period June 1, 1994 through May 31, 1995; it is hereby

ORDERED, that continuation of the nuclear decommissioning charge of \$0.00012 per kwh be, and hereby is approved, effective June 1, 1994 through May 31, 1995 unless the Commission orders otherwise.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 92-077, Order No. 20,856, 78 NH PUC 274, May 28, 1993.

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NH.PUC*05/24/94*[70512]*79 NH PUC 294*Kearsarge Telephone Company

[Go to End of 70512]

79 NH PUC 294

Re Kearsarge Telephone Company

DR 94-077

Order No. 21,241

New Hampshire Public Utilities Commission

May 24, 1994

ORDER authorizing a local exchange telephone carrier to offer remote call forwarding service, at the same rates approved for New England Telephone for such service.

1. SERVICE, § 447

[N.H.] Telecommunications — Handling of calls — Introduction of remote call forwarding service — Independent local exchange carrier — Rates commensurate with those of dominant carrier. p. 294.

BY THE COMMISSION:

ORDER

[1] On April 25, 1994, Kearsarge Telephone Company (Kearsarge or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce Remote Call Forwarding Service for effect May 27, 1994; and

WHEREAS, no additional equipment is required in order to provide this service; and

WHEREAS, Kearsarge proposes rates which mirror those authorized for New England Telephone; and

WHEREAS, Kearsarge anticipates that this service offering will earn annual revenues of \$1150; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revision to be in the public good; it is therefore

ORDERED, that the following tariff page

Page 294

of Kearsarge Telephone Company is approved:

NHPUC - No. 7
Section 3 - Original Sheet 31;

and it is

FURTHER ORDERED, that NHPUC - No. 7, Section 3 - Original Sheet 32 be revised such that the word "either" (a typographical error) is deleted from the last paragraph in III.C; and it is

FURTHER ORDERED, that the above tariff pages as modified shall be effective as of May 27, 1994; and it is

FURTHER ORDERED, that the above additions to NHPUC No. 7 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of May, 1994.

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NH.PUC*05/25/94*[70513]*79 NH PUC 295*Long Distance North of New Hampshire, Inc.

[Go to End of 70513]

79 NH PUC 295

Re Long Distance North of New Hampshire, Inc.

DE 94-087

Order No. 21,242

New Hampshire Public Utilities Commission

May 25, 1994

ORDER authorizing an interexchange telephone carrier to introduce certain new services, including home-connection "800" service, collect and third-party calling, operator-dialed calling card service, and "Common Sense" service, which provides customized switched and dedicated dial-up and "800" services at postalized rates.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — Customized services — Switched and dedicated dial-up and "800" services — Postalized rate structure. p. 295.

2. SERVICE, § 468

[N.H.] Telephone — Toll services — Introduction of new service options — Home-connection "800" service — Collect and third-party calling — Operator-dialed calling card service. p. 295.

BY THE COMMISSION:

[1, 2] On May 6, 1994, Long Distance North of New Hampshire, Inc. (LDN) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce its Common Sense Service, 800 Service for Home Connection, Collect and Third Party Charges, Operator Dialed Calling Card Charge, Decrease Consumer CTS Card Rates, make minor textual changes and add definitions to its Tariff and eliminate the Frontrunner service offering; and

WHEREAS, Common Sense service is a customized telecommunications product providing switched dial-up, dedicated dial-up, switched 800, dedicated 800 and CTS Card origination and incorporates a postalized rating structure; and

WHEREAS, Home Connection Service is a residential service with a rate structure that is not mileage sensitive and to which no discounts apply and LDN proposes to expand this product offering to include 800 service; and

WHEREAS, Frontrunner Service is a switched outbound service with discount options based on total monthly usage, and discounts to the area code with the highest outbound usage and currently this product has no customers; and

WHEREAS, LDN proposes to introduce an Operator Dialed Calling Card Charge at the rate of \$2.05 per call, Collect call charge at the rate of \$2.05 per call and a charge of \$2.11 per call for Third Party calls; and

WHEREAS, LDN proposes to add

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definitions for Peak and Off-Peak rate periods and clarify day, evening and night/weekend rate periods; and

WHEREAS, LDN proposes to decrease Consumer CTS Card rates and the per call surcharge; and

WHEREAS, LDN requested an effective date of June 5, 1994; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *MSI*, that the following tariff pages for NHPUC No. 2 are approved:

4th Revised Page 2
 3rd Revised Page 4
 2nd Revised Page 19.2
 3rd Revised Page 20
 Original Page 20.1
 2nd Revised Page 33.4

2nd Revised Page 33.7
1st Revised Page 33.8
1st Revised Page 33.9
1st Revised Page 33.10
1st Revised Page 33.11
Original Page 33.12
Original Page 33.13
Original Page 33.14
Original Page 33.15
1st Revised Page 34
1st Revised Page 37
1st Revised Page 40;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, LDN cause an attested copy of this Order *Nisi* to be published in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 31, 1994, and is to be documented by affidavit filed with this office on or before June 6, 1994; and it is

FURTHER 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 6, 1994; and it is

FURTHER ORDERED, that LDN file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 8, 1994, 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-fifth day of May, 1994.

=====

NH.PUC*05/25/94*[70514]*79 NH PUC 296*AT&T Communications of New Hampshire, Inc.

[Go to End of 70514]

79 NH PUC 296

Re AT&T Communications of New Hampshire, Inc.

DE 94-088

Order No. 21,243

New Hampshire Public Utilities Commission

May 25, 1994

ORDER approving an interexchange telephone carrier's proposal for certain administrative changes in its regulations governing prepaid calling card service, to assure that subscribers understand the ramifications of any misuse of AT&T's tradenames or logos, or of any alteration or modification of a prepaid card.

1. SERVICE, § 451

[N.H.] Telephone — Prepaid calling card service — Penalties for misuse — For misappropriation of carrier tradename or logo — For improper alteration of card itself. p. 297.

Page 296

BY THE COMMISSION:

ORDER

[1] On May 9, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce additional regulations for the use of AT&T Prepaid Card Service; and

WHEREAS, the proposed regulations restrict customers from altering or modifying AT&T's Prepaid Card; and

WHEREAS, the proposed regulation requires the Customer to agree not to use AT&T's name or logo, including but not limited to a picture or graphical representation of an AT&T Prepaid Card without prior written permission from AT&T; and

WHEREAS, the proposed regulation requires the Customer to acknowledge any misuse of AT&T's tradenames or insignia (Marks) or failure to abide by the terms of the tariff shall cause AT&T irreparable harm which may not be fully remedied by a damage award and AT&T shall be entitled to seek, among other things, preliminary injunctive relief;

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 a written request for a hearing on this matter before the Commission no later than June 6, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than May 31, 1994, and is to be documented by affidavit filed with this office on or before June 6, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of AT&T Tariff No. 4 - AT&T Long Distance Service, are approved:

Section 2:

3rd Revised Page 6
Original Page 24.1;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 6, 1994, 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-fifth day of May, 1994.

=====

NH.PUC*05/25/94*[70515]*79 NH PUC 297*LCI International of New Hampshire, Inc.

[Go to End of 70515]

79 NH PUC 297

Re LCI International of New Hampshire, Inc.

DE 94-089
Order No. 21,244

New Hampshire Public Utilities Commission
May 25, 1994

ORDER authorizing an interexchange telephone carrier to introduce its "Simply Business" service, which will provide small business customers with a variety of switched inbound, outbound, and calling card services.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched-line services — Inbound and outbound services — Calling card services — Small business customers. p. 298.

Page 297

BY THE COMMISSION:

ORDER

[1] On May 4, 1994, LCI International of New Hampshire, Inc. (LCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce "Simply

Business\3SM\3" service, and operator services; and

WHEREAS, LCI filed tariff pages containing the necessary tariff changes to reflect the offering; and

WHEREAS, "Simply Business\3SM\3" is a product line consisting of switched outbound, inbound, and card services targeted for the small business segment; and

WHEREAS, the operator services offering specifies terms, conditions and rates for related operator services; and

WHEREAS, the offering expands the choice of telephone services available to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; and

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

ORDERED *NISI*, that LCI's petition to offer "Simply Business\3SM\3" service and operator services hereby is approved; and it is

FURTHER ORDERED *NISI*, that the following tariff pages of LCI's Tariff P.U.C. No. 1 are approved:

Page 1 - Third Revision

Page 2 - Third Revision

Page 3 - Third Revision

Section 2 - Page 13 Original

Page 14 - Original

Page 15 - Original

Section 4 - Page 19 Original

Section 5 - Page 1 Original

Page 2 Original;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, LCI shall publish an attested copy of this Order *Nisi* in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than June 6, 1994 and is to be documented by affidavit filed with this office on or before June 21, 1994; and it is

FURTHER 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 21, 1994; and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 24, 1994, 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-fifth day of May, 1994.

=====

NH.PUC*05/31/94*[70517]*79 NH PUC 301*Public Service Company of New Hampshire

[Go to End of 70517]

79 NH PUC 301

Re Public Service Company of New Hampshire

DR 94-018

Order No. 21,246

New Hampshire Public Utilities Commission

May 31, 1994

ORDER adopting stipulation establishing a fuel and purchased power adjustment clause rate of 0.335 cents per kilowatt-hour for an electric utility. The rate takes into account a \$15,000 disallowance relating to a refueling outage at the Vermont Yankee plant, and defers to other proceedings outage costs associated with the Connecticut Yankee and Seabrook plants.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Factors — Disallowance of Vermont Yankee outage costs — Deferral of Connecticut Yankee and Seabrook outage costs — Electric utility — Stipulation. p. 302.

APPEARANCES: Day, Berry and Howard by Gerald A. Garfield, Esq. on behalf of North Atlantic Energy Services Corporation, and Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Office of the Consumer Advocate by Michael W. Holmes, Esq. on behalf of residential ratepayers; Eugene F. Sullivan III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On February 7, 1994, Public Service Company of New Hampshire (PSNH) filed a petition pursuant to RSA chapters 362-C and 378 to establish an adjustment to its rates in accordance with the Fuel and Purchased Power Adjustment Clause (FPPAC) established in the Rate

Agreement approved by this Commission on July 20, 1990. *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385, 75 NH PUC 396 (1990).

On February 14, 1994, the Commission issued an order of notice scheduling a prehearing conference for March 9, 1994 to address motions to intervene and to establish a procedural schedule to govern its investigation into the proposed FPPAC rate.

On March 16, 1994, the Commission issued Report and Order No. 21,159 adopting a procedural schedule, proposed by the parties and Staff, to examine the proposed FPPAC rate for effect from June 1, 1994 through November

Page 301

30, 1994.

After months of investigation, which included data requests, pre-filed testimony and technical sessions, a hearing on the merits of the proposed FPPAC rate was held on May 10, 1994.

II. POSITIONS OF THE PARTIES AND STAFF.

The parties and Staff entered into a Stipulation relative to the appropriate rate adjustment for the June 1 to November 30, 1994 FPPAC period (Stipulation). The Stipulation included a \$15,000 disallowance based on the testimony of Staff engineers Johnson and Prabhakar relative to a refueling outage at Vermont Yankee and the deferral of two issues until the next FPPAC proceeding. The two issues deferred related to an extension of an outage at the Connecticut Yankee nuclear facility for repairs to its thermal shield and a January 25, 1994 unscheduled outage at the Seabrook nuclear facility. See Appendix A.

The above referenced Stipulation had no effect on the proposed FPPAC rate of \$0.00335 per kwh, a slight increase over the previous FPPAC rate of \$0.00316 approved in docket DR 93-149¹⁽²³⁾.

PSNH also filed for approval of its short term avoided cost of energy and capacity. The all hours, on-peak and off-peak energy rates as well as the short-term capacity rate is contained in Exhibit 14. See Appendix B.

III. COMMISSION ANALYSIS.

[1] We have reviewed the record in this proceeding, including the filing, the Stipulation of the Staff and the parties and their testimony. The Stipulation calls for disallowance of \$15,000 in relation to the refueling outage of Vermont Yankee, which we find appropriate. We also accept the short term rates for qualifying facilities as set forth in Exhibit 14.

We find the proposed FPPAC rate increase of \$0.00019 per kWh to be within the parameters of the FPPAC adjustment as set forth in the Rate Agreement and just and reasonable pursuant to RSA chapter 378. The increase, which reflects the disallowance of \$15,000, will result in an FPPAC rate of \$0.00335 per kWh for the period June 1, 1994 through November 30, 1994 and will be approved.

The Stipulation defers until the next FPPAC proceeding evaluation of an outage at Connecticut Yankee due to thermal shield repair and the unscheduled outage at Seabrook on

January 25, 1994.

Finally, we understand that there are on-going discussions between PSNH, OCA and the Staff regarding a mechanism by which extraordinary performance might be weighed against instances of imprudence. We also expect that at the next FPPAC proceeding we will hear testimony on the results of these efforts.

Our order will issue accordingly.

ORDER

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

ORDERED, that the FPPAC rate for the period from June 1, 1994 through November 30, 1994 shall be \$0.00335 per kWh; and it is

FURTHER ORDERED, that PSNH shall pay Qualifying Facilities for the period June 1, 1994 through November 30, 1994, based on the short-term rates in Exhibit 14.

By order of the New Hampshire Public Utilities Commission this thirty-first day of May, 1994.

APPENDIX A

STIPULATION AND RECOMMENDATION FOR ORDERS REGARDING VERMONT YANKEE REFUELING OUTAGE

Public Service Company of New Hampshire (PSNH), the Staff of the New Hampshire Public Utilities Commission (Staff) and the Office of the Consumer Advocate (OCA) hereinafter referred to as the Parties, hereby agree, stipulate and recommend as follows:

1. On May 4, 1994, testimony was filed on behalf of the Staff by Arthur C. Johnson, Assistant Chief Engineer, and Hampapur S. Prabhakar, Nuclear Engineer. On pages 8 through

Page 302

12 of that pre-filed testimony the Staff describes two fuel-handling incidents which occurred on respectively September 3 and 9, 1993 during a planned refueling outage at Vermont Yankee nuclear generating station. At page 18 of the Staff's pre-filed testimony, the Staff recommends a disallowance of \$15,000 for replacement power costs related to the extension of the Vermont Yankee refueling outage caused by the two fuel-handling incidents on the grounds that the incidents were the result of imprudence on the part of Vermont Yankee management.

2. On March 18, 1994, PSNH also submitted pre- filed testimony on these fuel-handling events at Vermont Yankee. At pages 6-7 of that testimony, PSNH's expert witness Thomas J. Dente described these occurrences and attributed the cause to employee error.

3. The Parties agree that the replacement power cost estimate of \$15,000, recommended by Staff and provided by PSNH in response to a request for information, closely approximates the actual replacement power costs for the extension of the refueling outage attributable to the fuel assembly handling events. PSNH should not be required to perform a detailed study to compute the actual replacement power costs because the Parties agree that such analysis would not produce results substantially different from the Staff's recommendation.

3. Subject to acceptance of this Stipulation in its entirety, PSNH agrees to reduce its request for recovery of fuel and purchased power costs in this proceeding by \$15,000. By agreeing to this reduction, PSNH does not concede any imprudence or mismanagement on the part of Vermont Yankee which could be imputed to PSNH.

4. This Stipulation shall not constitute a precedent for any determination in any future proceedings. Any person or party may assert any position which is contrary to the terms of this Stipulation in any other proceeding which involves issues other than those determined by this Stipulation. Each term of this Stipulation is offered and accepted as consideration of the other terms. Acceptance by the Commission shall be in its entirety without amendment or deletion.

WHEREFORE the undersigned Parties respectfully request that the Commission approve this Stipulation and Recommendation Regarding Vermont Yankee Refueling Outage as part of its final order in this proceeding.

Office of the Consumer
Advocate
By: Michael Holmes
Date: May 10, 1994

The Public Utilities Commission
Staff
By: Eugene F. Sullivan, III
Date: May 10, 1994

Public Service Co. of New
Hampshire
By: Gerald M. Eaton
Its Attorney
Date: May 10, 1994

APPENDIX B

Public Service Company of New Hampshire Short Term Avoided Energy Costs (Before Adjustment for Line Losses and Indirects) FPPAC Period Ending November, 1994

A. Background

1. Load Following Block (LFB) Method for Determining On-Peak/Off-Peak Avoided Cost Ratios (Cents/kWh).

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

Month	On-Peak	Off-Peak	All Hours
Jun-94	1.997	1.363	1.615
Jul-94	2.025	1.424	1.644
Aug-94	2.302	1.754	1.975
Sep-94	2.112	1.565	1.784
Oct-94	2.117	1.511	1.734
Nov-94	1.871	1.209	1.417
Average	2.071	1.471	1.695

2. (LFB) Ratios Applied to Increment/Decrement Method.

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

Month	On-Peak	Off-Peak	All Hours
Jun-94	1.237	0.844	1.000
Jul-94	1.232	0.866	1.000
Aug-94	1.166	0.888	1.000
Sep-94	1.184	0.877	1.000
Oct-94	1.221	0.871	1.000
Nov-94	1.320	0.853	1.000
Average	1.227	0.867	1.000

3. Avoided Cost for a 25 MW Increment/Decrement.

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

Month	Increment	Decrement	Average All Hours
Jun-94	1.850	1.917	1.884
Jul-94	1.946	1.989	1.968
Aug-94	2.269	2.177	2.223
Sep-94	2.400	2.033	2.217
Oct-94	1.887	2.086	1.987
Nov-94	1.722	1.644	1.683
Average	2.012	1.974	1.994

4. Final Avoided Energy Costs (Before Adjustments).

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

Month	On-Peak (¢/kWh)	Off-Peak (¢/kWh)	All Hours (¢/kWh)	Capacity (\$/kW)
Jun-94	2.331	1.590	1.884	-
Jul-94	2.425	1.704	1.968	-
Aug-94	2.592	1.974	2.223	-
Sep-94	2.625	1.944	2.217	-
Oct-94	2.426	1.731	1.987	-
Nov-94	2.222	1.436	1.683	-
Average	2.437	1.730	1.994	1.00

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

Public Service Company of New Hampshire
 Short Term Rates for Small Power Producer Facilities
 FPPAC Period Ending November, 1994
 Line Loss Percentage

	(Expressed as a Short Term Rates ¹ Multiplying Factor)*			(Cents/kWh)	
	On	Off	All	On	Off
All Project Type	Peak	Peak	Hours	Peak	Peak
Hours					
All Projects					

Under 500 kW	1.0172	1.0106	1.0134	2.5037	1.7658
2.0409					
Projects Over					
500 kW					
Great Falls					
Upper	1.0482	1.0289	1.0385	2.5800	1.7978
2.0915					
Dunbarton					
Land Fill	—	—	1.0032		
2.0204					

¹Short Term Rate = (Avoided Energy Costs) × (Indirect Factor) × (Line Loss Percentage).
Indirect Factor = 1.01.

*Line loss percentages updated for 4/91 Integrated Least Cost Planning.

FOOTNOTES

¹This figure includes the levelized eighteen month amortization of the costs of the Seabrook refueling outage, approved by the Commission in DR 93-149, and all of the direct savings that resulted from the renegotiation of certain hydroelectric rate orders in DR 94-002.

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NH.PUC*05/31/94*[70518]*79 NH PUC 305*Forest Cottage Condominium Association v. Rosebrook Water Company

[Go to End of 70518]

79 NH PUC 305

Forest Cottage Condominium Association

v.

Rosebrook Water Company

DC 92-121

Order No. 21,247

New Hampshire Public Utilities Commission

May 31, 1994

ORDER rejecting a petition by certain water utility customers to revoke the utility's franchise and replace it with another, where the utility was found to be abiding by all approved billing procedures and to be providing safe and adequate service, there thus being no grounds for revocation.

1. FRANCHISES, § 55

[N.H.] Revocation — Grounds for ordering — Refusal to render service — Inadequacy of service — Customer petitions as a factor. p. 305.

2. SERVICE, § 472

[N.H.] Water — Adequacy of service — Compliance with approved billing procedures — Rejection of customer petition for revocation of franchise. p. 305.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, a petition signed by 29 unit owners of the Forest Cottage Condominium Association (Forest Cottage) was submitted on June 10, 1992; and

WHEREAS, the petition requested that the Commission "replace the current water utility franchise held by Rosebrook Water Company (Rosebrook or the company) with a utility corporation that is dedicated to and experienced in the provision of public utility services"; and

WHEREAS, concerns were expressed at a hearing held on August 25, 1992, attended by Staff and Meta Barton, the primary petitioner, regarding yearly rate increases, billing procedures, the willingness of the company to expand the franchise, and the use of the company as a profit center for the developers; and

WHEREAS, Commission Staff (Staff) verified that the current rates being charged have not been increased since January 2, 1990, when they were approved by Order No. 19,661 in the last rate case (DR 89-031); and

WHEREAS, billing procedures are correct in that bills are based on meter size and metered consumption for all Forest Cottage customers, as also approved in the above order; and

WHEREAS, the utility states that it has never been approached for an extension of service outside the existing franchise; and

WHEREAS, Staff site visits and investigation indicate that Rosebrook is providing adequate service; and

WHEREAS, since 1991, Consumer Assistance has received only five calls from the 195 customers presently served by the water system, which include the 54 customers in the Forest Cottage development; and

WHEREAS, three of those calls were from the same customer regarding the utility's billing format, which is being revised to address her concerns; and

WHEREAS, the other two calls were inquiries for general information; and

WHEREAS, RSA 374:28 allows the Commission to revoke a franchise when a "utility has declined or unreasonably failed to render service in said territory or that its service in said territory is inadequate..."; and

WHEREAS, based on the Staff investigation and recommendation, the Commission finds no

grounds to support such a revocation in this docket; it is

ORDERED, that the petition to replace Rosebrook with another utility corporation is denied; and it is

FURTHER ORDERED, that Rosebrook

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immediately mail a copy of this order to each Forest Cottage customer.

By order of the New Hampshire Public Utilities Commission this thirty-first day of May, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Rosebrook Water Co., Inc., DR 89-031, Order No. 19,661, 75 NH PUC 1, Jan. 2, 1990.

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NH.PUC*05/31/94*[70519]*79 NH PUC 306*Concord Electric Company

[Go to End of 70519]

79 NH PUC 306

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 93-195

Order No. 21,248

New Hampshire Public Utilities Commission

May 31, 1994

ORDER directing two affiliated electric utilities to expand their conservation and load management programs by continuing a "Wrap Up Plus" program and by instituting new programs aimed at small commercial and low-income customers. Additionally, performance-based shared savings incentive awards are ordered to be earned and allocated by the utilities on a stand-alone, rather than an aggregate, basis, despite such incentives being distributed based on aggregate performance in the past.

1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utilities — Goal of achieving both financial and resource savings — Expansion of programs — Components —

Continuation of "Wrap Up Plus" program — Introduction of nonlighting conservation measures for small commercial and industrial customers — Initiation of programs targeting low- income customers. p. 311.

2. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utilities — Accounting for and allocation of associated indirect costs — Audit requirements. p. 311.

3. EXPENSES, § 26

[N.H.] Advertising, publicity, and marketing — Conservation and load management programs — Electric utilities — Reasonableness of costs — Percentage of overall budget as a factor. p. 311.

4. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Affiliated electric utilities — Distribution of shared savings incentives — According to performance on stand-alone basis — Rejection of allocation based on aggregate performance. p. 311.

5. INTERCORPORATE RELATIONS, § 1

[N.H.] Sister affiliates — Electric utilities — Conservation and load management programs — Performance-based shared savings incentives — Allocation on stand-alone, not aggregate, basis. p. 311.

APPEARANCES: LeBoeuf, Lamb, Green and MacRae by Paul B. Dexter, Esq. on behalf of Concord Electric Company and Exeter and Hampton Electric Company; the Office of the Consumer Advocate by Kenneth E. Traum on behalf of residential ratepayers; E. Barclay Jackson, Esq. on behalf of the Commission Staff.

BY THE COMMISSION:

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REPORT

I. PROCEDURAL HISTORY

On October 4, 1993, Concord Electric Company and Exeter & Hampton Electric Company (UNITIL Companies or Companies

¹⁽²⁴⁾) filed with the New Hampshire Public Utilities Commission (Commission) a proposed 1994 Conservation and Load Management (C&LM) program. On December 2, 1993, during the pendency of the C&LM proposal, the Companies requested Commission approval to impose increased Conservation Charges beginning January 1, 1994. The Commission denied the Companies' request to increase Conservation Charges for the time being, ordering that the Companies continue implementing existing programs and collecting existing Conservation Charges (Order No. 21,073, dated December 27, 1993).

The Companies, Office of Consumer Advocate (OCA), and Commission Staff (Staff) exchanged written testimony, data requests, and data responses. Lengthy settlement discussions were held on April 6 and April 11, 1994. No comprehensive settlement of the issues was reached although it was agreed to recommend alteration of the Companies' C&LM program year to commence July 1 rather than January 1.

On April 13, 21, and 27, 1994, the Commission heard testimony on all issues. Briefs, limited to four contested issues, were submitted on May 9, 1994. The four issues were: (1) the size of the C&LM budget, (2) accounting for C&LM costs, (3) the calculation of the Shared Savings Incentive (SSI), and (4) the timing of alternative C&LM financing proposals.

II. POSITIONS OF THE PARTIES AND STAFF BY ISSUE

A. Joint Recommendation

The parties and Staff agreed that changing the Companies' C&LM program year from a January 1st start date to July 1st would be beneficial. Currently all companies implementing C&LM programs are required to file proposals on October 1, seeking approval for the ensuing calendar year. Simultaneous filing creates an administrative bottleneck, prohibiting efficient and timely resolution of the C&LM dockets. Moving the UNITIL Companies' program year to July 1st, in effect staggering the C&LM filings, would allow better, more efficient use of Commission resources while permitting timely consideration of the issues presented.

B. Size of the C&LM Budget

The Companies

The Companies proposed a C&LM budget of \$1,106,995, which is \$351,500 lower than the budget proposed by Staff. Staff's budget expands C&LM, a policy the Companies reject. The Companies claimed that expansion of the existing C&LM programs could strain the economy's recent movement toward recovery in their service area; and expansion is inappropriate during this period of low supply-side market prices and excess capacity. In addition, the Companies contended that expansion of the existing C&LM programs should only be proposed after careful evaluation and analysis over the 1994 program year. Attempting to implement expanded programs beginning in the 1994 program year, the Companies argued, is unworkable because of the time necessary to develop and respond to RFPs and to get Commission approvals for the programs.

The Wrap-Up Plus Program (Wrap-up), a successful program providing water saving devices and energy efficient light bulbs since 1992, reached its targeted 50% market penetration for 1993 and was then discontinued. The Companies proposed to assign half of the total 1993 current Wrap-up budget to the 1994 program (\$81,000) and to offer Wrap-up measures: (1) under the Residential Electric Space Heat Program (Space Heat), and (2), only to those customers requesting the measures. The Companies claim that cost effectiveness of the program will likely diminish beyond the 50% market penetration because attracting additional participants will become more expensive.

Consistent with their argument against expansion of C&LM at this time, the

Companies objected to Staff's recommendation to add \$75,000 to the Small Commercial & Industrial (C&I) Lighting program for non-lighting measures. The Companies argued that adequate analysis of the costs and benefits of such a program has not occurred and cannot be carried out effectively for proper implementation in 1994. The Companies proposed that such analysis occur during 1994 for implementation consideration in 1995.

Again consistent with their argument against expansion of C&LM at this time, the Companies objected to Staff's recommendation to institute a \$100,000 Low-Income component (Low Income Component) of C&LM. The measures Staff proposed, according to the Companies, are already offered under the existing Space Heat and Wrap-up programs: implementation of a separate Low-Income Component would be duplicative and an unnecessary added expense. The Companies also argued that identifying the low-income market is difficult and that therefore implementation of a Low-Income Component, if approved, should not occur until the 1995 program year.

Staff

Staff argued to increase the Companies' 1994 C&LM budget in three areas: the Wrap-up Plus program, non-lighting measures for small C&I customers, and a separate Low-Income Component. Staff's justification for continuation of the Wrap-up budget at its 1993 level rested upon the history of the program. Staff contended that Wrap-up had been one of the most cost effective programs ever offered by the Companies, having a benefit/cost ratio of 1.47:1. Staff claimed that there is no evidence that the program will become less cost-effective as market penetration increases. Staff also asserted that demand for the program is strong.

Staff argued that non-lighting measures can be offered to the Companies' small C&I customers through the existing lighting program by conducting non-lighting audits at the same time as the lighting audits. The measures could include occupancy sensors, programmable thermostats, and selected air conditioning and water heating fixtures, all of which are measures which Staff argued have proven cost effective for other New Hampshire utilities. Staff recommended increasing the small C&I lighting program by \$75,000 to finance the audits and rebates for the non-lighting measures.

In support of a separate Low-Income Component, Staff argued that the low income market is readily accessed through Community Action Plan (CAP) agencies, and easily identified through data from the Governor's Office of Energy and Community Services. Energy conservation efforts would be maximized, Staff argued, by the combination of utility C&LM dollars with CAP access to the low income market, without reducing or undermining the cost-effectiveness criteria of C&LM.

Staff pointed out that the Companies' 1992 C&LM budget represented 1.3% of the total operating budget and that the budget Staff is proposing represents 1.6% of the total operating budget.

Staff compared the rate impacts associated with its increased budget to the rate impacts of the Companies' budget in order to demonstrate that the impacts would not be unduly burdensome and are within the range of rate increases approved in other C&LM cases. For Concord Electric, the Companies' budget would result in a residential rate impact of 1.75%; Staff's budget would

result in a residential rate impact of 2.26%. For Exeter & Hampton Electric, the Companies' budget would result in a residential rate impact of 1.43%; Staff's budget would result in a residential rate impact of 1.96%.

OCA

The OCA supported Staff's budget recommendation, arguing that the successful, cost effective Wrap-up program should not be discontinued simply because of its success. Continued benefit to the public can be maintained without high marketing costs, the OCA asserted.

In support of a specific Low-Income Component as proposed by Staff, the OCA pointed out that the Companies themselves have recognized the benefit of such a program in the past, by offering a Social Service Lighting program. However, the Social Service program has been

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discontinued for 1994, thereby cutting low-income customer participation. Despite the reduced participation, the conservation surcharge continues to be levied on low-income customers. In order to rectify that imbalance, the OCA argued that low-income customers should be targeted for C&LM measures for reasons other than the traditional cost/benefit reasons. For instance, the OCA argued, conservation measures taken by low-income customers make that customer's energy bills more affordable to the customer and thus more likely to be paid in timely fashion. Timely payments, the OCA argued, reduce the utility's receivables, creating a positive effect of C&LM which should be considered by the Commission in deciding whether to target low income customers.

The OCA requested that \$1,000 of Staff's proposed \$100,000 budget be ear-marked for a pilot program to provide energy efficient light bulbs to interested low income customers. While a low-income program may result in a higher residential rate impact, the OCA declared that the benefits of the proposed additional cost-effective C&LM spending are greater than the detriment of a slightly higher rate impact. Providing a program for low-income customers and continuation of the Wrap-up program would increase residential bills by only one half of one percent, a justifiable increase in the OCA's view.

C. Accounting for C&LM Costs

The Companies

The Companies argued that its method of accounting is accurate, readily reviewable, and complies with the requirements of the Securities and Exchange Commission. The Companies' method is disputed only with respect to the allocation of charges for C&LM efforts which are cooperative among the UNITIL Companies. The Companies argued that their current methods should continue and not, as Staff recommends, change to accumulate costs of cooperative efforts at the UNITIL Service Corporation level for allocation to the Unitil Companies on the basis of direct costs. The Companies asserted that employees and their supervisors are capable of competently allocating cooperative efforts on the basis of time and that accumulation and subsequent allocation of costs is unnecessary. At a minimum, the Companies urged, no accounting changes should occur until after Staff completes its proposed audit.

The Companies also argued that their allocation by time spent reflects the real costs of

cooperative efforts more accurately than allocation by direct costs. The Companies claimed that costs vary in relation to the number of companies implementing the particular programs, not in relation to direct costs.

Staff

Staff argued that because indirect costs for C&LM are not specifically attributable to a particular company, they must be arbitrarily allocated to a company by an allocation factor. Choice of an allocation factor is important as the allocation must be reviewable and reasonable. Staff contended that the Companies' allocation of indirect costs using time as the allocation factor results in an allocation which is not reasonably reviewable. Since individual employees' time charges are not susceptible to Commission review, Staff argued, Commission review of C&LM accounts would best be accomplished if a separate indirect cost account were established on the UNITIL Service Corporation's general ledger and then allocated to the Companies based in direct C&LM costs.

OCA

The OCA supported Staff's position with regard to accounting for indirect C&LM costs in order for the Companies to be consistent with other New Hampshire utilities and in order to provide Staff with a clear and easily reviewable record.

D. SSI Calculation

The Companies

Two components of the Shared Savings Incentive (SSI) calculation were disputed in this

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docket. In prior C&LM proceedings, the Companies argued, they have received SSI awards based on a calculation demonstrating that the Companies have in the aggregate met a threshold C&LM achievement. Changing this calculation to require meeting the threshold by individual company, as recommended by Staff, may result in an individual company failing to meet the threshold even in years when the threshold is met on an aggregate basis.

The second disputed component is that of which avoided costs to use, those used at the outset of the C&LM program year to both screen the programs for cost-effectiveness and establish performance goals, or updated avoided costs at the end of the program year. The Companies argued that updated avoided costs would result in significant increases or decreases in SSI wholly unrelated to the Companies' C&LM performance, for example, changes in the price of oil. Therefore, the Companies held that the current methodology should be continued: the avoided costs should be fixed at the values used during C&LM planning.

Staff

With regard to the first disputed component of SSI calculation, Staff, citing *Re Incentives for Conservation and Load Management*, 75 NH PUC 527 (1990), argued that SSI is offered in order to reward C&LM programs which offer extraordinary benefits to ratepayers. Hence, the SSI calculation must apply the minimum performance threshold to the individual companies; the SSI calculation must not apply the minimum performance threshold to the aggregate of the

UNITIL Companies. The Companies' aggregate approach, Staff argued, would dilute the SSI message of rewarding a particular company's extraordinary efforts. Even unsatisfactory performance of an individual company would be rewarded if another company's outstanding performance were to be included in the calculation. Staff maintained that the best case application of the threshold would be to apply it to the net savings by program or class, noting that two other New Hampshire electric companies apply the threshold on a class basis.

With regard to the second disputed component of SSI calculation, use of projections versus updated avoided costs in calculating SSI, Staff argued that use of updated avoided costs is consistent with a basic tenet of public utility regulation that it is best to use the most accurate information available. In order to achieve accuracy, Staff pointed out, C&LM incentives are calculated retrospectively based on actual rather than projected costs, using actual rather than projected numbers of C&LM installations during the program year. Using the pre-program avoided costs in the SSI calculations instead of the post-program year actual avoided costs, Staff claimed, would overstate the benefits resulting from the 1993 programs.

OCA

The OCA argued that SSI should be calculated separately for each program of each company, both Concord Electric and Exeter and Hampton Electric. The Conservation Charges for each customer class, according to the OCA, should be based on the costs and benefits associated with that class.

E. Timing of Alternative Financing Proposal

The Companies

The Companies contended that alternative financing options should be studied, not implemented, during the 1994 program year. The Companies argued that this longer development period will permit a comprehensive analysis of the level of interest subsidy to offer participants, the treatment of the interest subsidy in the benefit cost analysis, and what institution should act as lender.

Staff

Development of an alternative financing mechanism will mitigate C&LM rate impacts on non-participants by reducing the need for rebates, Staff contended. Staff argued that the Companies should develop such a mechanism for Commission review within 6 months of the

order in this docket, using as a model the alternative mechanisms proposed by other New Hampshire utilities or developing a totally new pilot concept. Staff stated that its experience with the other utilities reveals that the 6 month development period is sufficient.

OCA

The OCA also supported Staff's position with regard to alternative financing programs and argued that alternative financing mechanisms should be proposed by the Companies by September 1, 1994.

III. COMMISSION ANALYSIS

We have reviewed the testimony, exhibits and briefs filed, and appreciate the efforts by the parties and Staff to focus the issues in contention. Our analysis will consider each of the four contested issues, following the numeric sequence used in section II of this report.

[1] 1. We accept and approve the increased C&LM budget proposed by Staff with regard to continuing the Wrap-up Plus program, increasing the Small C&I Lighting budget to cover non-lighting measures, and implementing a Low-Income Component of C&LM. Our approval is grounded on our firm commitment to C&LM as a process beneficial to utilities and to consumers. We reject the notion that by merely attaining a numeric goal of a particular market penetration level the purpose of C&LM is met. The goal of C&LM is to achieve financial and resource savings. For this reason, we will not approve discontinuation of a cost effective C&LM program such as the Wrap-up Plus program. The Companies have not convinced us that the program will lose its cost effectiveness.

The Companies ask to keep their C&LM program at its current modest level because of the region's economic condition. The Companies argue that economic recovery is uncertain and should not be endangered by unnecessary mandated expenditures. We have weighed the economic factors presented and find that effective C&LM programs (a) assist those most affected by economic downturns and (b) represent only a modest percent of the Companies' operating budgets and therefore are not apt to result in detrimental economic consequences to the Companies. We have also been asked to deny any expansion of the Companies' C&LM program because of the need for extended study of the proposed Low-Income Component and non-lighting measures for Small C&I customers. The arguments for a full year to study the proposals have not been persuasive. We therefore find appropriate the increase recommended for Small C&I programs and for implementation of a Low-Income Component. We will order that \$1,000 of the budgeted \$100,000 for Low-Income Component be ear-marked for a pilot program providing energy efficient light bulbs to low income customers who request them, as suggested by the OCA.

[2] 2. We recognize Staff's concern that allocations be reviewable and therefore will order Staff to conduct an audit of the Companies and to report to us the results of the audit by September 1, 1994. However, based on our current knowledge, we will not, at this time, order a change in the Companies' method for accounting for indirect C&LM costs. The allocation of indirect costs on the basis of time expended by employees is acceptable, absent any evidence of incorrect activity. Our intent is to permit utilities flexibility in the choice of accounting methods as long as the method chosen is reasonable and accurate. The method employed by the Companies is accepted by the Securities and Exchange Commission; we see no reason at this time to reject it.

[3] Although the issue was not specifically briefed, we heard testimony regarding the Companies' expenditures and accounting for Design, Administration and Marketing (DA&M). We are concerned that these DA&M costs appear as a higher percentage of the budget than that for other companies. We therefore will direct Staff, as part of its audit, to ascertain the reason for this difference and make a recommendation to the Commission by September 1, 1994 for reducing the percentage. Of course, we will provide an opportunity for the Companies to respond to Staff's recommendation.

[4, 5] 3. The calculation of SSI is one part

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of the three-pronged overall C&LM policy designed by the Commission to encourage cost-effective development and implementation, the three prongs being cost recovery, lost revenue recovery, and SSI. We think it is inappropriate to apply the SSI threshold on an aggregate basis. Our intent is to create incentives for individual companies to perform individual C&LM for their customers and for individual companies to benefit from financial incentives awarded for specific C&LM. We stated in *Re Incentives for Conservation and Load Management*, 75 NH PUC 527 at 541 (1990), "financial incentives ... are warranted where the utility can demonstrate ... extraordinary benefits to ratepayers over the long term." Despite what we may have permitted in the past, the issue having been brought to our attention, we will not give credence here to an assumption that extraordinary benefits can be demonstrated by aggregating the performances of these companies; we are concerned that by doing so, quite ordinary benefits would be rewarded. We therefore opt for rewarding specific efforts and will order the Companies to apply the SSI calculation in the most specific manner possible, to wit, on a class basis for each company separately. At present, both Granite State Electric and Connecticut Valley Electric apply the minimum performance thresholds on a class basis.

Consistent with our concern for accuracy in regard to meeting the SSI threshold, we agree with Staff that, for the purposes of valuation of energy and capacity savings in the SSI calculation, the most appropriate numbers available are the most recent. Therefore, we will order the use of the most recent post-program year avoided costs.

4. We are persuaded that an alternative financing proposal can and should be developed by the Companies by December 1, 1994. Models for such a program are available and Staff has indicated its willingness to assist.

Finally, we accept and approve the recommendation that the Companies' C&LM program year commence in future on July 1st rather than January 1st in order to stagger C&LM filings at the Commission.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Companies' C&LM program year shall commence in future on July 1 and that reconciliation of the 1994 C&LM program shall include January 1, 1994 through June 30, 1995; and it is

FURTHER ORDERED, that the Companies' proposed C&LM budget shall be increased by \$ 351,000 in order to implement C&LM measures as described in the foregoing report for the Wrap-up Plus program, a Low-Income C&LM Component, and the Small C&I program; and it is

FURTHER ORDERED, that the Companies shall make best efforts to implement the above-referenced programs on July 1, 1994, and it is

FURTHER ORDERED, that the Companies shall report to the Commission on the status of

the above-referenced programs on July 15, 1994, and it is

FURTHER ORDERED, that the Staff shall conduct an audit of the Companies' accounts, reporting to the Commission on or by September 1, 1994 on the results of the audit including recommendations to change the allocation method and ways to reduce the administrative costs as a percentage of the overall budget; and it is

FURTHER ORDERED, that the Companies' accounting practices shall continue unless and until the Commission, after reviewing Staff's audit report, issues a supplemental order requiring such practices be changed; and it is

FURTHER ORDERED, that for purposes of SSI calculations the Companies shall apply the minimum performance threshold to the net savings performance of each individual company by separate customer class; and it is

FURTHER ORDERED, that for purposes of SSI calculations the Companies shall utilize the most recent post program year; and it is

FURTHER ORDERED, that the Companies shall develop and submit to the Commission by December 1, 1994, a proposal for an

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alternative C&LM financing mechanism.

By order of the New Hampshire Public Utilities Commission this thirty-first day of May, 1994.

FOOTNOTES

¹A third company, Fitchburg Electric Company in Massachusetts, is affiliated with the UNITIL Companies.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Concord Electric Co., DR 93-195, Order No. 21,073, 78 NH PUC 735, Dec. 21, 1993.

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NH.PUC*06/01/94*[70520]*79 NH PUC 313*GE Exchange Corporation of New Hampshire

[Go to End of 70520]

79 NH PUC 313

Re GE Exchange Corporation of New Hampshire

DR 94-097

Order No. 21,249

New Hampshire Public Utilities Commission

June 1, 1994

ORDER approving a telephone carrier's proposed tariff revisions relative to clarification of customer liability for "800" service charges, regardless of joint use or resale service status.

1. PAYMENT, § 9

[N.H.] Customer liability — Clarification of rules — Telephone carrier — "800" services — Joint use or resale as a factor. p. 313.

BY THE COMMISSION:

ORDER

[1] On May 17, 1994, GE EXCHANGE Corporation of New Hampshire, (GE EXCHANGE) d/b/a GE EXCHANGE and d/b/a GE Capital EXCHANGE petitioned the New Hampshire Public Utilities Commission (Commission) for authority to clarify language in its tariff, such that: the customer, as defined within the tariff, remains liable for all obligations notwithstanding sharing, joint use or resale of the service; the company shall have no liability to any entity other than the customer; requiring each authorized or joint user to submit to the designated customer a letter accepting contingent liability for its portion of all charges billed by the customer; and certain customary notification and signaling obligations of customers of its 800 service; and

WHEREAS, GE EXCHANGE filed tariff pages containing the necessary changes to reflect the clarifications; and

WHEREAS, the Staff has reviewed the filing and recommends its approval to the Commission; and

ORDERED, that the following pages are approved, NHPUC No. 1:

- Page 2 - 2nd Revised Page,
- Page 16 - 1st Revised Page,
- Page 16.1 - Original Page,
- Page 16.2 - Original Page,
- Page 16.3 - Original Page,
- Page 16.4 - Original Page;

and it is

FURTHER ORDERED, that GE EXCHANGE file a compliance tariff in accordance with NH Admin. Rules, Puc PART 1600;

By Order of the New Hampshire Public Utilities Commission this first day of June, 1994.

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NH.PUC*06/06/94*[70521]*79 NH PUC 314*Public Service Company of New Hampshire

[Go to End of 70521]

79 NH PUC 314

Re Public Service Company of New Hampshire

DR 94-074

Order No. 21,250

New Hampshire Public Utilities Commission

June 6, 1994

ORDER authorizing an electric utility to enter into a 10-year discounted service contract with Wyman-Gordon Investment Castings, Inc., in order to retain it as a customer. The contract provides for a 75% reduction in demand charges for the first three years of the contract, a 50% reduction for the next three years, and a 25% reduction in the last years.

1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Discounting — Special contracts — Factors — Load retention — Industrial load. p. 314.

2. DISCRIMINATION, § 99

[N.H.] Rates — Electric rates — Demand charges — Discounting — Special concessions to industrial customer — Special rate contracts — Factors affecting approval — Need to retain load. p. 314.

BY THE COMMISSION:

ORDER

[1, 2] On April 15, 1994, Public Service Company of New Hampshire (PSNH) filed a request for approval of a special contract, Special Contract No. NHPUC-94, between PSNH and Wyman Gordon Investment Castings, Inc. (Wyman-Gordon) effective May 1, 1994 or upon approval by the Commission; and

WHEREAS, Wyman-Gordon is a Delaware corporation having a place of business in Northfield, New Hampshire, with its principal business engaged in the manufacture of investment castings used primarily by the aerospace and defense industries; and

WHEREAS, Special Contract No. NHPUC-94 is designed to retain electric service from Wyman-Gordon for a period of ten years from the effective date of Special Contract No. NHPUC-94; and

WHEREAS, PSNH contends Wyman-Gordon would, absent this special contract, consolidate its investment castings operations at other facilities located outside of New Hampshire as it enters a transitional period of developing new products for markets unrelated to the aerospace and defense industries and would in PSNH's opinion cease operations in New

Hampshire; and

WHEREAS, Wyman-Gordon has closed a facility in Franklin, New Hampshire and reduced its workforce from 450 in the late 1980s to 150 today; and

WHEREAS, Wyman-Gordon has, in the opinion of PSNH, undertaken significant technological steps and developed a marketing strategy to expand into non-traditional markets; and

WHEREAS, Wyman-Gordon has worked with the State's Office of Business and Industrial Development which has indicated its willingness to assist Wyman-Gordon as needed; and

WHEREAS, PSNH is proposing to provide discounted electric service to Wyman-Gordon in the form of discounted demand charges for a ten-year period as well as contribute matching funds up to \$45,000 for Energy Conservation Measures as determined under PSNH's Energy Services Program; and

WHEREAS, Wyman-Gordon also agrees that PSNH will continue to be its only provider of electric service for a period of 10 years; and

WHEREAS, PSNH believes Special Contract NHPUC-94 will enable Wyman-Gordon to remain in New Hampshire and expand its production capacity; and

WHEREAS, PSNH is convinced that Wyman-Gordon has a viable business plan

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provided that it is able to enhance its production line and lower operating costs of which energy costs are a significant part; and

WHEREAS, the demand charge discount applies only to Wyman-Gordon's billing demand in excess of the base demand which varies over the term of the special contract; and

WHEREAS, the demand charge discount above the base demand varies from 75% off the applicable demand charges during the first three years to 50% during years four through six with the last three years of the special contract at a 25% discount; and

WHEREAS, Wyman-Gordon will pay tariffed rates for all energy and the base demand levels specified in Article 3 in the special contract; and

WHEREAS, Wyman-Gordon will be charged no less than 103% of PSNH's short-term avoided costs for all energy and demand in excess of base nor a rate greater than the tariffed rates; and

WHEREAS, by retaining service to Wyman-Gordon, PSNH maintains some level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers; and

WHEREAS, PSNH contends that this filing is consistent with its 1992 Integrated Resource Plan and is made in accordance with the Commission's established economic development policy and adheres to the Commission's "Final Checklist for Economic Development and Business Retention Discounted Rates" (Checklist) as specified in Order No. 20,882 in docket DR 91-172, the Generic Discounted Rates docket; and

WHEREAS, upon review of the filing and the Staff recommendation, the Commission finds that Special Contract NHPUC-94 meets the criteria for a discounted rate as we outlined in DR 91-172, but the Commission believes that PSNH and Wyman- Gordon should and will be expected to fully pursue other appropriate forms of assistance as outlined in the Checklist; and

WHEREAS, Special Contract NHPUC-94 between Public Service Company of New Hampshire and Wyman-Gordon Corporation is in the public interest; it is hereby

ORDERED *Nisi*, that Special Contract NHPUC-94 is approved as filed effective July 1, 1994, unless the Commission provides otherwise in a Supplemental Order issued prior thereto; and it is

FURTHER ORDERED, that PSNH report to the Commission by July 1, 1995, the status of Wyman-Gordon's pursuit of assistance including but not limited to the outcome of any type of assistance Wyman-Gordon seeks from the Department of Resources and Economic Development; and it is

FURTHER ORDERED, that recovery of any monies expended by PSNH on conservation measures will be deferred to the 1994 docket on PSNH's conservation and load management programs where it may be more fully reviewed; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, PSNH notify all persons desiring to be heard by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than June 10, 1994, and documented by affidavit filed with this office on or before June 15, 1994; 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 June 17, 1994; and it is

By order of the New Hampshire Public Utilities Commission this sixth day of June, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,882, 78 NH PUC 316, June 23, 1993.

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NH.PUC*06/06/94*[70523]*79 NH PUC 316*GTE Corporation

[Go to End of 70523]

79 NH PUC 316

Re GTE Corporation

Additional parties: MCTA, Inc.; Contel of New Hampshire, Inc.

DF 93-240, DF 93-241

Order No. 21,252

Re Wilton Telephone Company, Inc.

Additional applicants: Telecommunication Systems of New Hampshire, Inc.; Hollis Telephone Company, Inc.

DF 94-021

Order No. 21,253

Re GTE Corporation

Additional parties: Maine Telecommunications Group, Inc.; Contel of Maine, Inc.

DF 94-071

Order No. 21,254

New Hampshire Public Utilities Commission

June 6, 1994

ORDER approving a merger/reorganization proposal submitted by several local exchange telephone carriers.

Under the plan, the common stock of GTE New Hampshire (Contel of New Hampshire, Inc.) is transferred to MCTA, Inc., and upon such merger, the surviving carrier will be renamed Contoocook Valley Telephone Company. Similarly, the common stock of GTE Maine (Contel of Maine, Inc.) is transferred to Maine Telecommunications Group, Inc., and upon such merger, the surviving carrier will be renamed Northland Telephone Company of Maine. Additionally, Wilton Telephone Company is allowed to reorganize through formation of a parent holding company, Telecommunication Systems of New Hampshire, Inc.

1. CONSOLIDATION, MERGER, AND SALE, § 21

[N.H.] Factors affecting approval — Rate considerations — Retention of existing rate structure — Moratorium on rate increase requests — Merger/reorganization of local exchange telephone carriers. p. 319.

2. INTERCORPORATE RELATIONS, § 13

[N.H.] Holding companies and affiliated interests — Mergers and reorganizations — Via stock transfers — Via holding company restructuring — Terms and conditions — Local exchange telephone carriers. p. 319.

3. CONSOLIDATION, MERGER, AND SALE, § 52

[N.H.] Terms and conditions — Treatment of purchase/sale price — Rate base limitations — Exclusion of difference between fair market value and net book value — Exclusion of difference between fair market (goodwill) value and purchase price — Merger/reorganization of local exchange telephone carriers. p. 319.

4. VALUATION, § 27

[N.H.] Rate base computations — Measures of value — Following merger/reorganization transactions — Exclusion of difference between fair market value and net book value — Exclusion of difference between fair market value and purchase price — Local exchange telephone carriers. p. 319.

5. VALUATION, § 336

[N.H.] Rate base computations — Treatment of intangibles — Following merger/reorganization transactions — Exclusion of difference between fair market (goodwill) value and purchase price — Local exchange telephone carriers. p. 319.

6. CONSOLIDATION, MERGER, AND SALE, § 42

[N.H.] Terms and conditions — Treatment

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of securities issues — Interest rate limitations — Effect on capital structure — Exclusion of risk premium from return on equity — Merger/reorganization of local exchange telephone carriers. p. 319.

7. SECURITY ISSUES, § 122

[N.H.] Conditions and restrictions — Following merger/reorganization transactions — Interest rate limitations — Effect on capital structure — Exclusion of risk premium from return on equity — Local exchange telephone carriers. p. 319.

8. RETURN, § 41

[N.H.] Factors affecting reasonableness — Intercorporate relations — Merger/reorganization transactions — Interest rate limitations — Effect on capital structure — Exclusion of risk premium from return on equity — Local exchange telephone carriers. p. 319.

APPEARANCES: Orr and Reno, by Thomas C. Platt III, Esq. on behalf of GTE Corporation, *et al.*; Devine, Millimet and Branch by Frederick Coolbroth, Esq. and Anu Mather, Esq. on behalf of MCTA, Inc.; McLane, Graf, Raulerson and Middleton by Steven Camerino, Esq. and Deborah Morazzi, Esq. on behalf of Wilton Telephone Company *et al.*; James Anderson, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; Amy Ignatius, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On December 3, 1993, GTE Corporation (GTE), Contel of New Hampshire, Inc., d/b/a GTE New Hampshire (GTE NH), and MCTA, Inc. (MCTA) jointly filed with the New Hampshire Public Utilities Commission (Commission) petitions seeking approval of the sale and transfer of

the common stock of GTE NH from Contel to MCTA and for approval of the issuance by GTE NH of its secured guarantee of a loan from the Rural Telephone Finance Cooperative (RTFC) to MCTA. The Commission proceeding relating to these petitions was docketed as Docket DF 93-240.

Also on December 2, 1993, GTE, Contel, Contel of Maine, Inc. d/b/a GTE Maine (GTE Me.) and Maine Telecommunications Group, Inc. (MTG) jointly filed petitions for approval of the sale and transfer of the common stock of GTE Me. and of its secured guarantee of a loan from the RTFC to MTG. These petitions were docketed as Docket DF 93-241.

Prehearing conferences were held with respect to dockets DF 93-240 and DF 93-241 on February 16, 1994, at which the Commission granted the petition of Wilton Telephone Company, Inc. (WTC), Hollis Telephone Company, Inc. (HTC), Telecommunication Systems of New Hampshire, Inc. (TSNH) to intervene. The Office of Consumer Advocate (OCA) intervened pursuant to RSA 363:28.

On February 9, 1994, WTC, TSNH, HTC and MCTA jointly filed with the Commission petitions, docketed as Docket No. DF 94-021, seeking authority for WTC to effect transactions which would create a holding company structure for WTC, authority for HTC to operate as a telephone public utility within GTE NH's current Hollis Exchange, authority for GTE NH to transfer to HTC the assets and franchises used and useful in the operation of GTE NH's Hollis exchange and approval of the existing rates of GTE NH for the Hollis exchange as permanent rates for HTC. The Commission subsequently granted a motion by MCTA to amend its petition to provide additionally for the merger, following the transfer of the GTE NH stock to MCTA, of GTE NH into MCTA with the surviving company to be renamed Contoocook Valley Telephone Company, Inc. (CVT), to provide for the RTFC financing to be the direct obligation of CVT (rather than a separate direct obligation of MCTA guaranteed by GTE NH), and for CVT to mortgage its assets to secure

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such RTFC financing. MCTA proposes to retain the existing rates of GTE NH as permanent rates for CVT following the merger.

A prehearing conference in docket DF 94-021 was also held on February 16, 1994, at which GTE, Contel and GTE NH were permitted to intervene. The OCA appeared and intervened pursuant to RSA 363:28.

Finally, on March 1, 1994, MTG and ST Enterprises, Ltd. (STE) jointly petitioned for authority for STE (or an affiliate thereof) to operate as a telephone public utility within GTE Me.'s current New Hampshire service territory (located in the towns of Chatham and East Conway, New Hampshire), authority for GTE Me. to transfer to STE or such affiliate the assets and franchises used and useful in the operation of GTE Me.'s New Hampshire exchanges and approval of the existing rates of GTE Me. for these exchanges as permanent rates after the transfer. These petitions were docketed as Docket DF 94-071. An order of notice offered any interested party the right to intervention and a prehearing conference if requested. There were no intervenors other than the OCA.

At the start of the hearing on the Stipulation Agreements, the Commission granted a motion

to amend the DF 94-071 petitions to change the structure of the transactions as follows: GTE Me. would be merged into MTG, which would have a subsidiary known as Northland Telephone Company of Maine, Inc. (NTC); NTC would in turn hold the New Hampshire assets previously owned by GTE Me.; STE would then redeem its stock in MTG in exchange for receipt from MTG of all of the stock of NTC. As a result, NTC would be the owner and operator of the New Hampshire assets previously owned by GTE Me. and would be the public utility serving those 300 customer lines in East Conway and Chatham, New Hampshire. In addition, the Commission approved the requested amendment of certain financing terms, including change of lender to STE from RTFC to the National Bank for Cooperatives (CoBank) in the amount of \$34,000,000 and further a short term line of credit from CoBank for NTC, secured by the same mortgage which secures the CoBank acquisition loan above.

The Commission also granted a motion to amend the petitions filed in DF 94-021 to change the structure of the transactions as follows: upon acquisition by MCTA of all of the outstanding stock of GTE NH, GTE NH would be merged into MCTA and the surviving corporation would be renamed CVT; CVT would be the direct obligor on the RTFC acquisition loan. In addition, the Commission granted the request to amend the petitions by inclusion of a request for approval of a \$775,000 revolving line of short-term credit from the RTFC to CVT, with a mortgage and security interest to secure the indebtedness of CVT.

On March 1, and March 8, 1994, respectively, the Commission issued its procedural orders in the foregoing dockets. Subsequently, the petitioners filed testimony supporting the requested approvals, a substantial number of detailed data requests were issued by both the Staff and the OCA with respect to the proposed transactions, and responses to the data requests were submitted by the petitioners. The Commission found jurisdiction over the transaction and granted GTE's request for confidential treatment of certain information. *See* Order No. 21,195 (April 20, 1994).

Under the terms of the stock transfer from GTE, the Maine, Vermont and New Hampshire regulatory agencies must each approve those transactions which fall within their jurisdiction. If any regulatory agency rejects a transaction within its jurisdiction, however, none of the transactions may proceed to closing. The Maine Public Utilities Commission, on May 25, 1994, approved the transactions within its jurisdiction. The Vermont Public Service Board, through a hearings examiner, conducted a hearing on May 31, 1994 regarding the transactions within its jurisdiction.

After extensive settlement discussions, the parties and Staff presented three stipulation agreements recommending approval of the petitions in all four dockets. The Commission heard evidence in four separate records on May 25, 1994. Because the transactions are so closely intertwined, this report will address all four dockets; separate orders, however, will be issued in each docket.

II. TERMS OF STIPULATION AGREEMENTS

[1-8] Three stipulation agreements, addressing all petitions in the four dockets, were submitted to the Commission on May 25, 1994. All parties, intervenors and the Staff were

signatories. For full understanding of all terms, see the Stipulations themselves. Some of the key provisions are summarized below:

A. DF 93-240

Telephone Plant Adjustment and Goodwill

The resulting operating utility, CVT, will not include in the rate base the difference between fair market value and net book value of the acquired assets for purposes of determining revenue requirements for establishing local telephone rates and shall never seek to include the difference between the purchase price being paid by MCTA and the fair market value of the acquired assets (attributable to the franchise, or goodwill) in rate base.

Rates

No signatory to the stipulation will seek to commence a general rate proceeding for rates effective prior to April 1, 1996 with respect to CVT, nor shall the Commission initiate a show cause proceeding with respect to rates; provided, however, that CVT, MCTA, OCA and the Staff shall have the right to seek rate changes in the event of certain exogenous factors delineated in the Stipulation, in which case, the Staff or the OCA may request the Commission to examine such operating company's overall revenue requirements, or the Commission may do so on

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its own motion. Likewise, in the event that the OCA or Staff petitions to decrease revenues to offset these changes, GTE NH (or MCTA or CVT) may request the Commission to examine such company's overall revenue requirement.

In order to ensure that ratepayers do not pay higher rates because of any financial risks resulting in higher costs of debt or equity capital due to these transactions, (i) the interest cost of the RTFC loan for intrastate ratemaking purposes for MCTA and CVT will be capped at 100 basis points over the RTFC's fixed rate for 15-year loans in effect on the date of the closing, and (ii) at all times when the capital structure for intrastate ratemaking purposes includes a debt component of 70% or more, the cost of equity shall not reflect any risk premium which causes the revenue requirement to exceed that which would result from a capital structure with 50% or less debt having the same interest cost.

All transaction costs incurred by MCTA and its affiliates in connection with the acquisition by MCTA of the common stock of GTE NH, the merger of GTE NH into MCTA and the transfer of the Hollis assets to HTC shall be recorded in non- operating (below the line) accounts and shall not be included in determination of revenue requirements for establishing local telephone rates.

B. DF 94-021

Telephone Plant Adjustment and Goodwill

The resulting operating utility, HTC, will not include in the rate base the difference between fair market value and net book value of the acquired assets for purposes of determining revenue requirements for establishing local telephone rates and shall never seek to include the difference between the purchase price being paid by HTC and the fair market value of the acquired assets

(attributable to the franchise or goodwill) in rate base.

Rates

No signatory to the stipulation will seek to commence a general rate proceeding for rates effective prior to April 1, 1996 with respect to HTC, nor shall the Commission initiate a show cause proceeding with respect to rates; provided, however, that HTC, OCA and the Staff shall have the right to seek rate changes in the event of certain exogenous factors delineated in the Stipulation, in which case, the Staff or the OCA may request the Commission to examine such operating company's overall revenue requirements, or the Commission may do so on its own motion. Likewise, in the event that the OCA or Staff petitions to decrease revenues to offset these changes, HTC may request the Commission to examine such company's overall revenue requirement.

In order to ensure that ratepayers do not pay higher rates because of any financial risks resulting in higher costs of debt or equity capital due to these transactions, (i) the interest cost of the RTFC loan for intrastate ratemaking purposes for HTC will be capped at 100 basis points over the RTFC's fixed rate for 15-year loans in effect on the date of the closing, and (ii) at all times when the capital structure for intrastate ratemaking purposes includes a debt component of 70% or more, the cost of equity shall not reflect any risk premium which causes the revenue requirement to exceed that which would result from a capital structure with 50% or less debt having the same interest cost.

All transaction costs incurred by HTC and its affiliates in connection with the transfer of the Hollis assets to HTC shall be recorded in non-operating (below the line) accounts and shall not be included in determination of revenue requirements for establishing local telephone rates.

C. DF 93-241 and DF 94-071

Telephone Plant Adjustment and Goodwill

Neither MTG, STE, NTC nor any of their operating subsidiaries shall include in rate base or seek to recover through any ratemaking treatment, the difference between the purchase price and the net book value of the acquired GTE Me. assets.

Rates

None of the signatories will seek to initiate a general rate proceeding for GTE Me., MTG or NTC, nor shall the Commission initiate a show cause proceeding for rates that would become effective prior to January 1, 1998, except in the event of a Commission rule or order which significantly affects the revenue requirement of GTE Me., MTG or NTC.

III. REQUESTED APPROVALS

All requested approvals have been agreed to by the parties and Staff in the context of the stipulated conditions. They are as follows:

A. DF 93-240 and, to an extent, DF 94-021 .sp 7p

1. The sale and transfer of the GTE NH Stock from Contel to MCTA is consistent with the public good and is approved and authorized;

2. The issuance by GTE NH of its guarantee of the acquisition loan from the RTFC to

MCTA in the principal amount of not more than \$18,358,526.00 (contingent on the closing of the purchase of the GTE NH Stock by MCTA) will be consistent with the public good and is approved and authorized;

3. The granting by GTE NH of a mortgage and security interest in all of its assets, tangible and intangible, including franchises, as security for its guarantee of such loan from the RTFC to MCTA is consistent with the public good and is approved and authorized;

4. To the extent that the receipt by GTE NH of capital contributions from MCTA for the purpose of prepaying outstanding indebtedness of GTE NH at the closing constitutes the issuance by GTE NH of a security, the issuance of such security is consistent with the public good and is approved and authorized;

5. The merger of GTE NH with and into MCTA, with MCTA as the surviving corporation to be renamed Contoocook Valley Telephone Company, Inc., and the operation by the merged entity of the properties and franchises of GTE NH are consistent with the public good and are approved and authorized;

6. The existing intrastate rates of GTE NH are approved as the permanent rates of CVT unless or until they may be changed as provided in subsection II.B of the Stipulation;

7. The issuance by CVT of its promissory note or notes to the RTFC in the aggregate principal amount of not more than \$13,726,670.00 for the purposes set forth in the amended petition by MCTA in Docket No. DF 94-021 is consistent with the public good and is approved and authorized; provided, however, that the

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following terms shall apply to such financing:

- a. Such loan shall have a maturity of fifteen (15) years;
- b. At least 50% of the principal amount of such loan shall bear interest at a single fixed rate for at least the first ten years of the life of the loan. Should the fixed rate at the time of closing exceed 10%, the Commission shall have the authority, upon request of the OCA, the Staff, or upon its own motion, to order prior to the closing, without notice and hearing, that the closing not occur. Furthermore, CVT shall notify the Commission Staff and OCA of the then current fixed rates on the following schedule:
 - (i) During weeks preceding the closing, weekly;
 - (ii) During the week immediately preceding the closing, daily if the rate should increase;
- c. (i) Should the composite interest rate of the entire loan as of the date of the closing (reflecting on a weighted basis the interest rates of both the fixed rate and variable rate portions of the loan) exceed 8 1/2% per annum, the Commission shall have the authority, upon request of the OCA, the Staff, or upon its own motion, to order prior to the closing, without notice and hearing, that the closing not occur; (ii) CVT shall report to the Commission each instance in which CVT intends to convert variable rates to fixed rates; and (iii) CVT shall make its best efforts to maintain the composite interest rate at the level stated above - if variable rates should increase such that the composite rate would exceed 9%, CVT shall fix that portion or portions of the loan or otherwise limit any

increase to the composite rate, unless the Commission approves otherwise;

8. The granting by CVT to the RTFC of a mortgage and security interest in all of CVT's assets to secure the foregoing RTFC loan is consistent with the public good and is approved and authorized;

9. To the extent that the receipt by MCTA of capital contributions from MCTA at the closing constitutes the issuance by CVT of a security, the issuance of such security is consistent with the public good and is approved and authorized;

10. The transfer of the Hollis Assets from CVT to HTC is consistent with the public good and is approved and authorized;

11. The granting by CVT to the RTFC of a mortgage and security interest in all of CVT's assets to secure a short term line of credit from the RTFC in the amount of not more than \$775,000 outstanding at any one time is consistent with the public good and is approved and authorized.

B. DF 94-021

1. The reorganization of WTC through (a) the authorization of TSNH to operate as a telephone utility in the areas now served by WTC, (b) the transfer of the telecommunications plant, not including motor vehicles, of WTC to TSNH, (c) approval of the existing rates of WTC as the permanent rates of TSNH (to be renamed WTC), (d) approval of the existing tariff of WTC as the tariff of TSNH, and all other actions necessary to effectuate the reorganization proposed by WTC in this docket are consistent with the public good and are hereby approved;

2. The operation by HTC as a telephone public utility within the areas currently served by GTE NH in GTE NH's Hollis Exchange is consistent with the public good and is approved and authorized;

3. The transfer of the Hollis Assets from CVT to HTC is consistent with the public good and is approved and authorized;

4. The issuance by HTC of its promissory note or notes to the RTFC in the aggregate principal amount of not more than \$4,631,856.00 for the purposes set forth in HTC's petition in Docket No. DF 94-021 is consistent with the public good and is hereby approved and authorized; provided, however, that the following terms shall apply to such financing:

a. Such loan shall have a maturity of fifteen (15) years;

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b. At least 50% of the principal amount of such loan shall bear interest at a single fixed rate for at least the first 10 years of the life of the loan. Should the fixed rate at the time of closing exceed 10%, the Commission shall have the authority, upon request of the OCA, the Staff, or upon its own motion, to order prior to the closing, without notice and hearing, that the closing not occur. Furthermore, HTC shall notify the Commission Staff and OCA of the then current fixed rates on the following schedule:

(i) During weeks preceding the closing, weekly;

(ii) During the week immediately preceding the closing, daily if the rate should increase;

c.(i) Should the composite interest rate of the entire loan as of the date of the closing (reflecting on a weighted basis the interest rates of both the fixed rate and variable rate portions of the loan) exceed 8.5% per annum, the Commission shall have the authority, upon request of the OCA, the Staff, or upon its own motion, to order prior to the closing, without notice and hearing, that the closing not occur; (ii) HTC shall report to the Commission each instance in which HTC intends to convert variable rates to fixed rates; and (iii) HTC shall make its best efforts to maintain the composite interest rate at the level stated above - if variable rates should increase such that the composite rate would exceed 9%, HTC shall fix that portion or portions of the loan or otherwise limit any increase to the composite rate, unless the Commission approves otherwise;

5. The granting by HTC to the RTFC of a mortgage and security interest in all of HTC's assets to secure the RTFC loan referenced in the foregoing subsection 4 is consistent with the public good and is approved and authorized;

6. The existing intrastate rates of GTE NH are approved as the permanent rates of HTC through April 1, 1996, unless changed as provided in subsection II.B and the existing local tariff of GTE NH is approved as the local tariff of HTC;

7. No assets of WTC shall be mortgaged, pledged or otherwise encumbered as a result of this transaction.

C. DF 93-241 and DF 94-071

1. The sale and transfer of the GTE Me. stock from Contel to MTG is consistent with the public good and is approved and authorized;

2. The issuance by GTE Me. of its guarantee of the acquisition loan from the RTFC to MTG in the principal amount of not more than \$86,294,444.00 (contingent on the closing of the purchase of the GTE Me. Stock by MTG) will be consistent with the public good and is approved and authorized;

3. The granting by GTE Me. of a mortgage and security interest in all of its New Hampshire assets, tangible and intangible, including franchises, as security for its guarantee of such loan from the RTFC to MTG is consistent with the public good and is approved and authorized;

4. The issuance of common stock of MTG to STE as requested in the amended petition in Docket No. DF 94-071 is consistent with the public good and is approved and authorized;

5. To the extent that the receipt by GTE Me. of capital contributions from MTG for the purpose of prepaying outstanding indebtedness of GTE Me. at the closing constitutes the issuance by GTE Me. of a security, the issuance of such security is consistent with the public good and is approved and authorized;

6. The merger of GTE Me with and into MTG, with MTG as the surviving corporation is consistent with the public good and is approved and authorized;

7. The transfer of GTE Me. New Hampshire assets from MTG to NTC is consistent with the public good and is approved and authorized;

8. The transfer of all of the stock of NTC from MTG to STE is consistent with the public good and is approved and authorized;

9. The transfer by MTG of the stock of NTC and the simultaneous redemption of STE's stock in MTG are consistent with the public good and are approved and authorized;

10. The issuance by NTC of its promissory

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note or notes to CoBank in the aggregate principal amount of not more than \$34,000,000 for the purposes set forth in the petition by STE in Docket DF 94-071 on the terms approved by the Maine Public Utilities Commission is consistent with the public good and is approved and authorized;

11. The granting by NTC to CoBank of a mortgage and security interest in all of NTC's assets to secure the foregoing CoBank loan is consistent with the public good and is approved and authorized;

12. The granting by NTC to CoBank of a mortgage and security interest in all of NTC's assets as security for a line of credit from CoBank consisting of loans from time to time, each having a maturity of less than one year and in principal amounts at any one time outstanding not exceeding the limitation prescribed in Rule Puc 406.04 (not more than 10% of net assets less depreciation) is consistent with the public good and is approved and authorized;

13. The existing intrastate rates of GTE Me. are approved as the permanent rates of NTC unless or until changed as provided in subsection II.C;

14. NTC's request to operate as a public utility engaged in the provision of telephone services in the areas of Chatham and East Conway in which GTE Me. is currently authorized to operate is consistent with the public good and is approved and authorized; and

15. NTC is authorized to accept the transfer of the GTE Me. New Hampshire assets from MTG.

IV. COMMISSION ANALYSIS

We have reviewed the testimony, exhibits and stipulations presented in these cases, as well as the order of the Maine Public Utilities Commission approving those transactions within its jurisdiction. We find that the requested approvals as delineated in detail in this report and the individual orders to follow to be consistent with the public good and will be approved. We approve the transfer of the GTE NH and GTE Me. assets with the understanding that the purchasers and successors are bound by the limitations set forth within the three stipulations. The limits set on the allowable interest rates from the RTFC appear designed to protect the financial viability of the resulting utilities; the limits set on the allowable interest rates to be used for ratemaking purposes for intrastate rates, appear designed to protect the ratepayers of the resulting utilities. The agreement not to seek a general rate case until April, 1996 in the case of CVT and HTC and April, 1998 in the case of NTC is acceptable. The projected efficiencies of the new operating companies may result in no need for rate increases and, perhaps, rate reductions in the future.

We welcome the addition of expanded customer service hours and 24 hour coverage of a maintenance number. We also appreciate the willingness of the successor utilities to work

closely with our Staff during the transition period, in order to minimize confusion on the part of customers.

The parties and Staff are to be commended in their efforts to provide a balanced and responsible set of provisions for these transactions, which we consider to be fair and reasonable for the utilities and their ratepayers.

Our order will issue accordingly.

ORDER NO. 21,252

Based upon the foregoing report, which is made a part hereof and the conditions set forth in section II of the Stipulation and Agreement Among the Parties and Staff Regarding Approvals Requested by GTE Corporation and MCTA, Inc. and their Respective Affiliates, it is hereby

ORDERED, that the sale and transfer of the GTE NH Stock from Contel to MCTA is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the issuance by GTE NH of its guarantee of the acquisition loan from the RTFC to MCTA in the principal amount of not more than \$18,358,526.00 (contingent on the closing of the purchase of the GTE NH Stock by MCTA) will be consistent with the public good and is approved and authorized.

FURTHER ORDERED, that the granting by GTE NH of a mortgage and security interest

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in all of its assets, tangible and intangible, including franchises, as security for its guarantee of such loan from the RTFC to MCTA is consistent with the public good and is approved and authorized.

FURTHER ORDERED, that to the extent that the receipt by GTE NH of capital contributions from MCTA for the purpose of prepaying outstanding indebtedness of GTE NH at the closing constitutes the issuance by GTE NH of a security, the issuance of such security is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the merger of GTE NH with and into MCTA, with MCTA as the surviving corporation to be renamed Contoocook Valley Telephone Company, Inc., and the operation by the merged entity of the properties and franchises of GTE NH are consistent with the public good and are approved and authorized; and it is

FURTHER ORDERED, that the existing intrastate rates of GTE NH are approved as the permanent rates of CVT unless or until they may be changed as provided in subsection II.B; and it is

FURTHER ORDERED, that the issuance by CVT of its promissory note or notes to the RTFC in the aggregate principal amount of not more than \$13,726,670.00 for the purposes set forth in the amended petition by MCTA in Docket No. DF 94-021, subject to the limitations of subsection III.G. of the Stipulation is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the granting by CVT to the RTFC of a mortgage and security

interest in all of CVT's assets to secure the foregoing RTFC loan is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that to the extent that the receipt by MCTA of capital contributions from MCTA at the closing constitutes the issuance by CVT of a security, the issuance of such security is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the transfer of the Hollis Assets from CVT to HTC is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the granting by CVT to the RTFC of a mortgage and security interest in all of CVT's assets to secure a short term line of credit from the RTFC in the amount of not more than \$775,000 outstanding at any one time is consistent with the public good and is approved and authorized.

By order of the New Hampshire Public Utilities Commission this sixth day of June, 1994.

ORDER NO. 21,253

Based upon the foregoing report, which is made a part hereof, and based on the conditions set forth in Section II of the Stipulation and Agreement Among the Parties, Staff and OCA Regarding Approvals Requested by Wilton Telephone Company, Inc., Hollis Telephone Company, Inc, and Telecommunication Systems of New Hampshire, Inc., it is hereby

ORDERED, that the reorganization of WTC through (a) the authorization of TSNH to operate as a telephone utility in the areas now served by WTC, (b) the transfer of the telecommunications plant, not including motor vehicles, of WTC to TSNH, (c) approval of the existing rates of WTC as the permanent rates of TSNH (to be renamed WTC), (d) approval of the existing tariff of WTC as the tariff of TSNH, and all other actions necessary to effectuate the reorganization proposed by WTC in this docket are consistent with the public good and are hereby approved; and it is

FURTHER ORDERED, that the operation by HTC as a telephone public utility within the areas currently served by GTE NH in GTE NH's Hollis Exchange is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the transfer of the Hollis Assets from CVT to HTC is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the issuance by HTC of its promissory note or notes to the RTFC in the aggregate principal amount of not more than \$4,631,856.00 for the purposes set forth in HTC's petition Docket No. DF 94-021

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and subject to the limitations of subsection III.D. of the Stipulation is consistent with the public good and is hereby approved and authorized; and it is

FURTHER ORDERED, that the granting by HTC to the RTFC of a mortgage and security interest in all of HTC's assets to secure the RTFC loan referenced in the foregoing subsection D is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the existing intrastate rates of GTE NH are approved as the permanent rates of HTC through April 1, 1996, unless changed as provided in subsection II.B and the existing local tariff of GTE NH is approved as the local tariff of HTC; and it is

FURTHER ORDERED, that no assets of WTC shall be mortgaged, pledged or otherwise encumbered as a result of this transaction.

By order of the New Hampshire Public Utilities Commission this sixth day of June, 1994.

ORDER NO. 21,254

Based upon the foregoing report and the conditions contained within the Stipulation and Agreement Among the Parties and Staff, which is made a part hereof, it is hereby

ORDERED, that the sale and transfer of the GTE Me. stock from Contel to MTG is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the issuance by GTE Me. of its guarantee of the acquisition loan from the RTFC to MTG in the principal amount of not more than \$86,294,444.00 (contingent on the closing of the purchase of the GTE Me. Stock by MTG) will be consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the granting by GTE Me. of a mortgage and security interest in all of its New Hampshire assets, tangible and intangible, including franchises, as security for its guarantee of such loan from the RTFC to MTG is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the issuance of common stock of MTG to STE as requested in the amended petition in Docket No. DF 94-071 is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that to the extent that the receipt by GTE Me. of capital contributions from MTG for the purpose of prepaying outstanding indebtedness of GTE Me. at the closing constitutes the issuance by GTE Me. of a security, the issuance of such security is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the merger of GTE Me. with and into MTG, with MTG as the surviving corporation is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the transfer of GTE Me. New Hampshire assets from MTG to NTC is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the transfer of all of the stock of NTC from MTG to STE is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the transfer by MTG of the stock of NTC and the simultaneous redemption of STE's stock in MTG are consistent with the public good and are approved and authorized; and it is

FURTHER ORDERED, that the issuance by NTC of its promissory note or notes to CoBank in the aggregate principal amount of not more than \$34,000,000 for the purposes set forth in the petition by STE in Docket DF 94-071 on the terms approved by the Maine Public Utilities Commission is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the granting by NTC to CoBank of a mortgage and security interest in all of NTC's assets to secure the foregoing CoBank loan is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the granting by NTC to CoBank of a mortgage and security interest in all of NTC's assets as security for a line of credit from CoBank consisting of loans from time to time, each having a maturity of less than one year and in principal amounts at any one time outstanding not exceeding more

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than 10% of net assets less depreciation, pursuant to N.H. Admin. Rules, Puc 406.04, is consistent with the public good and is approved and authorized; and it is

FURTHER ORDERED, that the existing intrastate rates of GTE Me. are approved as the permanent rates of NTC unless or until changed as provided in subsection II.C of the Stipulation; and it is

FURTHER ORDERED, that NTC's request to operate as a public utility engaged in the provision of telephone services in the areas of Chatham and East Conway in which GTE Me. is currently authorized to operate is consistent with the public good and is approved and authorized; and is it

FURTHER ORDERED, that NTC is authorized to accept the transfer of the GTE Me. New Hampshire assets from MTG.

By order of the New Hampshire Public Utilities Commission this sixth day of June, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Contel of New Hampshire, Inc., DF 93-240, Order No. 21,195, 79 NH PUC 226, Apr. 20, 1994.

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NH.PUC*06/07/94*[70516]*79 NH PUC 298*Claremont Gas Corporation

[Go to End of 70516]

79 NH PUC 298

Re Claremont Gas Corporation

DE 94-056

Order No. 21,245

New Hampshire Public Utilities Commission

June 7, 1994

ORDER, pursuant to settlement, authorizing a natural gas local distribution company to temporarily abandon service to those customers located within the path of a municipal sewer construction project, where the company had agreed to substitute bottled propane and convert customer appliances accordingly during the period of discontinuance.

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1. SERVICE, § 221

[N.H.] Abandonment or discontinuance — Temporary abandonment — Factors affecting right to abandon — Municipal construction project — Local gas distribution company. p. 300.

2. SERVICE, § 244

[N.H.] Abandonment or discontinuance — Temporary abandonment during municipal construction project — Terms and conditions — Substitution of service — Bottled propane for natural gas — Concomitant conversion of appliances — Local gas distribution company. p. 300.

APPEARANCES: Ransmeier & Spellman by Dom S. D'Ambruoso, Esq. and Harold T Judd, Esq. on behalf of Claremont Gas Corporation; James R. Anderson, Esq. on behalf of the Office of Consumer Advocate; and Robert J. Frank, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was opened after Claremont Gas Corporation ("Claremont") filed a request to permanently discontinue service in its franchise area in Claremont, New Hampshire. Claremont's Petition seeking the aforementioned relief was filed on March 25, 1994, and in it Claremont stated that the City of Claremont ("City") was to begin major construction on its sewer system beginning on or about July 1, 1994 which required Claremont to abandon and purge a portion of its pipeline primarily in the Hanover Street area of its franchise. Claremont Petition, parag. 6. Claremont further stated that such work would result in the loss of at least 25 and perhaps as many as 100 customers, and the project would require Claremont to expend "large amounts of money to carry out the necessary work preparatory to the City's work." *Id.* Claremont made these claims in support of its request for permanent abandonment, alleging that these factors were escalating its "death spiral". *Id.*

Claremont filed on April 21, 1994 a motion seeking immediate and permanent discontinuance of the area affected by the sewer project (the "Motion"). The Motion requests authorization to permanently abandon service to 24 residential customers on Hanover and Barnes Streets. Claremont's Motion alleges that the cost of providing temporary service to the 24 affected customers during the pendency of the sewer construction would be \$37,035, while the

cost of permanently discontinuing service to the same customers would be \$2,160.

Staff filed a response to the Motion, alleging, *inter alia*, that Claremont erred in calculating the cost estimate for providing temporary service to the affected customers. Staff also averred that the sewer project was scheduled to begin on July 15, 1994, not July 1, 1994. Staff objected to Claremont's request to permanently abandon the 24 affected customers until such time as Claremont's request was supported by verified facts. On the same date that Staff filed its response, Claremont filed direct testimony of James M. Trickett, the Region Manager of Claremont Gas Corporation. Although his prefiled testimony was not particularly elaborative with regard to the sewer project or the customers affected thereby, Mr. Trickett testified that the pipeline along the affected area must be removed in order for the City to complete its work.

The Commission scheduled a hearing on Claremont's Motion for May 23, 1994. On May 19, 1994 Staff filed a proposed settlement agreement which provided for the *temporary* discontinuance of service for the 24 residential customers affected by the sewer project. The Settlement Agreement was executed by Claremont, the Office of Consumer Advocate ("OCA") and Staff. Filed along with the Settlement Agreement was a proposed contract between Claremont and Synergy Gas Corporation ("Synergy") wherein Synergy agreed to supply bottled propane to the affected customers on Hanover and Barnes Streets during the

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sewer project and, presumably, until the Commission issues a final order on Claremont's Petition to abandon its entire system.

At the May 23, 1994 hearing Claremont presented the Settlement Agreement and supporting testimony of Mr. Trickett.

II. SETTLEMENT AGREEMENT

As noted above, the Settlement Agreement relates only to the 24 residential customers who will be affected by the upcoming City sewer project on Hanover and Barnes Streets. Claremont's Motion requested an order authorizing the *permanent* abandonment of these customers and service lines. The Settlement Agreement provides that propane pipeline service to the affected customers will be *temporarily* discontinued in order to accommodate the City, and that Claremont will provide all 24 customers with bottled propane service on a temporary basis. The Settlement Agreement contemplates that the temporary discontinuance will become permanent should the Commission grant Claremont's Petition to permanently abandon its entire service area. The Settlement Agreement further provides, *inter alia*, as follows:

(a) Claremont will inspect and readjust at no cost all impacted customer appliances (which at the time of conversion meet applicable safety standards) in order to accommodate the conversion to bottled propane.

(b) Claremont will pay customers the present value of any appliance which cannot be safely converted to bottled propane service.

(c) Claremont will send personnel to every structure and address in the affected area to ensure that every service has been properly plugged.

(d) After all affected customers have been converted (or declined conversion) and after all services have been plugged, Claremont will purge the pipeline of residual gas utilizing a team of qualified personnel and in accordance with applicable safety standards;

(e) All affected customers will be given written notice of the temporary discontinuance and conversion process, and Claremont will provide a 24 hour-a-day telephone number to answer any customer concerns during the conversion and purging process.

(f) Temporary service through bottled propane will be supplied by Synergy at a cost no higher than current Claremont rates.

During the hearing, several aspects of the Settlement agreement were clarified through Mr. Trickett's testimony. With regard to appliance conversions, the Settlement Agreement provides that Claremont will not be responsible for converting any appliance that does not meet NFPA standards at the time of conversion; however, Claremont will convert any such appliance(s) which are subsequently brought into compliance at customer expense. Mr. Trickett also explained that each of the conversions to bottled propane will be conducted in a manner so that service will be interrupted for a few hours and that no customer will be left without service overnight.

III. COMMISSION ANALYSIS

[1, 2] N.H. RSA 374:28 provides that the Commission may authorize a public utility to temporarily discontinue any part of its service whenever it will not unreasonably burden the public. On May 31, 1994, we ratified Order No. 21,245 which approved the Settlement Agreement and accompanying contract between Claremont and Synergy. Based upon the facts presented, there appears to be little doubt that Claremont must discontinue its pipeline service to the affected customers on Hanover and Barnes Streets in order to accommodate the City's sewer project. Claremont initially requested authority to permanently discontinue service to those customers, but now apparently agrees with Staff and OCA that a temporary discontinuance is both feasible and appropriate. The proposed contact with Synergy will minimize customer inconvenience and expense. The affected customers will have the opportunity to maintain service through bottled propane at a cost no higher than current rates. We find that Claremont has satisfied the RSA 374:28 standard for obtaining authority to temporarily discontinue its service in the affected area.

Our order has been issued accordingly.

ORDER

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Claremont Gas Corporation ("Claremont") has pending before this Commission a Petition To Discontinue Service in Its Franchise Territory in Claremont, New Hampshire. On April 21, 1994 Claremont filed a Motion For Immediate Permanent Discontinuance of a Portion of Claremont Gas Corporation's Franchise Territory. A hearing was held on May 23, 1994 with respect to the aforementioned Motion. At the hearing Claremont presented a document which had been previously filed entitled Temporary Discontinuance of Service Settlement Agreement which was executed by Claremont, the Office of Consumer Advocate and the Commission Staff. Along

with the Settlement Agreement was a proposed contract between Claremont and Synergy Gas Corporation (the "Contract"). The details of these filings will be fully set forth in the Report which will follow this order. In light of the foregoing, it is hereby

ORDERED, that the Temporary Discontinuance Of Service Settlement Agreement and accompanying Contract is hereby APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of May, 1994.

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NH.PUC*06/07/94*[70524]*79 NH PUC 326*UNITIL Service Corporation

[Go to End of 70524]

79 NH PUC 326

Re UNITIL Service Corporation

Additional applicants: Concord Electric Company; Exeter and Hampton Electric Company

DE 94-081

Order No. 21,255

New Hampshire Public Utilities Commission

June 7, 1994

ORDER adopting a procedural schedule and extending the intervention period in a proceeding in which a parent holding company had filed an integrated least-cost resource plan for its two electric utility operating subsidiaries.

1. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource plans — Electric utilities — Submission of plans by parent holding company — Procedural schedule for review of plans. p. 327.

2. PARTIES, § 18

[N.H.] Intervenors — Deadline for intervening — Extension of deadline — Factors — Delay in publication and notice of proceeding. p. 327.

APPEARANCES: Leboeuf, Lamb, Green and MacRae by Scott Mueller, Esq. on behalf of UNITIL Service Corp.; and E. Barclay Jackson, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

I. PROCEDURAL HISTORY

On April 29, 1994 UNITIL Service Corp. (UNITIL) filed its 1994 Integrated Least Cost Resource Plan (ILCRP) for Concord Electric Company, and Exeter and Hampton Electric Company in accordance with RSA 378:38 and an updated forecast of its avoided costs.

On May 11, 1994 the Commission issued an Order of Notice scheduling a prehearing conference to entertain motions to intervene and establish a procedural schedule to investigate UNITIL's ILCRP. The investigation shall include, but not be limited to, UNITIL's need for additional resources, its long term budgets for demand-side management, the appropriate balance of long and short term resources in its supply mix, the development of a company build option, and its policy for negotiating future power purchases from qualifying facilities.

On June 2, 1994 the Commission held the duly scheduled prehearing conference at which time it was noted that the required notice of this

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proceeding had been published one day late in the service territory of Exeter and Hampton Electric Company and two days late in the service territory of Concord Electric Company.

No motions to intervene were filed prior to the hearing and no intervenors appeared at the prehearing conference.

II. POSITIONS OF UNITIL AND STAFF

Neither UNITIL nor Staff objected to proceeding with the prehearing conference because of the late publication of notice to the public. UNITIL and Staff noted that they did not believe any party had been or would be prejudiced by the late publication given the Commission's liberal policy on intervention.

UNITIL and Staff stipulated to the following procedural schedule to govern the Commission's investigation into the ILCRP:

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

Data Requests to UNITIL (relative to resource supply planning).	July 21, 1994
UNITIL responses.	August 17, 1994
Technical session.	September 13, 1994
Follow-up data requests relative to (demand) planning	September 13, 1994
UNITIL responses.	September 30, 1994
Technical session.	October 6, 1994
Staff and intervenor testimony.	October 21, 1994
Data requests to Staff and intervenors.	October 28, 1994
Staff and intervenor responses.	November 14, 1994
UNITIL rebuttal testimony.	November 21, 1994
Surrebuttal testimony.	November 28, 1994
Settlement Conference.	December 2, 1994
Hearing on the merits.	December 13-14, 1994

III. COMMISSION ANALYSIS.

[1, 2] On its face the procedural schedule stipulated to by UNITIL and Staff to govern our investigation in this proceeding appears reasonable. We are concerned, however, that UNITIL's failure to provide timely notice may have precluded the participation of one or more potential intervenors in the development of the schedule.

Although the Commission does have a liberal policy relative to intervention in its proceedings, that does not excuse UNITIL's failure to abide by our order. We trust this is a mistake which will not be repeated.

In order to avoid prejudice to any party we will allow any party to file motions to intervene pursuant to RSA 541-A:17, I for two business days following the issuance of this report and order. Subject to that condition, we will accept the stipulated procedural schedule.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report, which is incorporated herein, it is hereby:

ORDERED, that any party may move to intervene pursuant to RSA 541-A:17, I for two business days following the date of this order; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report is adopted subject to the condition set forth above.

By order of the New Hampshire Public Utilities Commission this seventh day of June, 1994.

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NH.PUC*06/07/94*[70525]*79 NH PUC 327*Tele-Matic of New Hampshire, Corporation

[Go to End of 70525]

79 NH PUC 327

Re Tele-Matic of New Hampshire, Corporation

DE 94-079

Order No. 21,256

New Hampshire Public Utilities Commission

June 7, 1994

ORDER authorizing a telephone carrier to provide coinless, automated, collect-only service in correctional institutions, at rates capped at one cent below those of the state's dominant local exchange carrier.

Page 327

1. RATES, § 565

[N.H.] Telephone rate design — Pay station service — In correctional institutions — Coinless, automated, collect-only service — Rate cap — Based on rates of the state's dominant local exchange carrier. p. 328.

BY THE COMMISSION:

ORDER

[1] On April 21, 1994, Tele-Matic of New Hampshire, Corp. (Tele-Matic), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking a waiver of certain administrative rules, specifically NH Admin Rules Puc PART: 408.07(a) Dial tone, 408.08(c) Access, 408.09 Call Receiving, 408.10 Identification, 408.11 Directory Assistance, 408.12(a) Coin Return, and 408.12(b) Coin Acceptance; and

WHEREAS, Tele-Matic petitions to utilize coinless telephones exclusively in correctional institutions; and

WHEREAS, limiting service to automated collect-only calling provides correctional facilities with the control they require over inmate calling, which is in the public good; and

WHEREAS, in lieu of markings, Tele-Matic proposes to utilize oral branding to identify the carrier to both the caller and the called party accepting the charges; and

WHEREAS, the correctional facilities are responsible for reporting pay telephone service troubles; and

WHEREAS, Tele-Matic bills for its timed services in full-minute increments, as is common in the telecommunications industry, and New England Telephone and Telegraph (NET) bills for its timed services in single-second increments; and

WHEREAS, Tele-Matic, by its attorney, on May 26, 1994, agreed to Staff's request to concur, in principle, in the rates of NET as a rate cap for purposes of its automated collect-only services to inmates; and

WHEREAS, Tele-Matic has agreed to concur in the rates of NET as referenced in Part A - Section 9, Page 7, Eleventh Revision, and specifically to cap its rates \$.01 per minute below the approved NET rates, to offset additional customer charges incurred as a result of Tele-Matic's "rounding up" of the last minute of call timing; it is therefore

ORDERED, that Tele-Matic's Application for Waiver of Rules is approved for the limited purposes of pay telephones installed within correctional facilities; and it is

FURTHER ORDERED, that Tele-Matic's rates for services originated from pay telephones installed within correctional facilities shall be capped at \$.01 cent below the tariffed rates of NET until Tele-Matic bills its services in single-second increments, and shall be capped at the NET rates after Tele-Matic establishes single-second billing; and it is

FURTHER ORDERED, that Tele-Matic is subject to all other Statutes, Rules and Orders of the Commission, including specifically NH Admin Rules Puc 408.15 Application (Form E-29).

By order of the New Hampshire Public Utilities Commission this seventh day of June, 1994.

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NH.PUC*06/07/94*[70526]*79 NH PUC 328*Southern New Hampshire Water Company, Inc.

[Go to End of 70526]

79 NH PUC 328

Re Southern New Hampshire Water Company, Inc.

DE 93-216
Order No. 21,257

New Hampshire Public Utilities Commission
June 7, 1994

ORDER authorizing a water utility to acquire the Pine Haven Trust water system, whose customers already were located within the acquiring utility's franchised Londonderry service area. The utility is allowed to continue billing the newly acquired customers on a flat-rate quarterly basis pending installation of individual meters.

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Factors affecting approval — Financial resources and operational experience of acquiring company — New customers located in already franchised area — Water utility transactions. p. 330.

2. RATES, § 595

[N.H.] Water rate design — Continuation of flat-rate quarterly billing — Upon acquisition of small water system — Pending installation of individual meters. p. 330.

APPEARANCES: Larry S. Eckhaus, Esq. on behalf of Southern New Hampshire Water Company, Inc.; Robert J. Frank, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On November 2, 1993, Southern New Hampshire Water Company, Inc. (Southern) filed a letter and enclosures consisting of revised tariff pages and a proposed Purchase Agreement which would transfer the water utility assets of Pine Haven Trust to Southern upon approval of the New Hampshire Public Utilities Commission (Commission). Southern thereafter filed additional information including written responses to Staff inquiries. A duly noticed hearing on the merits was held on May 23, 1994. There were no requests for intervention filed in this matter.

II. POSITION OF SOUTHERN AND STAFF

A. SOUTHERN

Southern proposes to purchase the Pine Haven system (System) for the sum of \$10,000. The System serves approximately 34 residential customers and is located within the Londonderry franchise granted to Southern by Commission Order No. 18,760. *Re Southern New Hampshire Water Company, Inc.*, 72 N.H. PUC Reports 309 (1987). At the May 23, 1994 hearing, Southern's Vice President of Operations, Lawrence Gingrow, Jr., testified in support of Southern's request to acquire the System. Mr. Gingrow testified generally about the current condition of the System and the need to make certain capital improvements. Southern introduced a document which set forth a "needs analysis" for the System. The analysis and supporting testimony of Mr. Gingrow contemplate two alternative capital projects. One option is to install atmospheric storage capabilities in addition to other miscellaneous capital improvements at an estimated combined cost of \$54,260. The other option is to make the same capital improvements without installing storage, at an estimated cost of \$32,360. Mr. Gingrow indicated that additional storage in the System may prove desirable.

With regard to proposed rates, Mr. Gingrow testified that the Pine Haven customers would continue to be charged the existing rate for Pine Haven customers (\$55 per quarter) until meters are installed, at which time customers would be charged Southern's existing GMS-A rate.

B. STAFF

Staff did not present testimony, but requested clarification with regard to several aspects of Southern's filing. On cross-examination, Mr. Gingrow testified that under either capital improvement scenario set forth above, Southern intended to maintain the GMS-A rate for the Pine Haven customers.

Mr. Gingrow also testified on cross-examination that he believed that the purchase price accurately reflected the value of the water utility assets.

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III. COMMISSION ANALYSIS

[1, 2] After reviewing the evidence presented in this proceeding, we are satisfied that granting Southern's request to serve the Pine Haven customers is consistent with the public good. As we have noted on numerous occasions, Southern has the financial, managerial, administrative and technical expertise to meet the needs of customers such as those of the Pine Haven Service Area. We also find it appropriate for Southern to charge the Pine Haven customers the current

rate of \$55 per quarter until such time as the system is metered and Southern has reported this to the Commission. Once all meters are installed and we are notified of same by Southern, we agree that Southern should be authorized to charge the Pine Haven customers its GMS-A rate.

Our order will issue accordingly.

ORDER

Based on the foregoing Report which is incorporated herein, it is hereby

ORDERED, that Southern's request to acquire the Pine Haven Service Area is granted; and it is

FURTHER ORDERED, that Southern shall charge the Pine Haven customers the same rate that such customers are currently charged, until Southern has installed meters at all service locations; and it is

FURTHER ORDERED, that following notification by Southern to the Commission that all meters have been installed, the Pine Haven customers shall be charged Southern's GMS-A rate.

By order of the New Hampshire Public Utilities Commission this seventh day of June, 1994.

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NH.PUC*06/07/94*[70527]*79 NH PUC 330*Springwood Hills Water Company, Inc.

[Go to End of 70527]

79 NH PUC 330

Re Springwood Hills Water Company, Inc.

DE 90-051

Order No. 21,258

New Hampshire Public Utilities Commission

June 7, 1994

ORDER reinstating a requirement that a small water utility install individual water meters in each residential dwelling unit, now that a bid by Southern New Hampshire Water Company, Inc., to acquire the smaller company has been finalized.

1. SERVICE, § 288

[N.H.] Metering equipment — Duty to install — Reinstatement of installation mandate — Factors — Acquisition by another company — Water utility. p. 330.

BY THE COMMISSION:

ORDER

[1] On May 31, 1994, Southern New Hampshire Water Company (Southern) filed with the New Hampshire Public Utilities Commission (Commission) a motion for modification of Commission Order 21,111 to permit the installation of meters by Southern in the area currently served by Springwood Hills Water Company (Springwood Hills) once Southern acquires the Springwood Hills assets and franchise; and

WHEREAS, the Commission by Order No. 20,971 on September 21, 1993 ordered Springwood Hills to install meters in the residential dwelling units in its franchise area by April 30, 1994 in order to provide proper price signals to customers; and

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WHEREAS, on October 24, 1993 Southern and Springwood Hills filed a joint petition to transfer Springwood Hill's assets and franchise to Southern (Docket 93-203); and

WHEREAS, on January 4, 1994 the Springwood Hills Neighborhood Association (Association) requested that the Commission postpone the meter installation pending a final decision in Docket DE 93-203, which motion the Commission granted by Order 21,111 issued January 26, 1994; and

WHEREAS, the Commission approved the transfer of assets and franchise by Report and Order No. 21,219 on May 10, 1994 establishing Southern's Rate GMS-A as the proper rate after meters are installed, and therefore there no longer exists a reason to postpone meter installation; and

WHEREAS, the Association has indicated that it strongly supports the installation of meters upon the conclusion of Docket DE 93-203; it is hereby

ORDERED, that Southern New Hampshire Water Company install meters as set forth in Order No. 20,971 by October 31, 1994.

By order of the New Hampshire Public Utilities Commission this seventh day of June, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., Inc., DE 93-203, Order No. 21,219, 79 NH PUC 264, May 10, 1994. [N.H.] Re Springwood Hills Water Co., Inc., DE 90-051, Order No. 20,971, 78 NH PUC 530, Sept. 21, 1993. [N.H.] Re Springwood Hills Water Co., Inc., DE 90-051, Order No. 21,111, 79 NH PUC 40, Jan. 26, 1994.

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NH.PUC*06/08/94*[70528]*79 NH PUC 331*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 70528]

Re Sprint Communications Company of New Hampshire, Inc.

DE 94-091
Order No. 21,259

New Hampshire Public Utilities Commission

June 8, 1994

ORDER authorizing an interexchange telephone carrier to introduce its "Most For Business" switched access data service.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access services — Switched data service — "Most For Business" plan. p. 331.

BY THE COMMISSION:

ORDER

[1] On May 11, 1994, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce The Most For Business Switched Data Service (SDS) and make various miscellaneous text changes; and

WHEREAS, The Most For Business Switched Data Service provides for the transport of data either domestically or internationally over the Sprint network via switched access; and

WHEREAS, the proposed miscellaneous text changes are to allow the introduction of language within the tariff in association with Switched Data Service; and

WHEREAS, Sprint requested this filing become effective June 10, 1994; and

WHEREAS, the proposed changes expand the choice of telephone services to New

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Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NSI*, that the following tariff pages for Sprint's NHPUC No. 4 are approved:

1st Revised Page 1

1st Revised Page 63

1st Revised Page 64

1st Revised Page 94
1st Revised Page 95;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Sprint cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than June 14, 1994 and is to be documented by affidavit filed with this office on or before June 21, 1994; and it is

FURTHER 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 21, 1994; and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 22, 1994, 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 eighth day of June, 1994.

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NH.PUC*06/08/94*[70529]*79 NH PUC 332*MCI Telecommunications Corporation of New Hampshire

[Go to End of 70529]

79 NH PUC 332

Re MCI Telecommunications Corporation of New Hampshire

DE 94-095

Order No. 21,260

New Hampshire Public Utilities Commission

June 8, 1994

ORDER approving an interexchange telephone carrier's proposal for making certain short-term promotional offerings effective on only seven days' notice.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access options — Short-term promotional offerings — Notice period. p. 332.

2. RATES, § 243

[N.H.] Schedules and procedure — Notice and publication — Seven days' notice — For special short-term promotional offerings — Interexchange telephone carrier. p. 332.

BY THE COMMISSION:

ORDER

[1, 2] On May 13, 1994, MCI Telecommunications Corporation of New Hampshire (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to add language to Section B, Rules and Regulations of its Tariffs which would allow MCI to offer promotions limited to certain dates, times and locations on seven days notice to the Commission; and

WHEREAS, notice to the Commission will specify rates, terms, conditions and time intervals applicable to each promotional offering; and

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WHEREAS, MCI requests this filing become effective June 13, 1994; and

WHEREAS, the proposed tariff expands MCI's flexibility in offering promotions to stimulate existing customer usage, attract new customers, win back former customers or increase awareness of MCI services, thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 a written request for a hearing on this matter before the Commission no later than June 21, 1994; 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 of New Hampshire in which operations are proposed to be conducted, such publication to be no later than June 14, 1994 and is to be documented by affidavit filed with this office on or before June 21, 1994; and it is

FURTHER ORDERED *NISI*, that the following tariff pages for MCI's NHPUC No. 1 - are approved:

13th Revised Page No. 1
17th Revised Page No. 2
7th Revised Page No. 22;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 22, 1994 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 eighth day of June, 1994.

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NH.PUC*06/08/94*[70530]*79 NH PUC 333*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 70530]

79 NH PUC 333

Re Sprint Communications Company of New Hampshire, Inc.

DE 94-100

Order No. 21,261

New Hampshire Public Utilities Commission

June 8, 1994

ORDER authorizing an interexchange telephone carrier to introduce an operator-assisted busy line verification service and an operator-assisted emergency interruption service, each at a charge of \$2.50 per request.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special operator-assisted services — Busy line verification — Emergency interruption service — Per-request charges. p. 333.

BY THE COMMISSION:

ORDER

[1] On May 23, 1994, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Operator Services Busy Line Verification and Emergency Interruption services, make minor text changes to clarify operator services usage rates and reduce the surcharge for VPN FONCARD Off-Net to On-Net calls; and

Page 333

WHEREAS, the proposed Busy Line Verification charge of \$2.50 shall apply when Sprint provides operator assistance to determine if there is an ongoing conversation at a called station; and

WHEREAS, the proposed Emergency Interruption charge of \$2.50 applies in addition to the Busy Line Verification when Sprint provides operator assistance to interrupt an ongoing conversation; and

WHEREAS, Sprint proposes to make a minor text change to clarify that operator services usage rates apply to operator handled calls except for those calls placed via VPN Premiere or International VisaPhone in addition to VPN; and

WHEREAS, Sprint proposes to reduce the surcharge for VPN FONCARD Off-Net to On-Net calls from \$.25 to \$.07 per call; and

WHEREAS, Sprint requested this filing become effective June 22, 1994; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NISI*, that the following tariff pages for Sprint's NHPUC No. 4 are approved:

- 2nd Revised Page 1
- 1st Revised Page 84
- 1st Revised Page 86
- 1st Revised Page 101
- 1st Revised Page 101-A;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Sprint cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than June 14, 1994 and is to be documented by affidavit filed with this office on or before June 21, 1994; and it is

FURTHER 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 21, 1994; and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 22, 1994, 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 eighth day of June, 1994.

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NH.PUC*06/08/94*[70531]*79 NH PUC 334*Long Distance North of New Hampshire, Inc.

[Go to End of 70531]

Re Long Distance North of New Hampshire, Inc.

DE 94-107
Order No. 21,262

New Hampshire Public Utilities Commission

June 8, 1994

ORDER authorizing an interexchange telephone carrier to change certain consumer calling card service rates to a flat rate of 40 cents per minute, and to increase slightly the day, evening, and night/weekend rates for its "Dimension" calling card service.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling card services — Flat rates for consumer calling card service — Increases for other calling card services. p. 335.

Page 334

BY THE COMMISSION:

ORDER

[1] On May 20, 1994, Long Distance North of New Hampshire, Inc. (LDN) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Option II to its Consumer CTS Card Service, make rate changes to the Dimension CTS Card Service and make miscellaneous text changes; and

WHEREAS, the proposed option II Consumer CTS Card Service shall establish a flat rate per minute charge of \$.40 and no volume discounts or per call surcharges will apply; and

WHEREAS, the proposed rate changes to the Dimension CTS Card Service consists of changing the day, evening and night/weekend rates from \$.2280, \$.1830 and \$.1830 to \$.2284, \$.1827 and \$.1827 respectively; and

WHEREAS, the proposed textual changes are for the purpose of accommodating Option II Consumer CTS Card Service language within the body of the tariff; and

WHEREAS, LDN requested an effective date of June 19, 1994; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which 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 *NSI*, that the following tariff pages for NHPUC No. 2 are approved:

5th Revised Page 2
3rd Revised Page 19.2
1st Revised Page 33.5
2nd Revised Page 33.9;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, LDN cause an attested copy of this Order *Nisi* to be published in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than June 14, 1994, and is to be documented by affidavit filed with this office on or before June 21, 1994; and it is

FURTHER 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 21, 1994; and it is

FURTHER ORDERED, that LDN file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective June 22, 1994, 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 eighth day of June, 1994.

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NH.PUC*06/13/94*[70533]*79 NH PUC 335*AT&T Communications of New Hampshire, Inc.

[Go to End of 70533]

79 NH PUC 335

Re AT&T Communications of New Hampshire, Inc.

DE 94-112

Order No. 21,264

New Hampshire Public Utilities Commission

June 13, 1994

ORDER approving an interexchange telephone carrier's proposed tariff changes for those CustomNet features related to software defined network services, to make its intrastate tariffs more compatible with its federally approved interstate tariffs.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — "CustomNet" services — Software

defined network service features — Intrastate tariff changes — Factors — Mirroring of interstate tariffs. p. 336.

BY THE COMMISSION:

ORDER

[1] On June 1, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to add, delete and change text to its New Hampshire P.U.C. No. 1 CUSTOM NETWORK SERVICES tariff, specifically for the purpose of making the tariff more compatible with the F.C.C. tariff; and

WHEREAS, this filing proposes making administrative changes to AT&T's Software Defined Network Service tariff language; and

WHEREAS, the proposed tariff update is for the purpose of referencing all terms and conditions, described in AT&T's Tariff F.C.C. No. 1, that regulate the provisioning of intrastate Software Defined Network Service; and

WHEREAS, AT&T filed this revision to become effective July 1, 1994; it is hereby

ORDERED, that the following tariff pages of AT&T Tariff No. 1, AT&T Custom Network Service, is approved for effect as filed:

Section 2:

- 4th Revised Page 2
- 7th Revised Page 3
- 5th Revised Page 4
- 2nd Revised Page 9;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this thirteenth day of June, 1994.

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NH.PUC*06/13/94*[70534]*79 NH PUC 336*Atlantic Connections, Ltd.

[Go to End of 70534]

79 NH PUC 336

Re Atlantic Connections, Ltd.

DR 94-075
Order No. 21,265

New Hampshire Public Utilities Commission

June 13, 1994

ORDER denying an appeal of Order No. 21,112 (79 NH PUC 42, *supra*), which had approved New England Telephone and Telegraph Company's proposal for its "Customized NETSAVER" plan, under which a high-volume toll customer can qualify for rate discounts through combined usage of various inbound/outbound and 800 toll services.

The petitioner had requested an order reducing the carrier's switched access originating and terminating charges as they apply to toll resellers, arguing that the charges were predatory and, being higher than those charged retail customers, were also anticompetitive.

1. RATES, § 646

[N.H.] Procedure — Pleading — Customer-requested rate relief — No basis in statute. p. 339.

2. RATES, § 588

[N.H.] Telephone rate design — Competitive toll calling plans — Originating and terminating charges — Charges to resellers versus retail customers — Stipulation. p. 339.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telephone — Competing toll service — "Customized NETSAVER" plan — Allegations of predatory pricing or "price squeeze" — Allegations of anticompetitive pricing — Effect on resellers versus retail customers. p. 339.

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BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 1, 1994, Atlantic Connections Ltd. (ACL), a telecommunications reseller, filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Emergency Rate Relief pursuant to RSA 378:9, requesting that the Commission order a reduction in the current switched access rates (for originating and terminating access combined) charged to ACL by New England Telephone Company, now doing business as NYNEX (NYNEX).

A. Background of Customized NETSAVER

The request of ACL is directly related to an earlier Commission proceeding regarding a NYNEX optional calling plan known as Customized NETSAVER. On December 20, 1993, in

Docket DR 93-159, by Order No. 21,069, the Commission authorized NYNEX to offer Customized NETSAVER. A full Report and Order was issued the following month which contained a detailed analysis of the issues. *See* Report and Order No. 21,112 (January 31, 1994).

Customized NETSAVER provides customers with a single discounted rate per minute for combined customer usage of outbound toll, inbound 800 and/or VALUFLEX (which is an inbound 800 service provided over a regular exchange line that uses originating and terminating switched access and is targeted towards smaller volume 800 customers). Customized NETSAVER is targeted to customers with at least 5,000 minutes of use per month. The discounted usage rate varies according to the length of the service contract a customer takes and the minimum monthly usage volume to which a customer commits. If a customer's actual monthly usage falls below this minimum, the customer will be charged as if his actual usage had been the minimum amount he committed to under the plan.

There was strong support in the business community for this plan. The Commission received numerous letters encouraging speedy approval of the offering, as well as the companion services Business Package and Business Package Plus which were approved in an earlier *nisi* order.

Customized NETSAVER also engendered strong opposition from interexchange carriers MCI, AT&T, Sprint and Long Distance North (the IXC's), which combined forces opposing Customized NETSAVER. ACL also filed an objection on October 12, 1993.

Customized NETSAVER is the first optional calling plan submitted by NET under the Stipulation in DE 90-002, the Generic Telecommunications Competition Docket. Attachment 4 of the Stipulation details the way in which optional calling plans must be priced. For details of the modified Stipulation in DE 90-002, *see* Order No. 20,916 (August 2, 1993).

B. Customized NETSAVER Calculations

At the hearing on Customized NETSAVER, the IXC's argued that NYNEX was creating a "price squeeze" by offering an optional calling plan with toll rates discounted below the price of access which competitive toll providers must pay NYNEX to provide the same type of service to the same market segment, plus the "negotiated add-on" agreed to in the Stipulation. Under the IXC's argument, which is essentially the same as that advanced by ACL in its October 1993 comments and April 1994 Petition, NYNEX charges the IXC's 16 cents per minute for switched access (originating and terminating combined), while at the same time offering NYNEX retail customers a calling plan that charges only 9 cents per minute, thereby "squeezing" the IXC's out of the market.

NYNEX and the Staff argued that one should not compare the Customized NETSAVER rate with the 16 cents per minute access rate for several reasons. First, most customers who take advantage of the calling plan would not otherwise be using both originating and terminating switched access exclusively. In reality, a customer would be comparing 9 cents per minute to something less than 16 cents per minute when selecting an intraLATA toll carrier.

That is why the pricing rules of the Stipulation are so important.

The Stipulation required calculation based on the lowest cost form of access which a carrier

could use to provide the service to the same market segment. The pricing rules, which were developed between NET and the IXC's, recognize that the lowest form of access must take into account intrastate traffic, interstate traffic, customer premises equipment and customer proximity to the interexchange points of presence. The price floors established for existing services recognize that proxies derived from different combinations of different types of access may be required.

C. IXC's Segmented Price Floor Test

The IXC's argued that the Stipulation requires that one determine the Average Revenue Per Minute (ARPM) of each segment of the plan. They defined the segments as toll, 800 VALUFLEX and regular 800 service. By their calculations, the toll segment and regular 800 met the pricing tests but 800 VALUFLEX (the low volume 800 service) was priced too low. They disagreed with the use of a weighted price floor which NYNEX and Staff recommended as a proxy.

D. NYNEX and Staff's Weighted Price Floor Test

The underlying principle in the modified Stipulation was that the relevant form of access should be the basis for segmentation, and the relevant form of access should be the basis for establishing the price floor. In contrast to the segmented price floor test advocated by the IXC's, NYNEX and Staff argued that the theoretically correct price floor test was a stand-alone price floor test. As with the general pricing rules established in the modified Stipulation, under this standard, the resulting price floor would represent the lowest cost form(s) of access that a competitor could purchase to provide a competing service to customers with similar volumes of use (plus a negotiated add-on).

NYNEX and Staff argued that using existing price floors for services to calculate a price floor for the new service was a simple and reasonable alternative. By this method, the price floor for the overall plan is calculated accurately by weighting the price floors for the individual segments (existing component services) by their relative usage. This weighted price floor is then compared with the total ARPM for the new service, rather than comparing the ARPM for particular segments against the relevant price floor for the respective segment. By NYNEX and Staff calculations, the ARPM from Customized NETSAVER overall exceeds the weighted price floor and therefore meets the terms of the Stipulation.

NYNEX argued that IXC applications of a weighted price floor test for Customized NETSAVER was not correctly done. First, the IXC's used the 800-A price floor for the 800 usage component exclusively in the 7,500 minutes of use per month category. Also, while the IXC's correctly recognized that the actual monthly usage of some customers purchasing the Customized NETSAVER plan will fall below the minimum usage commitment, they incorrectly allocated these "shortfall revenues and minutes of use" exclusively to Message Telecommunications Service (MTS), which is the term used for intraLATA toll. While the exact distribution of these shortfall revenues/minutes of use cannot be known, it is unlikely that they would all be attributed to the MTS segment. The result of re-allocating these revenues/minutes of use to the other categories would be to increase the ARPM of these other categories (increasing the margin) and reduce the ARPM of the MTS category (reducing the margin).

The Commission, in Order No. 21,112, accepted the use of a "weighted price floor

calculation as a proxy for determining a specific price floor", believing the results were not anti-competitive and that it did not wish to delay the introduction of the service.

II. ACL'S PETITION FOR EMERGENCY RATE RELIEF

ACL did not appear at the Customized NETSAVER hearing, but filed comments in objection on October 12, 1993, which the Commission ruled against in Report and Order

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21,112. On April 1, 1994, ACL filed a Petition for Emergency Rate Relief, alleging that Business Package Plus and Customized NETSAVER are anti-competitive because the price charged is less than the cost of access. As stated in the petition, "... at 2,000 minutes per month, a customer on Business Package PLUS pays less than \$0.16 per minute. The more minutes of monthly usage, the more dramatic the discount. At 5,000 minutes per month, the customer on Customized NETSAVER would pay \$0.135 per minute." ACL Petition, pp. 1-2. ACL then goes on to calculate the price floor by segment, as did the IXCs. ACL concludes that the two plans violate the Stipulation, result in rates which are not just and reasonable, are anti-competitive and have created an economic emergency for ACL. ACL asks, therefore, that the price of switched access immediately be dropped to 12 cents per minute.

The Petition also argues in the alternative that the Commission's obligation to establish just and reasonable rates is a basis for immediately lowering the switched access charges (for originating and terminating access combined) established in DE 90- 002 to 12 cents per minute.

III. COMMISSION ANALYSIS

[1-3] We have reviewed ACL's Petition for Emergency Rate Relief and studied again the Customized NETSAVER filing and the pricing rules contained in the modified Stipulation we approved in the Generic Telecommunications Competition Docket, DE 90-002. We do not see a basis on which to grant ACL's request and will, therefore, dismiss the Petition.

At the outset, ACL argues that it is entitled to relief under RSA 378:9, which authorizes a utility rate changes, presumably increases, without notice and hearing under emergency circumstances. The statute is designed to remedy a crisis within a utility; it is not intended to provide relief or a different pricing structure for a customer. ACL filed its Petition in its capacity as a customer of NET rather than its capacity as a public utility and therefore, we find the statute inapplicable.

The heart of ACL's request, regardless of how styled, however, is its contention that NYNEX's pricing of Customized NETSAVER is too low and works to the disadvantage of competitors. This was precisely the argument presented by the four IXCs in the Customized NETSAVER proceeding. Neither the IXCs nor ACL sought rehearing or appeal of that decision. If we were to grant ACL's Petition, we would in effect be allowing ACL a late appeal of Order No. 21,112. We see no basis on which to allow a request for reconsideration two months after issuance of our order, and will, therefore, dismiss the Petition.

We should note that at the time ACL filed its petition, the switched access rates (combined originating and terminating) for NYNEX's intrastate toll were 16 cents per minute. In accordance with the modified Stipulation, those rates drop to 12 cents per minute on July 1, 1994 and will

continue to drop over the next two years. NYNEX also filed for a new reduction in certain toll pricing, including a reduction in its Customized NETSAVER calling plan. That filing is now pending with the Commission.

Based upon the foregoing, it is hereby

ORDERED, that the Petition for Emergency Rate Relief filed by ACL is DENIED.

By order of the New Hampshire Public Utilities Commission this thirteenth day of June, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re New England Telephone, DR 93-159, Order No. 21,069, 78 NH PUC 731, Dec. 20, 1993. [N.H.] Re New England Teleph. & Teleg. Co., DR 93-159, Order No. 21,112, 79 NH PUC 42, Jan. 31, 1994.

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NH.PUC*06/13/94*[70535]*79 NH PUC 341*Public Service Company of New Hampshire

[Go to End of 70535]

79 NH PUC 341

Re Public Service Company of New Hampshire

DR 94-096

Order No. 21,266

New Hampshire Public Utilities Commission

June 13, 1994

ORDER denying an electric utility's request to discontinue showing Seabrook-related decommissioning charges as a separate line item on bills.

1. NUCLEAR PLANT DECOMMISSIONING, § 1

[N.H.] Decommissioning charges — Notation on billing statements — Separate line item — Continuation — Seabrook-related charges. p. 340.

2. PAYMENT, § 21

[N.H.] Billing statements — Format — Separate line items — Seabrook-related decommissioning charges. p. 340.

BY THE COMMISSION:

ORDER

On June 1, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a request to omit from customer bills the line item regarding decommissioning charges for Seabrook Station Nuclear Plant. The request asked for a number of changes to PSNH tariff NHPUC No. 35 - Electricity, Original Page 14.

RSA 162-F:19,III authorizes a utility to collect the amount it pays "directly" to the nuclear decommissioning fund; any such collection "shall be designated a nuclear decommissioning charge and shall be separately stated on the customer's billing statement." PSNH in its filing notes that it no longer makes payments directly into the decommissioning fund. Instead it collects the charges from customers which it uses to reimburse NAEC, the Northeast Utilities (NU) subsidiary that acquired PSNH's ownership interest in Seabrook Station at the time of the merger of PSNH and NU. NAEC, therefore, is the entity that makes payments directly to the decommissioning fund.

[1, 2] For that reason, PSNH argues that it should not include a line item on its bills for decommissioning. Further, PSNH argues that it no longer collects decommissioning charges pursuant to this statute but rather in accordance with the Rate Agreement, the Seabrook Power Contract and the Unit Power Contract.

We disagree. We do not believe that the reorganization of PSNH and its relationship with NU and other subsidiaries NU justifies a finding that the statute no longer applies. In this case the decommissioning payments are made by a subsidiary of NU, with PSNH reimbursing that subsidiary with monies collected from its customers. A payment arrangement between two subsidiaries of the parent company NU does not, in our view, take PSNH out of the realm of RSA 162- F:19.

We find nothing in RSA 162-F:19,III to prohibit PSNH from continuing to include decommissioning as a line item and are not persuaded by its arguments that it should no longer make such an identification. We believe the public policy which led to the passage of RSA 162-F:19 is best served by continuing to require PSNH to include the decommissioning charge as a separate line item.

Based upon the foregoing, it is hereby

ORDERED, that the request to omit the line item identifying decommissioning charges filed by PSNH is DENIED.

By order of the New Hampshire Public Utilities Commission this thirteenth day of June, 1994.

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NH.PUC*06/14/94*[70536]*79 NH PUC 342*New England Telephone and Telegraph Company

[Go to End of 70536]

Re New England Telephone and Telegraph Company

DR 94-111
Order No. 21,267

New Hampshire Public Utilities Commission

June 14, 1994

ORDER granting confidential treatment of certain revenue analyses and customer development data associated with a local exchange telephone carrier's application for approval of proposed tariff changes.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Telephone revenue analyses and customer development data — Associated with proposed tariff changes — Sensitivity of information vis-a-vis competitors. p. 341.

BY THE COMMISSION:

ORDER

[1] On June 1, 1994, New England Telephone and Telegraph Company (NET) filed with the New Hampshire Public utilities Commission (Commission) tariff pages modifying NHPUC No. 75, Part A-Section 9 and Part C-Section 3, and supporting materials including seven pages entitled Revenue Effect Work Papers, (Supporting Material); and

WHEREAS, in its motion NET states that the Supporting Material contains competitively sensitive data falling within the scope of RSA 91-A:5(IV), specifically, revenue analyses and customer development information not readily available to competitors but of value to competitors for strategic marketing purposes; and

WHEREAS, the Supporting Material is a necessary part of the filing, and important for Commission Staff to review in evaluating the proposed tariff pages; and

WHEREAS, the Commission recognizes the importance of Staff having the opportunity to review fully the Supporting Material in order to responsibly carry out its duties; and

WHEREAS, the Commission finds that the benefits of non-disclosure of the Supporting Material outweigh the benefits of disclosure of the Supporting Material; therefore, it is hereby

ORDERED, that the Motion for Confidential Treatment is granted; and it is

FURTHER ORDERED, that this order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Commission Staff or any other party or member of the public, to reconsider this order in light of the standards of RSA 91-A and Puc 204.07.

By order of the New Hampshire Public Utilities Commission this fourteenth day of June, 1994.

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NH.PUC*06/14/94*[70537]*79 NH PUC 341*New Hampshire Electric Cooperative, Inc.

[Go to End of 70537]

79 NH PUC 341

Re New Hampshire Electric Cooperative, Inc.

DSF 93-128
Order No. 21,268

New Hampshire Public Utilities Commission

June 14, 1994

ORDER granting an electric cooperative a certificate of site and facility for the construction, operation, and maintenance of a 115-kilovolt overhead transmission line, to be located along the same route as currently occupied by a 34.5-kilovolt line, found to be no longer adequate.

1. CERTIFICATES, § 102

[N.H.] Electric utility — Construction of new facilities — Factors affecting approval — Present and future need for power — Impact on

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system reliability. p. 348.

2. ELECTRICITY, § 7

[N.H.] Transmission lines — Authorization for new construction — Factors — Location along existing transmission line corridor — Lack of viable alternative route — Proven need for additional capacity — Improvement in service reliability — Under both normal and contingent operating conditions — Reductions in line losses — Consistency with long-range planning — Least-cost integrated resource plans — Cooperative. p. 348.

APPEARANCES: Broderick and Dean by Diane Nicolosi, Esq. on behalf of New Hampshire Electric Cooperative, Inc.; Office of Attorney General by Senior Assistant Attorney General Leslie J. Ludtke of the Environmental Protection Bureau on behalf of the public; Site Evaluation Committee by Vincent J. Iacopino, Esq.

BY THE COMMISSION:

REPORT

I. INTRODUCTION

The New Hampshire Electric Cooperative, Inc. (NHEC) proposes to construct an 8.2 mile long overhead electric transmission line with associated substation facilities from the existing Public Service Company of New Hampshire (PSNH) Saco Valley Substation in Conway, N.H. to the new Intervale Substation in Bartlett, N.H. The line will be three phase alternating current (AC), with a design and operating voltage of 115,000 volts (115 kV), phase to phase. As shown on NHEC Exhibit 5 (Ex 5 CES pgs. 4-5), it will be constructed adjacent to the existing transmission line in an existing right-of-way. The 1.5 mile section of the line between the PSNH Saco Valley Substation and the NHEC Perkins Corner Substation will occupy the existing PSNH right-of-way presently having a 34,500 volt (34.5 kV) line constructed toward one edge of the right-of-way except for 1.2 miles of new right-of-way, and will be constructed, owned, and operated by PSNH as set forth in the letter attached to the application. The remaining 6.7 mile section of line will be constructed, owned, and operated by NHEC. The section of line beyond the NHEC Perkins Corner Substation will occupy the center of the existing NHEC 34.5 kV right-of-way, replacing the older and smaller capacity line of the two existing 34.5 kV lines. The line will terminate in a new Intervale substation, to be located on the rear portion of the NHEC Conway District Office property. NHEC states the line is required to ensure continued reliability and continuity of service to NHEC's customers in its Conway District area.

The proposed facilities are included in the NHEC filings of Long Range Plans for Bulk Power Facilities (1991 to the present) which are on file with the Public Utilities Commission (Commission) and the Site Evaluation Committee (SEC) as required pursuant to RSA Chapter 162-H:17.

The SEC Decision, dated April 20, 1994 and signed by all the members on April 29, 1994, approved NHEC's application finding, in accordance with RSA 162-H:16,IV that: a) NHEC demonstrated adequate financial, technical and managerial capability; b) the site and facility will not unduly interfere with the orderly development of the region; c) the site and facility will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment and public health and safety; and d) operation of the site and facility is consistent with the state energy policy established in RSA 378:37. The Decision also addressed electro-magnetic fields, possible alternatives and the environmental impacts of the site and route.

In addition to the approvals contained in the SEC Decision, the Commission must issue a certificate of site and facility, pursuant to RSA 162-H:16,V, if it finds that the construction of the facility:

(a) is required to meet the present and

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future need for electricity; and

(b) will not adversely affect system stability and reliability factors.

According to the statute, a "finding that the construction of the facility is required to meet present and future need for electricity may be based upon a determination of need for capacity to generate electricity, need for a greater supply of energy, or need for more economic, reliable, or otherwise improved sources of either capacity or energy." RSA 162-H:16,V (a). In evaluating the

need for electricity, the Commission "shall consider economic factors and the current integrated least cost plans filed with the Commission pursuant to RSA 378:38..." RSA 162-H:16,V (a).

The Commission also must have "reasonable assurance that all applicable state standards and requirements shall be met" by NHEC. RSA 162-H:16,V.

The Commission's proceeding was conducted as a joint proceeding with the SEC and the record developed in that proceeding is incorporated herein by reference. NHEC testified in favor of the proposal. There was no opposition.

II. POSITION OF NHEC

A. *Need for Electricity*

Charles E. Swanson, Director of Engineering at NHEC, described the NHEC service area in the Mount Washington Valley and the NHEC transmission system, which serves those loads, the existing conditions and problems and the need for additional capacity and the proposed project. (Ex 5 CES pgs. 2-5). He testified to the need for the project and alternatives considered (Ex 5 CES pg. 6), including the project's effect on system stability and reliability. (Ex 5 CES pg. 16). He testified to NHEC's policy on electromagnetic fields (EMF) and how the design of the proposed facilities significantly reduces EMF. Mr. Swanson described the NHEC system as follows:

The New Hampshire Electric Cooperative provides electrical service to approximately 65,000 member consumers in 118 of the State's 235 towns. Its electrical system consists of approximately 54 miles of 34.5 kV transmission line, approximately 4,650 miles of 25 kV, 12.5 kV and 4.2 kV distribution line, and 32 substations.

NHEC's Conway District serves the electrical needs of approximately 8,300 member consumers in the Mt. Washington Valley area. The Conway District service area includes the northern portion of the Town of Conway in the Saco River Valley including the Mountain Valley Mall and the Yield House, and all of the Towns of Bartlett, Jackson, Hart's Location, and Hale's Location.

Because of the winter recreation businesses and electric heat usage, the area's annual electric peak demand occurs during the winter. The maximum monthly demands during the summer are slightly less than half of the winter peak. The lowest monthly peak demands occur in the spring. The area's annual load factor over the past five years has averaged 35.8 percent.

Ex 5 CES pgs. 3-4.

He further stated that:

The NHEC electric system in the Conway District consists of approximately 340 miles of distribution line, 23 miles of 34.5 kV transmission line, and five 34.5 - 7.2/12.5 kV distribution substations. Also, Mt. Cranmore and Mt. Attitash own substations which are served directly from the NHEC 34.5 kV system.

The entire area is served from a single, radial Public Service Company of New Hampshire (PSNH) 34.5 kV transmission line which runs from PSNH's Saco Valley Substation to the NHEC Perkins Corner Substation located adjacent to Route 302 just

south of the Mountain Valley Mall. From the Perkins Corner Substation, NHEC has two 34.5 kV transmission lines located on a common right-of-way extending northward to its distribution substations. One line, the older and smaller capacity one, feeds its North Conway Substation, located on Kearsage

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Street near the Mt. Cranmore Ski Area, and two substations owned by Mt. Cranmore. The other line extends beyond the North Conway Substation and feeds the NHEC Glen, Jackson, and Bartlett Substations as well as a substation owned by the Mt. Attitash Ski Area. The existing system is shown on NHEC Exhibit 5.

Ex 5 CES pg. 4.

The need for additional transmission facilities was identified in the Conway District area in NHEC's Long Range Plans (LRP) filed with the Commission and the SEC. NHEC also identified the need for additional transmission facilities in its Two-Year Construction Work Plan (CWP) for 1993 and 1994. The CWP includes the Saco Valley to Intervale 115 kV Transmission Line, the Intervale Substation, and a line terminal bay at the Saco Valley Substation. This CWP has been approved by REA and also has been submitted to the Commission. The CWP is consistent with those facilities shown in the LRP and the proposed project. (Ex 5 CES pg. 6).

According to Mr. Swanson, the 1991 Forecast Update for NHEC, prepared by Power System Engineering, Inc. during the Bankruptcy reorganization for NHEC, "showed a 1.3 percent increase in annual energy requirements after demand side management adjustments for the 1990 to 1995 period, followed by a 2.4 percent annual increase for the 1995-2000 period." (Ex 5 CES pg 8). There was no separate load forecast for the Conway District area or for any other specific area in the NHEC system, but the 1991 Forecast Update stated the projection is "valid for the Conway District since it has experienced a two year overall increase of 3.5 percent from 1990 to 1992." (Ex 5 CES pgs 8-9). As to the capacity of the existing and future loads in the Conway District, Mr. Swanson explained that the annual peak demand is influenced by a number of factors including the amount of snowmaking done by the ski areas. With increased snow and colder temperatures, the demand for snowmaking decreases. (TR.pgs. 32-33) Mr. Swanson testified that:

The annual energy requirements for the Conway District in 1992, the last full calendar year, were 128.4 million kilowatt-hours (kWH) with an annual peak demand of 40,300 kilowatts (kW) which occurred in January 1992. In 1987 the annual energy requirements were 109.7 million kWH with a peak demand of 31,700 kW which represents an increase in the energy requirements of 3.2 percent compounded annually for the past five years. The January 1993 peak demand was 39,400 kW. Because of the area's large amount of electric heat usage, which is greatly influenced by cold temperature, the annual peak demand, and resulting annual load factor, has fluctuated from year to year, thus the 1993 peak was slightly less than the 1992 peak.

Ex 5 CES pg. 8.

Mr. Swanson updated his testimony by stating that in January of 1994, the most recent month for which NHEC has demand figures, the demand figure was 36.8 megawatts. (Tr. pg. 30).

On the basis of a 1.3 percent annual increase from 1992 through 1995 and a 2.4 percent increase thereafter, the annual energy requirements in the Conway District area for 1996 are projected to be 135.4 million kWh. The projected peak demand for January/February 1996 is calculated to be 43,200 kW using the most recent five year average annual load factor of 35.8 percent. The winter peak demand has historically occurred during cold holiday periods when the Mt. Washington Valley is crowded with skiers and shoppers. During the January 1989 billing period when the crowded holiday period coincided with extremely cold weather, the peak demand was much higher than average, resulting in an annual load factor of 33.1 percent. This resulted in a peak demand approximately 8.2 percent greater than that which would have occurred with the 35.8 percent annual load factor. In January 1996, if the crowded holiday period coincides with extreme cold temperatures and the peak demand also increases by 8.2 percent above the average, as it did in 1989, the resulting demand would be 46,700 kW.

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EX 5 CES pg. 9.

Gerald E. Hager, Professional Engineer, and Vice President of Electrical Systems Consultants, Inc., (ESC) of Fort Collins, Colorado, discussed the NHEC's planning process, the problems and limitations of the existing system, the general alternatives and the recommendations for facilities to solve the problems. He also outlined the various alternatives which NHEC considered and the reasons for selecting the proposed transmission line option.

The purpose of his testimony was to explain the need for increased electrical system capacity and greater reliability of service to the NHEC consumers in the Mount Washington Valley area (Ex 7 GEH pgs. 2-8), and the benefits which will be provided by the proposed Saco Valley to Intervale 115 kV line and the Intervale 115 kV to 34.5 kV Substation. He also addressed why certain alternatives were rejected. (Ex 7 GEH pgs. 10-11).

He presented NHEC Exhibit 5, "Existing NHEC Transmission Facilities Serving the North Conway Area", which illustrates the existing electric supply facilities for the NHEC customers in the Mount Washington Valley. These facilities include the PSNH Saco Valley Substation, the PSNH 34.5 kV circuit from the Saco Valley Substation to the NHEC Perkins Corner Substation, the NHEC 34.5 kV circuits from the Perkins Corner Substation, and the five NHEC substations and three consumer-owned substations in the Mount Washington Valley area. (Ex 7 GEH pg. 3).

He testified that the existing electric facilities which serve the NHEC consumers in the Mount Washington Valley area are inadequate. According to Mr. Hager, the existing 34.5 kV circuit is overloaded, due in part to power losses and conductor thermal loading, and excessive voltage drop has created an unsatisfactory condition. Voltage regulators are capable of boosting voltage levels a maximum of 10 percent, and the 34.5 kV circuit is nearing its maximum capacity as limited by voltage regulations. Also, this circuit cannot provide service in the event that any one of several of the existing line sections were to fail or the source 115 to 34.5 kV power transformer were to fail. In addition, the PSNH 115 to 34.5 kV power transformer in the Saco Valley Substation is fully loaded based on its highest kVA rating at its maximum cooling. (Ex 7 GEH pgs. 4 and 8).

Failure of portions of the existing 34.5 kV system would cause an outage to consumers because there is no alternate means of providing service.

According to Mr. Hager, five critical segments of the system can be identified in declining order of the number of consumers and the magnitude of load interrupted if portions of the system should fail:

First, the loss of the PSNH 1.5 mile of 477 ACSR line, the first section of the circuit feeding NHEC, would cause an interruption of electric service to all NHEC consumers in this area. There is no alternate means of providing service.

Second, the loss of the PSNH Saco Valley power transformer would result in an outage to the entire NHEC Mount Washington Valley system until load transfer switching could be performed. During heavy load periods a portion of the NHEC Mount Washington Valley system could not be served even after load transfer. The 34.5 Kv voltage at Perkins Corner would drop under this contingency arrangement. Some power can be delivered from the PSNH White Lake Substation over existing 34.5 kV lines after switching; however, during peak conditions the maximum amount of total load in the Saco Valley area that could be served from White Lake would be about 45 MW assuming that the two PSNH 34.5 kV lines were operated in a contingency parallel mode. In addition to the NHEC load, PSNH serves their retail customers in the area from the Saco Valley Substation. The 1991-92 total peak load on the Saco Valley Substation is approximately 50 MW. Since there is only one transformer at Saco Valley, this condition could not be corrected until a mobile transformer was moved to the station and connected.

Third, loss of the NHEC 477 ACSR line section between the Perkins Corner and North Conway Substations would necessitate shedding load during periods of high load

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because the 3/0 ACSR 34.5 kV circuit is not capable of serving all of the existing NHEC load north of the Perkins Corner Substation. An outage on the 477 ACSR 34.5 kV line section in the northern portion of the Town of Conway (the portion which parallels the railroad track) would result in an outage to the Glen, Jackson, Bartlett and Mount Attitash Substations because there is only one 34.5 kV line along this portion of the circuit.

Fourth, the loss of the Glen to Jackson tap line would result in an outage to most of the Jackson area loads.

Fifth, the loss of the Glen to Bartlett tap line would result in an outage to the Bartlett area and the Mount Attitash Ski area. There is a 12.5 kV distribution tie line between Glen and Jackson and another distribution tie line between Glen and Bartlett which would allow a portion of the load to be served from Glen after switching if either 34.5 kV tap were to fail.

Ex 7 GEH pgs. 4-5.

Mr. Hager quantified the magnitude and cost of power losses in the existing 34.5 kV system which serves the NHEC Mount Washington Valley area as follows:

... the peak load losses, based on the projected 1994-95 winter peak of 42.5 MW, would be 2,290 kW. Of these losses, 550 kW occur in the PSNH 1.5 mile line section and the remaining 1,740 kW of loss occurs in the NHEC 34.5 kV lines and substation transformers. Based on the current wholesale rate from PSNH, the cost of losses will be approximately \$200 per year per peak kW loss at this delivery point. The value will be slightly higher in 1995, about \$212 per kW, when the ratchet on peak demand goes from 60 to 70 percent. The annual cost of the losses on the NHEC portion of this 34.5 kV system will be near \$370,000 in 1995. Losses on the PSNH 1.5 mile line section amount to 550 kW which, if their cost of power were the same as NHEC, would have an annual cost of over \$100,000.

Ex 7 GEH pgs. 8-9.

Mr. Hager further explained that the proposed 115 kV line and substation would ... reduce the NHEC system losses by 980 kW based on the projected 1994-95 winter peak. This reduction in losses will reduce the wholesale cost of power by over \$200,000 annually. It will also eliminate nearly all of the losses on the PSNH 1.5 mile line section.

EX 7 GEH pg. 9.

In addition to these line loss savings, the power transformer load losses will be reduced by approximately 50 percent because two transformers will be serving the load that is currently served by one. (EX 7 GEH pg. 9)

Mr. Hager testified that the existing 34.5 kV circuit line is overloaded due to conductor thermal loading:

Maximum thermal amperage loading on the line section between Saco Valley an[d] Perkins Corner has been 680 amps. Most conductor tables list the ampacity of 477 ACSR conductor based on 50° C conductor rise above ambient and a 2 foot per second wind speed at 670 amps. The projected 1994-95 winter peak is equivalent to approximately 725 amps at 34.5 kV which will cause the conductor temperature to rise approximately 60° C over ambient. The NHEC maximum winter peak loading criteria for normal loading of their transmission lines is based on 10° C ambient, 2 foot per second wind speed and a conductor temperature of 75° C. With this criteria, maximum load which can be carried by this circuit is 750 amps or approximately 43 MW at the Perkins Corner delivery point.

Ex 7 GEH pgs. 9-10.

Regarding alternate sources of power for the area, he stated:

... I looked at the possibility of other sources of power for the Mount Washington Valley area. Alternatives considered include the construction of a 115 kV line to the vicinity of the Glen Substation from: 1) Maine west across the White Mountains, 2) the

PSNH North Woodstock Substation east across the White Mountains, and 3) Berlin south across the White Mountains. All of the alternatives included a 115 to 34.5 kV substation in the area of Glen. These alternatives were rejected because all of them were longer and required the clearing of a new right-of-way in the White Mountain National Forest.

Ex 7 GEH pg. 11.

NHEC selected the 115 kV voltage because a second 34.5 kV line would not provide a long term solution to the capacity deficiency of this area. It also provides the greatest increase in service reliability and operating flexibility by creating a two-directional feed to all except the two radial taps to the Jackson and Bartlett/Mount Attitash Substations. By utilizing the shortest feasible route and an existing right-of-way, the proposed plan mitigates the environmental impact. (EX 7 GEH pg. 12).

Wendell S. Palmer, System Engineer at NHEC, testified regarding the proposed transmission corridor, including the PSNH portion. (EX 6 WSP pg. 2). He described specifics of the transmission line with respect to design and configuration, (EX 6 WSP pgs. 3-8), construction methods and maintenance requirements and the proposed 115 Kv - 34.5 kV Intervale Substation. He also discussed PSNH's involvement in the proposed project. (Ex 6 WSP pgs. 8-9).

B. System Stability and Reliability

According to NHEC, the line will maintain reliability of electric service to the Mount Washington Valley area in accordance with NHEC's franchise, thereby contributing positively to the future growth and development of the region.

Mr. Swanson stated that reliability, in the context of an electric power system, is the ability to serve the electric consumer's power needs under both normal operating conditions and contingent conditions involving the loss or failure of part of the electric system. (Ex 5 GES pg. 13).

The NHEC reliability design criteria for the transmission system, included in the "Supplemental Information to the Application of New Hampshire Electric Corporation, Inc., for a Certificate of Site and Facility to construct, operate and maintain a 115 kV Transmission Line/PSNH Saco Valley Substation to NHEC Intervale Substation," dated June 17, 1993, provides that the system will be designed to permit some loss of consumer load at the time of system peak for the loss of a radial line or power transformer provided that the load lost does not exceed 30 mW and the duration of the outage does not exceed 8 hours, after allowing for load transfer. No alternate source is available, thus load cannot be transferred. Depending on the cause of the outage, this criteria may be violated under the present conditions.

Ex 7 CES pg. 15.

Mr. Swanson defined stability as follows:

Power system stability is generally defined as the quality of the power system, or part of it, to develop restoring forces between its various elements equal to or greater than the disturbing forces, so as to restore a state of equilibrium between these elements. In designing an electric system, an arbitrary disturbance must not create an unbalance or

loss [of] equilibrium in the system which causes the loss of other elements. To maintain stability, the system must be designed so that a fault on a transmission line does not cause a generator or other transmission line to inadvertently trip off resulting in widespread outages to other consumers.

Ex 5 CES pg 16.

C. Economic Factors and Least Cost Planning

Wendell Palmer, System Engineer at NHEC, testified to alternative ways to alleviate the problems facing NHEC and the costs associated with those alternatives. In his opinion, neither alternative sources of generation or alternative designs or routes were economically feasible.

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NHEC's proposal for a new transmission line to serve this area was included at Section 5 in its Least Cost Integrated Resource Plan, filed with the Commission in 1992 and approved by Report and Order No. 20,907 (July 13, 1993) in Docket DE 92-149, although there are particular details which have changed as the project has been more sharply defined.

III. COMMISSION ANALYSIS

[1, 2] Pursuant to RSA Chapter 162-H:16,V the Commission may not approve new facilities unless it finds that the proposed facilities (a) are required to meet the present and future need for electricity and (b) will not adversely affect system stability and reliability factors. In carrying out this mandate, we must consider economic factors and the effect of the project on the current integrated least cost resource plans filed with the Commission.

In order to "meet the present and future need for electricity", a utility must plan and operate electric systems to provide energy over periods of time and provide the capability to supply energy at any instant in time when the system is called upon to deliver.

A. Present and Future Need for Electricity

The testimony and the evidence presented in the record of these proceedings clearly show that the transmission system in the Mount Washington Valley area requires future additions to stay in conformance with current utility transmission design guidelines. Further, there was no contest to NHEC's assertion that its system is inadequate to serve the Mount Washington Valley area in the future, given current projections of growth and peak demand. We find persuasive the testimony of Mr. Hager that a series of events could result in significant losses or curtailment of power, without adequate alternatives for those customers of both NHEC and PSNH served by the system.

Since 1990, NHEC has been in the process of constructing a 115 kV transmission line to serve the increasing electrical loads in its service territory. It identified the need for additional transmission facilities in its Long Range Plans and two year Construction Work Plan.

We find NHEC's efforts to develop additional transmission to be responsible and prudent utility practice to avoid future outages and curtailments. The proposed 115 kV transmission line will allow the system to withstand certain contingencies without loss of load after allowing for load transfer, and will avoid the five critical segments of the system described by Mr. Hager. The

addition of the proposed 115 kV line will enable NHEC to fully serve the forecasted peak winter loads in the Mount Washington Valley area and meet its reliability standards in the late 1990's.

Based on the record, we conclude that the existing electric facilities which serve the NHEC consumers in the Mount Washington Valley area are inadequate. The existing 34.5 kV circuit is overloaded due to excessive voltage drop, power losses and conductor thermal loading, and it would be unable to provide service in the event that any one of several of the existing line sections or the 115 to 34.5 kV power transformer were to fail. Also, the PSNH 115 to 34.5 kV power transformer in the Saco Valley Substation is fully loaded based on its highest kVA rating at its maximum cooling.

Upon careful review of all the evidence in the record the Commission finds by a preponderance of the evidence that the proposed project is required for the present and future needs of electricity in the NHEC service territory. We note that the SEC evaluated and rejected alternative sources of power and routes as being less satisfactory than NHEC's proposed project. Due to conflicts with power supply contracts and various economic and environmental impacts, the possibility of local fossil-fueled generation in the Conway District was found unworkable. The evidence also indicated that the contribution of load management and conservation programs was insufficient to replace the need for the proposed transmission line.

B. System Stability and Reliability

Based on the record, we find that the proposed transmission line will not adversely affect system stability and reliability. On the contrary, the proposed transmission line will enhance

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reliability and stability factors by allowing the system to withstand greater contingencies. A particular failure no longer would trigger other parts of the system to fail, as described by Mr. Hager. With reduced losses, reduced thermal overload and upgraded transmission, the system not only should be able to serve greater loads but serve those existing loads with greater reliability. Loss reductions due to the new facility's construction will create significant energy savings resulting in reduced costs.

C. Economic Factors and Least Cost Plan

We have considered NHEC's proposal in light of least cost planning principles. The proposal is consistent in most respects with the 1992 Least Cost Plan filed with us by NHEC, and approved in Report and Order No. 20,907. The Least Cost Plan presented analysis of alternative solutions to NHEC's transmission problem, addressing the costs and feasibility of those alternatives, and the record of the SEC proceeding further developed this analysis. We are persuaded that the 115 kV transmission line is the least cost solution to NHEC's problem and is consistent with its last approved Least Cost Plan and least cost planning principles in general.

IV. CONCLUSION

Upon review of all of the SEC record, we find that the proposed facility is necessary to meet present and future demand for electricity and will not adversely affect system stability and reliability. In making this finding, we have considered economic factors and NHEC's current integrated least cost resource plan.

The Commission by the following order will issue a Certificate of Site and Facility to construct, operate and maintain a 115 kV electric transmission line, including the associated substation facilities, from the PSNH Saco Valley Substation, Conway N.H. to the proposed NHEC's Intervale Substation, Bartlett, N.H.

The NHEC application addresses the entire line along with associated facilities, from Saco Valley to Intervale, including both the NHEC and PSNH sections. Pursuant to RSA 162-H: 5 I, a certificate shall not be transferred or assigned without approval of the Committee. In its findings, the Site Evaluation Committee determined that RSA 162-H would be best served by assigning to PSNH that portion of the line which falls within its service territory. In accordance with the Committee's findings, the Commission finds that this assignment to PSNH is conditioned upon PSNH's agreement that all terms, conditions and restrictions set forth in the certificate shall apply to and be binding upon PSNH.

The Commission approves NHEC's request for a license to cross over and to parallel the tracks on the properties of the Maine Central Railroad Company located in the Towns of Conway and Bartlett, New Hampshire, and for PSNH to cross over the railroad property in the Town of Conway, New Hampshire, as described in Appendix D, Supplemental Information to the Application. In accordance with RSA 371:24, the Commission has determined that the one time \$500 administrative fee for both NHEC and PSNH, the one time \$1500 engineering review fee covering the entire project, the \$17,700 annual fee for the NHEC crossings and longitudinal circuits, and a \$400 annual fee for PSNH's single crossing to be just and reasonable compensation to the railroad for the wire crossing license.

Finally, the Commission will incorporate the permits and licenses of the Wetlands Board, Department of Environmental Services (Attachment B), and the Department of Transportation (Attachment C) in the Certificate of Site and Facility to be issued by the Commission.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, the findings of the Site Evaluation Committee (Attachment A), the Wetlands Board Permit (Attachment B) and the Department of Transportation Permit (Attachment C) all of which are made part of this order; it is hereby

ORDERED, that the New Hampshire Electric Cooperative, Inc., in conjunction with appropriate portions assigned to Public Service Company of New Hampshire, is authorized to

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construct, operate and maintain a 115,000 volt (115 kV) alternating current (60 Hertz), electric transmission line in the Towns of Conway and Bartlett, N.H., along with the necessary substation terminal additions from the PSNH Saco Valley Substation, Conway N.H., to the proposed NHEC Intervale Substation, Bartlett, N.H.; and it is

FURTHER ORDERED, that the proposed 115 kV transmission line facility is of sufficient character and environmental impact to require a Certificate of Site and Facility; and it is

FURTHER ORDERED, that the requisite good cause exists to permit issuance of this

Certificate of Site and Facility to permit construction of the proposed 115 kV (AC) transmission line; and it is

FURTHER ORDERED, that a Certificate of Site and Facility be, and hereby is, granted pursuant to RSA Chapter 162-H to New Hampshire Electric Cooperative, Inc., with portions assigned to Public Service Company of New Hampshire, for the construction, operation and maintenance of a 115 kV transmission line and the necessary substation terminal facilities along approximately 8.0 miles of existing and 0.2 miles of new transmission right-of-way which is now being finalized from the PSNH Saco Valley Substation in Conway, N.H., to the new Intervale substation in Bartlett, N.H.; and it is

FURTHER ORDERED, that all licenses and/or permits referred to in the foregoing report and attached findings of the Site Evaluation Committee, including the permits issued by the Wetlands Board under RSA Chapter 482-A, the Commissioner of the Department of Transportation under RSA Chapter 231, and the Commission under RSA Chapter 371, are granted, as specified, thus constituting compliance under RSA Chapter 162-H:16 II that all state standards and requirements shall be met by the New Hampshire Electric Cooperative, Inc., and Public Service Company of New Hampshire as a condition of granting this Certificate of Site and Facility.

By Order of the New Hampshire Public Utilities Commission this 14th day of June, 1994.

Attachment A

SITE EVALUATION COMMITTEE

(Docket No. SEC 93-02)

PUBLIC UTILITIES COMMISSION

(Docket No. DSF 93-128)

DECISION

April 20, 1994

APPEARANCES: New Hampshire Electric Cooperative, Inc., Broderick & Dean, Esqs., by Diane Nicolosi, Esq., 707 Chestnut Street, Manchester, NH 03105-1420; Department of Justice, by Leslie Ludtke, Esq., Public Counsel, State House Annex, Concord, NH 03301; Site Evaluation Committee, by Vincent J. Iacopino, Esq., 28 Blodgett Landing Road, Newbury, NH 03255-0072.

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

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I. INTRODUCTION

New Hampshire Electric Cooperative, Inc. (NHEC or Applicant) is a member/consumer owned Rural Electrification Administration (REA)/National Utilities Cooperative Finance Corporation (CFC) financed electric cooperative serving within nine of New Hampshire's ten counties and serving all or part of 118 of the state's 235 towns. Its headquarters is located in the Town of Plymouth with ten operating districts located throughout its franchised service territory. For the year ending December 31, 1992 NHEC serviced over 65,000 consumers with 4,700 miles of line with energy sales of 653,000,000 kilowatt-hours.

Eighty-five percent of the Cooperative's customers are residential and use sixty-five percent of the energy sold. Eleven percent are commercial using thirty percent of energy sold. Only nine of the Cooperative's accounts have peak demands in excess of 1000 kilowatts and these are ski areas, a factory-resort complex, a packings manufacturing plant, and a state college.

The Cooperative purchases all of its power and energy requirements at wholesale rates. It owns no operating life of unit generating plants, although it has a 0.7356 percent share of capacity entitlement (approximately 6,000 kilowatts) in the Maine Yankee generating station.

Power is received from wholesale suppliers at twenty-eight delivery points and from three small power producers. The cooperative also receives power into its distribution system from the Goodrich Falls Hydro (600 Kilowatts) in Bartlett for wheeling to the Public Service Company of New Hampshire (PSNH). (June 17, 1993 application, Appendix A, Guidelines for System Design, II Introduction).

A. Procedural History

On November 1, 1990, The NHEC filed an application for a Certificate of Site and Facility to construct, operate and maintain a 115 Kv Transmission Line, from Saco Valley Substation, Conway, New Hampshire to Intervale Substation, Bartlett, New Hampshire including associated substation facilities. The application was received and assigned Public Utilities Commission Docket No. DSF 90-189.

On February 8, 1991, the Site Evaluation Committee (SEC or Committee) held a duly noticed meeting to consider pursuant to RSA 162-F:2 I(c) whether it would require a certificate because of a substantial environmental impact. The SEC concluded that a certificate was required and directed NHEC to file a formal application.

On November 15, 1991, pursuant to the directions of the SEC, the NHEC filed a formal

application entitled, Application of the New Hampshire Electric Cooperative, Inc., to the State of New Hampshire, Public Utilities Commission (and) Bulk Power Site Evaluation Committee for a Certificate of Site and Facility to construct, operate and maintain a 115 Kv Transmission Line, (from) Saco Valley Substation, Conway, New Hampshire to Intervale Substation, Bartlett, New Hampshire. The application was considered part of PUC Docket No. DSF 90-189.

On January 1, 1992, the applicable statute, RSA 162-F, was repealed and replaced by RSA 162-H, which became effective the same date.

On January 20, 1992, the SEC responded with a request for additional data. The November application proposed three alternative routes for the section from Saco Valley Substation to Redstone with the remainder of the proposed line from Redstone to Intervale in an existing right-of-way.

On January 25, 1993, the NHEC filed supplemental information to the application for a Certificate of Site and Facility to construct, operate and maintain a 115 Kv Transmission Line from Public Service New Hampshire (PSNH) Saco Valley Substation, Conway, New Hampshire, to NHEC Intervale Substation, Bartlett, New Hampshire. This filing was made pursuant to RSA Chapter 162-H and proposed only one route from the Saco Valley Substation to Redstone, that being the existing PSNH right-of-way from Saco Valley to the NHEC Perkins Corner Substation and the existing NHEC right-of-way from Perkins Corner to Redstone. PSNH agreed to construct, own, operate and maintain a 115 kV line in that section and intersect with the proposed NHEC 115 kV line at Perkins Corner, a distance of 1.5 miles. PSNH also stated such construction and operation would be under the terms and conditions of the Certificate of Site and Facility if issued. The new application addresses the entire line proposed from Saco Valley to Intervale, including both the NHEC and PSNH sections. (PUC Docket No. DSF-93-019) (SEC Docket No. 93-02).

On March 22, 1993, the SEC responded that its preliminary review indicated that the application was incomplete and set forth in detail the incomplete areas.

On April 2, 1993, at its scheduled public meeting, the SEC concluded its preliminary review to determine whether the application was complete. The Committee rejected the NHEC application and indicated that a new application pursuant to RSA Chapter 162-H could be filed if the applicant wished to pursue the project.

On June 17, 1993, the NHEC filed Supplemental Information to the Application of New Hampshire Electric Cooperative, Inc. for a Certificate of Site and Facility to Construct, Operate and Maintain a 115 kV Transmission Line, PSNH Saco Valley Substation, Conway, New Hampshire to NHEC Intervale Substation, Bartlett, New Hampshire. The application incorporates the November 15, 1991, and the January 25, 1993 filings. The application was assigned Docket No. SEC 93-02 by the Committee and Docket No. DSF 93-128 by the Commission.

On August 16, 1993, the Site Evaluation Committee and the Commission concluded their preliminary review of the current application and accepted the application as complete.

On August 20, 1993, the SEC and the Commission issued an Order of Notice for an Informational Hearing pursuant to RSA 162-H:10 to be held at the John Fuller Elementary School, Pine Street, North Conway, NH, on September 16, 1993, at 7:00 p.m. An affidavit of

timely publication was filed with the Committee.

On September 16, 1993, a public informational hearing was held at the John Fuller Elementary School, in North Conway, NH. The Applicant provided informational handouts. Four witnesses presented information explaining the purpose of the project, the location, the construction methods, the environmental impacts and the public health impacts.

The first witness, Charles E. Swanson, Director of Engineering at NHEC, briefly described the Cooperative's service area in the Mount Washington Valley; the Cooperative's transmission system which serves the area; and gave a brief overview of the existing conditions

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and problems and the need for additional capacity. Mr. Swanson also described the effects of the proposed facility on magnetic field strength levels.

The second witness, Gerald E. Hager, Professional Engineer, and Vice President of Electrical Systems Consultants, Inc., Fort Collins, Colorado, discussed the NHEC's role in the project, the planning process, the problems and limitations of the existing system, the general alternatives to solve those problems, and the recommendations for facilities to solve the problems. He also outlined the various alternatives which they considered and the reasons for selecting the transmission line option. Electrical Systems Consultants is the firm that has prepared both the Long-Term and Short-Term Electric Facility Planning Studies for the NHEC, including studies of the electric system in the Mount Washington Valley.

The third witness, Wendell S. Palmer, Engineer, discussed the design of the proposed line and substation, and some items specific to the project.

The final witness, Dr. Peter A. Valberg, an Adjunct Associate Professor of Environmental Health at the Harvard School of Public Health, discussed electro-magnetic fields (EMF); recent studies on the subject and his assessment of the health effects relating to the project.

Following the testimony of the witnesses, members of the committee questioned the witnesses and received their responses. (Tr. pgs. 80-115). Comments were also offered by one member of the public, who was concerned about service reliability until the new facility was in place.

The Public Counsel, appointed by the Attorney General in accordance to RSA 162-H:9, represented the public interests at the hearing.

At the conclusion of the informational hearing the SEC and the Commission adopted a procedural schedule and directed that a copy of the Order of Notice be published by October 15, 1993. An affidavit of timely publication was filed with the Committee.

On November 1, 1993, the Applicant filed its written testimony, and data requests were filed by December 1, 1993, by the Commission staff and the Attorney General's Office. Additional data requests and production of documents were filed by Committee Counsel.

On February 3, 1994, the Committee and the Commission issued an Order of Notice for a hearing pursuant to RSA 162-H:10 to be held at the offices of the Department of Environmental Services, 6 Hazen Drive, Concord, New Hampshire on March 10, 1994, at 10:00 a.m. Affidavits

of publications were filed with the Committee.

On March 10, 1994, a public adversarial hearing was held jointly by the SEC and the Commission as required by RSA 162-H:10. Upon conclusion of the presentation of testimony and introduction of evidence, the evidentiary portion of the hearing was closed. The Committee unanimously adopted a motion to approve the application submitted by the Applicant subject to a report and written findings of the Committee and signed by the appropriate Committee members.

II. RELATED PROCEEDINGS

Long-Range Plan filing - The line and its proposed route have been identified and included in the NHEC long-range plans for bulk power supply facilities filed annually with the Commission, and the SEC. This annual filing is a requirement of RSA 162-H:17.

III. STANDARD OF REVIEW

Pursuant to the Declaration of Purpose set forth in RSA 162-H:II, the public interest requires that it is essential to maintain a balance between the environment and the possible need for new energy facilities; that undue delay in construction of any needed facilities be avoided; that operation of the facility be consistent with the state's least cost energy policy; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion.

RSA 162-H:16 IV requires the SEC after having considered available alternatives and fully reviewed the environmental impacts of the

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site or route, and other relevant factors bearing on whether the objectives of Chapter 162-H would be best served by the issuance of the certificate, to find that:

- (a) The Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the Certificate;
- (b) The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies;
- (c) The site and facility will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment and public health and safety; and
- (d) Operation of the site and facility is consistent with the state energy policy established in RSA 378:37.

When acting pursuant to the previous statute, RSA 162-F, the Committee stated that the relevant inquiry under the statute is whether the proposed facility will have an unreasonable environmental impact. Whether the impacts are unreasonable depends on the assessment of the environment in which the facility will be located, an assessment of statutory or regulatory constraints, or prohibitions against certain impacts on the environment and determination as to

whether the proposed facility exceeds those constraints or violates those prohibitions. *In Re: New England Electric Transmission Corp. 67 NHPUC 910, pg 923.; Public Service Company of New Hampshire. SEC Report issued Dec. 15, 1992.*

RSA 162-H:16 IV, adopted January 1, 1992, has included additional findings (a) pertaining to adequate financial, technical and managerial capability to assure construction and operation of the facility, as well as (d) the operation is consistent with the state energy policy.

The Department of Transportation has the authority to issue permits for highway crossings, the Commission for railroad crossings and public water crossings, and the Wetlands Board for excavating and dredging permits, pursuant to their rules. Such permits, if issued, will be incorporated in the Bulk Power Certificate of Site and Facility.

IV. APPLICANTS POSITION

The Applicant presented four witnesses with written testimony, which generally followed the summaries set forth in the informational hearing on September 16, 1993, but in greater detail.

Charles E. Swanson presented a brief description of NHEC's service area and existing facilities in the North Conway area (EX 5 CES pgs. 2-4). He also presented a brief overview of the project proposed by NHEC in this proceeding. (EX 5 CES pg.5). He described the need for the project (EX 5 CES pg. 6) and alternatives considered (EX 5 CES pg. 6), its consistency with the state energy policy (EX 5 CES pgs. 27-28), its effect on system stability and reliability (EX 5 CES pg. 16), the NHEC policy on EMF and relevant considerations in the design of the proposed facility as it relates to EMF (EX 5 CES pg. 21-25), and the proposed project's compatibility with the orderly development of the area (EX 5 CES pgs. 25-26). He further addressed the Cooperative's financial, technical, and managerial capabilities to ensure the construction and operation of the proposed facilities. (EX 5 CES pgs. 29-30).

Mr. Swanson identified and described the NHEC system by stating that it provides electrical service to approximately 65,000 member consumers in 118 of the State's 235 towns. Its electrical system consists of approximately 54 miles of 34.5 Kv transmission line, approximately 4,650 miles of 25 Kv, 12.5 kV and 4.2 kV distribution line, and 32 substations. (EX 5 CES pg. 3).

NHEC's Conway District serves the electrical needs of approximately 8,300 member consumers in the Mt. Washington Valley area. The Conway District service area includes the portion of the Town of Conway in the Saco River Valley north of, and including the Mountain Valley Mall and the Yield House, and all of the Towns of Bartlett, Jackson, Hart's Location,

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and Hale's Location.

Because of the winter recreation businesses and electric heat usage, the area's annual electric peak demand occurs during the winter. The maximum monthly demands during the summer are slightly less than half of the winter peak. The lowest monthly peak demands occur in the spring. The area's annual load factor over the past five years has averaged 35.8 percent.

He further identified the NHEC electric system in the Conway District as consisting of approximately 340 miles of distribution line, 23 miles of 34.5 kV transmission line, and five 34.5

- 7.2/12.5 kV distribution substations. Also, Mt. Cranmore and Mt. Attitash own substations which are served directly from the NHEC 34.5 kV system.

The entire area is served from a single, radial PSNH 34.5 kV transmission line which runs from PSNH's Saco Valley Substation to the NHEC Perkins Corner Substation located adjacent to Route 302 just south of the Mountain Valley Mall. From the Perkins Corner Substation, the Cooperative has two 34.5 kV transmission lines located on a common right-of-way extending northward to its distribution substations. One line, the older and smaller capacity one, feeds its North Conway Substation, located on Kearsage Street near the Mt. Cranmore Ski Area, and two substations owned by Mt. Cranmore. The other line extends beyond the North Conway Substation and feeds the NHEC Glen, Jackson, and Bartlett Substations as well as a substation owned by the Mt. Attitash Ski Area. The existing system is shown on NHEC Exhibit 5.

Mr. Swanson testified that NHEC is proposing to construct a new 8.2 mile long overhead electric transmission line with associated substation facilities from the existing PSNH Saco Valley Substation in Conway, N.H. to the new Intervale Substation in Bartlett, N.H. The line will be three phase alternating current (AC), with a design and operating voltage of 115,000 volts (115 kV), phase to phase. The 1.5 mile section of the line between the PSNH Saco Valley Substation and the NHEC Perkins Corner Substation would occupy the existing PSNH right-of-way presently having a 34,500 volt (34.5 kV) line constructed toward one edge of the right-of-way and would be constructed, owned, and operated by PSNH as set forth in its letter dated February 19, 1992 and attached to the December 10, 1992 application. The remaining 6.7 mile section of line would be constructed, owned, and operated by NHEC. The section of line beyond the NHEC Perkins Corner Substation would occupy the center of the existing NHEC 34.5 kV right-of-way, replacing the older and smaller capacity line of the two existing 34.5 kV lines. The line would terminate at a new substation, called the Intervale Substation, to be located on the rear portion of the NHEC Conway District office property. The proposed line is shown on NHEC Exhibit 5. (EX 5 CES pgs. 4-5).

The need for additional transmission facilities were identified in the Conway district area in NHEC's Long Range Plans (LRP) filed with the Commission and the SEC. It also identified the need for additional transmission facilities in its Two-Year Construction Work Plan (CWP) for 1993 and 1994. The CWP includes the Saco Valley to Intervale 115 kV Transmission Line, the Intervale Substation, and a line terminal bay at the Saco Valley Substation. This CWP has been approved by REA and also has been submitted to the Commission. It is consistent with those facilities shown in the LRP and the proposed project. (EX 5 CES pg. 6).

Mr. Swanson also discussed the most recent load forecast for the total NHEC system - the "1991 Forecast Update - Case 2WN for New Hampshire Electric Cooperative" dated September 17, 1991. The forecast was prepared by Power System Engineering, Inc. as part of the NHEC Bankruptcy Plan of Reorganization. It was used to support the Plan of Reorganization before the Bankruptcy Court, to support the rate increase and debt restructuring before the Commission, and to support the two-year CWP financing and line of credit with the National Rural Utilities Cooperative Finance Corporation (CFC). This forecast showed a 1.3 percent increase in annual energy requirements after demand side management adjustments for the 1990 to 1995 period, followed by a 2.4 percent annual increase for the 1995-2000 period. A separate load forecast was not performed for the

Conway District area or for any other specific area in the NHEC system. Although load growth fluctuates from year to year, this load projection is still considered to be valid for the Conway District since it has experienced a two year overall increase of 3.5 percent from 1990 to 1992.

As to the capacity of the existing and future loads in the Conway District, Mr. Swanson stated, the annual energy requirements for the Conway District in 1992, the last full calendar year, were 128.4 million kilowatt-hours (KWH) with an annual peak demand of 40,300 kilowatts (Kw) which occurred in January 1992. In 1987 the annual energy requirements were 109.7 million kWh with a peak demand of 31,700 kW which represents an increase in the energy requirements of 3.2 percent compounded annually for the past five years. The January 1993 peak demand was 39,400 kW. Because of the area's large amount of electric heat usage and snowmaking capability, which is greatly influenced by cold temperature and weather, the annual peak demand, and resulting annual load factor, has fluctuated from year to year, thus the 1993 peak was slightly less than the 1992 peak. Mr. Swanson updated his testimony by stating that in January of 1994, the most recent month for which NHEC has demand figures, the demand figure was 36.8 megawatts. (Tr. pg. 30).

On the basis of a 1.3 percent annual increase from 1992 through 1995 and a 2.4 percent increase thereafter, the annual energy requirements in the Conway District area for 1996 are projected to be 135.4 million kWh. The projected peak demand for January/February 1996 is calculated to be 43,200 kW using the most recent five year average annual load factor of 35.8 percent. The winter peak demand has historically occurred during cold holiday periods when the Mt. Washington Valley is crowded with skiers and shoppers. During the January 1989 billing period when the crowded holiday period coincided with extremely cold weather, the peak demand was much higher than average, resulting in an annual load factor of 33.1 percent. This resulted in a peak demand approximately 8.2 percent greater than that which would have occurred with the 35.8 percent annual load factor. In January 1996, if the crowded holiday period coincides with extreme cold temperatures and the peak demand also increases by 8.2 percent above the average, as it did in 1989, the resulting demand would be 46,700 kW.

Gerald E. Hager, holds a Bachelor of Science Degree in Electrical Engineering from Colorado State University and has worked in the electric utility industry since June 1963. His work experience includes a total of 8 1/2 years with three different electric utilities, 3 years with the Public Utility Commission of Colorado and 19 years with three different consulting engineering firms including the last 8 1/2 years at his current position with Electrical Systems Consultants, Inc. (ESC). He has prepared a large number of construction work plans and long range planning studies for electric utilities. He is a professional engineer in several states, a member of the Institute of Electrical and Electronic Engineers (IEEE), the National Society of Professional Engineers (NSPE) and the Association of Energy Engineers (AEE).

He testified that he was Vice-President of ESC of Fort Collins, Colorado, and head of the rate and planning department. ESC is an electrical consulting firm which provides technical and engineering services primarily to electric utilities and industrial firms.

The purpose of his testimony was to explain the need for increased electrical system capacity and greater reliability of service to the NHEC consumers in the Mount Washington Valley area (EX 7 GEH pgs. 2-8), the benefits which will be provided by the proposed Saco Valley to Intervale 115 kV line and the Intervale 115 kV to 34.5 kV Substation. He also addressed why certain alternatives were rejected. (EX 7 GEH pgs. 10-11).

Mr. Hager prepared NHEC's most recent long-range planning study which was completed in January 1991 and their last two-year construction work plans. (EX 7 GEH pgs. 11-12). The first construction work plan was finished in December 1989 and the last one was finished in March 1992. He has also been involved in providing engineering assistance with equipment application, evaluation of line losses and the initial coordination of a field

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inventory and computer generated mapping project.

Mr. Hager presented NHEC Exhibit 5, "Existing NHEC Transmission Facilities Serving the North Conway Area", which illustrates the existing electric supply facilities for the NHEC consumers in the Mount Washington Valley including the PSNH Saco Valley Substation, the PSNH 34.5 kV circuit from the Saco Valley Substation to the NHEC Perkins Corner Substation, the NHEC 34.5 kV circuits from the Perkins Corner Substation, and the five NHEC substations and three consumer-owned substations.

The maximum load at the Perkins Corner delivery point has been 40,300 kW and there are approximately 8,300 consumers in this portion of the NHEC system.

Mr. Hager testified that the existing electric facilities which serve the NHEC consumers in the Mount Washington Valley area are inadequate. The existing 34.5 kV circuit is overloaded due to voltage drop, power losses and conductor thermal loading, and this circuit cannot provide service in the event that any one of several of the existing line sections were to fail or should the source 115 kV to 34.5 kV power transformer fail. Also, the PSNH 115 kV to 34.5 kV power transformer in the Saco Valley Substation is fully loaded based on its highest kVA rating at its maximum cooling.

Failure of portions of the existing 34.5 kV system would cause an outage to consumers because there is no alternate means of providing service.

Mr. Hager testified that the magnitude and cost of power losses in the existing 34.5 kV system which serves the NHEC Mount Washington Valley area, based on the load flow calculations indicated that the peak load losses, based on the projected 1994-95 winter peak of 42.5 MW, would be 2,290 kW. Of these losses, 550 kW occur in PSNH's 1.5 mile line section and the remaining 1,740 kW of loss occurs in NHEC's 34.5 kV lines and substation transformers. Based on the current wholesale rate from PSNH, the cost of losses will be approximately \$200 per year per peak kW loss at this delivery point. The value will be slightly higher in 1995, about \$212 per kW, when the ratchet on peak demand goes from 60 to 70 percent. The annual cost of the losses on the NHEC portion of this 34.5 kV system will be approximately \$370,000 in 1995. Losses on PSNH's 1.5 mile line section amounts to 550 kW which, if their cost of power were the same as NHEC, would have an annual cost of over \$100,000.

Mr. Hager testified that the proposed 115 kV line and substation will reduce the NHEC system losses by 980 kW based on the projected 1994-95 winter peak. This reduction in losses will reduce the wholesale cost of power by over \$200,000 annually. It will also eliminate nearly all of the losses on the PSNH 1.5 mile line section. In addition, it will reduce the power transformer load losses by approximately 50 percent because two transformers will be serving the load that one currently serves. (EX 7 GEH pg. 9).

Mr. Hager also testified that the existing 34.5 kV circuit line is overloaded due to conductor thermal loading, that the maximum thermal amperage loading on the line section between Saco Valley and Perkins Corner has been 680 amps. Most conductor tables list the ampacity of 477 ACSR conductor based on 50.5C conductor rise above ambient and a 2 foot per second wind speed at 670 amps. The projected 1994-95 winter peak is equivalent to approximately 725 amps at 34.5 kV which will cause the conductor temperature to rise approximately 60.5C over ambient. The NHEC maximum winter peak loading criteria for normal loading of their transmission lines is based on 10.5C ambient, 2 foot per second wind speed and a conductor temperature of 75.5C. With this criteria, maximum load which can be carried by this circuit is 750 amps or approximately 43 MW at the Perkins Corner delivery point. (EX 7 GEH pgs. 9-10).

Mr. Hager stated that NHEC reviewed other sources of power for the Mount Washington Valley area. The alternatives they considered included the construction of a 115 kV line to the vicinity of the Glen Substation from: 1) Maine west across the White Mountains, 2) the PSNH North Woodstock Substation east across the White Mountains, and 3) Berlin south across the White Mountains. All of the alternatives included a 115 kV to 34.5 kV substation in

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the area of Glen. These alternatives were rejected because all of them were longer and required the clearing of a new right-of-way in the White Mountain National Forest. (EX 7 GEH pg. 11).

The 115 kV voltage was selected because a second 34.5 kV line would not provide a long term solution to the capacity deficiency of this area. It also provides the greatest increase in service reliability and operating flexibility by creating a two-directional feed to all except the two radial taps to the Jackson and Bartlett/Mount Attitash Substations. By utilizing the shortest feasible route and an existing right-of-way, the proposed plan mitigates the environmental impact.

Wendell S. Palmer, is an electrical engineer employed as the System Engineer at NHEC. He holds a Bachelor of Science Degree in Electrical Engineering from the University of New Hampshire.

The purpose of his testimony was to present a detailed description of the proposed transmission corridor, including the PSNH portion (EX 6 WSP pg. 2). He described specifics of the transmission line with respect to design and configuration (EX 6 WSP pgs. 3-8), construction methods and maintenance requirements and also briefly described the proposed 115 kV - 34.5 kV Intervale Substation. He also discussed PSNH's involvement in the proposed project. He presented a detailed overview of the impacts associated with the proposed 115 kV transmission line with regard to aesthetics, air and water quality, the natural environment, and public health

and safety. (EX 6 WSP pgs. 11-18).

He further described the design and configuration of the proposed transmission line by stating, design criteria, such as, structure type and height, overhead clearances, phase to phase clearances, and working clearances are based upon an operating voltage of 115 kV.

On page 8 of his testimony, Mr. Palmer described PSNH's commitment in the project as follows:

PSNH has agreed to design, construct, own and maintain the portion of the 115 kV transmission line that falls within their service territory. NHEC, pursuant to RSA 162-H:5(I), conditioned upon approval by the Site Evaluation Committee, will assign to PSNH the Certificate requested by this application as it relates to that portion of the proposed transmission line that falls within PSNH's service territory. The assignment of the Certificate to PSNH is conditioned upon PSNH's agreement that all terms, conditions and restrictions set forth in the Certificate shall apply to and be binding upon PSNH.

The approximate length of the PSNH portion is 1.5 miles and will be located almost entirely within the existing 100 foot wide PSNH transmission line right-of-way, along side their existing 34.5 kV line designated the "395 Line". The proposed 115 kV line will begin at the Saco Valley Substation. It will exit from the north end of substation running generally northwesterly and parallel to Rte. 302 and extend to a joint deadend structure, to be designed, constructed and owned by NHEC, and located adjacent to the Perkins Corner Substation in the existing NHEC right-of-way. This deadend structure will mark the beginning and end of the NHEC and PSNH portions of this transmission line, respectively. PSNH will also construct a 115 kV terminal bay at their Saco Valley Substation for the take off structure and primary metering which will be erected inside the existing fenced substation yard.

EX 6 WSP pg. 8

Dr. Peter A. Valberg, Principal at Gradient Corporation (Gradient) and Adjunct Associate Professor of Environmental Health at the Harvard School of Public Health, is an environmental scientist and public health professional.

AT Gradient, an environmental consulting firm, Dr. Valberg specializes (a) in evaluation of chemical and radiation toxicity, (b) in assessment of human health risk for cancer and non-cancer endpoints, (c) in review of animal toxicology studies, and (d) in assessment of multi-media exposure to environmental chemicals. He is on the faculty of Harvard University, School of Public Health, which is a research and teaching institution focusing on health-related interactions between humans and the environment.

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His duties there include teaching human physiology, toxicology, and environmental health, and collaborating in environmental health research. He has been with the Harvard School of Public Health for eighteen years. (EX 8 PAV pg. 1).

Dr. Valberg received a degree summa cum laude in Physics and Mathematics from Taylor University in 1964. In 1966 he was awarded an MA degree by Harvard University and in 1970,

after completing his thesis work with Nobel Laureate Norman F. Ramsey, he was awarded the PhD degree in Physics from Harvard University.

He received an additional MS degree in Physiology from Harvard University in 1975. He also completed continuing education courses in (a) Analytical and Quantitative Microscopy, (b) Biomedical Physics and Biomaterial Science, (c) Pulmonary Pathology, and (d) Advanced Risk Assessment and Physiologically-Based Pharmacokinetics. (EX 8 PAV pg. 2).

The majority of Dr. Valberg's research career has been at the Harvard University School of Public Health, where he has been engaged in research and teaching in the areas of environmental health, physiology, toxicology, and public health. (EX 8 PAV pg. 3).

Dr. Valberg's experience in evaluating the biological effects of EMF comprises a background in physics, physiology, and public health expertise. He holds advanced degrees both in physics and physiology, and has served on university faculties both in physics and in public health. He has studied the health effects of EMF for seven years. He was an invited participant for both an EPA workshop in Washington, DC, and a Health Effects Institute workshop in Cambridge, MA, in which health hazards of power lines were analyzed. He was an invited participant in two international conferences on Biomagnetism in Vancouver (1985) and New York City (1989), and also made presentations at Bioelectromagnetic Society Annual Conferences in 1991 and 1992, and he made a presentation at the 1993 EMF Contractors Meeting. He directs a research grant at the Harvard School of Public Health from the National Cancer Institute; its title is "Magnetic Field Effects on Macrophages". At Gradient, he directs the technical staff working on EMF health effects, and for the past two years he has been assisting the Health Effects Institute (Cambridge, MA) in conducting a feasibility study for funding new directions in EMF research. (EX 8 PAV pgs. 3-4).

Dr. Valberg's testimony summarized what is known regarding epidemiological studies on the effects of EMF exposure, the biological effects of EMF exposure, and whether such exposure causes a number of different types of cancer and other disease.

Dr. Valberg testified how EMFs are encountered in normal day-to-day activities, by stating that all humans are exposed to a wide variety of natural and man-made electric and magnetic fields. The earth's atmosphere produces slowly-varying electric fields (about 100 to 10,000 V/m). A manifestation of these fields is lightning. The earth's core produces a steady magnetic field, which can be easily demonstrated with a compass needle. The earth's magnetic field ranges in strength from about 470 milligauss (mG) to 590 mG over the United States and is about 560 mG in the Northeast. An increasingly common medical diagnostic procedure, magnetic resonance imaging (MRI), uses fields of 20,000,000 mG on humans and is preferred over X-rays, which are known to be capable of causing damage to cells. The medical literature does not report any ill effects from the high-intensity MRI fields.

Magnets and steady electric currents, i.e., direct currents (DC), produce steady (DC) magnetic fields. Power-line currents are alternating currents (AC), because they change size and direction 60 times a second (called 60 Hertz (Hz)). AC currents produce AC magnetic fields; however, aside from the variation in time (60 Hz) that characterizes power-line fields, they are identical in nature to steady fields, such as those due to the earth's atmosphere or geomagnetism.

Dr. Valberg testified that baseline 60-Hz magnetic fields in residences:

... are in the range of 0.5 to 2.0 mG in the middle of rooms, away from any operating appliances and are, to a large extent,

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produced by outdoor distribution wiring, indoor wiring, and ground return pathways. 60-Hz EMFs also can be found in the vicinity of all electrical appliances, including electric ranges, microwave ovens, refrigerators, clothes washers and dryers, fluorescent lights, televisions, toasters, vacuum cleaners, etc. Appliances produce magnetic fields of size 40-80 mG at distances of 1 foot, but the fields diminish quickly with distance. Personal electric appliances such as shavers, electric toothbrushes, hair dryers, massagers, electric toys, and electric blankets can produce fields in the 100's of mG in the vicinity of the persons using them.

EX 8 PAV pg. 7

He differentiated between epidemiologic and biological studies of EMF.

Epidemiologic scientists examine the prevalence of disease in human populations and seek to establish what statistical correlations, if any, exist between human disease and possible etiologic factors such as diet, genetics, lifestyle, exposure to chemicals, radiation, etc. Because epidemiology is not an experimental science, it is susceptible to identifying statistical associations that have no causal basis.

"Biological studies" refer to laboratory experiments whose focus is to examine the possible chain of causal events between an exposure (such as EMF) and biological alterations which may produce disease. Such studies encompass experiments on isolated cells (in vitro studies, e.g., genotoxicity, cell function, ion flux, etc.), on animal species (in vivo studies, e.g., animal cancers, tumor growth, reproduction, etc.), and on biochemical molecules.

EX 8 PAV pgs. 7-8

When questioned, what do epidemiological studies report about EMF and cancer and have the results been consistent? He stated that:

"Overall consistency" of the EMF-cancer association has not been shown. Actually, there is a fair amount of inconsistency among the various studies.

EX 8 PAV pgs. 8-9

In the written testimony, Dr. Valberg present various studies (EX 8 PAV pgs. 9-10), and compared the information and conclusions. Dr. Valberg's overall conclusion about epidemiologic studies on EMF is that:

Historical trends in childhood disease and childhood cancer incidence show a lack of correspondence between historical increases in per capita electric power consumption and childhood disease. The absence of such an association is reassuring of the absence of EMF health effects. Some epidemiology has shown weak associations between disease and surrogates of EMF exposure, such as the configuration of utility wires outside the home. However, measured magnetic fields have not been associated with disease.

Overall, the epidemiologic of research provides no persuasive support for linking EMF to cancer.

EX 8 PAV pg. 11

In general, Dr. Valberg explained the relationship between epidemiologic and biological studies, as follows:

Understanding the toxicity of something in relation to humans requires supporting evidence from both areas. An epidemiologic association is not indicative of a causal link between the exposure and the putative disease; biological studies are required to examine whether there is a causal chain — a series of sequential mechanisms — leading from the exposure to the presence of disease. Only when both lines of investigation produce positive results can we be reasonably certain that a causal link has been established.

EX 8 PAV pg. 11

Dr. Valberg testified that both types of studies must yield positive results to demonstrate the existence of a causal link.

Epidemiology is a science that only observes the status quo, and does not experimentally

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manipulate its subject matter. Epidemiologic observations can only establish statistical associations. Yet, an association may arise for a variety of reasons: it may be a statistical fluke, it may be due to some coincidental factor that is common to both the disease and the exposure (a "confounder"), it may be due merely to the way the diseased and control populations were selected, or it may be due to some bias in the way that the investigators evaluated the exposure or the disease. On the other hand, biological studies are performed in a laboratory where the investigator can control and manipulate many variables. However, laboratory studies are of necessity performed on animals species or isolated cells, and thus, the results may not be applicable to humans or to cells in an intact organism. Hence, to supplement the biological results, epidemiology can provide supporting evidence directly relevant to humans.

EX 8 PAV pgs. 11-12

Dr. Valberg elaborated upon the concept of a causal chain between exposure to some agent and the development of disease by stating in his testimony:

If EMF is to cause disease, we must be able to observe that EMF triggers a series of sequential steps that leads to the disease outcome.

The causal chain would begin with human exposure to some particular (as yet unknown) component of our EMF environment. To complete the first step, EMF must be able to interact with biological molecules or cell membranes in such a way as to alter them in size, shape, charge, or energy. This step is called the energy-"transduction" step, the idea being that, if you absorb no energy from the EMF, your body cannot be affected by it. Second, it is not enough for the EMF to alter just any random molecule, but rather, the affected molecule must be crucial in some way to a biological signaling and

amplification system, so that the cell will "perceive" the change. This might be a change in calcium ion flux, a change in transmembrane potential, a change in the binding of signal molecules, and so forth.

Third, this observable change in biological signals must be linked to a change in cell behavior. That is, the alteration in a biological signal must be of a magnitude and specificity that links it to a change in cell function such as gene expression, metabolism, division, etc. Fourth, the change in cell function we are discussing must be an adverse one in terms of the cell's health. For disease to occur, it is not sufficient that it be a neutral change or perhaps merely an adaptive change, such as muscle cells responding to the stress of exercise.

Fifth, the adverse effect at the cell level must be sufficiently deleterious so that it cannot be repaired, compensated, or controlled by healthy cells, and so irreversible that it leads, in the long term, to the development of human disease.

EX 8 PAV pgs. 13-14

Based on his reviews of and familiarity with the literature, Dr. Valberg reported that published biological studies have not established that exposure to EMF results in a causal process leading to disease. He explained:

Many links of the causal chain I have discussed are being extensively investigated. However, even though many "effects" of EMF have been reported, no biophysical mechanism by which EMF at power-line frequencies and ambient intensities can affect biological systems has been identified. Several possibilities have been raised, but each is subject to serious problems, and none have been verified. Out of the many EMF "effects" reported, such as changes in calcium flux, changes in gene transcription, and changes in enzyme activity, a clear link to disease has not been found.

EX 8 PAV pg. 14

Based on his investigation of the studies, Dr. Valberg made the following general conclusions:

Although laboratory studies on the biological

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effects of EMF have been ongoing for over 20 years, no clear pattern of effects has emerged. Experiments with cells and chromosomes have failed to show that EMF can induce genetic damage or otherwise initiate cancer. Likewise, in studies where whole animals have been either treated so as to provide the first step toward cancer, or actually injected with cancerous cells, EMF has not been shown to promote or accelerate the cancer process. A wide range of biochemical changes in cells have been reported to occur after EMF exposure, but these cannot be taken as evidence for EMF effects on health for the following reasons: (1) The vast majority have been reported by only one investigative team or laboratory and have not been independently replicated by a broad group of scientists, (2) Some responses are elicited at extremely high field levels or other bizarre conditions not relevant to power-line exposure, (3) Many responses observed cannot be

linked in a clear way to an adverse health effect, and (4) No mechanism has been found whereby power-line EMFs can alter the normal function of biological molecules. In summary, in no case do the biological studies provide a complete causal chain to link EMF exposure to a disease.

EX 8 PAV pgs. 17-18

Hence, his overall conclusion is that laboratory experiments on cells, animals, and biochemical systems do not support the contention that EMF cause cancer or other diseases.

Dr. Valberg concluded on pg. 18 of his testimony, that based on the studies performed to date, no casual relationship between EMF and any disease, including cancer, can be established. He stated:

My conclusion is consistent with the report recently commissioned by the U.S. Department of Labor on analysis of the reports of adverse health effects attributed to EMFs from power-lines, household appliances, and video display terminals. For this report, Oak Ridge Associated Universities established a panel of expert scientists and coordinated the analysis, which was published in 1992. The executive summary of the Oak Ridge report states that;

This review indicates that there is no convincing evidence in the published literature to support the contention that exposures to extremely low-frequency electric and magnetic fields (ELF-EMF) generated by sources such as household appliances, video display terminals, and local power lines are demonstrable health hazards.

1(25)

EX 8 PAV pg. 18

Dr. Valberg further stated:

Experimental studies of magnetic-field exposure to animals and cells over the range of fields predicted for the NHEC project have not shown effects that can be interpreted as being adverse to health. The magnetic-field levels in the vicinity of the proposed transmission lines are not unusual, can be found in any household using electric appliances, and have not been associated with demonstrated ill effects.

EX 8 PAV pgs. 18-19

Therefore, he concluded:

EMF due to the operation of the electric transmission lines will not have an impact on public health.

EX 8 PAV pg. 19

V. ANALYSIS AND FINDINGS

Before discussing the major findings which the SEC makes pursuant to the statute, there is a preliminary matter to consider: whether the proposed facility should require a certificate of site and facility.

RSA 162-H:2II(C) defines a bulk power supply facility, among other definitions, as an

electric transmission line or design rating of 100 kilovolts that is in excess of ten miles in length, over a route not already occupied by a transmission line, . . . , or which the Committee determines in accordance with RSA 162-H:1 should require a certificate of site and facility.

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The proposed facility is less than 10 miles in length, more than 100 kV in design and is located almost entirely in the existing transmission line right-of-way. Exercising the discretion which it has under the law, the Committee finds that the proposed facility is one which should require a certificate. In reaching this finding the Committee notes that the existing right-of-way was developed some twenty-five years ago. Present environmental standards should be met for new construction and maintenance and there should be a current examination of the effects of air ions, magnetic fields and electric fields. This proceeding provides a forum to make a proper examination.

The following discussion will consider the requirements of RSA 162-H:16 IV as presented on page 6 of this report, including the review of available alternatives.

The evidence adequately established that the Applicant considered various alternatives including various REA transmissions structure designs such as single wood pole structures with horizontal post insulators, crossarm configurations with suspension insulators; two pole H-frame structures with suspended insulators; and underground installation. After reviewing the various alternatives the Applicant maintains that due to the right-of-way restrictions, a single wood pole design with horizontal post insulators provides the most reasonable, economical, maintainable, narrow profile and compact design with the least visual impact. (EX 6 WSP pgs. 4-5).

Other general alternatives considered included utilization of load management programs, installation of local generation, and use of other transmission voltages and sources.

The Applicant has several load management programs, including water heater control, thermal storage (ETS) and winter interruptible contracts (WI). Although these programs provide temporary emergency help by reducing the system peak demand, they do not solve the longer term capacity, quality of service and reliability problems and do not provide sufficient demand reductions to be an acceptable alternative. (EX 5 CES pg. 17).

Due to conflicts with power supply contracts and various economic and environmental impacts, the alternative of installing a fossil-fueled generation facility sized to meet present and future loads was not considered to be a viable alternative. (EX 5 CES pgs. 17-18).

The Applicant examined the 34.5 kV and 115 kV transmission voltages that exist in the area and as shown in the Supplemental Information to the Application. The system design criteria shows the preferred source voltage is at 115 kV. A transmission line from the Berlin area, the North Woodstock area or the Central Maine Power Company's facilities in Maine to the Conway District were considered to be significantly more costly and likely to have greater adverse environmental impacts. (EX 5 CES pg. 19).

Two alternate routes for the first part of the line between the Saco Valley Substation and existing NHEC 34.5 kV right-of-way at Redstone were considered. The first was a direct route north of and parallel to Highway 302 through the vicinity of the Redstone Quarry. This route

would require procuring new easements through or adjacent to existing or planned residential developments. Based on discussions with landowners, the cost of procuring these easements would be unreasonably high. In establishing this new right-of-way, approximately 13 acres of forested lands would be cleared. Additionally, according to the State Archeologist, such a route had a good possibility of impacting items of archeological significance in the Redstone Quarry area. This route was considered to have much greater environmental impact than the one proposed.

The second alternative between the Saco Valley Substation and Redstone was along the edge of the Maine Central Railroad (MCRR) right-of-way. This would require procuring easements from both the railroad and adjacent property owners and establishing a new right-of-way. The MCRR right-of-way is adjacent to many homes and businesses and is adjacent to Highway 302. A transmission line constructed in this location would be highly visible from the highway for almost its entire length and because of the gradually curving track alignment and lack of adequate room for guys and anchors, would require the installation of many self supporting transmission structures. This

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alternate was considered to have much greater environmental impact due to the visibility from the highway, and clearing that would be required as compared to the proposed route which is already established and is screened from the highway.

Alternate routes to the east of the proposed line would traverse steep, mountainous terrain subject to erosion. They would require establishing and clearing a new right-of-way which because of the higher elevations would be subject to adverse visual impact from the valley below, would conflict with the Mt. Cranmore Ski Area as well as residential developments north of the ski area, and would be less accessible than the proposed route adversely impacting reliability.

Alternate routes between the proposed line and the Conway Scenic Railroad would go directly through North Conway and are not reasonable due to the area's congestion and buildings, high visual impact, and significantly higher costs. A route through this area was deemed impractical and not considered to be an acceptable alternative.

Alternate routes between the Conway Scenic Railroad and the West Side Road lie almost entirely in the 100 year flood plain and would have the greatest impact on wetlands of any of the alternatives considered. In the past, NHEC has experienced lengthy outages and damaged poles on its distribution system in this area due to ice during winter flooding periods and has been unable to reach those structures until the ice and water receded. This has a significant adverse impact on reliability and is not acceptable for this transmission facility. Additionally, the alternate route traverses open fields directly in front of the Mt. Washington scenic vista at the Conway-Bartlett town line and is highly visible and distracting from that panorama.

Alternates west of the 100 year flood plain and the West Side Road would conflict with congested residential developments or traverse national forest lands or the Echo Lake State Park. The terrain behind the residential developments is very steep and includes White Horse Ledge and Cathedral Ledge adversely affecting accessibility and reliability.

The Committee finds the proposed route avoids establishing and clearing a new right-of-way by utilizing an existing and adequate right-of-way and it is the most reasonable and acceptable of the alternatives considered. (EX 5 CES pgs. 19-21).

(a) Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the Certificate.

The Applicant's witness Charles E. Swanson, testified that the NHEC is a financially viable company operating under a plan of reorganization approved by the Bankruptcy Court and the NHPUC. Financing is available through the National Rural Utilities Cooperative Finance Corporation which has approved approximately a twelve million dollar construction loan which specifically includes this project and a ten million dollar line of credit. Both of these sources of funds became available to NHEC upon emergence from Bankruptcy. Until that time the NHEC was using cash reserves of approximately twenty million dollars to fund its construction programs. (EX 5 CES pg. 29).

Mr. Swanson further testified that NHEC professional staff with the engineering and operations departments presently manages and operates a transmission and distribution system consisting of over 4,700 miles of line and 32 substations. Although none of its operations are with 115 kV lines or substations, its 34.5 kV operations are connected with and served by its power suppliers. NHEC has staff and personnel with construction, maintenance and operation experience in transmission and substation facilities rated at 115 kV and above. NHEC intends to use experienced consulting engineers for the design of the proposed facilities and qualified contractors for their construction. (EX 5 CES pgs. 29-30).

The approximate length of the PSNH portion is 1.5 miles and will be located almost entirely within the existing 100 foot wide PSNH right-of-way. PSNH has agreed to design, construct, own and maintain the portion of the 115 kV line that will be placed within their service territory. Conditioned upon approval by the Site

Page 364

Evaluation Committee, NHEC will assign to PSNH that portion of the proposed line that falls within PSNH's service territory.

The Committee, based on the record, finds that the Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the requested certificate. (EX 5 CES pgs. 29-30).

(b) The proposed facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies.

The single important fact bearing on this finding is that the proposed transmission line occupies or follows existing transmission lines right of way for its entire length of 8.2 miles. (Exhibit NHEC 6). The route makes the proposed facility compatible with the land use patterns in the area and will not interrupt or conflict with land use plans or developments or interfere with existing commerce. The Committee has not received any concerns voiced by the municipal or

regional planning commissions or representatives of the affected towns concerning any interference, interruption or conflict with the orderly development of the area. (EX 5 CES pg. 25). The Applicant supplied letters from the Boards of Selectmen supporting the need for the project, the Town of Bartlett stated their concern about the environmental and public health effects as well as the visual impacts that might occur. (See Application, Appendix L)(EX 5 CES pg. 26). NHEC met with selectmen from the Towns of Conway, Bartlett and Jackson and also with members of the Conway Conservation Commission. NHEC responded to the concerns of these governing bodies by redesigning the transmission structures in the vicinity of the Scenic Vista and eliminating the overhead static wire and reducing the pole heights by 15 feet. In addition, with the increased voltage and utilizing a compact design configuration, the magnetic field strength will be reduced below existing levels thus addressing expressed concerns regarding EMF. Having considered the comments submitted by the municipal and regional planning commission and the municipalities, the Committee finds the proposed facility will not unduly interfere with the orderly development of the region.

(c) The proposed facility will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment and public health and safety.

Within the broader category of environmental impact there are five specific categories of impacts which the Site Evaluation Committee must address. These five categories are (1) impact on esthetics, (2) impact on historic sites, (3) impact on air and water quality, (4) impact on the natural environment, and (5) impact on public health and safety.

The Applicant presented the testimony of Charles E. Swanson, Gerald E. Hager, Wendell S. Palmer and Dr. Peter Valberg. The testimony and exhibits show no violation of existing regulatory or statutory constraints by the construction, operation or maintenance of the proposed facility. With respect to Wetland permit requirements, railroad crossings and highway crossings we make the requisite findings below and refer the issuance of the permits to the respective agencies charged with the respective administrative duties under the law.

ESTHETIC IMPACTS

The proposed transmission line will be located in the same right-of-way where NHEC operates and maintains the existing 34.5 kV line. Approximately 80 percent of the proposed transmission line project, including the PSNH portion, is not visible to the general traveling public. The proposed towers will consist of 50 and 55 foot poles which are only 10 to 15 feet taller than the existing 40 and 45 foot poles. The line will be constructed with conductors that give an aged weathered look similar to existing wire. (EX 6 WSP pgs. 11-12). Given the existence of tall towers presently in the right-of-way and the design of the new towers, the proposed towers will have a minimal esthetic impact on the area.

IMPACT ON HISTORIC SITES:

There are no known historic or archaeological sites within the area of the proposed facilities. There are no sites proposed or listed in the National Register of Historic Places in the vicinity of the proposed facility. (EX 5 CES pg. 28). Hence the Committee finds there is no identifiable impact on historic sites of the proposed facility. The proposed route is considered to have a low

probability of impacting items of archaeological significance.

IMPACT ON AIR AND WATER QUALITY:

With the exception of electromagnetic fields, which will be discussed under Impacts on Public Health and Safety, the Committee finds the evidence supports a finding that there are no substantial impacts on air and water quality by the construction, operation or maintenance of the proposed facilities. The Wetlands Board will issue its permits for stream crossings and construction in wetlands conditioned upon compliance with the agency's rules and regulations. The permits will be appended to the final report and order issued by the NHPUC. (EX 6 WSP pgs. 14-15).

IMPACT ON THE NATURAL ENVIRONMENT:

The Applicant conferred with the New Hampshire Natural Heritage Inventory (NHI) who concluded that there are no known occurrences of endangered plant or animal species in the project area. The State of New Hampshire Fish and Game Department determined that there would be no adverse effect on fish and wildlife resources since the proposed facilities are located in an existing right-of-way. The US Department of Interior, Fish & Wildlife Services noted that on occasion the endangered wintering bald eagle and peregrine falcon have known to nest in the cliffs to the west of the proposed corridor. The proposed facility actually represents a reduced danger of electrocution to either of these species because of design and engineering. (EX 6 WSP pg. 16). The Committee finds no adverse effect on the natural environment.

IMPACT ON PUBLIC HEALTH AND SAFETY:

The issue concerning public health and safety centered on the effect of the transmission line and the exposure to electromagnetic fields (EMF) on public health and safety.

Charles E. Swanson testified that it is the policy of NHEC to monitor the ongoing medical and scientific research and regulatory developments on the possible health effect of electric and magnetic fields. He stated that the 115 kV line will reduce the magnetic field strength from what presently exists with the 34.5 kV facility. This reduction is primarily due to increasing the voltage from 34.5 kV to 115 kV. Since the magnetic field is proportional to current, the magnetic field strength for any given kW demand for a 115 kV line is 30 percent of that for a 34.5 kV line, not taking into account effects of the distance above the ground or physical configuration of the conductors. Additional reduction of EMF will occur because the design proposed for this 115 kV line is a compact, triangular configuration on single pole structures which minimizes the magnetic field strength by placing the conductors as close together as possible considering the electrical clearance limits required by the National Electric Safety Code (NESC). By placing the conductors closer together the magnetic field strength is reduced due to magnetic cancelling effects. He then testified to the calculated magnetic field strength at various locations along the right-of-way. (EX 5 CES pgs. 21-22).

Dr. Peter A. Valberg's testimony summarized what is known regarding epidemiological studies on the effect of EMF exposure, the biological effect of EMF exposure, and whether such exposure causes a number of different types of cancer and other disease. He presented a chart setting forth the results of the leading epidemiological studies about EMF and cancer. Dr. Valberg's overall conclusion about epidemiologic studies on EMFs is that historical trends in childhood disease and childhood cancer incidence show a lack of correspondence between

historical increases in per capita electric power consumption and childhood disease.

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The absence of such an association is reassuring of the absence of EMF health effects. Some epidemiology has shown weak associations between disease and surrogates of EMF exposure, such as the configuration of utility wires outside the home. However, measured magnetic fields have not been associated with disease. Overall, the epidemiologic of research provides no persuasive support for linking EMF to cancer or other disease.

He explained the relationship between epidemiologic and biological studies and concluded that published biological studies have not established that exposure to EMF results in a causal process leading to disease.

He also addressed laboratory studies on the biological effects of EMF and concluded that laboratory experiments on cells, animals and biochemical systems do not support the contention the EMFs cause cancer or other diseases.

Dr. Valberg's overall opinion is that a causal relationship between EMF and disease has not been established. His opinion is consistent with a report recently commissioned by the U.S. Department of Labor on analysis of the reports of adverse health effects attributed to EMFs from power-lines, household appliances, and video display terminals. The executive summary of the Oak Ridge Associated Universities report states that:

This review indicates that there is no convincing evidence in the published literature to support the contention that exposures to extremely low-frequency electric and magnetic fields (ELF-EMF) generated by sources such as household appliances, video display terminals, and local power lines are demonstrable health hazards.

Wendell Palmer testified that additional consideration was given to the horizontal and vertical clearances associated with the proposed line. He stated that this line has been designed to meet or exceed, under anticipated worse case loading conditions, all associated minimum clearances established by the 1993 edition of the National Electric Safety Code.

Mr. Palmer also addressed the concerns with the use of herbicides in maintenance of the right-of-way. NHEC does use herbicides to control the growth of vegetation in the right-of-way as regulated by the NH Pesticide Control Board. Herbicides are applied only by licensed companies or contractors.

The Committee finds that the proposed design of the 115 kV transmission line minimizes the EMF exposure and reduces current levels of exposure. Based on the current information presented to the Committee the evidence does not support a finding that unreasonable adverse effects will be produced by the construction, operation or maintenance of the proposed transmission line. Accordingly the Committee finds that the proposed line does not have an adverse effect on public health and safety.

(d) Operation is consistent with the state energy policy established in RSA 378:37.

The Committee having examined and evaluated the application finds that the proposed transmission line and its related substation facilities meet the electrical needs of the state at the

lowest reasonable cost. The proposed project provides reliability and diversity of energy resources. Its design is adequate for the protection of the safety and health of the citizens of the State. The proposed project does not have any unreasonable effect on the environment, and it has no impact on the future supply of nonrenewable resources. The project has adequate financing sources and does not threaten the financial stability of the state's utilities. The Committee finds that the proposed transmission line is consistent with the state energy policy established in RSA 378:37.

VI. FINDING AND CONCLUSION

The Site Evaluation Committee, pursuant to RSA 162-H:2(c) finds that the proposed transmission line requires a certificate to construct and operate the facility.

After having considered available alternatives and fully reviewed the environmental impact of the proposed transmission line and

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other factors bearing on whether the objectives of Chapter 162-H would be best served by the issuance of a certificate, the Committee finds that NHEC has adequate financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the certificate.

Pursuant to RSA 162-H:5(I), a certificate shall not be transferred or assigned without approval of the Committee. In regard to this proposal, the Committee finds that RSA 162-H would be best served by assigning to PSNH that portion of the line which falls within its service territory. Moreover, this assignment is conditioned upon PSNH's agreement that all terms, conditions and restrictions set forth in the certificate shall apply to and be binding upon PSNH.

After giving due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies, the Committee finds the project will not unduly interfere with the orderly development of the region.

The Project will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment and public health and safety.

The Committee finds the proposed transmission line is consistent with the state energy policy established in RSA 378:37.

The undersigned members of the Bulk Power Supply Site Evaluation Committee, hereby adopt these findings and transmits them to the New Hampshire Public Utilities Commission pursuant to RSA-H 162:16.

The Application and Petitions are referred to the Wetlands Board, Water Supply and Pollution Control Division, Department of Environmental Services, the Department of Transportation, and the Public Utilities Commission for the issuance of such permits and licenses as required by law to be included in the Certificate of Site and Facility that may be issued by the Public Utilities Commission.

Robert W. Varney, Chairman
Commissioner, Dept. of

Environmental Services

Delbert F. Downing, Dir.
Water Resources Division
Dept. of Environmental
Services

Jeffrey H. Taylor, Dir.
Office of State Planning

Jonathan S. Osgood, Dir.
Governor's Office of Energy
& Community Services

Charles P. O'Leary, Comm.
Dept. of Transportation

Wilbur P. LaPage, Dir.
Division of Parks, Dept. of
Resources & Economical
Development

Michael D. Cannata, Jr.,
Chief Eng.
Public Utilities Commission

Edward J. Schmidt, Dir.
Water Supply & Pollution
Control Division, Dept. of
Environmental Services

Douglas L. Patch, Chairman
Public Utilities Commission

Dr. Donald A. Normandeau, Dir
Fish and Game Dept.

Dennis R. Lundeville, Dir.
Air Resources Division, Dept.
Of Environmental Services

John E. Sargent, Dir.
Division of Forest & Lands,
Dept. of Resources and Economic
Development

Dr. Patrick J. Meehan, Dir.
Division of Public Health &
Human Services, Dept. of
Health & Human Services

Bruce B. Ellsworth, Comm.
Public Utilities Commission

Susan S. Geiger, Comm.
Public Utilities Commission

DATED: April 29, 1994

See Commission Files For Attachment B & C

FOOTNOTES

¹*Health Effects of Low-Frequency Electric and Magnetic Fields*. Report to the Committee on Interagency Radiation Research and Policy Coordination by the Oak Ridge Associated Universities Panel. ORAU 92/F-8 and NTIS Publication #029-000-00443-9. (June 1992. 368 pp.) p. ES-11.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*06/14/94*[70538]*79 NH PUC 369*Concord Electric Company

[Go to End of 70538]

79 NH PUC 369

Re Concord Electric Company

DR 94-083
Order No. 21,269

New Hampshire Public Utilities Commission

June 14, 1994

ORDER approving a special streetlight conversion and replacement agreement between an electric utility and the City of Concord. The streetlights at issue are currently mercury vapor lamps owned by the utility, but which the municipality wished to replace with high-pressure sodium lights, the cost of which it was willing to pay.

1. SERVICE, § 328

[N.H.] Electric — Streetlighting — Conversion and replacement program — Agreement by municipality to share costs. p. 369.

2. RATES, § 362

[N.H.] Electric rate design — Streetlighting — Conversion from mercury vapor to high-pressure sodium lights — Allocation of costs to municipality seeking the conversion. p. 369.

BY THE COMMISSION:

ORDER

[1, 2] On May 2, 1994 UNITIL Service Corporation for Concord Electric Company (CEC) filed a request for approval of a special contract, Special Contract No. 7, Street Light Replacement Agreement, between CEC and The City of Concord (the "Customer") with a proposed effective date of May 17, 1994; and

WHEREAS, the Customer would like to replace approximately 1,100 of their 100 Watt Mercury Vapor street lights with 50 Watt High Pressure Sodium street lights; and

WHEREAS, CEC owns the 100 Watt Mercury Vapor and the 50 Watt High Pressure Sodium street lights; and

WHEREAS, Special Contract No. 7 provides the payment terms for which the Customer will pay the costs associated with the removal of the 100 Watt Mercury Vapor street lights as well as the undepreciated value of these lights (less their salvage value); and

WHEREAS, CEC will be responsible for the cost of material and labor associated with installing the 50 Watt High Pressure Sodium street lights; and

WHEREAS, Special Contract No. 7 is designed to achieve the Customer's desire to replace their existing Mercury Vapor street lights with the more efficient High Pressure Sodium street lights without adversely affecting their operating budget; and

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WHEREAS, Special Contract No. 7 essentially keeps the Customer's bills at a level equal to their current bill level with Mercury Vapor lights until their portion of the costs related to conversion are paid; and

WHEREAS, after the Customer's portion of the conversion costs are paid, the Customer will receive the full benefits through more efficient street lights and lower bills; and

WHEREAS, Special Contract No. 7 is consistent with CEC's goal of promoting efficient uses of electricity and is in the public interest; it is hereby

ORDERED *NSI*, that Special Contract No. 7 is approved as filed effective July 14, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, CEC notify all persons desiring to be heard by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than June 24, 1994 and documented by affidavit filed with this office on or before July 11, 1994; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than July 11, 1994; and it is

FURTHER ORDERED, that CEC file monthly, until the cost recovery ending balance is zero, with the Commission, the status of the cost recovery schedule, conversion schedule, conversion costs, and conversion savings; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective July 14, 1994, unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the New Hampshire Public Utilities Commission this fourteenth day of June, 1994.

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NH.PUC*06/14/94*[70539]*79 NH PUC 370*MFS Intelenet of New Hampshire, Inc.

[Go to End of 70539]

79 NH PUC 370

Re MFS Intelenet of New Hampshire, Inc.

DE 94-070

Order No. 21,270

New Hampshire Public Utilities Commission

June 14, 1994

ORDER granting an interexchange telephone carrier interim authority to offer competitive intrastate toll services.

1. CERTIFICATES, § 123

[N.H.] Telecommunications — Intrastate toll service — Interexchange carrier — Interim authority — Factors — Financial resources and technical ability. p. 370.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing toll service — Intrastate toll service — Interexchange carrier — Interim authority. p. 370.

BY THE COMMISSION:

ORDER

[1, 2] On April 14, 1994, MFS Intelenet of New Hampshire, Inc. (MFSI-NH), a wholly-owned subsidiary of MFS Intelenet, Inc., which is in turn a wholly-owned subsidiary of MFS Communications Company, Inc., petitioned the New Hampshire Public Utilities

Commission (Commission) for authority to do business as a telecommunications utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26; and

WHEREAS, MFSI-NH has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order; and

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WHEREAS, interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993 to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993); and

WHEREAS, the public good is served by permitting interim competition by telecommunications companies; and

WHEREAS, the public should be provided an opportunity to respond in support of, or in opposition to this petition; it is hereby

ORDERED, that MFSI-NH shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation, publication to be no later than June 24, 1994. Compliance with this notice provision shall be documented by affidavit to be filed with the Commission on or before July 11, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. MFSI-NH shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, *NISI*, that MFSI-NH may offer as a public utility, telecommunication services for the service territory of the entire State of New Hampshire; and it is

FURTHER ORDERED, *NISI*, that MFSI-NH hereby is granted authority to offer intrastate long distance services in the State of New Hampshire subject to the following conditions:

1. that the services shall be offered only by approved tariffs, as subsequently amended, and shall be offered only on an interim basis until completion of the Trial Period, at which time the authority granted herein may be revoked or continued on the same or different basis;

2. that MFSI-NH shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission;

3. that MFSI-NH shall notify the Commission of any change in rates of approved services to be charged the public within one day after offering the service at rates other than the rates on file with the Commission;

4. that MFSI-NH is exempt from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies;

5. that MFSI-NH shall maintain its books and records in accordance with Generally

Accepted Accounting Principles;

6. that MFSI-NH shall file each calendar year an Annual Report, consisting of: a Balance Sheet and Statement of Operations and an Information Sheet, reflecting to whom the N.H. Utility Assessment should be mailed and a Listing of Corporate Officers and Titles;

7. that MFSI-NH shall be subject and responsible for adhering to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein;

8. that MFSI-NH shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders;

9. that MFSI-NH shall compensate the appropriate Local Exchange Company for all originating and terminating access used by MFSI-NH pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies;

10. that all new service offerings are to be accompanied by a description of the service, rates and effective dates;

11. that during the Trial Period, MFSI-NH shall within 60 days following the end of calendar quarter, report on a confidential basis, except where noted, monthly statistics, for each month the service is offered, the following information:

a. For each intrastate toll service offered:

(1) number of subscribers in NH who have intrastate usage will be provided annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify

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total subscribers;

(2) intrastate minutes of use;

(3) intrastate revenue;

(4) type of access arrangement used;

(5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;

(6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC;

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements;

d. The number of interstate and intrastate special access arrangements stated by channel capacity;

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements;

f. As a percentage of total intrastate conversation minutes of use, the amount of

intrastate traffic that was both originated and terminated over switched access;

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential;

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow MFSI-NH to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that MFSI-NH file a compliance tariff before beginning operations in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective July 14, 1994, 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 fourteenth day of June, 1994.

Notice of Conditional Approval of MFS InteleNet of New Hampshire, Inc. To Do Business as a Telecommunications Utility in the State of New Hampshire

On April 14, 1994, MFS Intelenet of New Hampshire, Inc. (MFSI-NH), a wholly-owned subsidiary of MFS Intelenet, Inc., which is in turn a wholly owned subsidiary of MFS Communications Company, Inc., a Delaware corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,270, the Commission granted MFSI-NH conditional approval to operate as of July 14, 1994 subject to the right of the public and interested parties to comment on MFSI-NH or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on MFSI-NH's petition to do business in the State should submit written comments no later than July 11, 1994 to:

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Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road

Concord, New Hampshire 03301

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*06/22/94*[70540]*79 NH PUC 373*Claremont Gas Corporation

[Go to End of 70540]

79 NH PUC 373

Re Claremont Gas Corporation

DE 94-056

Order No. 21,271

New Hampshire Public Utilities Commission

June 22, 1994

ORDER rescinding a prohibition on Synergy Gas Corporation as to competing for customers with Claremont Gas Corporation, where Claremont had petitioned for authority to discontinue service in its franchised area.

1. SERVICE, § 221

[N.H.] Abandonment or discontinuance — Factors affecting right to abandon — Readiness of alternative provider to compete for customers — Local gas distribution company. p. 373.

2. MONOPOLY AND COMPETITION, § 34

[N.H.] Grounds for authorizing competition — Plans by existing utility to abandon service — Readiness of alternative provider to compete for customers — Local gas distribution company. p. 373.

BY THE COMMISSION:

ORDER

[1, 2] Claremont Gas Corporation ("Claremont") has pending before this Commission a Petition To Discontinue Service in Its Franchise Territory in Claremont, New Hampshire. On June 10, 1994, Claremont filed a motion requesting an order which releases Claremont's parent corporation, Synergy Gas Corporation ("Synergy"), from its obligation under Commission Order

No. 15,278 in Docket No. DE 81-162 which restricted Synergy from soliciting customers of Claremont. The instant motion asks that Synergy be released from any such restriction. The motion states that the parties involved in this proceeding have no objection to the relief requested. At the June 13, 1994 Commission meeting, we unanimously approved Claremont's Motion to Permit Competition. In light of the foregoing, it is hereby

ORDERED, that the Motion of Claremont Gas Corporation to Permit Competition is hereby GRANTED. We reserve the prerogative to reverse or modify this ruling depending upon the final adjudication of the Petition which initiated this proceeding.

By order of the New Hampshire Public Utilities Commission this twenty-second day of June, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Light Co., DE 81-162, Order No. 15,278, 66 NH PUC 458, Nov. 5, 1981.

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NH.PUC*06/22/94*[70541]*79 NH PUC 374*New England Telephone Company

[Go to End of 70541]

79 NH PUC 374

Re New England Telephone Company

DR 94-108

Order No. 21,272

New Hampshire Public Utilities Commission

June 22, 1994

ORDER suspending a local exchange telephone carrier's proposed tariff revisions, which reflected a significant rate increase for its "SUPERPATH" digital service.

1. PROCEDURE, § 42

[N.H.] Suspension — Of proposed tariff terms — For substantial rate increase — Local exchange telephone carrier. p. 374.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed tariff terms — For substantial rate increase — To allow for adequate investigatory period — Local exchange telephone carrier. p. 374.

BY THE COMMISSION:

ORDER

[1, 2] On May 24, 1994 New England Telephone Company (NET or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to modify its SUPERPATH 1.544 Mbps digital service tariff; and

WHEREAS, the proposed rates and cost support submitted by the Company require further investigation by Staff; it is hereby

ORDERED, that the proposed revisions to NHPUC No. 75

Part C - Section 2

Third Revision of Table of Contents Page 1

Second Revision of Page 1

Second Revision of Page 2

First Revision of Page 2.1

Third Revision of Page 3

Original Page 3.1

Third Revision of Page 4

Second Revision of Page 5

Original Pages 6 through 11

Elimination of Price List Page

are suspended pending further investigation.

By order of the New Hampshire Public Utilities Commission this twenty-second day of June, 1994.

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NH.PUC*06/22/94*[70542]*79 NH PUC 374*New England Telephone

[Go to End of 70542]

79 NH PUC 374

Re New England Telephone

DR 94-125

Order No. 21,273

New Hampshire Public Utilities Commission

June 22, 1994

ORDER approving a local exchange telephone carrier's proposed tariff revisions relating to access services, which revisions would change no rules or rates, but would merely clarify existing tariff language.

1. RATES, § 553

[N.H.] Telephone rate design — Access service — Tariff revisions — For clarification purposes only — Local exchange carrier. p. 375.

BY THE COMMISSION:

ORDER

Page 374

[1] On May 19, 1994, New England Telephone (NET) filed NHPUC - No. 79 with the New Hampshire Public Utilities Commission (Commission) seeking to introduce a new format for its Access tariff; and

WHEREAS, the filing does not change regulations, rates or charges; and

WHEREAS, the filing reflects minor language changes which generally serve to clarify or eliminate redundant text and creates a separate section for rates and charges making them easier to identify; and

WHEREAS, Commission policy requires that companies with computer capabilities submit petitions, prefiled testimony, data requests and responses and other formal filings on floppy disk containing the filed information in a format compatible with the NHPUC computer system; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revision to be in the public good; it is therefore

ORDERED, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 79

Cover Page

Table of Contents, Pages 1 through 8

Section 1 - Original Pages 1 through 12

Section 2 - Original Pages 1 through 17

Section 3 - Original Pages 1 through 5

Section 4 - Original Pages 1 through 9

Section 5 - Original Pages 1 through 8

Section 6 - Original Pages 1 through 21

Section 7 - Original Pages 1

Section 8 - Original Pages 1

Section 9 - Original Pages 1

Section 10 - Original Pages 1

Section 11 - Original Pages 1 through 3

Section 12 - Original Pages 1

Section 13 - Original Pages 1

Section 14 - Original Pages 1

- Section 15 - Original Pages 1 through 3
- Section 16 - Original Pages 1
- Section 17 - Original Pages 1
- Section 18 - Original Pages 1
- Section 19 - Original Pages 1
- Section 20 - Original Pages 1
- Section 21 - Original Pages 1
- Section 22 - Original Pages 1
- Section 23 - Original Pages 1
- Section 24 - Original Pages 1
- Section 25 - Original Pages 1
- Section 26 - Original Pages 1
- Section 27 - Original Pages 1
- Section 28 - Original Pages 1
- Section 29 - Original Pages 1
- Section 30 - Original Pages 1 through 30

and it is

FURTHER ORDERED, that NET submit these tariff pages in a disk file compatible with the NHPUC computer system (WordPerfect 5.1 or in ASCII) showing all annotations, page references, and tariff codes as appear on the formal paper tariffs; and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of June 22, 1994; and it is

FURTHER ORDERED, that the above addition to NHPUC No. 79 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this twenty-second day of June, 1994.

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NH.PUC*06/22/94*[70543]*79 NH PUC 375*AT&T Communications of New Hampshire, Inc.

[Go to End of 70543]

79 NH PUC 375

Re AT&T Communications of New Hampshire, Inc.

DE 94-120

Order No. 21,274

New Hampshire Public Utilities Commission

June 22, 1994

ORDER approving an interexchange telephone carrier's proposal for tariff changes so as to provide for special pricing arrangements in competitive bidding situations vis-a-vis its custom

network services.

1. RATES, § 140

[N.H.] Factors affecting reasonableness —

Page 375

Competition — Competitive bid situations — Justification for special pricing arrangements — Interexchange telephone carrier — Custom network services. p. 376.

BY THE COMMISSION:

ORDER

[1] On June 6, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking an addition to its New Hampshire P.U.C. No. 1 CUSTOM NETWORK SERVICES tariff, specifically for the purpose of permitting AT&T to enter into special pricing arrangements; and

WHEREAS, this filing seeks to allow AT&T the opportunity to offer special pricing in association with competitive bid situations; and

WHEREAS, the proposed filing will allow AT&T to be more flexible and competitive when negotiating custom design contracts to meet specific customer demands; and

WHEREAS, service offered under this tariff provision will be provided pursuant to contract; and

WHEREAS, rates will be filed with the New Hampshire Public Utilities Commission for approval; and

WHEREAS, AT&T filed this tariff proposal to become effective July 6, 1994; it is hereby

ORDERED, that the following tariff pages of AT&T Tariff No. 1, AT&T Custom Network Service, is approved for effect as filed:

Table of Contents: 5th Revised Page 4

Section 1: Original Page 29;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-second day of June, 1994.

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NH.PUC*06/22/94*[70544]*79 NH PUC 376*Northern Utilities, Inc.

[Go to End of 70544]

79 NH PUC 376

Re Northern Utilities, Inc.

DF 94-115

Order No. 21,275

New Hampshire Public Utilities Commission

June 22, 1994

ORDER approving a natural gas local distribution company's proposed tariff changes which would reflect recent state legislative action exempting gas utilities from paying a state franchise tax.

1. RATES, § 147

[N.H.] Factors affecting reasonableness — Cost of service — Taxes — Changes in franchise tax liability — Exemption of natural gas utilities from payment — Necessity of concomitant tariff changes. p. 376.

2. EXPENSES, § 112

[N.H.] Taxes — State franchise taxes — Changes in liability — Exemption of natural gas utilities from payment — Necessity of concomitant tariff changes. p. 376.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, the New Hampshire legislature amended RSA 83- C:1,II exempting gas utilities from paying a state franchise tax for the sale of gas effective June 2, 1994; and

WHEREAS, Northern Utilities, Inc. no longer has the authority to bill its customers for

Page 376

the franchise tax; and

WHEREAS, Northern Utilities, Inc. has filed revised tariff pages, Seventh Revised Page 2, Sixth Revised Page 2A, Sixth Revised Page 13, First Revised Page 22, Fourth Revised Page 23, Fourth Revised Page 24, Fifth Revised Page 25, Fifth Revised Page 26, Fifth Revised Page 27, Fifth Revised Page 28, Fourth Revised Page 29, Fourth Revised Page 30 and Fifth Revised Page 31 for the purpose of removing any reference to the applicability of the franchise tax to the sale of gas; and

WHEREAS, Northern Utilities, Inc. has added terminology relating to taxes that reads "All rates and charges for the sale of gas shall be subject to all applicable taxes, which the Company may hereafter be required to pay or collect by any federal, state, or local law."; it is hereby

ORDERED, that the filed clause related to future tax changes is hereby denied; and it is

FURTHER ORDERED, that Northern Utilities, Inc. is hereby authorized to revise its tariff pages for the purpose of removing any reference to the applicability of the franchise tax to the sale of gas; and it is

FURTHER ORDERED, that Northern Utilities, Inc. shall file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-second day of June, 1994.

=====

NH.PUC*06/22/94*[70545]*79 NH PUC 377*EnergyNorth Natural Gas, Inc.

[Go to End of 70545]

79 NH PUC 377

Re EnergyNorth Natural Gas, Inc.

DF 94-114

Order No. 21,276

New Hampshire Public Utilities Commission

June 22, 1994

ORDER approving a natural gas local distribution company's proposed tariff changes which would reflect recent state legislative action exempting gas utilities from paying a state franchise tax.

1. RATES, § 147

[N.H.] Factors affecting reasonableness — Cost of service — Taxes — Changes in franchise tax liability — Exemption of natural gas utilities from payment — Necessity of concomitant tariff changes. p. 377.

2. EXPENSES, § 112

[N.H.] Taxes — State franchise taxes — Changes in liability — Exemption of natural gas utilities from payment — Necessity of concomitant tariff changes. p. 377.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, the New Hampshire legislature amended RSA 83- C:1,II exempting gas utilities from paying a state franchise tax for the sale of gas effective June 2, 1994; and

WHEREAS, EnergyNorth Natural Gas, Inc. no longer has the authority to bill its customers for the franchise tax; and

WHEREAS, EnergyNorth Natural Gas, Inc. has filed revised tariff pages, Fifteenth Revised Page 1, Fourth Revised Page 1, Supplement No. 2, Fourth Revised Page 2, Supplement No. 2, Fifth Revised Page 3, Supplement No. 2, Fifth Revised Page 4, Supplement No. 2, Fifth Revised Page 5, Supplement No. 2, Fourth Revised Page 6, Supplement No. 2, Third Revised Page 7, Supplement No. 2, Tenth Revised Page 5, Third Revised Page 5, Supplement No. 1, Third Revised Page 9, Supplement No. 1 and Fourth Revised Page 11, Supplement No. 1 for the purpose of removing any reference to the applicability of the franchise tax to the sale of gas; and

WHEREAS, EnergyNorth Natural Gas,

[Page 377](#)

Inc. is withdrawing Fourth Revised Page 8, Supplement No. 2 and Third Revised Page 8A, Supplement for the same reason; it is hereby

ORDERED, that the above referenced tariff pages are hereby approved; and it is

FURTHER ORDERED, that EnergyNorth Natural Gas, Inc. file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-second day of June, 1994.

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NH.PUC*06/22/94*[70546]*79 NH PUC 378*Carleton Water Company Trust

[Go to End of 70546]

79 NH PUC 378

Re Carleton Water Company Trust

DR 89-083

Order No. 21,277

New Hampshire Public Utilities Commission

June 22, 1994

ORDER extending the deadline by which a small water utility was to have submitted a meter installation plan, pending the outcome of a bid by Integrated Water Company to acquire the

smaller company.

1. SERVICE, § 288

[N.H.] Metering equipment — Duty to install — Deadline for installation plan — Postponement of deadline — Factors — Bid for takeover by another company — Water utility. p. 378.

BY THE COMMISSION:

ORDER

[1] On December 6, 1993 the New Hampshire Public Utilities Commission issued Order No. 21,052 in which, *inter alia*, it directed Carleton Water Company Trust (Carleton) to submit a plan for metering its systems or reasons why it should not be changed to metered use no later than March 6, 1994; and

WHEREAS, on April 7, 1994 the Commission Staff noted by letter that the plan had not been filed and requested submission of the agreed upon metering plan within ten days; and

WHEREAS, on May 17, 1994 Carleton requested the Commission's permission to extend the deadline by which it will be required to file its metering plan, citing its negotiations with Integrated Water Company (Integrated) for the purchase and sale of the system and representing that the signing of a purchase and sale agreement between the parties is imminent; and

WHEREAS, the Commission agrees that it would be more appropriate for the metering plan to be submitted by the new owner within a reasonable time after Commission consideration of the transaction, should the transaction in fact be consummated and approved; it is therefore

ORDERED, that the deadline for submission of a metering plan by Carleton is extended indefinitely; and it is

FURTHER ORDERED, that Carleton report to the Commission on the progress of its negotiations with Integrated no later than August 1, 1994.

By order of the New Hampshire Public Utilities Commission this twenty-second day of June, 1994.

=====

NH.PUC*06/23/94*[70547]*79 NH PUC 379*Public Service Company of New Hampshire

[Go to End of 70547]

79 NH PUC 379

Re Public Service Company of New Hampshire

DR 93-179

Order No. 21,278

New Hampshire Public Utilities Commission

June 23, 1994

ORDER authorizing protective treatment for certain documents and narrowing the scope of issues to be addressed in a docket examining the renegotiation of rates payable by an electric utility for power purchased from certain wood-fired small power producers. The scope is redefined due to recent changes in state law. For the original scoping decision, see Order No. 21,173 (79 NH PUC 181), *supra*.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Factors affecting grant — Trade secret or confidential research material — Competitive disadvantage if disclosed — Good cause and public interest standards. p. 380.

2. PROCEDURE, § 39

[N.H.] Time limits — Extensions of time — Factors — Delay in submission of data request responses — Subsequent grant of protective treatment — Necessity of rescheduling testimony submission dates. p. 381.

3. ELECTRICITY, § 3

[N.H.] Wood-fired generating plant — Small power producers (SPPs) — Renegotiation of rates — Issues to be addressed — Narrowing of issues — Factors — Recent state legislative action — Reduction in number of wood-fired SPPs to be addressed. p. 381.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY.

On June 3, 1994 Public Service Company of New Hampshire (PSNH) filed a motion for protective treatment to a response to a certain data request issued by the Staff of the Commission (Staff).

On June 4, 1994 the Staff filed a response to the motion in which it indicated that it did not object to the requested protective treatment, but required an extension of time to file testimony given the delay in obtaining the requested information.

On June 8, 1994 Senate Bill 790 was signed into law effective immediately. 1994 N.H. Laws Chapter 362. On that same date, the parties and Staff submitted a stipulation to the Commission requesting a narrowing of the issues set out in Report and Order No. 21,173 to be considered in this phase of the proceeding.

II. BACKGROUND.

A. Motion for Protective Treatment.

The motion states that the response to Staff data request 15 consists of detailed computer printouts which are voluminous and of some bulk, and contain "confidential, competitive information", and, therefore, requests that copies only be provided to Staff and the Office of the Consumer Advocate (OCA) with access provided to all other parties at PSNH offices subject to the appropriate protective treatment. The motion further requests that access be totally denied to the New Hampshire Electric Cooperative, Inc. and Granite State Electric Company as they are potential competitors that could use this information to PSNH's competitive disadvantage.

The cover letter to the motion states that PSNH provided a copy of the motion to all parties to the proceeding on June 2, 1994 and received no objections. The Commission received no objections to the motion.

Page 379

B. Amendment to Procedural Schedule.

On June 6, 1994, the Commission received a response to PSNH's request and a motion from Staff stating it had no objection to the requested protective treatment, but requested an amendment to the procedural schedule because of the delay in receiving this response, a response necessary to its analysis of the proposed "buyout" of the rate agreements.

C. Stipulation Narrowing Issues.

As was stated above, on June 8, 1994 Senate Bill 790 was signed into law as 1994 Session Law, Chapter 362 (Chapter 362). Based on certain provisions of Chapter 362, most of the parties and Staff filed a stipulation setting forth a position relative to the issues which we need to consider in our evaluation of settlements reached relative to the long term avoided cost rate orders granted by this Commission to TIMCO, Inc. (TIMCO) and Bristol Energy Corporation (Bristol).

1(26)

III. COMMISSION ANALYSIS.

A. Motion For Protective Treatment.

The first matter for our consideration is PSNH's motion for protective treatment. The issue raised is whether the material is exempt from the public disclosure provisions of the "Right to Know Law".

The information sought by Staff is "all workpapers, data and assumptions" underlying PSNH's projected savings of \$64 million (net present value) that would result from the two rate agreement "buyouts" that are the subject of this phase of the docket. The Staff further requested a "copy of the energy price forecast" upon which these projected savings are based.

In its motion, PSNH states that a complete response to this request would involve, detailed data on individual unit operating characteristics for the period from 1994 through 2007, including, but not limited to (sic) capacity factors, maintenance and outage

schedules, assumptions of the operation and maintenance adder to fuel costs and the average cost of production on a unit-by-unit basis.

Motion at 1, par. 2.

The motion goes on to aver that this information, if disclosed to the public and all of the parties to this proceeding, will seriously harm Northeast Utilities' (NU) operating companies, which includes PSNH, in their attempts to compete for sales in the future.

[1] RSA 91-A:5,IV (Supp. 1993) provides, in pertinent part, that records containing confidential or commercial information are not subject to public disclosure under the Right to Know Law. In *Re New England Telephone and Telegraph Company, Inc.*, 74 NH PUC 307 (1989) the Commission stated that the decision to disclose this type of information involved a balancing of "the benefits of disclosure to the public against the benefits of nondisclosure to the utility." *Id.*, at 309 (citing *Mans v. Lebanon School Board*, 112 N.H. 160 (1972)). In that same case the Commission went on to adopt the three pronged test set forth in *Zenith Radio Corporation v. Matsushita Electric Industrial Co.*, 529 F. Supp. 866 (D.Pa. 1981) to accomplish this balancing.

The three pronged test set forth in the *Zenith* case is as follows:

First is the matter sought to be protected "a trade secret or other confidential research, development, or commercial information" which should be protected? Second, would disclosure of such information cause a cognizable harm sufficient to warrant a protective order? Third, has the party seeking protection shown "good cause" for invoking the protection.

Id., at 889-91.

Based on PSNH's assertions, the Commission finds the information constitutes competitive commercial information, the disclosure of which could be used to its and its sister companies' competitive disadvantage in the future, constituting good cause for protective treatment.

Page 380

B. Motion to Amend Procedural Schedule.

[2] Given PSNH's delay in seeking protective treatment of this data, and the further delay produced in seeking protective treatment we will grant Staff's motion to extend the date for the filing of Staff and intervenor testimony from June 21, 1994 to June 27, 1994.

C. Stipulation Narrowing Issues for Consideration.

[3] The last matter for our consideration is a motion to modify our scoping order in this phase of the proceeding, styled as the joint stipulation of the parties. The issue for our consideration is whether we should reconsider and redefine the scope of this phase of this proceeding given the passage of Chapter 362 as requested by the parties.

In Report and Order No. 21,173, our original scoping order in this docket, we noted that the standard to be applied in analyzing agreements such as those at issue herein, are "the "public good" standards of RSA 362-C within the context of the policy considerations of RSA 362-A [LEEPA] and RSA 378:39 [least cost planning]." Report and Order No. 21,173, at 9 (March 24,

1994). (quoting Report and Order No. 21,126 (February 11, 1994)). We went on to state that, pursuant to that standard, viewed in light of the underlying policy considerations, we would evaluate a number of factors in assessing the so-called "buy-out" agreements.

The factors included certain environmental effects, the overall economic impacts, and the actual terms of the agreements. At the time of the issuance of Report and Order 21,173, we operated under the assumption that the buy-out agreements could affect four wood plants. Since the issuance of Report and Order 21,173, Chapter 362 was enacted by the General Court.

Section 13 of Chapter 362 provides that the Commission may not approve the buy-out of any rate order unless it was signed and executed before April 6, 1994. Thus, the only agreements we may consider in this phase of this docket are those entered into by PSNH and TIMCO, a 4 Megawatt plant, and PSNH and Bristol, a 20 Megawatt plant.

In light of this development, the parties and Staff have asked us to limit our investigation to: 1) the terms of the two settlements, including the sale of electricity from the affected facilities, mitigation fund administration and other conditions necessary for the implementation of the agreement; 2) savings projections for ratepayers, the effect on the deferral account; 3) the direct loss of jobs at the subject facilities; and 4) the effect on local taxes.

Given the fact that the two agreements under consideration herein constitute a very small portion of the State's renewable energy mix and its biomass facilities, we will accept the Staff's and parties stipulation relative to the scope of this proceeding. Appendix A.

We further find, based on Section 13 of chapter 362, that any rate order buy-out with Bio Development Corporation (Bio) or Bridgewater Power Company, L.P. (Bridgewater) would be illegal. Thus, they need not be participants in this phase of this docket. They are, however, along with all of the other non-settling biomass facilities, still parties to this docket. DR 93-179 will remain an open docket until the conclusion of negotiations between PSNH and those facilities and our acceptance of any agreements, or the conclusion of our investigation into the rate orders should the parties' negotiations prove fruitless or we reject any settlement presented.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report, which is incorporated herein, it is hereby,

ORDERED, that Public Service Company of New Hampshire's request for protective treatment to the response to Staff data request number 15 is granted; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire need only provide a copy of the response to data request number 15 to the Staff and the Office of Consumer Advocate, and access to the information to all other parties, excluding Granite State Electric and the New Hampshire Electric Cooperative, Inc., at its offices in Manchester, New

Page 381

Hampshire from the hours of 9:00 A.M. to 5:00 P.M., Monday through Friday; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire provide a copy of a non-confidential summary of this information to all the parties to this proceeding; and it is

FURTHER ORDERED, that all parties receiving copies of this information or seeking access to this information complete the protective agreement attached hereto as Appendix B; and it is

FURTHER ORDERED, that the procedural schedule in this proceeding is modified to allow Staff and intervenor testimony to be filed June 27, 1994 with the remainder of the schedule remaining intact; and it is

FURTHER ORDERED, that the scope of this proceeding is narrowed to the consideration of those issues set forth in paragraph 2, at page 4 of the stipulation of the parties and Staff attached hereto as Appendix A.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of June, 1994.

APPENDIX A *STIPULATION*

Pursuant to the Commission's regulations, the undersigned parties stipulate to a limitation of this docket to specific issues on the condition that Senate Bill 790 (attached hereto as Exhibit A) becomes law and the Commission approves of this Stipulation in its entirety. The parties believe that such a limitation is appropriate in light of SB 790, which appears very likely of enactment. The parties believe that the stipulated limitation on issues is also consistent with the Commission's Report and Order Addressing Scope of Issues and Setting Scheduling Conference, dated March 24, 1994 in this docket (the "Scoping Order"), *assuming* that SB 790 is enacted.

I. Effect of Pending Legislation

SB 790 provides in relevant part as follows:

362-A:4-b Buyout of Existing Rate Orders. No agreement between qualifying small power producers or a qualifying cogenerator and the purchasing utility which involves the complete buyout of a long term rate order shall be approved by the commission unless the agreement was signed and executed before April 6, 1994, and the owner agrees to either the continuation by the owners of any existing payment in lieu of tax agreement or the elimination of any agreement in which the facility is exempted from paying local property taxes.

362-A:4-c Consideration by the Commission. The commission shall independently and expeditiously consider any mutually acceptable agreement regardless of the status of other negotiations.

Given these provisions, and assuming SB 790 is enacted, it appears that this docket should be limited to a review of the two settlement agreements executed before April 6, 1994 and filed in this docket. These two agreements have been executed between Public Service Company of New Hampshire ("PSNH") and (i) TIMCO, Inc. and (ii) Bristol Energy Corporation d/b/a Alexandria Power Associates (the "Pending Settlements"). PSNH hereby confirms that assuming enactment of SB 790, it will not pursue the settlement agreement filed in this docket with Bridgewater Power Company, L.P.

II. Proposed Limitations

Assuming the passage of SB 790, which prohibits any further "buyouts" of rate orders issued by the Commission, and this docket's limitation to the two Pending Settlements, the parties do not believe that the interests of the parties or the public are served by litigating issues in this proceeding that pertain more generally to New Hampshire's wood-fuel generation industry. Since the two facilities that are the subject of the Pending Settlements are locally important but represent a small percentage of the total wood fuel and generation market in the state, the parties suggest that the remainder of

Page 382

this docket focus on the particular merits of the Pending Settlements. If this can be done without the need to litigate issues common to or affecting other wood-fuel plants in the state, the parties believe that this docket may be susceptible of a consensual resolution within a shorter time frame than currently contemplated by the procedural schedule adopted in this docket. Such an accelerated resolution would enhance customer savings and allow PSNH and the remaining wood-fired IPPs to focus on their negotiations, as contemplated by SB 790.

Therefore, the parties request that the Commission accept the following list of Stipulated Issues and Remaining Issues, as consistent with its Coping Order and SB 790, and approve this listing as guiding the parties for the remainder of this docket:

Stipulated Issues

1. Renewable resources are an important source of power for the state and the diversity of its energy mix (Scoping Order at 9).
2. Energy production using renewable resources can have positive environmental effects, including but not limited to improved forestry practices, wildlife, and the use of ash. (Scoping Order at 12, 14-15).
3. Operation of wood-fired SPP facilities are a source of direct and indirect employment and economic benefit throughout the state, although the parties do not agree upon the net economic impact of the facilities.
4. The facilities that are the subject of the Pending Settlements, while locally important, have a limited effect on the total of the state's renewable energy mix, and the total of environmental and economic impacts from renewable energy production within the states.

Remaining Issues

The remainder of this docket would focus exclusively on the following issues, and only as they relate to the Pending Settlements:

1. *Terms of Pending Settlements.* These include terms regarding limitations of the sale of electricity from the affected facilities, "mitigation fund" administration, and the various conditions necessary for implementation of the Pending Settlements, including financial approvals required for PSNH.
2. *Savings Projections.* Electricity customer savings and costs under the Pending Settlements, and effects on PSNH's deferral accounts for small power producers costs under the Rate Agreement. Demand forecasts, including the future of PSNH's Merrimack facility, would be

reviewed in connection with these projections, along with consistency with least cost planning.

3. *Direct Employment.* The possible consequences on employment levels at the relevant facilities arising from the Pending Settlements.

4. *Local Tax Impacts.* Consistency of the Pending Settlements with the mandate of SB 790's amendment to RSA 362-A:4-b.

III. *Possible Consensual Resolution*

If the Commission approves this Stipulation, the parties believe there is a substantial likelihood that the parties who do not withdraw or receive dismissals from this proceeding can reach a consensual resolution of the Remaining Issues stated above well before the hearings scheduled in this docket (August 2-5). The parties request the Commission's concurrence to their attempts to pursue and present to the Commission at the earliest possible date an agreement stipulating to Remaining Issues, and/or identify issues upon which consensus could not be reached. The parties suggest early June, 1994 as a target period for filing such a settlement with the Commission.

IV. *Limitations Upon Preclusive Effect of this Docket*

The undersigned parties stipulate that they will not raise the factual or legal issues resolved by this Stipulation, any further stipulation in this proceeding, the Commission's decision in this proceeding, or any judicial review of that decision, as precedent or as having any effect under the doctrines of res judicata, collateral estoppel, or waiver, in any other proceeding, including, but not limited to, any proceeding involving the six non-settling Wood SPPs listed in the Rate

Page 383

Agreement, but excepting any proceeding to enforce the Commission's decision in this proceeding or the ruling obtained upon judicial review of that decision between parties who have not withdrawn or been dismissed from this proceeding. It is the intent of the parties to this Stipulation to waive, and they do hereby waive, their right to seek to foreclose or preclude any other party from fully litigating in any other proceeding, any issue that was raised or could have been raised in this proceeding, including but not limited to any issue relating generally to the state's renewable energy or forestry industry or any issue specific to any other renewable energy project, unless that proceeding is between parties who have not withdrawn or been dismissed from this proceeding and relates to enforcement of the Commission's decision in this proceeding or the ruling obtained upon judicial review of that decision.

The parties request, and this Stipulation is conditioned upon, the Commission's agreement that its decision in this proceeding will have the limited effect set forth above and that its decision may not be cited or used as precedent in any other proceeding except a proceeding to enforce the decision in this proceeding.

V. *Dismissal of Parties*

The Commission made Bio Development Corporation ("Bio") and Bridgewater Power Company, L.P. ("Bridgewater") parties to this docket to enable it to assess unsigned prospective agreements between (1) Bio and PSNH and (2) Bridgewater and PSNH. Those agreements have

not been signed, and SB 790 proscribes such "buyout" agreements in the future. Because the effect of SB 790 is to limit the scope of this docket to consideration of the agreements PSNH has reached with TIMCO, Inc. and Bristol Energy Corporation, there is no longer any justification for Bio and Bridgewater to remain as parties to this docket. Accordingly, Bio and Bridgewater should be dismissed as parties to this docket.

IN WITNESS WHEREOF, the parties hereto request that the Commission accept and approve this Stipulation, and take such other actions as may be in the public good.

New Hampshire Public Utility
Commission Staff

Office of Consumer Advocate

Public Service Company
of New Hampshire

New Hampshire Timberland
Owners Association

Society for the Protection
of New Hampshire Forests

Audubon Society of New
Hampshire

Conservation Law Foundation

New Hampshire Electric
Cooperative, Inc.

Campaign for Ratepayers Rights

New Hampshire Business and
Industry Association

TIMCO, Inc.

Bristol Energy Corporation

Concurrence

The New Hampshire Public Utilities Commission Staff concurs in the parties' narrowing of the issues as set forth above, but not necessarily for the reasons set forth above. In any event, the result of the negotiations with the two small power producers involved in this docket would have a de minimus effect on any issues affecting the State of New Hampshire.

New Hampshire Public Utilities
Commission Staff

The undersigned party to Case No. DR 93-179, *Public Service Company of New Hampshire, Small Power Producers - Woods*, requests access to, or a copy of, the information subject to a protective order in this case, to wit, the response to Staff Data Request No. 15.

The undersigned party acknowledges that it is PROPRIETARY INFORMATION within the meaning of Report and Order No. 21,278, and that the undersigned individual and the party represented by that individual have read Report and Order No. 21,278.

The undersigned party affirms that it will not divulge or use any of said information in any way, manner or form other than the investigation of the above referenced case.

The undersigned party further acknowledges that any other use of said information may result in criminal prosecution or fines pursuant to *inter alia*, RSA 365:41 and RSA 365:42 or civil litigation by any affected party.

Name of Party _____

Name of Agent _____
(please print)

Signature of Agent _____

Dated: _____

FOOTNOTES

¹On June 8, 1994 the Conservation Law Foundation (CLF) filed a letter in response to the Stipulation. In its letter CLF, a full intervenor to this proceeding and many other proceedings before this Commission, stated that it had reviewed drafts of the Stipulation but "has no comments on the agreement at this time." Pursuant to N.H. Admin. R., Puc 203.04 (c) any party has ten days to file an objection to any motion filed with the Commission. Thus, CLF was obligated to put forward its position on the agreement within ten (10) days of the agreement, and may not come forward at some later time, as can be inferred from its letter, to oppose the agreement. We take this position based on the sophistication of the party and its representation by competent counsel.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,126, 79 NH PUC 72, Feb. 11, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,173, 79 NH PUC 181, Mar. 24, 1994.

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NH.PUC*06/30/94*[70548]*79 NH PUC 385*Concord Electric Company

[Go to End of 70548]

79 NH PUC 385

Re Concord Electric Company

DR 94-102
Order No. 21,279

Re Exeter and Hampton Electric Company

DR 94-103
Order No. 21,279

New Hampshire Public Utilities Commission

June 30, 1994

ORDER adopting fuel and purchased power adjustment clause rates for two affiliated electric utilities. For Concord Electric, a fuel adjustment clause credit of 0.662 cents per kilowatt-hour and a purchased power adjustment clause charge of 0.584 cents per kilowatt-hour are approved. For Exeter and Hampton, a fuel adjustment clause credit of 0.620 cents per kilowatt-hour and a purchased power adjustment clause charge of 0.737 cents per kilowatt-hour are likewise approved. Additionally, the commission approves calculations for rates to be paid for short-term purchases of capacity from qualifying facilities.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fuel adjustment clause rate — Credits — Factors — Decreases in wholesale demand charges — Exclusion of Seabrook outage costs —

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Affiliated electric utilities. p. 387.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power adjustment clause rate — Charges — Factors — Differences between purchases and sales — Exclusion of Seabrook outage costs — Affiliated electric utilities. p. 387.

3. COGENERATION, § 25

[N.H.] Rates — For purchases from qualifying facilities — Short-term purchases of capacity — Avoided-cost basis — Affiliated electric utilities. p. 387.

APPEARANCES: Leboeuf, Lamb, Leiby & MacRae by Scott J. Mueller, Esq. on behalf of Concord Electric Company and Exeter & Hampton Electric Company; E. Barclay Jackson, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On behalf of Concord Electric Company (Concord) and Exeter & Hampton Electric Company (Exeter & Hampton) (collectively the Companies), on June 1, 1994, UNITIL Service Corporation filed revised tariff pages and supporting testimony and exhibits reflecting proposed changes to the Companies' fuel and purchased power adjustments (FAC and PPAC respectively) and short-term power purchase rates for Qualifying Facilities (short-term power purchase rates) for the period of July 1 through December 31, 1994.

On June 18, 1994, the New Hampshire Public Utilities Commission (Commission) held a duly noticed consolidated hearing to review the FAC, PPAC, and short-term power purchase rate filings. The Commission heard testimony from three company witnesses: Karen M. Asbury, David W. Lavoie, and George Gantz. The Commission Staff cross-examined the witnesses but did not present testimony.

II. POSITION OF THE COMPANIES

The Companies presented their calculations of the FAC and PPAC, requesting an FAC credit of \$0.00662 per kWh and a PPAC rate of \$0.00584 per kWh for Concord and, for Exeter & Hampton, an FAC credit of \$0.00620 per kWh and a PPAC rate of \$0.00737 per kWh. The Companies also filed revised tariffs for short-term power purchase rates for Qualifying Facilities as follows:

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

Energy Rates on Peak	2.70 cents per kWh
Off Peak	2.36 cents per kWh
All Hours	2.51 cents per kWh
Capacity Rate	0.00 per kW/year

The Companies argued that the above requests are the results of calculations consistent with the methodology approved by the Commission in DR 91-065 and utilized in DR 92-209. By that approved methodology, the Companies collect base purchased power revenues through class-specific demand and energy charges.

The net impact of the Companies' requests, according to witness Asbury, will increase the average customers's monthly bill by \$1.02 and \$1.01 for Concord and for Exeter & Hampton respectively. This impact calculation does not include the now available actual May figures rather than the estimates used in the Companies' original filing. According to Ms. Asbury, the Companies believe that the May actual figures do not impact the proposed increases significantly. The increased rates would go into effect on July 1, 1994; bills for service rendered after that date will reflect the higher rate.

Witness Lavoie, Contracts Supervisor for UNITIL Service Corporation (USC), presented the UNITIL Power Corporation (UPC)

production plan which is the basis for estimating costs for the next six months. The plan presented delineates resources available and the anticipated percent of purchase by fuel type, as well as capacity changes that will take place in November 1994.

As presented in pre-filed testimony, UPC's wholesale rates to the Companies, effective July 1, 1994, are as follows: Demand Charge \$16.57/kW/month, Base Energy Charge \$0.01967/kWh, and Fuel Charge \$0.01967/kWh. This represents an overall increase in wholesale rates compared to the last six month period. The Demand Charge is decreasing, while both the Base Energy Charge and Fuel Charge is expected to increase. These forecasted changes result from calculations of cost components which the Companies' witness presented in Exhibits DL-2 through DL-6 attached to his written testimony. The Companies' testimony was that the increases in purchased power cost adjustments are mainly due to the large projected difference between purchases and sales for the rate period. To mitigate the effect of the difference, the Companies' proposed an adjustment to the sales forecast for the upcoming rate period by using an annual three year average ratio of purchases to sales. The more usual methodology has been to use the ratio of purchases to sales from the preceding six month period only.

At the hearing, the Mr. Lavoie testified that the current outages at the Seabrook nuclear power plant, balanced by outages at several other power plants, will have no net effect upon FAC and PPAC rate requests. The specifics of individual purchased power contracts result in a savings at the Seabrook plant offset by higher expenses at the other plants. Thus, the Companies' forecasts and rate requests are unchanged.

Mr. Lavoie also testified regarding a contract with the PERC refuse-to-energy plant. The contract requires the Companies to purchase power if it is available, despite its higher price. The PERC contract, negotiated in 1986, contains other entitlements which are very advantageous to the Companies and must be viewed in its entirety.

As requested by the Commission in DR 92-209, for the reconciled period the Companies developed specific information on power purchases, comparing the actual and forecast values for energy, energy cost, capacity cost, and transmission cost by vendor.

Mr. Lavoie also testified as to short term avoided cost rates for capacity and energy. The avoided short-term capacity rate is based on actual experience contracting for capacity during January through June 1994 and a forecast of anticipated short term capacity transactions for July through December. This method was developed and approved in prior FAC and PPAC dockets at the Commission. Mr. Lavoie asserted that the companies' avoided short term capacity rates are correctly \$0.00/kw/mo. as no short term capacity transactions are anticipated in the upcoming July through December period.

When questioned regarding Administrative and General (A&G) expenses, the Companies' witness explained that all costs of running both the UNITIL Service Corporation (USC) and UNITIL Power Corporation (UPC) are included in A&G and then allocated to each company on the basis of direct time charges filed by employees. In order to facilitate Commission review, the Companies agreed to provide the Commission with data representing a five year trend line of A&G expenses.

III. COMMISSION ANALYSIS

[1-3] We have reviewed all the testimony and exhibits in this case, as well as the responses provided by the Companies to record requests made during the hearing by Staff. Having done so we accept the June 1, 1994, filings of the Companies and find that the FAC for the July through December, 1994, period shall be a credit of \$0.00662 per kWh for Concord and a credit of \$0.00620 per kWh for Exeter & Hampton. For the same period, the PPAC for Concord shall be \$0.00584 per kWh and \$0.00737 per kWh for Exeter & Hampton. For a typical Concord residential customer using 500 kWh per month, the net result of the PPAC and FAC changes is a \$1.02 increase to the monthly bill. For a typical Exeter & Hampton residential customer using 500 kWh per month, the net result of the PPAC and FAC changes is a \$1.01 increase to the monthly bill.

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We find that the proposed short term avoided capacity and energy rates, calculated in accord with the methodology outlined in prior commission orders, are just and reasonable.

Our order will issue accordingly.

ORDER

Based upon the foregoing report which is incorporated and made a part hereof, it is hereby

ORDERED, that the Concord Electric Company's FAC rate for the period July through December, 1994, shall be a credit of \$0.00662 per kWh while its PPAC rate shall be \$0.00584 per kWh; and it is

FURTHER ORDERED that the Exeter & Hampton Electric Company's FAC rate for the period July through December, 1994, shall be a credit of \$0.00620 per kWh while its PPAC rate shall be \$0.00737 per kWh; and it is

FURTHER ORDERED that for the same period the short- term power purchase rates (avoided capacity and energy rates) for Qualifying Facilities shall be as follows:

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

Energy Rates

On Peak	2.70 cents per kWh
Off Peak	2.36 cents per kWh
All Hours	2.51 cents per kWh

Capacity Rate 0.00 dollars per kW-year;

and it is

FURTHER ORDERED, that Concord Electric Company and Exeter & Hampton Electric Company file revised tariff pages in compliance with this order on or before July 15, 1994.

By order of the New Hampshire Public Utilities Commission this thirtieth day of June, 1994.

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NH.PUC*06/30/94*[70549]*79 NH PUC 388*New Hampshire Electric Cooperative, Inc.

[Go to End of 70549]

79 NH PUC 388

Re New Hampshire Electric Cooperative, Inc.

DR 94-105
Order No. 21,280

New Hampshire Public Utilities Commission

June 30, 1994

ORDER authorizing an increase in an electric cooperative's power cost adjustment factor from 0.199 cents per kilowatt-hour to 0.311 cents per kilowatt-hour. The rate is inclusive of a factor for lost revenues associated with demand-side/load management programs, although the commission notes that it generally does not believe that adjustment clause mechanisms are the proper vehicle through which to recover lost revenues. The cooperative is allowed to continue deferring power costs associated with the outage at the Seabrook nuclear power plant.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Power cost adjustment factor — Considerations — Lost revenues stemming from demand-side management programs — Deferral of Seabrook outage costs — Electric cooperative. p. 389.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 45

[N.H.] Revenue-based clauses — Recovery of lost revenues via power cost adjustment clause — Propriety of — When lost revenues stem from demand-side management programs — Discussion. p. 389.

APPEARANCES: Broderick and Dean by Mark Dean, Esq. on behalf of the New Hampshire Electric Cooperative, Inc.; Kenneth

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L. Traum of the Office of Consumer Advocate on behalf of residential ratepayers; Eugene F. Sullivan, Jr., Thomas C. Frantz, and Robert Frank, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT
I. PROCEDURAL HISTORY

On June 2, 1994, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) its petition for an increase of \$0.00178 per kWh in its power cost adjustment factor, from a charge of \$0.00119 per kWh to a charge of

\$0.00297 per kWh, effective July 1, 1994.

By Order of Notice dated May 25, 1994, the Commission set a hearing for June 15, 1994 at 10:00 a.m. at the Commission. Notice of the hearing was published in the Union Leader on May 31, 1994. Staff and the Office of Consumer Advocate (OCA) cross-examined NHEC, but did not present any witnesses. There were no requests for intervention.

II. POSITION OF NEW HAMPSHIRE ELECTRIC COOPERATIVE

NHEC presented one witness, Teresa L. Muzzey, Rates and Finance Manager, to support its petition for an increase in the Power Cost Adjustment (PCA) factor. Ms. Muzzey explained that the proposed PCA factor is equal to the forecasted power cost recovery requirement per kWh sold, which includes the expected power purchases for the upcoming power cost period adjusted for any projected over-recoveries or under-recoveries for the beginning of the power cost period, minus the purchased power costs per kWh sold included in base rates. Exhibit 1 at 2.

The PCA filing of June 1, 1994, was based on a sales forecast of 268,679,000 kWhs, a beginning under-recovery of \$596,835, total forecasted power costs of \$22,298,717, an adjustment for DSM program revenue reduction of \$421,048 of which NHEC proposed to defer two-thirds recovery during this PCA period, and the deferral of Seabrook related refueling costs of \$526,800. The estimated total purchased power costs to be recovered from members during the July 1 through December 31, 1994 period are \$22,509,101. Attachment TLM-1 of Exhibit 1.

At the hearing, Ms. Muzzey revised her estimate of the total forecasted power cost recovery requirement from \$22,298,717 to \$22,434,458. The change is the result of discussions with Staff concerning a simpler and better way of adjusting for revenue reductions due to specific load management programs.¹⁽²⁷⁾ The result is a recalculation of the estimated beginning under-recovery, elimination of the DSM adjustment and its associated deferral. The power costs forecasted for recovery as part of NHEC's base rates, \$21,599,262, were subtracted from the total forecasted power costs, \$22,434,458, to yield the total power costs to be recovered over the PCA period, \$835,195. The rate of \$0.00311 per kWh was calculated by dividing \$835,195 by the forecasted retail sales of 268,679,000 kWhs. Attachment TLM-1 Revised. The retail sales forecast was estimated by using the 1992 billing determinants by class and reducing them by two percent and adjusting for expected savings due to demand-side management programs.

Ms. Muzzey stated that a residential customer using 500 kWhs per month will see a monthly increase of \$0.96, 1.5% due to the increase in the PCA factor. Ms. Muzzey also informed the Commission that NHEC's customers would see an additional increase on July 1, 1994 if its 1994 DSM filing is approved.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the testimony of NHEC and the supporting materials in this proceeding and find the request to increase the Power Cost Adjustment factor from \$0.00199 per kWh to \$0.00311 per kWh is reasonable and in the public interest. The change in the originally filed rate based on the adjustment to capture the lost base rate revenues which NHEC believes directly reduce its margin appears to capture the difference in cost

incurrence between the load managed rate class and the other rate classes. This is a problem, recovering lost revenues from implementation of DSM programs, that we generally do not believe has a place in a fuel or purchased power adjustment clause. The solution lies in properly allocating power costs, based on accurate load research, in a rate design proceeding. To the extent that opportunity can still be pursued through NHEC's base rate case, we encourage NHEC, other parties and Staff to do so. For this proceeding, we believe the proposed solution will adequately address NHEC's concerns and will approve it. We will also continue to allow NHEC to defer a portion of the power costs associated with the Seabrook deferral.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which is made a part hereof; it is hereby

ORDERED, that effective on all meters read on and after July 1, 1994, the New Hampshire Electric Cooperative, Inc.'s Power Cost Adjustment factor will be \$0.00311 per kWh, an increase of \$0.00192 per kWh over the current rate of \$0.00119 per kWh; and it is

FURTHER ORDERED, that NHEC file as part of its next Power Cost Adjustment tariff pages on the short-run avoided costs it will pay Qualifying Facilities (QFs); and it is

FURTHER ORDERED, that NHEC file tariff pages in compliance with this Order by July 15, 1994.

By order of the New Hampshire Public Utilities Commission this thirtieth day of June, 1994.

FOOTNOTES

¹NHEC's initial proposal of the treatment of reduced revenues associated with certain load management programs was originally filed in DR 93-212. In its filing on November 1, 1993, NHEC proposed that "Lost Revenues" be included as a surcharge recoverable over a twelve month period. The parties and Staff later agreed to address the issue in the Power Cost Adjustment docket.

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NH.PUC*06/30/94*[70550]*79 NH PUC 390*New England Telephone Company

[Go to End of 70550]

79 NH PUC 390

Re New England Telephone Company

DR 94-111

Order No. 21,281

New Hampshire Public Utilities Commission

June 30, 1994

ORDER approving a local exchange telephone carrier's proposed tariff revisions relating to message telecommunications service, to reduce rates for the day period and increase discounts available through business package plans.

1. RATES, § 584

[N.H.] Telephone rate design — Message telecommunications service — Tariff revisions — Reductions in day period rates — Increased discounts for business package plans — Local exchange carrier. p. 390.

BY THE COMMISSION:

ORDER

[1] On June 1, 1994, New England Telephone (NET) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to reduce the day period Message Telecommunications Service (MTS) rate as well as increase corresponding credits, increase the discount for Business Package and Business Package Plus Services, and introduce a fifteen percent discount on applicable day period (MTS) rates for CallAround 603 service customers on their first 480 minutes of usage per month; and

WHEREAS, these rate changes reflect the price reductions in intraLATA switched access rates recently proposed in an April 29, 1994 filing made in compliance with the Modified

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Stipulation approved by the Commission in the generic competition docket, Docket DE 90-002; and

WHEREAS, in accordance with the Modified Stipulation the Company must demonstrate that the resulting average revenue minute (ARPM) for certain retail services will not fall below the relevant form of access that other toll providers could purchase in order to provide a competing service, plus an appropriate add-on corresponding to the appropriate form of access; and

WHEREAS, NET has submitted price floor workpapers and revenue effect workpapers in support of their filing; and

WHEREAS, Staff has reviewed the proposed tariffs and supporting materials and believes the filing conforms with the requirements of the Modified Stipulation in DE 90-002; and

WHEREAS, NET inadvertently omitted service of this filing to the signatories of the Stipulation and Agreement in DE 90-002, in accordance with the terms and conditions of the Stipulation and Agreement as approved on August 2, 1993; and

WHEREAS, NET subsequently sent copies of this filing to the parties in DE 90-002 on June 16, 1994; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revisions to be in the public good; it is therefore

ORDERED *NISI*, that the following tariff pages of New England Telephone Company are approved:

NHPUC - No. 75

Part A - Section 9:

Twelfth Revision of Page 7

Fifth Revision of Page 73

First Revision of Page 78

First Revision of Page 80

Part C - Section 3:

Second Revision of Page 3

Second Revision of Page 4

Second Revision of Page 5

Second Revision of Page 6

and it is

FURTHER ORDERED, that pursuant to N.H. Admin Rules PUC 1601.05 (j), the Company cause an attested copy of this Order *Nisi* to be published once in a newspaper having statewide circulation, such publication to be no later than July 11, 1994 and it is to be documented by affidavit filed with this office on or before August 4, 1994; 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 July 25, 1994; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective as of August 5, 1994, unless the Commission, on its own motion, orders otherwise.

By order of the New Hampshire Public Utilities Commission this thirtieth day of June, 1994.

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NH.PUC*06/30/94*[70551]*79 NH PUC 391*Granite State Electric Company

[Go to End of 70551]

79 NH PUC 391

Re Granite State Electric Company

DR 94-104, DR 94-110

Order No. 21,282

New Hampshire Public Utilities Commission

June 30, 1994

ORDER adopting fuel, purchased power, and oil cost adjustment clause rates for an electric utility. A fuel adjustment clause factor of 0.627 cents per kilowatt-hour and an oil cost adjustment factor of 0.116 cents per kilowatt-hour are approved. A purchased power adjustment credit of 0.177 cents per kilowatt-hour is likewise approved. Additionally, the commission approves calculations for rates to be paid for short-term purchases of capacity from

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qualifying facilities.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fuel adjustment clause rate — Oil cost adjustment factor — Considerations — Projected fuel costs — No further adjustment for Seabrook outage costs — Electric utility. p. 393.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power adjustment clause rate — Credits — Factors — Previous overcollections — Electric utility. p. 393.

3. COGENERATION, § 25

[N.H.] Rates — For purchases from qualifying facilities — Short-term purchases — Avoided-cost basis — Energy and capacity payments — Electric utility. p. 393.

APPEARANCES: David J. Saggau, Esq. on behalf of Granite State Electric Company; and Thomas Frantz, James Cunningham and Eugene F. Sullivan III, Esq. on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. Procedural History

On June 1, 1994 Granite State Electric Company (GSEC) filed tariff pages, testimony and schedules supporting changes to its purchased power adjustment clause (PPAC) which was docketed as DR 94-104, its fuel adjustment clause (FAC), oil cost adjustment (OCA), and power purchase rates for qualifying facilities (QFs) which was docketed as DR 94-110. The changes in GSEC's FAC and OCA factors and the rates it pays QFs are effective for the period July 1, 1994 through December 31, 1994. The proposed change to the PPCA factor is effective July 1, 1994 through June 30, 1995.

GSEC is seeking Commission approval of a PPAC credit of \$0.00177 per KWh effective July 1, 1994 reflecting a reconciliation of purchase power costs through February, 1994.

GSEC is requesting that the Commission approve an FAC factor of \$0.00627 per kWh, an OCA factor of \$0.00116 per kWh, and the following short-term avoided capacity and energy rates for QFs:

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

<i>Energy Rates</i>	<i>On Peak</i>	<i>Off Peak</i>	<i>Average</i>
Subtransmission			
Distribution	\$0.02634	\$0.02084	\$0.02337
Primary Distribution	\$0.02829	\$0.02186	\$0.02482
Secondary Distribution	\$0.02929	\$0.02237	\$0.02555
Capacity Rate Capacity Payment			
Subtransmission	\$1.46 per kW-month		
Primary Distribution	\$1.60 per kW-month		
Secondary Distribution	\$1.67 per kW-month		

On June 14, 1994 the Commission held a duly noticed hearing at its offices in Concord to review the PPAC, FAC, OCA and short-term avoided energy and capacity rates set forth above. Neither Staff nor any other party presented testimony at the hearing.

II. *Position of Granite State Electric*

A. Purchased Power Cost Adjustment

At the June 14, 1994 GSEC presented the testimony of Ms. Tina M. Bennett in support of the proposed PPCA factor. Ms. Bennett testified that pursuant to a settlement agreement approved by the Commission in docket DR 92-084, GSEC's last base rate petition, GSEC implemented an annual purchased power adjustment factor. *Re Granite State Electric Company*, Order No. 20,771 (February 6, 1993). The annual period in which purchased power

Page 392

costs are computed begins and ends on June 1 of each year, and the effective date of the adjustment commences on July 1 of each year. She further testified that the PPCA reconciliation was over-collected by \$1,166,700 as of February 1994 with interest calculated through June 1994.

Given this over-collection, the Company proposes a reconciliation adjustment credit of \$0.00174 which, when added to the previous purchased power adjustment, results in PPAC factor (credit) of \$0.00177 for the period of July 1, 1994 through June 30, 1995.

B. Fuel Adjustment Clause, Oil Conservation Adjustment, Qualifying Facility Power Purchase Rate.

In support of its proposed FAC and OCA factors GSEC presented the testimony of Ms. Colleen M. Gardner, a Senior Rate Analyst with New England Power Service Company, and Mr. Jeffrey W. Vansant, Vice President and Director of Fuel Supply for New England Power Company.

Ms. Gardner testified that the OCA factor would remain unchanged at \$0.00116 per kWh as GSEC continued to amortize its allocable share of the parent Company's abandoned investment

in the oil industry.

Ms. Gardner also testified that the FAC factor was a proposed \$0.00627 per kWh based on New England Power's projected calculations of fuel factors over the next six months. She further testified that this was a reduction of \$0.00136 per kWh over the currently effective FAC factor. In support of the proposed fuel factors charged to GSEC, GSEC offered the testimony of Mr. VanSant. Mr. VanSant testified to New England Power Company's projected fuel costs over the next six months, and the basis for those projections.

III. *Commission Analysis*

[1-3] Based on the testimony, and the exhibits in support thereof, we do not believe there is any reason to change GSEC's filed FAC and OCA factors to adjust for May 1994 actual data or the possible effects of the extended Seabrook refueling outage. It appears from GSEC's response to Staff Record Request - 1 in DR 94-110 that an FAC factor that includes actual May 1994 data with an adjustment for a Seabrook return date of mid-August would reduce the rate only from \$0.00627 to \$0.00617 per kWh. We find, therefore, that the proposed PPAC credit of \$0.00177 per kWh, the OCA factor of \$0.00116 per kWh, the FAC factor of \$0.00627 per kWh and the rates paid to QFs to be just and reasonable. The combined changes in the PPCA, OCA, and FAC factors will result in decrease of \$1.55 per month or 2.83% for a residential customer using 500 kWhs.

We have also reviewed GSEC's response to Staff Record Request - 1 in DR 94-104 and believe that there is insufficient information to make a final decision on the proper allocation of the \$150,000 associated with the settlement of 1.7 million kWhs that were diverted from GSEC. We will allow the adjustments GSEC made to the PPCA, Fuel, C&LM and OCA clauses pending final review. We will direct GSEC to file an explanation of why and how the various allocations were made among the clauses and base rates as part of its next FAC and OCA filing.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is incorporated herein; it is hereby

ORDERED, that the Purchased Power Cost Adjustment factor for Granite State Electric Company for the period July 1, 1994 through June 30, 1995 shall be a credit of \$0.00177 per kWh; and it is

FURTHER ORDERED, that the Fuel Adjustment Clause factor for Granite State Electric Company for the period July 1, 1994 through December 31, 1994 shall be \$0.00627 per kWh; and it is

FURTHER ORDERED, that the Oil Cost Adjustment factor for GSEC for the period July 1, 1994 through December 31, 1994 shall be \$0.00116 per kWh; and it is

FURTHER ORDERED, that GSEC pay Qualifying Facilities for the period July 1, 1994

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through December 31, 1994 the following rates:

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

<i>Energy Rates</i>	<i>On Peak</i>	<i>Off Peak</i>	<i>Average</i>
Subtransmission			
Distribution	\$0.02634	\$0.02084	\$0.02337
Primary Distribution	\$0.02829	\$0.02186	\$0.02482
Secondary Distribution	\$0.02929	\$0.02237	\$0.02555

<i>Capacity Rate</i>	<i>Capacity Payment</i>
Subtransmission	\$1.46 per kW-month
Primary Distribution	\$1.60 per kW-month
Secondary Distribution	\$1.67 per kW-month;

FURTHER ORDERED, that GSEC file tariff pages in compliance with this Order no later July 15, 1994.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 92-084, Order No. 20,771, 78 NH PUC 111, Feb. 26, 1993.

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NH.PUC*06/30/94*[70552]*79 NH PUC 394*WilTel of New Hampshire, Inc.

[Go to End of 70552]

79 NH PUC 394

Re WilTel of New Hampshire, Inc.

DE 94-099

Order No. 21,283

New Hampshire Public Utilities Commission

June 30, 1994

ORDER approving an interexchange telephone carrier's proposal for making certain short-term promotional offerings effective on only seven days' notice.

1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access options — Short-term promotional offerings — Notice period. p. 394.

2. RATES, § 243

[N.H.] Schedules and procedure — Notice and publication — Seven days' notice — For special short-term promotional offerings — Interexchange telephone carrier. p. 394.

BY THE COMMISSION:

ORDER

[1, 2] On May 18, 1994, WilTel of New Hampshire, Inc. (WilTel) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to add language to its Tariffs which would allow WilTel to offer promotions limited to certain dates, times and locations on seven days written notice to the Commission; and

WHEREAS, written notice to the Commission will specify rates, terms, conditions and time intervals applicable to each promotional offering; and

WHEREAS, the proposed tariff expands WilTel's flexibility in offering promotions to stimulate existing customer usage, attract new customers, win back former customers or increase awareness of WilTel's services, thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages for WilTel's NHPUC No. 2 - are approved:

3rd Revised Page No. 1

1st Revised Page No. 64;

and it is

FURTHER ORDERED, that WilTel file properly annotated tariff pages in compliance

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with this Commission order no later than thirty days from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this thirtieth day of June, 1994.

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NH.PUC*07/01/94*[70553]*79 NH PUC 395*Claremont Gas Corporation

[Go to End of 70553]

79 NH PUC 395

Re Claremont Gas Corporation

DF 94-126

Order No. 21,284

New Hampshire Public Utilities Commission

July 1, 1994

ORDER approving a natural gas local distribution company's proposed tariff changes which would reflect recent state legislative action exempting gas utilities from paying a state franchise tax.

1. RATES, § 147

[N.H.] Factors affecting reasonableness — Cost of service — Taxes — Changes in franchise tax liability — Exemption of natural gas utilities from payment — Necessity of concomitant tariff changes. p. 395.

2. EXPENSES, § 112

[N.H.] Taxes — State franchise taxes — Changes in liability — Exemption of natural gas utilities from payment — Necessity of concomitant tariff changes. p. 395.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, the New Hampshire legislature amended RSA 83-C:1,II exempting gas utilities from paying a state franchise tax for the sale of gas effective June 2, 1994; and

WHEREAS, Claremont Gas Corporation no longer has the authority to bill its customers for the franchise tax; and

WHEREAS, Claremont Gas Corporation has filed revised tariff pages, Revised Page 25, Revised Page 26 and Revised Page 28 for the purpose of removing any reference to the applicability of the franchise tax to the sale of gas; it is hereby

ORDERED, that the above referenced tariff pages are hereby approved; and it is

FURTHER ORDERED, that Claremont Gas Corporation file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this first day of July, 1994.

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NH.PUC*07/01/94*[70554]*79 NH PUC 395*Keene Gas Corporation

[Go to End of 70554]

79 NH PUC 395

Re Keene Gas Corporation

DF 94-131
Order No. 21,285

New Hampshire Public Utilities Commission

July 1, 1994

ORDER approving a natural gas local distribution company's proposed tariff changes which would reflect recent state legislative action exempting gas utilities from paying a state franchise tax.

1. RATES, § 147

[N.H.] Factors affecting reasonableness — Cost of service — Taxes — Changes in franchise tax liability — Exemption of natural gas utilities from payment — Necessity of concomitant tariff changes. p. 396.

2. EXPENSES, § 112

[N.H.] Taxes — State franchise taxes —

Page 395

Changes in liability — Exemption of natural gas utilities from payment — Necessity of concomitant tariff changes. p. 396.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, The New Hampshire legislature amended RSA 83- C:1,II exempting gas utilities from paying a state franchise tax for the sale of gas effective June 2, 1994; and

WHEREAS, Keene Gas Corporation no longer has the authority to bill its customers for the franchise tax; and

WHEREAS, Keene Gas Corporation has filed revised tariff pages, 11th Revised page 20, 11th Revised page 21, and 16th Revised page 27 for the purpose of removing any reference to the applicability of the franchise tax to the sale of gas; it is hereby

ORDERED, that Keene Gas Corporation is hereby authorized to revise its tariff pages for the purpose of removing any reference to the applicability of the franchise tax to the sale of gas; and it is

FURTHER ORDERED, that Keene Gas Corporation shall file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1994.

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NH.PUC*07/01/94*[70555]*79 NH PUC 396*New England Telephone Company

[Go to End of 70555]

79 NH PUC 396

Re New England Telephone Company

DR 94-113
Order No. 21,286

New Hampshire Public Utilities Commission

July 1, 1994

ORDER suspending a local exchange telephone carrier's proposed tariff revisions, which would establish a network access port for voice grade analog private line service and allow termination of digital private branch exchange service on a "SUPERPATH" network access port.

1. SERVICE, § 463

[N.H.] Telephone — Private branch exchange (PBX) service — Network reconfiguration service — Establishment of new access ports — Provision for termination of digital PBX service through "SUPERPATH" port — Suspension of related tariff provisions — To allow for adequate investigatory period — Local exchange carrier. p. 396.

BY THE COMMISSION:

ORDER

[1] On June 2, 1994 New England Telephone Company (Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to modify Network Reconfiguration Service (NRS) by introducing a Network Access Port for termination of voice grade analog private lines and by providing language to allow termination of FLEXPATH Digital PBX Service on the SUPERPATH Network Access Port, for effect July 1, 1994; and

WHEREAS, the proposed tariff pages submitted by the Company require further investigation by Staff; it is hereby

Page 396

ORDERED, that the proposed revisions to NHPUC No. 75

Part C - Section 5

Fourth Revision of Page 1
Fifth Revision of Page 2
Third Revision of Page 3
Eighth Revision of Page 4

Part C - Section 11

Second Revision of Page 1
Original Page 1.1
Second Revision of Pages 2 through 6

be suspended pending further investigation.

By order of the New Hampshire Public Utilities Commission this first day of July, 1994.

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NH.PUC*07/05/94*[70556]*79 NH PUC 397*Integrated Water Systems, Inc.

[Go to End of 70556]

79 NH PUC 397

Re Integrated Water Systems, Inc.

DR 94-094
Order No. 21,287

New Hampshire Public Utilities Commission

July 5, 1994

ORDER suspending a water utility's proposed tariff revisions, which reflected a requested rate increase of 156.8%.

1. PROCEDURE, § 42

[N.H.] Suspension — Of proposed tariff terms — For substantial rate increase — Water utility. p. 397.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed tariff terms — For substantial rate increase — To allow for adequate investigatory period — Water utility. p. 397.

BY THE COMMISSION:

ORDER

[1, 2] On June 21, 1994 Integrated Water Systems, Inc. (Integrated or petitioner) filed proposed rate schedules and supporting documentation which would result in a 156.8% increase over its present annual revenues; and

WHEREAS, the proposed tariff page pertaining to Integrated permanent rate increase is proposed for effect on July 21, 1994; and

WHEREAS, a thorough investigation is necessary prior to rendering a decision thereon; it is hereby

ORDERED, that Integrated NHPUC No. 4 Water Tariff First Revised Page No. 16 is hereby suspended.

By order of the New Hampshire Public Utilities Commission this fifth day of July, 1994.

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NH.PUC*07/05/94*[70557]*79 NH PUC 397*MCI Telecommunications Corporation of New Hampshire

[Go to End of 70557]

79 NH PUC 397

Re MCI Telecommunications Corporation of New Hampshire

DE 94-130

Order No. 21,288

New Hampshire Public Utilities Commission

July 5, 1994

ORDER authorizing an interexchange telephone carrier to make permanent an interim promotional plan for a regional intraLATA toll calling service, and to make operator assistance available for prepaid calling card services.

1. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — Interim promotional rates — Regional intraLATA calling plan — Conversion from promotional to permanent service plan. p. 398.

Page 397



2. SERVICE, § 449

[N.H.] Telephone — Special service — Prepaid calling card plans — Introduction of associated operator assistance. p. 398.

BY THE COMMISSION:

ORDER

[1, 2] On June 21, 1994, MCI Telecommunications Corporation of New Hampshire (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to make the Vision Regional Promotion a permanent service offering and to add Directory

Assistance to Option V (Prepaid Calling Card); and

WHEREAS, the MCI Vision Regional Promotion offers customers an intrastate outbound usage rate of \$.2280 for switched access and \$.1390 for dedicated access; and

WHEREAS, MCI was authorized by Commission Order No. 21,199 to extend the offering of the Vision Regional Promotion through June 30, 1994; and

WHEREAS, MCI proposes to make the Vision Regional Promotion a permanent service offering; and

WHEREAS, MCI proposes to add Directory Assistance to Option V (Prepaid Calling Card); and

WHEREAS, the terms and conditions of Option V Directory Assistance will be pursuant to MCI's FCC Tariff No. 1; and

WHEREAS, MCI filed this tariff proposal to become effective July 21, 1994; and

WHEREAS, the proposed service additions will expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good: it is therefore

ORDERED, that the following tariff pages for MCI's NHPUC No. 1 - are approved:

- 31st Revised Page No. 1
- 19th Revised Page No. 3.1
- 9th Revised Page No. 54
- 1st Revised Page No. 59.7;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this fifth day of July, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re MCI Telecommunications Corp. of New Hampshire, DE 94-062, Order No. 21,199, 79 NH PUC 233, Apr. 21, 1994.

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NH.PUC*07/05/94*[70558]*79 NH PUC 398*Fryeburg Water Company

[Go to End of 70558]

79 NH PUC 398

Re Fryeburg Water Company

DF 94-128
Order No. 21,289

New Hampshire Public Utilities Commission

July 5, 1994

ORDER authorizing a water utility to refinance debt of \$187,000, so as to reduce its interest rate on long-term debt from 10% to not more than 8%.

1. SECURITY ISSUES, § 111

[N.H.] Financing methods — Refinancing plan — To reduce interest liability on long-term debt — Water utility. p. 399.

Page 398

BY THE COMMISSION:

ORDER

[1] WHEREAS, Fryeburg Water Company, a public utility operating in Fryeburg, Maine and East Conway, New Hampshire, under the jurisdiction of this Commission, seeks authority, pursuant to RSA 369 to refinance its present indebtedness of approximately one hundred eighty-seven thousand dollars (\$187,000) principal amount of mortgage notes with interest not to exceed 8.0% per annum, and the Company to give a participating trust mortgage secured by all corporate tangible assets, real and personal, together with its franchise; and

WHEREAS, the Fryeburg Water Company represents that this refinancing will be used to reduce the current interest rate of 10.5% to 7.5% per annum on the long term indebtedness of the Company; and

WHEREAS, the Commission, following investigation and consideration of the evidence, finds the proposed refinancing of this debt is consistent with the public good; it is hereby

ORDERED, that Fryeburg Water Company be, and hereby is, authorized to refinance its present long term indebtedness of one hundred eighty-seven thousand dollars (\$187,000) at an interest rate not to exceed 8% per annum; and it is

FURTHER ORDERED, that the Fryeburg Water Company be, and hereby is, authorized to offer as security a participating trust mortgage secured by all corporate tangible assets, real and personal, together with its franchise; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, the Fryeburg Water Company shall file with this Commission a detailed statement duly sworn to by its Treasurer, showing the disposition of the proceeds of this financing, until there is a full accounting of the whole of said proceeds.

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1994.

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NH.PUC*07/05/94*[70559]*79 NH PUC 399*Tilton Northfield Aqueduct Company, Inc.

[Go to End of 70559]

79 NH PUC 399

Re Tilton Northfield Aqueduct Company, Inc.

DF 94-122

Order No. 21,290

New Hampshire Public Utilities Commission

July 5, 1994

ORDER authorizing a water utility to refinance debt of \$164,354, so as to replace existing long-term debt while also providing capital for water main replacement and meter installation projects.

1. SECURITY ISSUES, § 57

[N.H.] Refinancing of indebtedness — Purposes — Replacement of existing long-term debt — Capitalization of main and meter projects — Water utility. p. 399.

BY THE COMMISSION:

ORDER

[1] WHEREAS, Tilton Northfield Aqueduct Company, Inc. (the "Company"), a public utility operating in Tilton and Northfield, New Hampshire, under the jurisdiction of this Commission, seeks authority, pursuant to RSA 369 to refinance its present long term debt of \$164,354.46 currently with the State Street Bank and Trust Company, said debt authorized by this Commission in DF 89- 063 by Order No. 19,407 issued May 16, 1989, by the issuance of a new Note to the Bank of New Hampshire at a rate of 1 3/4% over the prime rate; and

WHEREAS, the Company represents that this refinancing will be used to 1) replace its existing indebtedness to State Street Bank and Trust Company in the amount of \$114,364.14;

Page 399

2) replace 280 feet of water main on East Main Street in Tilton costing \$15,000; 3) continue with the installation of water meters costing \$14,490.32; and 4) replace 1,200 feet of water main on Summer Street in Northfield costing \$20,500; and

WHEREAS, the Commission, following investigation and consideration of the evidence, finds the proposed refinancing of this debt is consistent with the public good; it is hereby

ORDERED, that Tilton Northfield Aqueduct Company, Inc. be, and hereby is, authorized to refinance its present long term debt in the amount of \$164,354.46 at an interest rate of 1 3/4% over prime, in accordance with the terms, conditions, and purposes described in its application; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, Tilton Northfield Aqueduct Company shall file with this Commission a detailed statement duly sworn to by its Treasurer, showing the disposition of the proceeds of this financing, until there is a full accounting of the whole of said proceeds.

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Tilton & Northfield Aqueduct Co., DF 89-063, Order No. 19,407, 74 NH PUC 164, May 16, 1989.

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NH.PUC*07/05/94*[70560]*79 NH PUC 400*WilTel of New Hampshire, Inc.

[Go to End of 70560]

79 NH PUC 400

Re WilTel of New Hampshire, Inc.

DE 94-121

Order No. 21,291

New Hampshire Public Utilities Commission

July 5, 1994

ORDER approving an interexchange telephone carrier's proposal for changing the anniversary date for making commitments for receiving discounts under the carrier's "CustomOne" program, thereby synchronizing a customer's commitment period with the customer's billing cycle.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special "CustomOne" discount plans — Annual customer commitment period — Synchronization with billing cycles. p. 400.

BY THE COMMISSION:

ORDER

[1] On June 9, 1994, WilTel of New Hampshire, Inc. (WilTel) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to revise the beginning date for Annual Commitment Discounts for CustomOnesm Service;

WHEREAS, CustomOnesm Discounts are available to customers on the combined basis of an Annual (volume) Commitment together with a Service Commitment Period; and

WHEREAS, currently, the dollar level of the Annual Commitment applies to each consecutive twelve (12) month period, within the Service Commitment Period, beginning with the start of service date, and each subsequent

Page 400

anniversary; and

WHEREAS, WilTel proposes to revise the Annual Commitment dollar level so that it applies to each twelve (12) month period, within the Service Commitment Period, beginning with the first full-bill cycle following the start of service date, and each subsequent anniversary; and

WHEREAS, WilTel's proposal synchronizes their customer's Commitment Period with their customer's billing cycle, thereby eliminating problems associated with calculations involving a partial month's billing; it is hereby;

ORDERED, that the following pages are approved, WilTel N.H.P.U.C. No. 2:

- Page 1 - 4th Revision,
- Page 63.3 - 1st Revision,
- Page 63.4 - 2nd Revision;

and it is

FURTHER ORDERED, that WilTel file a compliance tariff in accordance with NH Admin. Rules, Puc PART 1600.

By Order of the New Hampshire Public Utilities Commission this fifth day of July, 1994.

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NH.PUC*07/06/94*[70561]*79 NH PUC 401*New Hampshire Electric Cooperative

[Go to End of 70561]

79 NH PUC 401

Re New Hampshire Electric Cooperative

DR 94-124
Order No. 21,292

New Hampshire Public Utilities Commission

July 6, 1994

ORDER approving an electric cooperative's proposed changes in rates payable to qualifying facilities for short-term purchases of power, based on federally approved rates for wholesale power suppliers.

1. COGENERATION, § 24

[N.H.] Rates — Changes in — For short-term purchases from qualifying facilities — Factors — Federally approved wholesale power rates — Electric cooperative. p. 401.

BY THE COMMISSION:

ORDER

[1] On June 22, 1994, New Hampshire Electric Cooperative (NHEC) filed 5th Revised Page 43 of its tariff for changes to the short-term rates it proposes to pay Qualifying Facilities (QFs) for the period July 1, 1994 through December 31, 1994; and

WHEREAS, said filing is based on Federal Energy Regulatory Commission approved wholesale rates for the various wholesale suppliers supplying NHEC at designated delivery points; it is

ORDERED *Nisi*, that 5th Revised Page 43 of New Hampshire Electric Cooperative's tariff is approved effective July 1, 1994; and it is

FURTHER ORDERED, that NHEC file tariff pages and supporting materials for the rates it proposes to pay QFs for the period starting January 1, 1995, in its next Power Cost Adjustment filing; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, NHEC notify all persons desiring to be heard by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than July 15, 1994, and documented by affidavit filed with this office on or before July 29, 1994; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than July 29, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective July 1, 1994, retroactively, unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

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By order of the New Hampshire Public Utilities Commission this sixth day of July, 1994.

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NH.PUC*07/06/94*[70562]*79 NH PUC 402*Manchester Water Works

[Go to End of 70562]

79 NH PUC 402

Re Manchester Water Works

DE 94-133

Order No. 21,293

New Hampshire Public Utilities Commission

July 6, 1994

ORDER authorizing a water utility to expand its service area within the Town of Hooksett to include a proposed small residential development for which no other provider of water service was available.

1. SERVICE, § 210

[N.H.] Extensions — Water utility — Factors affecting approval — Request for service in small development — Lack of alternative service provider. p. 402.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on June 22, 1994, Manchester Water Works (Manchester) filed a petition to expand its existing service area in the Town of Hooksett; and

WHEREAS, the petition is primarily the result of a request for service to a proposed 8-lot single family development within a portion of the area; and

WHEREAS, the area will be served under Manchester's existing tariff; and

WHEREAS, the Town of Hooksett has provided their written approval of the proposed expansion; and

WHEREAS, there are no other water utilities in the vicinity of the proposed expansion; and

WHEREAS, upon investigation and consideration, the Commission finds that allowing Manchester to expand its franchise area as requested is in the public good; and

WHEREAS, the public should be afforded an opportunity to respond to this petition; it is hereby

ORDERED *Nisi*, that Manchester is granted authorization, pursuant to RSA 374:22 and 26, effective August 4, 1994, to expand its franchise into an additional limited area of Hooksett consisting of Lots 17 and 18 on Hooksett Tax Map 34, as also shown on the map attached as Appendix 1 to this order; and it is

FURTHER ORDERED, that all persons interested in responding be notified that they may submit their comments or file a written request for a hearing before the Commission by August 3, 1994; and it is

FURTHER ORDERED, that Manchester effect such notification by (1) causing an attested copy of this order to be published no later than July 20, 1994, once in a newspaper having general circulation in the Manchester and Hooksett area; (2) providing copies of this order by first class mail to the Hooksett Town Clerk and Manchester City Clerk, postmarked on or before July 20, 1994; and (3) documenting compliance with these notice provisions by affidavits to be filed with the Commission on or before August 3, 1994; and it is

FURTHER ORDERED, that this authorization is conditioned on Manchester's submission of approvals from the Department of Environmental Services pursuant to RSA 374:22 III regarding the proposed expansion.

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 1994.

Appendix 1 not attached - (map)

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NH.PUC*07/06/94*[70563]*79 NH PUC 403*Dufresne-Henry, Inc.

[Go to End of 70563]

79 NH PUC 403

Re Dufresne-Henry, Inc.

DE 94-078

Order No. 21,294

New Hampshire Public Utilities Commission

July 6, 1994

ORDER authorizing an engineering firm to construct electric distribution lines over, under, and across Monadnock State Park, which lines will be operated and maintained by an electric utility, Public Service Company of New Hampshire, in order to provide service to a newly required water storage facility owned by the Town of Jaffrey.

1. ELECTRICITY, § 6

[N.H.] Wires and cables — Distribution lines — Construction — Crossing of state park land — Factors affecting approval — Necessity of service to water storage facility — Reconfiguration and upgrading of existing lines. p. 403.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Pole lines — Electric distribution lines — Construction project — Factors — Crossing of state park land — Necessity of service connection — Upgrades. p. 403.

BY THE COMMISSION:

ORDER

[1, 2] On April 26, 1994, Dufresne-Henry, Inc., a design engineering firm located in Manchester, NH, (Petitioner), on behalf of the Town of Jaffrey, filed with the New Hampshire Public Utilities Commission (Commission) a petition under RSA 371:17 for the licensing of lines over, under, and across Monadnock State Park, land owned by the State, to a water storage facility on land owned by the Town of Jaffrey, New Hampshire, (Jaffrey) adjacent to the park; and

WHEREAS, on May 2, 1994, and May 16, 1994, the Petitioner filed supplemental documentation to clarify its request; and

WHEREAS, on June 27, 1994, the Petitioner filed documentation incorporating Public Service Company of New Hampshire (PSNH) as a party to the petition; and

WHEREAS, in order to comply with the requirements of the Safe Drinking Water Act, as enforced by the New Hampshire Department of Environmental Services, it is necessary for Jaffrey to construct a covered water storage facility to replace Poole Reservoir which is located within Monadnock State Park and which presently serves as one of the Town's water supply sources; and

WHEREAS, an electrical service is necessary to power telemetry equipment at the storage facility site which will monitor the tank water level and send signals based on the water level to control the operation of a remotely located pump station; and

WHEREAS, the most feasible and cost-effective route for electrical service to the storage tank site is across a portion of Monadnock State Park; and

WHEREAS, the existing electrical service for the State Park is a 120/240 volt line which is not presently licensed as per RSA 371:18; and

WHEREAS, there are two meters on a pole at the entrance to the park, one meter is for the Park Concession Stand and the other is for the rest of the park; and

WHEREAS, as part of this project, the meter for the Concession Stand will be relocated to the Concession Stand itself; and

WHEREAS, just prior to the location of the new electric meter at the Concession Stand, the line will be split to run to a second meter from which the new 120/240 volt line will run to the tank site, as identified on the Petitioner's sketches nos. 1 and 2; and

WHEREAS, there will be a separate meter installed to register the electrical use by Jaffrey; and

Page 403

WHEREAS, PSNH shall own, maintain and be responsible for the electrical overhead circuit from the park entrance to the Concession Stand; and

WHEREAS, Jaffrey shall own, maintain and be responsible for the proposed underground circuit to be constructed from its new meter at the Concession Stand to the Jaffrey Water Storage Tank site; and

WHEREAS, the State of New Hampshire Department of Resources and Economic Development has no objection to the electrical service as stated in a May 5, 1994 letter to the New Hampshire Public Utilities Commission; and

WHEREAS, in order to meet the reasonable requirements of service to the Park Concession Stand, it is necessary for PSNH to maintain the existing single phase 120/240 volt electric distribution line from the Monadnock State Park entrance to the Concession Stand; and

WHEREAS, in order to meet the reasonable requirements of service to power telemetry equipment at the storage facility site, it is necessary for the Petitioner to construct a single phase 120/240 volt electric distribution line from the Concession Stand to the State Park/Jaffrey property line and then to the site of the storage tank, as identified on the Petitioner's sketches nos. 1 and 2; and

WHEREAS, in order to provide service during construction a temporary overhead service is proposed from near the park entrance to a point near the Concession Stand, as identified on the Petitioner's sketch no.1; and

WHEREAS, the Commission finds such crossing of State land necessary for PSNH to meet its obligations to serve customers within its authorized franchise area without substantially affecting the State's rights in the Monadnock State Park, thus being in the public good; it is hereby

ORDERED, that the petitioner be authorized, pursuant to RSA 371:17 *et seq.* to place the aforementioned electric lines over, under and across the Monadnock State Park in the Town of Jaffrey, New Hampshire, effective July 6, 1994; and it is

FURTHER ORDERED, that PSNH be authorized, pursuant to RSA 371:17 *et seq.* to maintain and be responsible for the existing overhead electrical circuit from the Monadnock State Park entrance to the Concession Stand, effective July 6, 1994; and it is

FURTHER ORDERED, that Jaffrey be authorized, pursuant to RSA 371:17 *et seq.* to maintain and be responsible for the proposed underground circuit from its new meter at the Concession Stand to the property line, between the Monadnock State Park and the Town of Jaffrey, effective July 6, 1994; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code, and all other applicable safety standards.

By order of the New Hampshire Public Utilities Commission this sixth day of July, 1994.

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NH.PUC*07/07/94*[70564]*79 NH PUC 404*Public Service Company of New Hampshire

[Go to End of 70564]

79 NH PUC 404

Re Public Service Company of New Hampshire

DR 94-132
Order No. 21,295

New Hampshire Public Utilities Commission

July 7, 1994

ORDER granting protective treatment of an electric utility's proposed special contract service agreement with an industrial customer, Lockheed Sanders, Inc.

1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Proposed special contract rates — Customer-specific usage data — Confidentiality. p. 405.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of proposed special rate contract — Of customer-specific usage data contained therein — Factors — Competitive

Page 404

disadvantage to both customer and utility if disclosed — Electric utility. p. 405.

BY THE COMMISSION:

ORDER

[1, 2] On June 21, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, special contract NHPUC-95 with Lockheed Sanders, Inc. in redacted form, for the provision of electric service; and

WHEREAS, concurrent with the special contract, PSNH filed a Motion for Protective Treatment of portions of the Technical Statement containing customer specific information supporting the contract; and

WHEREAS, in its motion PSNH states that the information should be afforded protective treatment, pursuant to RSA 91-A, in that it contains customer specific usage data, operating costs and competitive alternatives, disclosure of which "... would result in substantial harm to Lockheed Sanders by providing its competitors with a view of Lockheed Sanders' recent business ..." and could further "... harm PSNH and its customers by discouraging other businesses from working with PSNH to expand or locate in New Hampshire ..."; and

WHEREAS, in its motion PSNH states that neither the Office of Consumer Advocate nor the Commission Staff (Staff) have reviewed the materials over which protection is sought and

therefore, take no position; and

WHEREAS, the Commission recognizes that detailed customer specific information regarding customer usage, costs and terms of service is critical to review of the special contract by the Commission and Staff, as required by RSA 378:18; and

WHEREAS, the Commission also recognizes that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record; it is hereby

ORDERED, that PSNH's Motion for Protective Treatment of portions of the Technical Statement supporting special contract number NHPUC-95 between PSNH and Lockheed Sanders, Inc. for the provision of electric service be, and hereby is, GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Staff or any party raises concerns, after review of the redacted materials, as well as the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the New Hampshire Public Utilities Commission this seventh day of July, 1994.

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NH.PUC*07/08/94*[70565]*79 NH PUC 405*AT&T Communications of New Hampshire, Inc.

[Go to End of 70565]

79 NH PUC 405

Re AT&T Communications of New Hampshire, Inc.

DE 94-123

Order No. 21,296

New Hampshire Public Utilities Commission

July 8, 1994

ORDER authorizing an interexchange telephone carrier to redefine its calling card service into two separate categories, one for consumers and one for commercial customers, and also to recategorize its various sent-paid services.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card services — Separation into consumer and commercial groupings — Recategorization of sent-paid services and charges. p. 406.

BY THE COMMISSION:

ORDER

[1] On June 16, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to redefine Calling Cards into two groups, redefine classes of long distance service, add and delete Rate Tables, and make minor textual changes to its New Hampshire P.U.C. No. 1 and No. 4 Tariffs; and

WHEREAS, the petition proposes to redefine Calling Cards and their associated calls into two groups identified as Consumer Calling Card calls and Commercial Calling Card calls; and

WHEREAS, the Commercial Calling Card will be defined as a calling card issued by AT&T or a Local Exchange Company that is billed to an account associated with a line for which the subscriber pays a rate that is described solely as a business or commercial rate in the applicable Local Exchange Company tariff for switched services, or a card issued by a non-carrier to a consumer whom the issuer defines as a commercial or business account; and

WHEREAS, the Consumer Calling Card will be defined as any calling card that is not a Commercial Calling Card; and

WHEREAS, the petition seeks to redefine the classes of long distance service offered by AT&T by expanding the tariff language from Station Service and Person Service to Dial Station, Customer Dialed Calling Card Station, Operator Dialed Calling Card Station, Person-to-Person and Real Time Rated; and

WHEREAS, the petition also seeks to delete the Rate Table for Operator Station-Billed to other than an AT&T CIID/891 Card and add Rate Tables for Operator Station Sent Paid-Coin and Person Sent-Paid Coin, both of which have a three minute initial period; and

WHEREAS, the petition as initially filed included language on the 2nd Revised Page 32 that would have allowed AT&T to apply an Operator Surcharge to a call completed by an Operator as a result of the call being directed to the Operator due to trouble on the network; and

WHEREAS, AT&T has now amended its proposed 2nd revised page 32 to strike the tariff language which would have introduced an Operator Surcharge for calls handled by an Operator due to network troubles; and

WHEREAS, the petition also proposes to institute an initial one minute period for Real Time Rated Calls and also reduce the service charge from \$1.94 to \$1.75 for Coin Sent-Paid calls; and

WHEREAS, the proposed tariff revisions will expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; and

WHEREAS, AT&T filed this revision to become effective July 18, 1994; it is hereby

ORDERED, that the following tariff pages of AT&T Tariffs No. 1 and No. 4, are approved for effect as finally filed:

P.U.C. No. 1

Table of Contents: 1st Revised Page 19

Section 1:

5th Revised Pages 23-24

3rd Revised Page 25

Section 17:

1st Revised Page 2

1st Revised Page 5

Original Pages 6-9

P.U.C. No. 4

Section 1:

1st Revised Page 29

2nd Revised Pages 30-32

Section 2:

1st Revised Page 2

3rd Revised Page 3

2nd Revised Page 4

Original Page 4.1

3rd Revised Page 5

2nd Revised Page 6

3rd Revised Pages 7-8

4th Revised Page 14

3rd Revised Pages 15-17

2nd Revised Page 19

3rd Revised Page 20;

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and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this eighth day of July, 1994.

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NH.PUC*07/08/94*[70566]*79 NH PUC 407*Public Service Company of New Hampshire

[Go to End of 70566]

79 NH PUC 407

Re Public Service Company of New Hampshire

DR 93-179
Order No. 21,297

New Hampshire Public Utilities Commission

July 8, 1994

ORDER affirming that part of Order No. 21,278 (79 NH PUC 379, *supra*) that narrowed the scope of issues to be addressed in a docket examining the renegotiation of rates payable by an electric utility for power purchased from certain wood-fired small power producers (SPPs), which scope was redefined due to recent changes in state law. Because the revised scoping order also reduced from eight to two the number of wood SPPs directly involved, the other six wood SPPs are dismissed from the proceeding.

1. ELECTRICITY, § 3

[N.H.] Wood-fired generating plant — Small power producers (SPPs) — Renegotiation of rates — Issues to be addressed — Narrowing of issues — Factors — Recent state legislative action — Reduction in number of wood-fired SPPs to be addressed — Dismissal of parties. p. 408.

2. PARTIES, § 1

[N.H.] Dismissal from proceeding — Factors — Narrowing of issues — Proceeding involving special contracts — For purchases of power from wood-fired small power producers — Reduction in number of contracts to be addressed. p. 408.

BY THE COMMISSION:

ORDER

On June 23, 1994, the Commission issued Order No. 21,278 which accepted the proposed narrowing of issues in the upcoming hearings in this docket to consideration of the terms of settlement agreements reached between Public Service Company of New Hampshire (PSNH) and TIMCO, Inc. and Bristol Energy Corporation, the savings generated, the direct employment of the two plants and the local tax impact of the settlements. These issues are more fully detailed in the Stipulation (undated) filed by PSNH, New Hampshire Timberland Owners Association, Society for the Protection of New Hampshire Forests, Audubon Society of New Hampshire, Conservation Law Foundation, New Hampshire Electric Cooperative, Inc., Campaign for Ratepayers Rights, New Hampshire Business and Industry Association, TIMCO, Inc., Bristol Energy Corporation, the Office of Consumer Advocate and the Commission Staff, which concurred with qualification.

The Stipulation was conditioned upon the passage into law of Senate Bill 790 which addressed buyouts of wood fueled small power producers (SPPs). Governor Merrill signed the bill into law as Chapter 362, effective June 8, 1994.

Order No. 21,278 denied the request of the signatories to the Stipulation that Bio-Energy

Corporation (mistakenly referred to in the Stipulation and Order as Bio-Development Corporation) and Bridgewater Corporation be "dismissed as parties" and further that the other four "non-settling" SPPs, Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc. and Whitefield Power and Light Company be similarly dismissed

Page 407

from the docket. The Order stated that these six non-settling SPPs need not be participants in the phase of the docket in which the two signed agreements were to be considered, but would remain parties for the rest of the proceedings.

Order No. 21,278 was silent on the request that nothing in the Stipulation would be considered precedent in any other proceeding.

On July 1, 1994 PSNH filed a letter requesting that the entire Stipulation be approved without qualification, including the dismissal of the six non-settling SPPs. On July 5, 1994 TIMCO, Inc., Bristol Energy Corporation, Bio-Energy Corporation and Bridgewater Power Company, L.P. noted their concurrence with PSNH's request. On July 6, 1994 New Hampshire Timberland Owners Association similarly concurred.

[1, 2] We have evaluated the request of PSNH and concurrences thereto, as well as the original Stipulation and our Order No. 21,278. We hereby clarify our acceptance of the limitation of issues to be litigated in the upcoming hearings as stated in the Stipulation.

Further, in the interest of not tying this docket up in litigation over what we consider a ministerial issue, we will grant the request contained within the Stipulation that the six non-settling SPPs are no longer participants in this docket. We fully intend, however, to open a new docket for the consideration of the rate agreements of the six non-settling SPPs, which we have been told are currently engaged in negotiations with PSNH.

The final issue to consider is the request contained within the Stipulation regarding preclusive effect. We have studied the language and are unclear as to the signatories' intent regarding the meaning of the request. We will accept the request regarding preclusive effect as we interpret that provision, namely: 1) the ultimate decision regarding the two signed agreements shall not bind the Commission in its ultimate decision regarding the six non-settling SPPs and 2) no signatory to the Stipulation will object to an issue being raised in a future proceeding on the grounds that it was or could have been addressed in this docket.

By acceptance of the Stipulation, however, we do not intend to relitigate the original scoping order or other procedural matters already resolved in this docket; to do otherwise would only further delay resolution of these critical issues. Future proceedings regarding the six non-settling SPPs will be guided by the provisions of SB 790 and other pertinent provisions of law, as well as the elements of the original scoping order, as we see fit in the context of the proceedings at that time.

Based upon the foregoing, it is hereby

ORDERED, that the requests contained in the Stipulation are granted as noted herein; and it is

FURTHER ORDERED, that due to a scheduling conflict, the hearings now scheduled for the week of August 1, 1994 are rescheduled for August 15, 16 and 17, 1994 beginning at 10 a.m.

By order of the New Hampshire Public Utilities Commission this eighth day of July, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,278, 79 NH PUC 379, June 23, 1994.

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NH.PUC*07/13/94*[70567]*79 NH PUC 408*MFS Intelenet of New Hampshire, Inc.

[Go to End of 70567]

79 NH PUC 408

Re MFS Intelenet of New Hampshire, Inc.

DE 94-070

Order No. 21,298

New Hampshire Public Utilities Commission

July 13, 1994

ORDER recaptioning Order No. 21,270 (79 NH PUC 370, supra) to provide that an interexchange telephone carrier has been granted interim authority to offer competitive intrastate toll services on a resale basis only.

Page 408

1. CERTIFICATES, § 123

[N.H.] Telecommunications — Intrastate toll service — Interexchange carrier — Interim authority — Resale of services. p. 409.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing toll service — Intrastate toll service — Resale basis — Interexchange carrier — Interim authority. p. 409.

3. SERVICE, § 171

[N.H.] Resale of service — Telephone — Intrastate toll services — Interim authority to compete. p. 409.

BY THE COMMISSION:

ORDER

[1-3] On June 14, 1994, in DE 94-070, the Public Utilities Commission of New Hampshire (Commission) issued Order No. 21,270, an Order *Nisi* entitled "Order *Nisi* Approving Petition for Authority to Conduct Business as a Telecommunications Utility in New Hampshire" (Order *Nisi*) which would become effective by expiration of the *nisi* period on July 14, 1994, unless the Commission provided otherwise in a supplemental order issued prior to the effective date; and

WHEREAS, on July 7, 1994, Granite State Telephone, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Inc., Dunbarton Telephone Company, Bretton Woods Telephone Company, and Dixville Telephone Company (the Movants) filed a motion in DE 94-025 and DE 94-070 objecting to Order No. 21,270 and requesting consolidation of Dockets DE-94-070 and De 94-025; and

WHEREAS, the Movants' objection is predicated on the claim that the Order *Nisi* as currently worded is too broad and could be interpreted in the future, in conjunction with a possible grant of authority in DE 94-025, to permit a single facility-based switched long distance network which includes local exchange facilities; and

WHEREAS, the Commission intends any local exchange telecommunications competition to occur only with the Commission's explicit authorization and under the Commission's regulatory aegis; and

WHEREAS, clarifying the Order *Nisi* so as to remove any speculation as to the specific authority granted will also remove the Movants' objection in DE 94-070; and

WHEREAS, the second basis for Movants' objection, piercing the corporate veil, will be considered in docket DE 94-025; it is hereby

ORDERED, that Order No. 21,270 is re-titled "Order *Nisi* Approving Petition for authority to Provide Intrastate Resold Telecommunications Services in the State of New Hampshire;" and it is

FURTHER ORDERED, that the first Whereas Clause of Order No. 21,270 shall read "Whereas, MFSI-NH has demonstrated the financial, managerial and technical ability to offer resold telecommunications services as conditioned by this Order;" and it is

FURTHER ORDERED, that the second Further Ordered Clause of Order No. 21,270 shall read "Further Ordered, NISI, that MFSI-NH may offer as a public utility, resold telecommunications services for the service territory of the entire State of New Hampshire;" and it is

FURTHER ORDERED, that the effective date of Order No. 21,270 shall remain July 14, 1994.

By order of the New Hampshire Public Utilities Commission this thirteenth day of July, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re MFS Intelenet of New Hampshire, Inc., DE 94-070, Order No. 21,270, 79 NH PUC 370, June 14, 1994.

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NH.PUC*07/13/94*[70568]*79 NH PUC 410*Claremont Gas Corporation

[Go to End of 70568]

79 NH PUC 410

Re Claremont Gas Corporation

DE 94-056

Order No. 21,299

New Hampshire Public Utilities Commission

July 13, 1994

ORDER, in a proceeding in which a natural gas local distribution company has sought to discontinue service, requiring the company to provide notice to its customers that, upon approval of its requested abandonment, the company must convert customers to bottled propane service. The company must further inform customers that they may proceed with such conversion prior to formal approval of the abandonment if they so desire, but that they are not required to take bottled propane service from the company's parent company, Synergy Gas Corporation.

1. SERVICE, § 213

[N.H.] Abandonment or discontinuance — Duty to continue service prior to formal approval of abandonment — Duty to convert customers to alternative supply — Local gas distribution company. p. 410.

2. SERVICE, § 220

[N.H.] Abandonment or discontinuance — Notice — As to intent to discontinue — As to alternative suppliers — As to conversion options — Local gas distribution company. p. 410.

BY THE COMMISSION:

ORDER

[1, 2] Claremont Gas Corporation ("Claremont Gas") has pending before this Commission a Petition To Discontinue Service in Its Franchise Territory in Claremont, New Hampshire. On July 6 1994, a public hearing was held in Claremont for the purpose of soliciting public comment on Claremont Gas' pending Petition. The Commission received several remarks from customers which reflected some confusion as to the status of this matter and Claremont Gas' obligations

during the pendency of its Petition before this Commission. There was further public comment on the activities of the Commission Staff who have been attempting to negotiate a settlement of this matter which would permit Claremont Gas to discontinue service on the condition that all customers are converted to alternative fuel sources. Any such settlement between Staff and Claremont Gas would have to be approved by the Commission following the noticed hearing to be held on July 21, 1994.

Based on the foregoing, it is hereby

ORDERED, that Claremont Gas Corporation is required to forward to all current customers, by first-class mail, the Interim Notice attached hereto on or before July 15, 1994.

By order of the New Hampshire Public Utilities Commission this thirteenth day of July, 1994.

Attachment

PETITION FOR PERMANENT
DISCONTINUANCE OF SERVICE

INTERIM NOTICE TO CUSTOMERS

The NH Public Utilities Commission is considering Claremont Gas Corporation's request to permanently discontinue its gas pipeline service to approximately 500 customers in Claremont. The Commission will hold a hearing on this request on July 21, 1994 at 9 AM at its offices at 8 Old Suncook Road in Concord.

One of the issues which has been raised concerns the customers' option to convert to bottled propane service during the interim period while the Commission is considering this matter.

If the discontinuance is approved by the Commission, Claremont Gas would be required to ensure that every customer is given the

Page 410

opportunity to be converted to bottled gas service. However, customers would not be obligated to choose Synergy Gas Corporation, which is Claremont Gas' parent company. There are a number of bottled propane suppliers who have indicated an interest in providing service to Claremont Gas customers.

Customers who elect to convert to bottled propane before the Commission considers Claremont Gas' request should carefully consider the benefits of competing companies before selecting a propane supplier.

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NH.PUC*07/13/94*[70569]*79 NH PUC 411*Northern Utilities, Inc.

[Go to End of 70569]

Re Northern Utilities, Inc.

Additional applicant: Public Service Company of New Hampshire

DR 94-090
Order No. 21,300

New Hampshire Public Utilities Commission

July 13, 1994

ORDER extending by 30 days the commission's interim approval of an amended interruptible gas sales contract between a natural gas local distribution company and an electric utility, which extension is deemed necessary to allow commission staff sufficient time for review of newly submitted contract provisions. For the decision originally granting interim approval, see Order No. 21,228 (79 NH PUC 280), *supra*.

1. RATES, § 384

[N.H.] Gas rate design — Interruptible service — Sales to electric utility — Necessity of contract amendments — Factors — Issuance of Order 636 — Unbundling requirements — Other transportation pricing changes — Nominating and balancing provisions — Interim approval — Extension of interim authority. p. 411.

BY THE COMMISSION:

ORDER

[1] Northern Utilities, Inc. (Northern) and Public Service Company of New Hampshire (PSNH) entered into an Interruptible Gas Sales Agreement (Gas Sales Agreement) on May 1, 1992, which the New Hampshire Public Utilities Commission (Commission) approved by Order No. 20,488 (May 26, 1992) in Docket DR 91-095. PSNH operates Newington Station, a utility boiler which is dual fueled and can operate on either oil or natural gas.

On May 10, 1994, Northern filed a Newington Station Conversion Cost Recovery Amended and Restated Interruptible Gas Sales and Interruptible Transportation Agreement (Restated Agreement) executed by Northern and PSNH for Commission approval. The Restated Agreement was designed to reflect current FERC regulation and Commission approved transportation policies. Northern and PSNH asked that the Restated Agreement be approved on an interim basis, effective immediately, to allow gas to be burned at Newington Station, thus lowering costs to consumers, while the terms of the Restated Agreement were fully evaluated. After discussion with the Office of Consumer Advocate and Commission Staff (Staff), Northern and PSNH withdrew the Restated Agreement and, on May 13, 1994, submitted instead an Interim Amendment to the Newington Station Conversion Cost Recovery Interruptible Sales Agreement (Interim Amendment) which addressed only the pricing requirements under current FERC and Commission regulation. This was approved, on an interim basis, in Order No. 21,228 (May 16, 1994), with interim approval expiring on July 15, 1994.

As required in Order No. 21,228, Northern submitted, on June 1, 1994, an Amended and Restated Agreement with PSNH for on-going use of natural gas at Newington Station. Staff has been reviewing the new provisions but will

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not be able to complete its review prior to the expiration of the Interim Amendment approval. For that reason, Staff believes it needs an additional period, not to exceed 30 days, to complete its review.

We find the extension of no more than 30 days to facilitate final Staff review to be reasonable and will approve the extension. Our interim approval, therefore, will remain in effect until August 14, 1994.

Based upon the foregoing, it is hereby

ORDERED, that the Interim Amendment approved by the Commission in Order No. 21,228 between Northern and PSNH is EXTENDED TO AUGUST 14, 1994 to facilitate further Staff review.

By order of the New Hampshire Public Utilities Commission this thirteenth day of July, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 94-090, Order No. 21,228, 79 NH PUC 280, May 16, 1994. [N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DR 91-095, Order No. 20,488, 77 NH PUC 250, May 26, 1992.

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NH.PUC*07/18/94*[70570]*79 NH PUC 412*Town of Derry

[Go to End of 70570]

79 NH PUC 412

Re Town of Derry

DR 94-134

Order No. 21,301

New Hampshire Public Utilities Commission

July 18, 1994

ORDER suspending a municipality's proposed contract/tariff revisions for wholesale service to Southern New Hampshire Water Company, to allow for proper investigation.

1. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed contract/tariff terms — For wholesale service provided to a retail utility — To allow for adequate investigatory period — Municipal water service. p. 412.

BY THE COMMISSION:

ORDER

[1] On June 22, 1994, the Town of Derry filed a revision to its wholesale water rate/contract serving Southern New Hampshire Water Company; and

WHEREAS, a thorough investigation is necessary prior to rendering a decision thereon; it is hereby

ORDERED, that NHPUC No. 1, Town of Derry Water Department 6th Revised Page 7 is suspended pending further investigation and decision.

By order of the New Hampshire Public Utilities Commission this eighteenth day of July, 1994.

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NH.PUC*07/18/94*[70571]*79 NH PUC 412*Public Service Company of New Hampshire

[Go to End of 70571]

79 NH PUC 412

Re Public Service Company of New Hampshire

DR 94-135

Order No. 21,302

New Hampshire Public Utilities Commission

July 18, 1994

ORDER granting protective treatment of an electric utility's proposed special contract service agreement with an industrial customer, Monadnock Paper Mills, Inc.

1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Proposed special contract rates — Customer-specific usage data —

Page 412

Confidentiality. p. 413.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of proposed special rate contract — Of customer-specific usage data relied upon — Factors affecting grant of confidentiality — Competitive disadvantage to both customer and utility if disclosed — Electric utility. p. 413.

BY THE COMMISSION:

ORDER

[1, 2] On June 27, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, special contract NHPUC-96 with Monadnock Paper Mills, Inc. (Monadnock) in redacted form, for the provision of electric service; and

WHEREAS, concurrent with the special contract, PSNH filed a Motion for Protective Treatment of portions of the Technical Statement containing customer specific information supporting the contract; and

WHEREAS, in its motion PSNH states that the information should be afforded protective treatment, pursuant to RSA 91-A, in that it contains customer specific usage data, operating costs and competitive alternatives, disclosure of which "... would result in substantial harm to Monadnock by providing its competitors with a view of Monadnock's costs and a resulting unfair competitive advantage ..." and could further "... harm PSNH and its customers by discouraging other businesses from working with PSNH to expand or locate in New Hampshire ..."; and

WHEREAS, in its motion PSNH states that neither the Office of Consumer Advocate nor the Commission Staff (Staff) have reviewed the materials over which protection is sought and therefore, take no position; and

WHEREAS, the Commission recognizes that detailed customer specific information regarding customer usage, costs and terms of service is critical to review of the special contract by the Commission and Staff, as required by RSA 378:18; and

WHEREAS, the Commission also recognizes that businesses engaged in discussions with regulated utilities are reluctant to disclose sensitive commercial and financial information if it is to become part of the public record; it is hereby

ORDERED, that PSNH's Motion for Protective Treatment of portions of the Technical Statement supporting special contract number NHPUC-96 between PSNH and Monadnock for the provision of electric service be, and hereby is, GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Staff or any party raises concerns, after review of the redacted materials, as well as the on-going rights of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the New Hampshire Public Utilities Commission this eighteenth day of July,

1994.

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NH.PUC*07/19/94*[70572]*79 NH PUC 413*North Country Water Supply, Inc.

[Go to End of 70572]

79 NH PUC 413

Re North Country Water Supply, Inc.

DE 93-197

Order No. 21,303

New Hampshire Public Utilities Commission

July 19, 1994

ORDER requiring a water utility that serves a condominium complex to show cause why it should not be deemed a public utility and franchised.

1. PUBLIC UTILITIES, § 14

[N.H.] Regulatory status — Factors — Intercorporate relations — Ownership of assets

Page 413

through separate subsidiary — Request for exemption from regulation as public utility — Show cause order — Water utility. p. 414.

2. FRANCHISES, § 3

[N.H.] Necessity of securing — Public utility status as a factor — Impact of request for exemption from regulation as public utility — Show cause order — Water utility. p. 414.

BY THE COMMISSION:

ORDER

[1, 2] On November 23, 1992 the New Hampshire Public Utilities Commission (the "Commission") issued Order No. 20,677 in docket DE 92-076, directing its Staff to investigate the water system at Freedom Village Condominiums with which North Country Water Supply, Inc. ("North Country" or the "Company") was involved. On December 14, 1992 and January 13, 1993 Staff sent letters to the Company requesting information on the Company's involvement with the water system, and received subsequent responses. In the view of the Staff, the Company's operations at Freedom Village met the statutory definition of a public utility under RSA 362:2.

On October 12, 1993 the Company requested exemption from PUC regulation for its operations at Freedom Village. The Staff indicated to the Company that if the Freedom Village water system assets were held by an entity separate from North Country, the Freedom Village entity might be granted an exemption from the Commission, pursuant to RSA 362:4,I but that the Company would have to make a filing detailing its proposal to separate the Freedom Village assets and operations.

On March 21, 1994 the Company requested the approval of such a plan without providing any further information thereon. The Commission's Executive Director and Secretary advised the Company on April 11, 1994 of additional information that would be needed before the Commission could act on the exemption request. Because no response was forthcoming, the Executive Director again advised the Company, in a letter on June 20, 1994, that the Company had until July 8 to provide a response as to its intention with respect to Freedom Village or the Staff would proceed on the assumption that North Country had abandoned its request for a waiver and would move forward on the establishment of a franchise for Freedom Village. This letter similarly has produced no response.

Based upon the foregoing, it is hereby

ORDERED, that North Country Water Supply, Inc. appear before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire at 10:00 A.M. on August 31, 1994 to show cause why the provision of water to Freedom Village should not be franchised.

By order of the New Hampshire Public Utilities Commission this nineteenth day of July, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re North Country Water Supply, Inc., DE 92-076, Order No. 20,677, 77 NH PUC 732, Nov. 23, 1992.

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NH.PUC*07/22/94*[70573]*79 NH PUC 414*EnergyNorth Natural Gas, Inc.

[Go to End of 70573]

79 NH PUC 414

Re EnergyNorth Natural Gas, Inc.

DE 91-149

Order No. 21,304

New Hampshire Public Utilities Commission

July 22, 1994

ORDER adopting settlement agreement as to the definition of a natural gas local distribution company's maximum daily total contractual capacity quantity for firm transportation service.

Page 414

1. SERVICE, § 332

[N.H.] Natural gas — Firm transportation service — Limits on delivery obligations — Maximum daily total contractual capacity quantity — Settlement as to definition. p. 415.

BY THE COMMISSION:

ORDER

[1] In accordance with Order No. 21,237, on June 6, 1994, EnergyNorth Natural Gas, Inc. (EnergyNorth or the Company) filed with the New Hampshire Public Utilities Commission (Commission) the direct testimony of Christopher P. Fleming which supported and justified the Company's definition of the Maximum Daily Total Contractual Capacity Quantity (MCCQ), the maximum quantity of gas which a firm transportation customer has the right to use and EnergyNorth is obligated to deliver during any gas day. On June 20, 1994, in accordance with Order No. 21,237, the joint direct testimony of Commission Staff members George R. McCluskey and Kenneth E. Yasuda, Sr., which commented on Mr. Fleming's testimony, was filed with the Commission; and

WHEREAS, members of the Commission Staff (Staff), the Office of Consumer Advocate (OCA), and EnergyNorth held a conference telephone call on June 21, 1994 in order to resolve the outstanding issue of how the MCCQ is to be defined; and

WHEREAS, the hearing scheduled for June 23, 1994 regarding EnergyNorth's proposed tariffs for firm transportation service was continued, in light of further discussions between Staff, the OCA, and the Company; and

WHEREAS, a settlement agreement was forged between Staff, the OCA, and EnergyNorth regarding the operational definition of MCCQ; and

WHEREAS, EnergyNorth filed a revised set of tariff pages for firm transportation service with the Commission on July 7, 1994, with an effective date of July 27, 1994, which attempted to incorporate the terms of the aforementioned settlement agreement; and

WHEREAS, Staff contacted EnergyNorth on July 13, 1994 and again on July 19, 1994, to suggest several changes in the language of the filing in order to be consistent with the aforementioned agreement; and

WHEREAS, EnergyNorth has agreed to file a revised tariff no later than July 25, 1994 which incorporates Staff's modifications; and

WHEREAS, Staff has reported these recent developments in a memorandum to the

Commission dated July 20, 1994; it is hereby

ORDERED, that the aforementioned compliance tariff filing made by EnergyNorth on July 7, 1994 be and hereby is suspended; and it is

FURTHER ORDERED, that the Company file revisions to its compliance filing for firm transportation service with the Commission no later than July 26, 1994, with an effective date of August 10, 1994; and it is

FURTHER ORDERED, that a copy of the aforementioned settlement agreement be filed with the Commission no later than July 27, 1994.

By order of the New Hampshire Public Utilities Commission this twenty-second day of July, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 91-149, Order No. 21,237, 79 NH PUC 290, May 23, 1994.

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NH.PUC*07/22/94*[70574]*79 NH PUC 416*New Hampshire Electric Cooperative, Inc.

[Go to End of 70574]

79 NH PUC 416

Re New Hampshire Electric Cooperative, Inc.

DR 93-212
Order No. 21,305

New Hampshire Public Utilities Commission

July 22, 1994

ORDER accepting proposed conservation and load management programs of an electric cooperative, and commending the cooperative on its innovative alternative financing proposals as well as its expansion of low-income customer benefits.

1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utilities — Annual filings — Staggered review periods. p. 417.

2. RATES, § 260

[N.H.] Surcharges — Electric cooperative — Purpose — Funding of conservation and load management programs. p. 417.

3. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric cooperative — Emphasis on load management over conservation — Reasonableness — Factors — Wholesale demand charges. p. 417.

4. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric cooperative — Constructs — Innovative alternative financing — Lighting programs and disposal of hazardous lighting materials — Programs targeted at low-income customers. p. 417.

APPEARANCES: Broderick and Dean by Mark W. Dean, Esquire on behalf of the New Hampshire Electric Cooperative, Inc.; Michael J. Holmes, Esquire for the Office of Consumer Advocate on behalf of residential ratepayers; and Eugene F. Sullivan, III, Esquire for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On November 1, 1993 New Hampshire Electric Cooperative, Inc. (NHEC or Company) filed its proposed 1994 Conservation and Load Management Program and Budget (C&LM) with the New Hampshire Public Utilities Commission (Commission) for effect January 1, 1994 through December 31, 1994 pursuant to RSA 378:38; 378:39 and 378:30-b. This filing represents NHEC's first formal C&LM program.

On January 11, 1994 the Commission issued an Order of Notice scheduling a prehearing conference for January 28, 1994 and subsequently approved a procedural schedule to govern its investigation into the C&LM filing on February 7, 1994 by Order No. 21,121.

Following a round of data requests by the Office of Consumer Advocate (OCA) and Staff, a technical session was held on March 8, 1994 to discuss outstanding issues of concern. The OCA and Staff filed separate testimony on April 13, 1994 and April 15, 1994 respectively and responded to Company data requests on May 4, 1994.

On June 3, 1994 a hearing was held at which time the Company, OCA and Staff submitted a Settlement Agreement (Attachment I) that resolved all issues in the case.

II. POSITION OF STAFF AND THE PARTIES

As was stated above, NHEC, Staff and the OCA entered into a settlement agreement which resolved all of the issues in this proceeding.

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III. COMMISSION ANALYSIS

A. Settlement Agreement

Attachment I to this Report and Order is a copy of the Settlement Agreement resolving all issues in this proceeding.

The settlement provides that from this time forward NHEC's C&LM program will be effective for twelve months commencing on July 1st of any year. Consequently, NHEC shall make its C&LM program filing on or before February 1st of each year.

At the June 3, 1994 hearing testimony by the Staff and NHEC explained the rationale for this change in effective dates. Staff testified that because all six electric utilities filed their C&LM programs at the same time there was insufficient time to process all filings for effect January 1 each year.¹⁽²⁸⁾ This led to the six month delay encountered in this proceeding in implementing the NHEC C&LM program.

[1] We believe staggering C&LM program effective dates will accommodate more timely and thorough reviews of C&LM filings and therefore we will approve the proposed change.

[2] The parties and Staff agreed to set the 1994/1995 C&LM budget at \$1,388,617, approximately \$0.5 million more than was approved in NHEC's 1992 least cost integrated resource plan. We are pleased that the management of NHEC has recognized the benefits that C&LM can bring to members and we encourage its further development. The C&LM surcharges consistent with the agreed budget are:

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

Residential	\$.00323/kWh
General	\$.00061/kWh
Primary General	\$.00024/kWh

2(29)

The costs to be reconciled against the revenues recovered under the above mentioned surcharges shall include the C&LM expenditures incurred during the period January 1, 1994 through June 30, 1994.

[3, 4] The specific agreements with respect to C&LM program modifications, alternative financing arrangements, cost-effectiveness tests, avoided costs, accounting treatments, monitoring and evaluation, and reporting requirements are described in full in the attached Settlement Agreement. We will address herein, however, some of the more important issues raised.

Initially, we note that NHEC's entire C&LM program is weighted more heavily toward load management than conservation when compared to the C&LM programs of other electric utilities under our jurisdiction. This is understandable given the level of the wholesale rate demand charges billed to NHEC by PSNH. That notwithstanding, the level of the energy charges in the wholesale rate also provides ample opportunities for the development of cost-effective conservation programs. Over the next few years we will expect NHEC to develop budget proposals that reflect a better balance between conservation and load management and pay particular attention to members that are unable to benefit from existing programs.

A particular aspect of the NHEC program which merits discussion is the development of an alternative financing program. Since the scale of cost-effective C&LM implementation is limited primarily by the rate impacts on non-participants, we are naturally interested in innovative ratemaking proposals that increase system benefits without unduly increasing rates. NHEC's agreement to develop residential and non-residential programs to finance C&LM investments at discounted rates falls into this category of innovative ratemaking. We look forward to reviewing NHEC's proposals.

Because the issue of lamp and ballast recycling was not addressed in the Settlement Agreement, we will require NHEC to insure that its C&LM programs comply with all state and federal environmental regulations regarding the treatment and disposal of hazardous lighting materials.

Finally, we view the addition of a low income component to the Lighting Catalog Program and the proposed modifications to the joint Community Action Program/NHEC low income weatherization program to be consistent with the goal of providing all members the opportunity to participate in the benefits of C&LM.

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In conclusion, we find the proposed Settlement Agreement to be just, reasonable and in the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed Settlement Agreement is just and reasonable and is hereby approved; and it is

FURTHER ORDERED, that the C&LM programs and the associated class surcharges shall be effective on August 1, 1994; and it is

FURTHER ORDERED, that the Company's alternative financing proposal be submitted for Commission review and approval within 90 days of the date of this order; and it is

FURTHER ORDERED, that within 90 days of the date of this order, the Company shall submit for Commission review and approval a redesigned residential lighting program that complies with Order No, 20,709; and it is

FURTHER ORDERED, that within 90 days of the date of this order, the Company shall develop and submit for Commission review and approval a commercial and industrial energy audit program that, at a minimum, meets the criteria set forth in the Settlement Agreement; and it is

FURTHER ORDERED, that the Company shall submit as part of its Least Cost Integrated Resource Plan filing due July 30, 1994 a comprehensive monitoring and evaluation plan for its C&LM programs.

By order of the New Hampshire Public Utilities Commission this twenty-second day of July,

1994.

ATTACHMENT I STIPULATION

I. INTRODUCTION

This Stipulation (Stipulation) sets forth the agreement between the New Hampshire Public Utilities Commission Staff (Staff), the Office of Consumer Advocate (OCA) and the New Hampshire Electric Cooperative (the Company or NHEC) regarding NHEC's 1994 conservation and load management (C&LM) program and the accompanying C&LM surcharges to be effective on or after July 1, 1994. The Stipulation resolves all issues in this docket. A summary of the procedural history and the terms of the Stipulation are set forth below.

II. PROCEDURAL HISTORY

On November 1, 1993, NHEC petitioned the New Hampshire Public Utilities Commission (Commission) to open a proceeding on its 1994 C&LM program and surcharges for effect January 1, 1994 through December 31, 1994. The Commission held a duly noticed prehearing conference on January 28, 1994, at which time a procedural schedule was established. There were no intervenors other than the OCA, a statutory party in all dockets.

The OCA and Staff issued data requests on February 11, 1994 and February 16, 1994 respectively to which the Company responded. A technical session on the Company's filing was held on March 8, 1994. The OCA and Staff issued testimony on April 13, 1994 and April 15, 1994 respectively and responded to Company data requests on May 4, 1994. On May 13, 1994, Staff, the OCA and NHEC participated in settlement discussions which resulted in this Stipulation.

III. STIPULATION

A. Future Conservation and Load Management Filing Procedures

The effective date of NHEC's 1994 C&LM program and the associated C&LM surcharges shall be July 1, 1994. NHEC shall file its 1995/1996 C&LM program proposal on or before February 1, 1995, with a proposed effective date of July 1, 1995. In each year thereafter, unless otherwise ordered by the Commission, NHEC will file its C&LM proposal on or before the first business day of February, with a proposed effective date of July 1.

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B. Electric Thermal Storage Heat Program (ETS)

NHEC may implement its ETS program as proposed, with the following modifications:

1. NHEC shall perform a study of existing ETS program participants for the purpose of verifying power cost savings, customer and NHEC costs, program cost effectiveness, equipment performance and customer satisfaction. The budget for this study shall be \$10,000. NHEC shall consult Staff and the OCA in the development of the study. The results of the study shall be included in the February 1995 filing.

2. NHEC shall provide an energy audit, free of charge, to each new potential ETS

participant. The audit shall address, at a minimum, the measures listed in sections D or L of this Stipulation.

3. The calculation of ETS cost effectiveness shall be based on the expected lifetime of the measure (i.e., the ETS unit).

4. NHEC shall make funds available to ETS participants under the financing program outlined in section E of this Stipulation. All measures identified through the audit as cost effective shall be eligible for receipt of financing funds. Fuel conversion is not an eligible measure.

5. The cost of meters purchased for ETS shall continue to be included in base rates.

6. The ETS program budget for 1994/1995 period shall be \$658,488 including \$10,000 for the ETS evaluation study.

7. NHEC's 1994/1995 target participation shall be 750 installations (i.e., projected number of customers). Should the demand for ETS heaters exceed the target level by more than 20%, NHEC shall request Commission approval prior to serving that additional demand. Should the Company make such a request, Staff agrees to make a recommendation to the Commission within fourteen (14) days.

C. Domestic Water Heater Programs — Controlled Water Heater Program and Storage Water Heater Program

NHEC's two water heater programs may be implemented with the following modifications:

1. NHEC shall make available, at no cost to participants in either water heater program, a hot water heater insulation wrap, low flow shower heads and faucet aerators.

2. NHEC shall not require participating customers to purchase any specific brand or model water heater as a precondition for the storage water heater rebate available under this program. However, NHEC shall require, as a condition to the rebate, that the customer purchase a water heater which meets a specified energy efficiency rating and warranty of no less than 15 years.

3. The 1994/1995 budget for the Controlled Water Heater Program shall be \$256,564 including lost revenues. The equivalent budget for the Storage Water Heater Program shall be \$126,649.

D. Residential Energy Conservation Audit Program

NHEC shall develop and offer to its residential customers, an energy audit that is capable of identifying energy efficiency opportunities in the following areas: building envelope, air infiltration, water heating, lighting, space heating, ventilation and air conditioning. Fuel conversion for space or water heating shall not be considered as part of the audit program.

The cost of providing audits to 100 customers, NHEC's target for 1994/1995, shall continue to be included in base rates.

E. Alternative Financing Program

NHEC shall develop a financing program utilizing funds available through its own lending sources and/or arrangements with other New Hampshire financial institutions. The financing

proposal shall be submitted for Commission review within 90 days from the date of the Commission's final order in this docket. For the purposes of setting conservation surcharges for 1994/1995, the Parties have agreed on a total program budget of \$40,351 with estimated

Page 419

budgets of \$20,000 each for the Residential and General customer classes.

F. Dual Fuel Program

NHEC shall implement its Dual Fuel program as proposed in the November 1, 1993 filing. The 1994/1995 budget shall be \$13,013 and the target participation shall be 60 customers.

G. Lifetime Lighting Program

NHEC shall withdraw its proposed lifetime lighting program. Within 90 days of the Commission's order in this docket, NHEC shall submit for Commission review and approval a redesigned residential lighting program that complies with Order No. 20,709. The new design shall be a catalog type offering modeled after existing New Hampshire utility programs and include subsidy provisions (e.g., 50% of product cost) sufficient to encourage meaningful levels of customer participation. The Company shall consider a program component (e.g., a higher subsidy) targeted to low income customers. The program shall be implemented by a competitively selected energy service company or a contractor. The 1994/1995 program budget shall be \$151,315 including estimated lost revenues.

H. Low Income Program

NHEC shall implement its proposed low income program with the following modifications:

1. NHEC shall increase its budget for the 1994/1995 Low Income Program to \$100,877.
2. NHEC shall utilize the existing Community Action Program (CAP) network to administer and implement this program. NHEC agrees to provide CAP with up to \$1,500 per qualified low income electric space heat household to finance the installation of energy conservation and load management measures beyond what CAP would normally install as part of the federal Weatherization Assistance Program.
3. Funding shall be conditioned upon the requirement that CAP prioritize the installation of recommended measures such that energy conservation measures rather than load management measures receive the highest priority.
4. NHEC shall have a goal of servicing 100 eligible customers in the 1994/1995 program year.

I. Winter Interruptible Program

NHEC has withdrawn the Winter Interruptible Program as a component of the 1994/1995 C&LM filing.

J. Savings Through Energy Management

Implementation of this program shall proceed as proposed in the Company's C&LM filing with a 1994/1995 budget of \$6053.

K. Commercial and Industrial (C&I) Energy Audit Program

Within 90 days of the date of the final order in this docket, NHEC shall develop and submit for Commission approval a C&I energy audit program. At a minimum, this program shall be capable of identifying energy efficiency opportunities in the following areas: building envelope, air infiltration, water heating, lighting, space heating, motors, ventilation and air conditioning. Fuel conversion for space or water heating shall not be considered as part of the audit program.

To the extent funds are available, participants in the C&I audit program shall also be eligible to participate in the financing program described in section E of this Stipulation. NHEC shall budget \$35,307 for this program in 1994/1995 and shall have a target goal of servicing 70 customers.

L. Total Resource Cost (TRC) Test Analyses and Avoided Costs

In future C&LM filings, NHEC shall present TRC analyses that take into account the

Page 420

costs avoided in each year of a program's life. In addition, the analyses should include all utility costs incurred in developing, implementing and evaluating C&LM programs, regardless of whether those costs are recovered through the C&LM surcharges or base rates. Workpapers used to generate TRC results shall also be included in such filings.

M. Accounting/Financial Issues

1. Lost revenues — The parties agree that NHEC's concerns regarding the recovery of fuel related costs associated with ETS implementation are more appropriately addressed in a purchased power adjustment proceeding. Accordingly, the Company agrees to withdraw its request for ETS related lost revenues. NHEC also agrees to revise its calculation of lost revenues utilizing the non-fuel cost components of the applicable rates consistent with the terms of this Stipulation.

2. Payroll costs — For the purposes of this filing, the payroll costs associated with all NHEC employees, with full or part-time C&LM responsibilities, shall be included in base rates which are now the subject of a docket currently before the Commission. NHEC shall maintain its payroll records in a manner that allows for appropriate tracking and verification of C&LM activities per employee.

3. C&LM related expenditures for radio controlled switches and peak interrupter panels shall be expensed in the relevant program year.

N. C&LM Surcharges and Cost Recovery Mechanism

The total C&LM budget for 1994/1995, after adjustment for revisions included within this Stipulation, shall be \$1,388,617. NHEC shall implement its proposed C&LM Cost Recovery Mechanism with the following modifications:

1. The C&LM surcharges shall take effect on July 1, 1994.
2. The 1994/1995 C&LM surcharges for the respective classes shall be as follows:

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

Residential	\$.00323/kWh
General	\$.00061/kWh
Primary General	\$.00024/kWh

3. The reconciliation of revenues recovered under the C&LM surcharges listed above shall include C&LM expenditures incurred from January 1, 1994 through June 30, 1995.

O. Monitoring and Evaluation (M&E)

NHEC shall submit as part of its LCIP filing due July 30, 1994 a comprehensive M&E plan for its C&LM programs. This plan shall include, at a minimum, appropriate means to track and verify energy savings resulting from the installation of C&LM measures. NHEC should utilize the experience of their C&LM consultant as well as other New England utilities in developing M&E protocols and procedures.

P. Reporting Requirements

With respect to ongoing reporting of Company C&LM activities, NHEC shall adhere to the following filing schedule:

1. Monthly C&LM Expenses and Revenues Variance Reports — Monthly reports shall be filed within 30 days following the end of each month of the program year. At a minimum, they shall contain by class by program an accounting for the month ended of C&LM expenses, revenues, lost revenues, actual and projected C&LM monthly expenses for the program year, and estimated year-end over or under collection of C&LM surcharges per class.

2. Quarterly Program Narratives — Quarterly narratives shall be filed within 45 days following the end of each quarter of the program year. At a minimum, they shall contain a written and tabular summary of C&LM activities such as planned and actual year to date energy and demand savings, program expenditures, participation levels, implementation activities, and budget variances.

3. Annual C&LM Report — The annual report shall be filed within 45 days following

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the end of the program year. At a minimum, it shall include in narrative and tabular format the following information for each program: actual versus planned budget expenditures by cost category and variance percentages, actual versus planned demand and energy savings, direct customer savings, projected lifetime savings, actual versus planned benefit/cost ratios, lost revenues, and any explanatory details regarding program performance.

IV. *CONDITIONALITY*

Other than as expressly stated herein, the making of this Stipulation establishes no principles or precedents and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation.

This Stipulation is the product of settlement negotiations. The content of those negotiations

shall be privileged and all previous and/or draft offers of settlement shall be without prejudice to the position of any party or participant presenting such offer.

This Stipulation is submitted on the condition that if the Commission does not approve the Stipulation in its entirety, the Stipulation shall be deemed withdrawn and shall not constitute part of the record in this or any proceeding or be used for any purpose to foreclose Staff, OCA or the Company from making any contention in any future proceeding or investigation.

The Company, OCA and Staff agree that this Stipulation, or portions hereof, shall be effective and binding, only upon approval of the Commission.

IN WITNESS THEREOF, the parties and Staff have caused this agreement to be executed by their duly-authorized agents, and request that the Commission adopt this settlement as a final resolution of all issues in this proceeding.

DATED as of this third day of June 1994.

NEW HAMPSHIRE ELECTRIC
COOPERATIVE, INC.

By: Mark W. Dean, Esquire
Broderick & Dean, P. A.
707 Chestnut Street
Manchester, NH 03105-1420

OFFICE OF CONSUMER ADVOCATE

By: Michael Holmes, Esquire
Office of the Consumer Advocate
8 Old Suncook Road
Concord, NH 03301

NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION STAFF

By: Eugene F. Sullivan, III, Esq.
New Hampshire Public Utilities
Commission
8 Old Suncook Road
Concord, NH 03301-7319

FOOTNOTES

¹In Docket DR 93-195 the UNITIL Companies, Concord Electric Company and Exeter and Hampton Electric Company, also changed their dates for filing C&LM programs.

²We note that these monetary values are based on the static costs of the programs. That is, if in fact the programs are effective in reducing overall load and peak load, they should reduce NHEC's overall power costs and in the long run reduce customer (member) power costs.

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NH.PUC*07/25/94*[70575]*79 NH PUC 422*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 70575]

79 NH PUC 422

Re Sprint Communications Company of New Hampshire, Inc.

DE 94-144

Order No. 21,306

New Hampshire Public Utilities Commission

July 25, 1994

ORDER authorizing an interexchange telephone carrier to introduce its "Real Solutions" service, under which a customer may choose between flat-rate options that are either distance-, time-of-day-, day-of-week-, or usage-sensitive.

1. RATES, § 582

[N.H.] Telephone rate design — Toll

Page 422

service — "Real Solutions" service — Customer-selected flat-rate options — Distance- or usage-sensitive charges — Time-of-day- or day-of-week-sensitive charges. p. 423.

BY THE COMMISSION:

ORDER

[1] On July 12, 1994, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Real Solutions and make minor text changes to the New Hampshire PUC No. 4 Tariff for the purpose of including language related to the Real Solutions service offering, for effect August 12, 1994; and

WHEREAS, Real Solutions is a packaged telecommunications service which offers customers using domestic and/or international calling the flexibility to choose a flat rated option that is neither distance sensitive, time of day, day of week or usage sensitive, via switched or dedicated access for their outbound traffic including 800, FONCARD and switched data usage; and

WHEREAS, Real Solutions allows for subscriber defined invoicing and reporting; and

WHEREAS, Real Solutions domestic calls will be billed at an eighteen second minimum with six second billing increments thereafter; and

WHEREAS, Sprint also proposes to make minor text changes to include Real Solutions into its New Hampshire PUC No. 4 Tariff; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages for Sprint's NHPUC No. 4 are approved for effect as filed:

- 3rd Revised Page 1
- 1st Revised Page 2
- 1st Revised Page 12
- 1st Revised Page 22
- 1st Revised Page 24
- 1st Revised Page 28
- 1st Revised Page 31
- 1st Revised Page 45
- Original Page 71-A
- 1st Revised Page 72
- Original Page 103-A
- Original Page 103-B
- Original Page 103-C
- Original Page 103-D;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of July, 1994.

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NH.PUC*07/25/94*[70576]*79 NH PUC 423*MCI Telecommunications Corporation of New Hampshire

[Go to End of 70576]

79 NH PUC 423

Re MCI Telecommunications Corporation of New Hampshire

DR 94-145

Order No. 21,307

New Hampshire Public Utilities Commission

July 25, 1994

ORDER authorizing an interexchange telephone carrier to introduce a new "HotelDirect" service, to reduce from 30 seconds to 18 seconds the minimum connect time for Option F 800 service, to introduce a 5% discount for customers using a preferred regional calling program, and

to increase access charges associated with its regional "Vision" calling plan.

Page 423

1. RATES, § 585

[N.H.] Telephone rate design — Toll calling — Special calling plans — Introduction of "HotelDirect" service — Inbound/outbound usage charges. p. 424.

2. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — "Option F 800" services — Minimum billing increment — Reduction from 30 to 18 seconds. p. 424.

3. RATES, § 582

[N.H.] Telephone rate design — Toll calling — Special calling plans — Regional intraLATA calling plan — Introduction of discounts — Increase in access charges. p. 424.

BY THE COMMISSION:

ORDER

[1-3] On July 14, 1994, MCI Telecommunications Corporation of New Hampshire (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Option X — HotelDirect, change the minimum average time requirement for all calls associated with Option F (MCI 800 Service), increase the rates for the Regional Program associated with Option Q (MCI Vision) and introduce the Preferred Regional Program Discount for Option R (MCI Preferred) customers, for effect August 14, 1994; and

WHEREAS, Option X — MCI HotelDirect is an outbound customized telecommunications service which may include an inbound service option using Business Line, WATS Access Line or Dedicated Access Line termination; and

WHEREAS, the Option X usage charges for outbound switched services are proposed to be \$.2394 for Peak and \$.1915 for Off-Peak and for dedicated outbound \$.1386 for Peak and \$.1109 for Off-Peak; and

WHEREAS, the Option X usage charges for inbound switched services are proposed to be \$.2889 for Peak and \$.2311 for Off-Peak and for dedicated inbound \$.1431 for Peak and \$.1145 for Off-Peak; and

WHEREAS, MCI proposes to change the minimum average time requirement for all calls associated with Option F from a thirty second to an 18 second initial connect time; and

WHEREAS, MCI proposes to increase its Regional program rates associated with Option Q by changing the switched access rate from \$.2280 to \$.2360 and changing the dedicated access rate from \$.1390 to \$.1430; and

WHEREAS, MCI proposes to introduce a 5% discount for customers of the Preferred Regional Program; and

WHEREAS, the proposed service additions and revisions will expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good: it is therefore

ORDERED, that the following tariff pages for MCI's NHPUC No. 1 — are approved:

32nd Revised Page No. 1
16th Revised Page No. 3
20th Revised Page No. 3.1
8th Revised Page No. 4
2nd Revised Page No. 35
10th Revised Page No. 54
2nd Revised Page No. 57
Original Page No. 59.8
Original Page No. 59.9;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of July, 1994.

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NH.PUC*07/25/94*[70577]*79 NH PUC 425*AT&T Communications of New Hampshire, Inc.

[Go to End of 70577]

79 NH PUC 425

Re AT&T Communications of New Hampshire, Inc.

DE 94-150

Order No. 21,308

New Hampshire Public Utilities Commission

July 25, 1994

ORDER authorizing an interexchange telephone carrier to revise usage charges associated with certain of its custom network services, to (1) eliminate the minimum average time requirement, (2) bill on the basis of an initial time period of 30 seconds, and (3) bill in increments of one second thereafter.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Custom network services — Usage-sensitive charges — Elimination of minimum average time requirement — Change in billing increments. p. 425.

BY THE COMMISSION:

ORDER

[1] On July 15, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to revise the method for determining usage charges contained within its New Hampshire P.U.C. No. 1 CUSTOM NETWORK SERVICES tariff, Section 4, AT&T MEGACOM 800 and AT&T 800 Gold Service — Nodal, for effect September 1, 1994; and

WHEREAS, this petition seeks to revise the method for determining usage charges by eliminating the Minimum Average Time Requirement ("MATR"); and

WHEREAS, the MATR currently aggregates the customer's total usage to determine if the average length of call is less than, equal to or greater than 30 seconds; and

WHEREAS, under the proposed method individual calls will be measured with a minimum initial period of 30 seconds and in additional one second increments thereafter; and

WHEREAS, the services affected will be: AT&T MEGACOM 800, AT&T 800 Gold Service-Nodal, including options 1 and 2, and UniPlan Special Access, offered under AT&T MEGACOM Plus Service; and

WHEREAS, it is proposed that the AT&T Billing System will be programmed to implement the revised billing method on September 1, 1994, on a nationwide basis

WHEREAS, this petition seeks to maintain parity between AT&T's interstate and intrastate tariffs; and

WHEREAS, the proposed revision will foster competition in the New Hampshire Telecommunication intraLATA Toll Market, which is in the public good; it is therefore

ORDERED, that the following tariff pages of AT&T Tariff No. 1, AT&T Custom Network Service, is approved for effect as filed:

Section 4:

3rd Revised Page 7

1st Revised Page 8;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of July, 1994.

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NH.PUC*08/05/94*[70578]*79 NH PUC 426*Claremont Gas Corporation

[Go to End of 70578]

79 NH PUC 426

Re Claremont Gas Corporation

DE 94-056

Order No. 21,309

New Hampshire Public Utilities Commission

August 5, 1994

ORDER adopting stipulation and authorizing a natural gas local distribution company to discontinue service, subject to a customer and appliance conversion program. The company is allowed to abandon service given evidence that it could not possibly continue to operate except at a loss.

1. SERVICE, § 231

[N.H.] Abandonment or discontinuance — Factors affecting right to abandon — Right to operate versus obligation to serve — Operation at a loss — No obligation to serve at a loss — Local gas distribution company. p. 430.

2. SERVICE, § 244

[N.H.] Abandonment or discontinuance — Terms and conditions for approval of abandonment — Substitution of service — Completion before winter season — Conversion of customers to other suppliers — Conversion of appliances — Customer options as to conversion — Local gas distribution company — Stipulation. p. 430.

APPEARANCES: Ransmeier & Spellman by Dom S. D'Ambruoso, Esq. and Harold T. Judd, Esq. on behalf of Claremont Gas Corporation; James R. Anderson, Esq. of the Office of Consumer Advocate on behalf of New Hampshire residential ratepayers; and Robert J. Frank, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

The procedural history in this matter reflects significant activity since the Petition which initiated this docket was filed on March 25, 1994. Claremont Gas Corporation ("Claremont"), the Office of Consumer Advocate ("OCA") and the Staff ("Staff") of the New Hampshire Public

Utilities Commission ("Commission") reached a global settlement which the Commission approved from the bench following a hearing on July 21, 1994. This Report will address the Settlement Agreement and the Commission's basis for approving the same.

Claremont sought to discontinue service permanently in its franchise territory in Claremont, New Hampshire. Claremont's Petition requesting the aforementioned relief was filed on March 25, 1994 ("Petition"); in it, Claremont alleged that the public good no longer required the continuation of Claremont's pipeline service. The Petition listed a number of items supporting Claremont's request:

(a) Claremont earned a negative 14.56% return in 1993 and it is projected to yield a negative 4.77% return on earnings in 1994, despite recent rate increases;

(b) Claremont's current rates are uncompetitive with those of bottled propane retailers, thus leading to an ongoing erosion of its customer base;

(c) Claremont needs to make substantial capital improvements in the near future in order to provide safe and adequate service to its customers; and

(d) A major City of Claremont sewer project will require Claremont to abandon and purge a portion of its pipeline primarily in the Hanover Street area of its franchise. Petition at ¶ 6.

Claremont made these claims in support of its request for permanent abandonment, alleging that these factors were escalating its "death spiral." Petition at ¶ 5.

In addition, on April 21, 1994, Claremont filed a motion seeking immediate and

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permanent discontinuance of the service area affected by the City sewer project ("Hanover Motion"). The Hanover Motion requested authorization to abandon service permanently to 24 residential customers on Hanover and Barnes Streets in Claremont. The Parties and Staff thereafter entered into a Temporary Discontinuance of Service Settlement Agreement ("Hanover Settlement"). The Hanover Settlement permitted a *temporary* discontinuance of service to the 24 residential customers affected by the sewer project. The Commission considered and approved the Hanover Settlement after a noticed hearing on May 23, 1994. *See* Order No. 21,245.

Claremont filed the direct testimony of James M. Trickett on May 2, 1994. Mr. Trickett is employed by Synergy Gas Corporation ("Synergy"), which is the parent company of Claremont, and is responsible for overseeing the Claremont operation. Mr. Trickett's testimony addressed issues pertaining to the request for discontinuance of the Hanover line and Claremont's Petition for permanent discontinuance of its entire franchise.

On May 25, 1994, Claremont, the OCA, and Staff filed a Joint Statement of Issues. These issues will be addressed below, both within the context of the Settlement Agreement and within the Commission Analysis.

Staff Attorney, Robert J. Frank, forwarded a June 14, 1994 letter to John J. Yazinski, Esq., the City of Claremont's attorney, wherein Mr. Frank encouraged the City to participate in this proceeding if the City had any concerns which it wished to be brought before the Commission.

On June 22, 1994, the Commission issued Order No. 21,271 in response to the June 10, 1994

Motion of Claremont Gas Corporation to Permit Competition ("Competition Motion"). The Commission granted Claremont's request to permit Synergy to compete with other bottled propane suppliers who were soliciting Claremont customers during the pendency of the Petition. Synergy previously had been prohibited from competing with bottled suppliers for Claremont customers pursuant to an informal agreement reached with the Commission when Synergy acquired Claremont in 1987.

On June 28, 1994, Claremont informed the Commission, through its counsel, Harold T. Judd, that Claremont had completed the disconnection of all services on the Hanover line.

The Commission, on July 6, 1994, held a duly noticed public informational hearing in Claremont, New Hampshire. Among the issues raised were the options available to Claremont customers during the conversion process. It was noted that there are a number of bottled propane suppliers serving the City of Claremont; Synergy was only one option for customers. A representative of a local propane supplier expressed concern that Synergy had an unfair advantage with regard to obtaining retail customers who were leaving the Claremont system, in that Synergy has access to Claremont's customer list.

In response to the concerns raised at the public hearing in Claremont, the Commission issued Order No. 21,299 which required Claremont to forward an Interim Notice to all current customers. The Notice encouraged those customers who elected to convert prior to final hearing and Commission action to contact a number of propane suppliers serving the Claremont area in order to obtain the most favorable terms.

On July 19, 1994, Claremont filed a Settlement Agreement, Submission of Settlement Agreement, and Stipulation of Facts and the Positions of the Parties and Staff ("Stipulation"). These documents were executed by Claremont, the OCA, and Staff.

At the duly noticed July 21, 1994 hearing, Claremont presented the aforementioned settlement documents and the supporting testimony of Mr. Trickett. The OCA presented the testimony of its Finance Director, Kenneth E. Traum. The Staff presented the testimony of Richard G. Marini, Staff Administrator of the Safety Division, and Amanda O. Noonan, Information Officer of the Consumer Assistance Office.

II. SETTLEMENT AGREEMENT AND THE POSITIONS OF THE PARTIES AND STAFF

The Settlement Agreement is a comprehensive document which, if approved, would allow Claremont to discontinue service

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permanently to all of its customers under a number of terms and conditions. The document is divided into sections which provide a broad framework of the issues which the Staff and Parties considered in this proceeding: general terms and conditions, issues related to the conversion from pipeline service and the abandonment of the pipeline, and post-abandonment issues. As noted, the Settlement Agreement is executed and jointly sponsored by Claremont, the OCA, and Staff. We will highlight certain key provisions which relate to these general areas and offer elaboration where appropriate.

A. General Terms and Conditions

The Settlement Agreement provides that pipeline service will be discontinued permanently only after all customers have been converted to either bottled propane service or another alternative fuel source or have declined conversion. All customers will be given the option of converting to bottled propane by Synergy under certain guaranteed terms. These terms include a no-cost conversion of appliances, certain guaranteed rates for one year, and the unilateral option to terminate service by the customer. The method of calculating these rates will be discussed below, as are other terms and conditions.

Other significant terms include the following: Claremont agreed not to sell its customer list (§ 7.0); Synergy does not assume the responsibilities of a public utility by virtue of its participation in the conversion and abandonment process (§ 8.0); and the Parties and Staff agree that Claremont should not be fined for minor non-safety violations which may be detected during the conversion and abandonment process (§ 10.0). Inevitably, as with any other proceeding which is inherently broad in scope, the Settlement Agreement does not, and cannot be expected to, contemplate every potential issue which could arise during the conversion and abandonment process. Accordingly, the Settlement Agreement recognizes that unforeseen issues remain subject to Commission review and action during the conversion and abandonment process. Settlement Agreement at § 9.0.

B. Conversion from Pipeline Service

1. Claremont's Obligation To Bear Conversion Costs.

Claremont will be permitted to discontinue service permanently after all customers have been converted (or have declined conversion) to bottled propane service or to an alternative energy source. Customers will select the propane supplier of their choice.

If a customer selects Synergy as its bottled propane supplier, there are certain conversion and price ceiling conditions guaranteed by Claremont and Synergy. First, the inspection and readjustment of the customer's appliances, in order to accommodate the conversion to bottled propane, will be completed at no cost to the customer, provided that the appliances meet applicable National Fire Prevention Association ("NFPA") safety standards. Neither Claremont nor Synergy is obligated to convert any appliance which does not meet the relevant NFPA safety standards. Should the customer effect such repairs that bring any appliance in conformity with the above-referenced NFPA safety standards, then the appliance readjustments necessary for conversion will be made at no cost to the customer.

Secondly, there will be a guaranteed rate ceiling for a period of one year. To determine this upper bound rate, Claremont will take the customer's bill for January 1994, less any cost of gas adjustment, divide the bill by the number of therms consumed, and then multiply the resulting per-therm rate by 0.93 to yield the upper bound per-gallon rate that can be charged by Synergy for the one year period. Provisions are made in the Settlement Agreement to deal with those Claremont customers who were not customers in January 1994 and to handle any other disputes concerning the rate ceiling.

Thirdly, Synergy shall impose no exit charges beyond those charged in the ordinary course of business in the event that a Claremont customer, having initially selected Synergy, chooses to

change propane suppliers.

And lastly, Synergy will not require any

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such customers to commit to a long term contract. In particular, any Synergy customer may unilaterally switch to another bottled propane supplier without penalty during the one year rate ceiling period, provided that the customer gives Synergy a thirty day written notice of termination of services.

If a Claremont customer selects a different propane supplier, or converts to an alternate fuel source despite having the capability to convert to bottled propane, neither Claremont nor Synergy shall bear the costs of conversion.

The Settlement Agreement provides that any disagreement which arises between Claremont and converting customers shall first be submitted to the Commission's Consumer Assistance Office in order to attempt a negotiated resolution. If a resolution cannot be reached, the matter shall be brought before the Commission.

2. Problem Appliances And Conversions.

For any appliance that meets NFPA 54 safety standards but cannot safely be converted, Claremont will pay customers the present value of the appliance, which is to be calculated by subtracting the depreciated value of the appliance from the original purchase price. The depreciation schedule for appliances is as follows:

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

	RESIDENTIAL	NON-RESIDENTIAL
Water Heaters	8 years	7 years
Furnaces	18 years	15 years
All other appliances	12 years	10 years

The Settlement Agreement provides that in the event a customer cannot be converted due solely to the inability to place tanks in compliance with local ordinances and applicable safety standards, Claremont will bear the cost of converting the customer to an alternative fuel source at a comparable level of service. Once again, the Settlement Agreement specifically provides for a mechanism to resolve disputes concerning the extent of Claremont's obligations. Disputes will first be referred to the Commission's Consumer Assistance Office; if the parties are unable negotiate a satisfactory resolution, the matter will be put before the Commission.

C. Abandonment of the Pipeline

The Settlement Agreement details a number of steps which Claremont agrees to undertake during the pipeline abandonment process. All such measures are intended to assure that the distribution pipeline is purged of residual gas in a safe and thorough manner.

Claremont will retain a qualified team of personnel to complete the abandonment process. A third-party monitor, unaffiliated with either Claremont or Synergy, will be retained by Claremont to oversee the abandonment process. The monitor will be responsible for informing the Staff and local safety officials of any activity which, in the opinion of the monitor, is unsafe or

inappropriate. The monitor will have no responsibility to direct or control the abandonment process.

Claremont also agrees to maintain a general liability insurance policy which provides \$1 million in coverage for activities associated with the abandonment and conversion process.

D. Post-Abandonment Issues

As noted above, one of the issues which was noticed in this proceeding was the need for a bond or performance guarantee to ensure that all obligations relative to the abandonment processes are completed. In addition to the insurance requirement above, the Settlement Agreement requires Claremont to establish an escrow account which may be accessed in the event Claremont fails to complete its responsibilities. The funds placed in escrow will equal the sum of (a) \$69 per customer for those who remain unconverted, (b) \$20,000 to guarantee the distribution pipeline abandonment, (c) \$5,000 to guarantee the return of customer deposits, and (d) \$5,000 to guarantee that a final leak survey of the distribution pipeline is completed by Claremont. Each of these amounts will be released when the activity which is guaranteed by such sum is completed.

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There is a provision for the timely return of any customer deposits and a provision which requires Claremont to refund to customers any cost of gas adjustment ("CGA") over-collection, after the rate case surcharge and the recoupment authorized by the Commission in Claremont's last rate case (Docket No. DR 92-020, Order No. 21,133) have been deducted from the over-collection. To the extent that the rate case surcharge and the recoupment together exceed the CGA over-collection, Claremont's customers will not be charged for the remaining amount.

Any extended payment arrangements will be honored by Claremont until the balance of such accounts are paid in full. Synergy has agreed to treat all customers who elect service from Synergy the same way all new customers are treated, and no customer will be declined service because that customer has an unpaid balance with Claremont.

With regard to the potential environmental contamination of Claremont's plant property, the Settlement Agreement provides that Claremont shall continue to exist as a wholly owned Synergy subsidiary for a period of five years; as such, Claremont remains subject to all applicable environmental laws in New Hampshire.

Claremont will file its final annual report with the Commission within four months of completing the abandonment of the distribution pipeline. Under the Settlement Agreement, Claremont will cease to be a public utility for the purposes of Commission regulation six months following the final Commission Order approving this Settlement Agreement, unless Claremont fails to fulfill an obligation created by the Settlement Agreement or which arises under RSA 374:28.

III. COMMISSION ANALYSIS

[1, 2] N.H. RSA 374:28 authorizes the Commission to allow a public utility to discontinue its service permanently whenever the public good does not require the continuation of such service. Based upon the facts presented, we are satisfied that it is in the public good to approve the

Settlement Agreement with one additional condition which we announced at the close of the July 21, 1994 hearing. We will address the primary issues which were noticed in this matter and the basis for concluding that each such issue has been sufficiently addressed in the Settlement Agreement.

At the outset, we address the broad legal standard set forth in RSA 374:28. Claremont seeks permission to abandon a franchise which was originally granted by the New Hampshire General Court in 1860. The request raises issues which are of more than historical significance. It is axiomatic that when a utility franchise is granted by this Commission it creates not just a right to operate, but an obligation to serve. *Wolff Packing Co. v. Court of Industrial Relations*, 262 U.S. 522 (1927). The public interest standard in RSA 374:28 implicitly recognizes this principle. On the other hand, it is equally settled that a public utility is not obligated to provide service at a loss. *Texas Railroad Comm. v. Eastern Texas R.R. Co.*, 264 U.S. 79 (1924). The United States Supreme Court gave express recognition to the principle that there are due process limits to a utility's obligation to serve the public:

" ... if at any time it develops with reasonable certainty that future operation must be at a loss, the company may discontinue operation and get what it can out of the property by dismantling the road. To compel it to go on at a loss or to give up the salvage value would be to take its property without just compensation which is a part of due process of law."

264 U.S. at 85.

There is sufficient evidence from which we conclude that there is reasonable certainty that Claremont's future operations would be at a loss to the company.

Another significant factor which weighs heavily is that customers can be conveniently converted to an alternate fuel source, in most cases, bottled propane. The Settlement Agreement provides a mechanism whereby customers ultimately have a no-cost conversion option, while at the same time encouraging competition among the propane suppliers to offer customers the most favorable terms. This does not ensure that no customers will incur financial expense

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as a result of the discontinuance, but in the event that certain appliances cannot be converted, Claremont will contribute the amount which is the present value of the appliance. While this provision may offer little or no protection in the case of older appliances which have fully depreciated, it does offer what we believe to be a fair balance between the rights of customers and the obligation of a utility which is voluntarily abandoning its franchise because it is no longer financially viable.

This raises another potential basis for approving the Settlement Agreement which Staff addressed in the Stipulation. Staff contended that Claremont has a history of management problems which contributed greatly to the utility being unresponsive to regulatory concerns. It is true that Claremont has been called to appear before this Commission on several occasions since Synergy acquired the Company in 1987. Particularly disturbing are the nature of those proceedings. As we indicated in our Order approving the Hanover Settlement Agreement, utilities which operate within this State have a paramount obligation to do so safely and in

compliance with all applicable safety standards. Although we deem consideration of this issue unnecessary to approve the Settlement Agreement, we nonetheless take note of Staff's recognition of the numerous deficiencies in Claremont's management performance which are inconsistent with assurances given to this Commission in DE 86-239, the proceeding in which the Commission approved the Synergy acquisition.

1(30)

For those customers who are forced to convert to a fuel source other than bottled propane (i.e., those customers who cannot be converted legally and safely to bottled propane), Claremont will bear all costs of conversion to an alternative source at a comparable level of service, including the replacement of appliances. We believe this to be an appropriate safeguard.

The proposed Settlement Agreement fairly balances the rights and interests of customers and the general public, while the guaranteed conversion conditions offered by Synergy minimize customer inconvenience and expense. The affected customers will have the opportunity to maintain service through bottled propane at a cost no higher than current rates. We find that Claremont has satisfied the RSA 374:28 standard for obtaining authority to discontinue its franchise permanently.

While we accept the Settlement Agreement in its entirety, we also impose one additional condition alluded to earlier. We direct Claremont to notify those former customers who had converted to Synergy (on terms and conditions other than those contained in the Settlement Agreement) after June 22, 1994, that they will have an opportunity to reconsider their commitment to Synergy and avail themselves of the terms and conditions of the Settlement Agreement. We direct Claremont to mail out this notification within two weeks of the date of this Order.

Having decided to approve the Settlement Agreement, a prominent consideration and concern that we have is the safety of the procedures which will be used to purge the distribution pipeline of residual gas. While we will not specify the procedure to be used in the purging process, we will require that Claremont shall be guided by applicable federal and state safety standards throughout the process of abandoning the distribution pipeline. We direct Claremont to consult with Staff in a timely fashion regarding the procedures and personnel which will be employed to abandon the distribution pipeline. We also place the burden of responsibility on Claremont to keep Staff informed as to the status of the abandonment process; in particular, we expect Claremont to develop a timely reporting mechanism to keep Staff advised of all new developments. We anticipate that Claremont and Staff will work together to seek consensus on the technical and engineering aspects of the abandonment. If disagreements develop, ultimately, the Commission retains jurisdiction to adjudicate or resolve disputes that arise during the abandonment process.

We understand that the timing of the system abandonment is very crucial; in particular, we recognize the importance of the project being completed before the winter heating season. We place the burden of responsibility on Claremont to develop and implement a safe

abandonment plan which meets the desired time frame. We instruct Staff to review this plan and to inform us if Claremont is not meeting its time deadlines or is not otherwise adhering to the plan; in particular, Staff is to inform us if Claremont is being unresponsive.

Until Claremont is officially relieved of its responsibilities as a public utility, as defined in ¶ 26.0 of the Settlement Agreement, Claremont will abide by all applicable Commission rules and statutes. In particular, as agreed to in ¶ 25.0 of the Settlement Agreement, Claremont will file its final annual report with the Commission within four months of completing the abandonment of the distribution pipeline.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Settlement Agreement filed with the Commission on July 19, 1994 is approved in its entirety; and it is

FURTHER ORDERED, that Claremont notify, within two weeks of the date of this Order, those former customers who had converted to Synergy (on terms and conditions other than those contained in the Settlement Agreement) after June 22, 1994, that they will have the opportunity to reconsider their commitment to Synergy and avail themselves of the terms and conditions of the Settlement Agreement; and it is

FURTHER ORDERED, that Claremont will develop and implement a system abandonment plan, subject to review and acceptance by the Staff, which satisfies all Federal, State, and local safety standards and which meets the deadlines agreed to by all Parties and Staff; and it is

FURTHER ORDERED, that Claremont will have the responsibility of keeping Staff informed as to the status of the abandonment process via a timely reporting mechanism that it will develop; and it is

FURTHER ORDERED, that until Claremont is officially relieved as a public utility, Claremont will abide by all applicable Commission rules and statutes governing a public utility; and it is

FURTHER ORDERED, that Claremont will file its final annual report with the Commission within four months of completing the abandonment of the distribution pipeline.

By order of the New Hampshire Public Utilities Commission this fifth day of August, 1994.

FOOTNOTES

¹The direct testimony of Robert F. Egan, Staff Utility Analyst, in DR 92-020 (Permanent Rate Case) further illuminates Staff's position here; however, we deem it unnecessary to consider the question of management difficulties because the Settlement Agreement can be independently justified on the grounds already stated.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Corp., DR 92-020, Order No. 21,133, 79 NH PUC 82, Feb. 22, 1994.

[N.H.] Re Claremont Gas Corp., DE 94-056, Order No. 21,245, 79 NH PUC 298, June 7, 1994.
[N.H.] Re Claremont Gas Corp., DE 94-056, Order No. 21,271, 79 NH PUC 373, June 22, 1994.
[N.H.] Re Claremont Gas Corp., DE 94-056, Order No. 21,299, 79 NH PUC 410, July 13, 1994.

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NH.PUC*08/08/94*[70579]*79 NH PUC 432*Uniform System of Accounts

[Go to End of 70579]

79 NH PUC 432

Re Uniform System of Accounts

DRM 94-153

Order No. 21,310

New Hampshire Public Utilities Commission

August 8, 1994

ORDER declaring approved uniform systems of accounts for electric, gas, telephone, water, and sewer utilities within the state to be exempt from the Administrative Procedures Act (APA), and therefore to be effective for an indefinite period of time rather than the six-year limit otherwise imposed by the APA.

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1. ACCOUNTING, § 6

[N.H.] Uniform systems of accounts — Effective period — Indefinite period — Exemption from time limits of the Administrative Procedures Act. p. 433.

2. RULES AND REGULATIONS

[N.H.] Effective period — Six-year limit — As provided for by the Administrative Procedures Act — Exemption for uniform systems of accounts. p. 433.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, Chapter 193:3, Laws of 1994, effective July 23, 1994 authorized an exemption of the uniform system of accounts (USOA) from the requirements of RSA 541-A, the administrative procedures act; and

WHEREAS, the New Hampshire Code of Administrative Rules establish the following USOAs for regulated utilities established under the provision of RSA 374:8; Electric PART Puc 307.04; Telephone PART Puc 409; Gas PART Puc 507.09; Water PART Puc 610; and Sewer

PART Puc 709; and

WHEREAS, on November 26, 1990, in accordance with the pertinent provisions of RSA 541-A, the New Hampshire Public Utilities Commission (Commission) reenacted its rules and regulations (NHPUC 100-1600) in order to meet the requirements of RSA 541-A:2, IV which reads as follows: "No rule shall be effective for a period of longer than 6 years..."; and

WHEREAS, on February 28, 1994, in accordance with the pertinent provisions of RSA 541-A, the Commission readopted PART Puc 409 in order to meet the requirements of RSA 541-A:2, IV as stated above; and

WHEREAS, historically USOAs remain in effect for long periods of time, as demonstrated by the following: Telephone PART Puc 409 effective January 1, 1988 rescinded and replaced a USOA which had been in effect for over 50 years; Gas PART Puc 507.09 has been in effect since January 1, 1939; Water PART Puc 607.08 had been in effect since June 1, 1942 and was replaced by Puc 610 by Order No. 21,102 (1/17/94); and

WHEREAS, regulated utilities established under the provision of RSA 374:8 Accounting Systems shall comply with the USOAs prescribed by this Commission; and

WHEREAS, the USOAs as described at Electric PART Puc 307.04; Telephone PART Puc 409; Gas PART Puc 507.09; Water PART Puc 610 and Sewer PART Puc 709 are now exempt from the requirements of RSA 541-A, the administrative procedure act, and therefore may remain in effect for a period of longer than 6 years; it is hereby

ORDERED, that the USOAs as set forth at Puc 307.04; Puc 409; Puc 507.09; Puc 610 and Puc 709; shall remain in effect until such time as the Commission shall prescribe, amend, rescind or otherwise affect the USOAs currently prescribed for regulated utilities.

By order of the New Hampshire Public Utilities Commission this 8th day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Uniform System of Accounts for Water Utilities, DRM 93-175, Order No. 21,102, 79 NH PUC 29, Jan. 17, 1994.

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NH.PUC*08/09/94*[70580]*79 NH PUC 434*New England Telephone

[Go to End of 70580]

79 NH PUC 434

Re New England Telephone

DE 94-148

Order No. 21,311

New Hampshire Public Utilities Commission

August 9, 1994

ORDER approving a local exchange telephone carrier's proposal for making certain short-term promotional offerings effective on only seven days' notice.

1. RATES, § 532

[N.H.] Telephone rate design — Local exchange carrier — Short-term promotional offerings — Notice period. p. 434.

2. RATES, § 243

[N.H.] Schedules and procedure — Notice and publication — Seven days' notice — For special short-term promotional offerings — Local exchange telephone carrier. p. 434.

BY THE COMMISSION:

ORDER

[1, 2] On July 14, 1994, New England Telephone (NET) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to revise its promotion and market trial tariff by reducing the notice period from thirty (30) days to seven (7) days for effect August 13, 1994; and

WHEREAS, NET states the Company is requesting this change to maintain parity with the regulatory flexibility regarding promotional programs granted to AT&T and MCI; and

WHEREAS, the Staff has reviewed this filing and recommended its approval; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revision to be in the public good; it is therefore

ORDERED, that the following tariff page of New England Telephone is approved:

NHPUC - No. 75

Part A - Section 1 - First Revision of Page 17.1

and it is

FURTHER ORDERED, that the above tariff page shall be effective as filed; and it is

FURTHER ORDERED, that the above revision to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this ninth day of August, 1994.

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NH.PUC*08/09/94*[70581]*79 NH PUC 434*F.L. Merrill Construction, Inc.

[Go to End of 70581]

79 NH PUC 434

Re F.L. Merrill Construction, Inc.

DE 94-085

Order No. 21,312

New Hampshire Public Utilities Commission

August 9, 1994

ORDER determining that a contractor had violated the state's "DigSafe" law in an incident in Concord and fining it \$100 therefore, but finding that the contractor was not liable for a separate incident in Nashua where damage was not caused by the contractor's negligent digging and trenching operations, but rather by a gas utility's improper, shallow placement of pipeline.

1. CONSTRUCTION AND EQUIPMENT, § 1

[N.H.] Digging and trenching performed by contractors — "DigSafe" law — Liability for damage to underground conduits — Duty of

Page 434

utilities to place underground pipes and mains at proper depths. p. 436.

2. FINES AND PENALTIES, § 5

[N.H.] Grounds for imposing — Damage to gas lines from contractor digging/trenching — Violations of state's "DigSafe" law. p. 436.

3. FINES AND PENALTIES, § 8

[N.H.] Grounds for imposing — Damage to gas lines from contractor digging/trenching — Mitigating circumstances — Failure of utility to place lines at proper depth — No levying of fine on contractor. p. 436.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On May 14, 1993, and on August 5, 1993, incidents in violation of RSA 374:55 IV-a, the Underground Utility Damage Protection Program statute known as DigSafe, allegedly performed by F.L. Merrill Construction, Inc. (the Contractor) were reported to the New Hampshire Public Utilities Commission (Commission) by EnergyNorth Natural Gas, Inc. (the Utility).

Pursuant to Commission rules, Puc 802.03(a), Notices of Probable Violation were issued to the Contractor by certified mail, to which the Contractor submitted written explanations which

were found insufficient by the Commission Staff (Staff) to refute the claims of violations.

The Commission therefore issued Notices of Violations, Nos. 93-002 and 93-004, by which the Contractor was instructed to pay a civil penalty or request a hearing before the Commission pursuant to Chapter Puc 805.04(a)(2).

On April 18, 1994, the Contractor requested a hearing on both violations. On June 8, 1994, the Commission held a duly noticed hearing on the merits, hearing testimony and reviewing exhibits presented by the Utility, the Contractor, and Staff.

II. POSITION OF THE PARTIES AND STAFF

A. NOV 93-002

1. The Utility

The Utility reported that damage occurred on May 14, 1993, at Washington and Essex Streets where the Utility had relocated a gas main in order to enable hook up of a drainage pipe under the street. The Contractor repositioned the planned site of the drainage trench, began excavating, and hit the relocated gas main. The Utility claimed that the Contractor did not notify it of the siting change and that the Contractor failed to excavate by hand as required by the DigSafe law.

2. The Contractor

While not disputing that the incident occurred, the Contractor contested that he violated DigSafe laws. He stated that a representative from the Utility was present at all relevant times. He asserted that the representative, who could have seen that the trench was being repositioned, should have warned of the main's relocated placement. The Contractor also stated he did excavate by hand but not the whole trench: he cleaned off part of the cast iron main, presumed the main continued at the same depth, then dug with a backhoe and hit the new fitting where it angled upward. The Contractor received no word of caution from the Utility representative.

3. Staff

Staff testified that the Contractor's repositioning of the drainage pipe and failure to follow DigSafe notification procedures led to the damage claimed. Therefore Staff recommended that the Contractor be assessed a penalty of \$100 for NOV 93-002.

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B. NOV 93-004

1. The Utility

The NOV 93-004 incident occurred on July 28, 1993, where the Contractor was grading a street in Nashua after a several-month-long project placing 36" concrete drainage pipe below numerous gas mains. The Contractor made contact with and damaged the 3/4" gas service line to 58 Almont Street. The Utility claims that the Contractor's failure to maintain the Utility's markings identifying the location of service lines resulted in damage to the service line necessitating its total replacement.

2. The Contractor

Again, the contractor does not dispute the incident occurred. The Contractor related that he had almost completed the project, having installed 3800 linear feet of drainage and sewer pipe while digging under and around numerous mains and service lines. The depth of all these mains and service lines was approximately 30" to 36". The damaged service line was located at a depth of only 9" to 12". The Contractor claims that the Utility bore the responsibility of placing caution tape over the shallow service line and that he should not be penalized for the Utility's unaccountably placed line.

3. Staff

Staff testified that the service line was damaged because it was not placed at a proper depth by the Utility, pursuant to the Utility's standards as defined by CFR section 192.361. Therefore, Staff recommended that the Violation be dismissed.

III. COMMISSION ANALYSIS

[1, 2] Having carefully reviewed all testimony and exhibits in this matter, we find in the matter of NOV 93-002, the Concord incident, that the Contractor was negligent and in violation of the DigSafe law by virtue of the fact that he failed to notify the Utility of his change of plans for placement of the drainage pipe. This failure circumvented the safeguards intended and provided for by the DigSafe law. As is permitted by RSA 374:55 III, in our order we will assess a \$100 penalty and in addition direct the Utility that it may seek recovery of the actual damages incurred (\$823.75), from the Contractor.

[3] In the matter of NOV 93-004, the Nashua incident, we find no negligence on the part of the Contractor. The depth of the mains and service lines had been repeatedly ascertained by the Contractor during the course of this construction project. His failure to maintain markings at the time of surface grading was not the cause of the damage. Therefore we will dismiss this issue as against the Contractor, absolving him of liability for the actual damages incurred (\$761.58). Further, we find that the Utility's placement of the service line at a shallower depth than standard practices permit was the cause of the damage. We will order that the Utility shall not put the cost of damages incurred into its revenue requirement calculations for ratemaking purposes.

Our order will issue accordingly.

ORDER

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

ORDERED, that, in the matter of NOV 93-002, pursuant to RSA 374:55, the Contractor shall pay a penalty of \$100 for violation of the Digsafe law as well as the actual costs of the damages incurred as a result of the violation; and it is

FURTHER ORDERED, that the matter of NOV 93-004 is hereby dismissed as to the Contractor's liability; and it is

FURTHER ORDERED, that the Utility shall not include the actual costs of damages incurred in the NOV 93-004 in the Utility's rate base for rate making purposes.

By order of the New Hampshire Public Utilities Commission this ninth day of August, 1994.

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NH.PUC*08/09/94*[70582]*79 NH PUC 437*EnergyNorth Natural Gas, Inc.

[Go to End of 70582]

79 NH PUC 437

Re EnergyNorth Natural Gas, Inc.

DE 91-149

Order No. 21,313

New Hampshire Public Utilities Commission

August 9, 1994

ORDER adopting settlement agreement as to natural gas transportation services, inclusive of a firm transportation cost of gas adjustment (CGA) applicable on a per-therm basis to all volumes transported in the winter CGA period.

1. RATES, § 384

[N.H.] Natural gas rate design — Transportation service — Firm transportation cost of gas adjustment — Applicability in winter period — Settlement. p. 437.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Firm transportation cost of gas adjustment — Per-therm basis — Applicability in winter period — Settlement. p. 437.

BY THE COMMISSION:

ORDER

[1, 2] In accordance with Order No. 21,304, on July 26, 1994, EnergyNorth Natural Gas, Inc. ("EnergyNorth" or "Company") submitted with the New Hampshire Public Utilities Commission ("Commission") several revised compliance tariff pages regarding the provision of firm transportation and related services. Also in accordance with Order No. 21,304, a Settlement Agreement between EnergyNorth, the Office of Consumer Advocate ("OCA"), and the Staff ("Staff") of the Commission, was filed with the Commission on July 27, 1994.

In a memorandum to the Commission dated August 5, 1994, Staff briefly reviewed the contents of the aforementioned Settlement Agreement; in particular, the justification of a firm transportation cost of gas adjustment ("FT CGA") charge to be applied on a therm basis to any volumes transported by all firm transportation customers during the Winter CGA period, i.e., from November 1 through March 31 of each year, was provided.

Following a thorough review, Staff recommended that both the Settlement Agreement and the July 26th filing be approved by the Commission, as Staff concluded that both of these

documents to be consistent with the Commission's Orders in this case.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement filed with the Commission on July 27, 1994 is approved in its entirety; and it is

FURTHER ORDERED, that EnergyNorth's firm transportation compliance tariff filing made on July 26, 1994 is approved, with an effective date of August 10, 1994; and it is

FURTHER ORDERED, that EnergyNorth's FT CGA per therm charge shall be applied only during the Trial Rate period and that it subsequently shall be reviewed when EnergyNorth files its firm transportation cost of service study.

By order of the New Hampshire Public Utilities Commission this ninth day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 91-149, Order No. 21,304, 79 NH PUC 414, July 22, 1994.

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NH.PUC*08/09/94*[70584]*79 NH PUC 438*Premiere Billing Systems, Inc.

[Go to End of 70584]

79 NH PUC 438

Re Premiere Billing Systems, Inc.

DE 94-023

Order No. 21,315

New Hampshire Public Utilities Commission

August 9, 1994

ORDER denying a telecommunications carrier's petition for authority to operate as a reseller of toll services, for failure to timely reply to requests for additional information.

1. CERTIFICATES, § 76

[N.H.] Denial of operating authority — Factors — Failure to timely respond to data requests — Uncorrected deficiencies in application — Telephone toll reseller. p. 438.

BY THE COMMISSION:

ORDER

[1] On February 4, 1994, Premiere Billing Systems, Inc. (Premiere) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to operate as a toll reseller;

WHEREAS, Staff reviewed Premiere's filing and communicated material deficiencies to Premiere in Staff written communications of March 8th, 1994; and

WHEREAS, after a reasonable period, Premiere had failed to respond to Staff communication; and

WHEREAS, Staff communicated in writing to Premiere on June 22, 1994 that Staff had not received Premiere's reply to Staff communication of March 8th, 1994 and that Staff would move before the Commission to close Docket 94-023 if Premiere's reply was not received by July 1st, 1994; and

WHEREAS, Premiere has not replied by the July 1st, 1994 deadline, Staff therefore recommends the petition be denied; it is hereby

ORDERED, that based upon Staff's recommendation, the petition of Premiere Billing Systems, Inc., is denied without prejudice.

By Order of the New Hampshire Public Utilities Commission this ninth day of August, 1994.

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NH.PUC*08/09/94*[70585]*79 NH PUC 438*Phoenix Network of New Hampshire, Inc.

[Go to End of 70585]

79 NH PUC 438

Re Phoenix Network of New Hampshire, Inc.

DE 94-146

Order No. 21,316

New Hampshire Public Utilities Commission

August 9, 1994

ORDER authorizing an interexchange telephone carrier to introduce and/or modify its rate codes, so as to clarify the timing of discount periods.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Modification of rate codes — Clarification of timing of discount periods. p. 438.

BY THE COMMISSION:

ORDER

[1] On July 11, 1994, Phoenix Network of New Hampshire, Inc. (Phoenix) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to introduce new rate codes, change rate codes, increase and decrease rates, and make textual changes primarily clarifying the timing of discount periods in the tariff, and clarifying service descriptions

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and conditions; and

WHEREAS, the filing creates new telecommunications services by, among other things, allowing the customer to identify and specify the underlying carrier, or in the alternative to have Phoenix select the underlying carrier on the customer's behalf; and

WHEREAS, the filing expands the choice of services available, fosters competition and competitive entry, and will allow the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following pages are approved, Phoenix New Hampshire PUC No. 1:

- Page 1 Second Revision,
- Page 2 Original,
- Page 3 First Revision,
- Page 4 Original,
- Page 5 Original,
- Page 6 Original,
- Page 7 First Revision,
- Page 8 Original,
- Page 9 Original,
- Page 10 Original,
- Page 11 Original,
- Page 12 Original,
- Page 13 Second Revision,
- Page 14 Second Revision,
- Page 15 Original,
- Page 16 Second,
- Page 17 Second,
- Page 18 Second,
- Page 19 Second,
- Page 20 Original;

and it is

FURTHER ORDERED, that Phoenix file a compliance tariff in accordance with NH Admin. Rules, Puc PART 1600.

By Order of the New Hampshire Public Utilities Commission this ninth day of August, 1994.

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NH.PUC*08/10/94*[70586]*79 NH PUC 439*Northern Utilities, Inc.

[Go to End of 70586]

79 NH PUC 439

Re Northern Utilities, Inc.

DR 94-164
Order No. 21,317

New Hampshire Public Utilities Commission

August 10, 1994

ORDER granting confidential treatment of certain nonjurisdictional affiliated contracts submitted in a proceeding addressing a natural gas local distribution company's approach to pricing. The same materials had been accorded protective treatment in Massachusetts due to their commercially sensitive content, and are ordered returned to the company when commission staff has finished its review. However, while the commission approves confidentiality and orders its staff to return the documents to the company, the commission denies the company's request to further compel commission staff to destroy and/or turn over to the company staff's own internal notes and memoranda pertaining to the materials.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidential treatment — Commercially sensitive affiliated contracts — Contracts involving nonjurisdictional affiliates and operations — Return of documents upon completion of commission staff review. p. 440.

2. PROCEDURE, § 19

[N.H.] Discovery and inspection — Confidential treatment — Commercially sensitive affiliated contracts — Internal commission staff notes and memoranda — Pertaining to the contracts — Return of documents upon completion of commission staff review — No return of staff records and materials. p. 440.

Page 439

BY THE COMMISSION:

ORDER

On August 1, 1994, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a motion for protective order (Motion) requesting protective treatment over certain special contracts between Northern's affiliate Bay State Gas Company (Bay State) and a number of natural gas customers located in Massachusetts. The contracts themselves are not subject to Commission jurisdiction but were requested by Commission Staff

(Staff) for their review in order to better understand pricing terms which Northern might wish to propose for some New Hampshire natural gas customers. The contracts were originally filed under protective order with the Massachusetts Department of Public Utilities (Massachusetts DPU).

Northern alleges in its Motion that the special contracts contain proprietary and other sensitive information under RSA 91-A, including customer identities and pricing terms and that disclosure of this information would work to the competitive disadvantage of Bay State.

Specifically requested in the Motion are the following terms: complete unredacted versions of the contracts be made available to Staff on a confidential basis, for the sole and exclusive review by Staff; Staff be prohibited from publishing, disclosing or otherwise divulging the materials, except upon completion of a non-disclosure agreement, with signatures faxed to Northern; Staff take reasonable precautions to ensure that the materials, notes, or other information derived from the materials are not viewed by anyone other than those Staff members conducting a review; all materials and copies returned after review but in no event longer than 30 days; and Staff destroy all notes or summaries of the information, certifying to Northern that the materials have been so destroyed.

[1, 2] The Commission recognizes the need for protection of these terms, and the value in Staff having an opportunity to study the terms negotiated by Northern's affiliate, in order to be better prepared to respond to any such filing Northern might make affecting New Hampshire customers. The contract terms appear to contain information which falls within the exceptions to the Right to Know Law, RSA 91-A, regarding commercially sensitive information. Further, the Commission respects the ruling of the Massachusetts DPU and does not wish to undermine its decision to protect this information by ruling otherwise, particularly when the information is filed not for approval by this Commission but merely to assist Staff in understanding Bay State's approach in Massachusetts.

While we will grant Northern's request in concept, we cannot accept all of the terms Northern requests for the management of confidential materials. As we recently stated in Report and Order No. 21,204 regarding the Energy Policy Act of 1992, "[w]e have in place procedures for protection of confidential materials which have served us and the parties before us well for years...We will not grant any special protection beyond that customarily given, that is, confidential materials will be kept segregated from the public and when not being used, kept in locked cabinets. Staff members reviewing the materials are bound by the Commission's order not to disclose the contents of the materials..." Consistent with our ruling on prior requests for "customized" protective treatment, we will deny Northern's request that individual Staff members execute non-disclosure agreements or that Staff members certify that notes or other materials have been destroyed at the close of their review.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Motion is GRANTED IN PART, to wit: the special contracts between Bay State and certain Massachusetts customers are granted protective treatment; materials shall be maintained with reasonable precautions to ensure their protection and shall not be published or otherwise disclosed to anyone other than Staff members who are working on review of the contracts; the unredacted contracts shall be returned to Northern within 30 days or

upon completion of review, whichever is sooner; and it is

FURTHER ORDERED, that Northern's Motion is DENIED IN PART, to wit: Staff are

Page 440

not required to execute non- disclosure agreements; Staff are not required to certify to Northern that materials derived from the contracts have been destroyed; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission to reconsider this order in light of RSA 91-A should circumstances so warrant.

By order of the New Hampshire Public Utilities Commission this tenth day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Energy Policy Act of 1992, DE 93-071, Order No. 21,204, 79 NH PUC 239, Apr. 25, 1994.

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NH.PUC*08/10/94*[70587]*79 NH PUC 441*Town of Derry

[Go to End of 70587]

79 NH PUC 441

Re Town of Derry

DR 94-134

Order No. 21,318

New Hampshire Public Utilities Commission

August 10, 1994

ORDER approving a municipality's proposed contract/tariff revisions for wholesale service to Southern New Hampshire Water Company, where the resulting rates eliminate fixed charges, incorporate a single consumption rate, properly allocate capital costs of the town's new water storage facility, and allow the utility to pay for fire protection service on an as-used basis.

1. RATES, § 431

[N.H.] Municipal providers — Wholesale service — Water — Contract revisions. p. 441.

2. RATES, § 625

[N.H.] Water rate design — Wholesale service — Provided to retail utility by municipality — Elimination of fixed charge — Use of single consumption rate — Allocation of capital costs — Fire protection on as-used basis only. p. 441.

BY THE COMMISSION:

ORDER

[1, 2] On June 22, 1994, the Town of Derry (Derry) jointly with Southern New Hampshire Water Co., Inc. (Southern) filed with the New Hampshire Public Utilities Commission (Commission) revised tariff page NHPUC No. 1 Town of Derry Water Department 6th Revised Page 7, superseding 5th revised Page 7; and

WHEREAS, on July 18, 1994, the Commission suspended the proposed tariff page by Order No. 21,301; and

WHEREAS, the filed tariff page governs Derry's contracted wholesale water rate as it applies to Southern; and

WHEREAS, the existing wholesale water contract (Contract) between Derry and Southern expired on June 14, 1994; and

WHEREAS, Derry concurrently filed with the Commission an Amendment to the contract (Amendment), signed by representatives of Derry and Southern (the parties) on June 14, 1994; and

WHEREAS, the Amendment extends the Contract for 18 months with certain changes detailed below, permitting the parties to continue negotiations for a long term contract, said negotiations to conclude, by agreement of the parties, on December 31, 1995 whether or not a long term contract has resulted; and

WHEREAS, the Amendment sets a rate of \$1.20/ccf with no fixed charge, based upon the methodology used to develop the current rate authorized by Commission Order No. 20,920 dated August 4, 1993; and

WHEREAS, the Amendment varies the above-mentioned methodology to (1) include an

Page 441

allocated capital cost of Derry's recently completed 4,000,000 gallon water storage tank and more recent expense figures, (2) include the total cost of service in a single consumption rate, and (3) remove the Fixed Charge; and

WHEREAS, Derry and Southern concurrently filed a wholesale Water Rate Analysis which develops the proposed rate; and

WHEREAS, the Amendment permits Southern to "float" on Derry's water supply for fire protection purposes, paying only for water actually consumed;

WHEREAS, the Amendment is otherwise consistent with the terms of the Contract; it is hereby

ORDERED, that the Amendment is approved as just and reasonable and in the public good; and it is

FURTHER ORDERED, that rate changes contained on NHPUC No. 1 Town of Derry Water Department 6th Revised Page 7, superseding 5th Revised Page 7, are approved for service rendered on/or after the effective date of this order; and it is

FURTHER ORDERED, that the town of Derry submit a revised tariff page annotated with this order number and effective June 14, 1994.

By order of the New Hampshire Public Utilities Commission this tenth day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Town of Derry, DR 93-123, Order No. 20,920, 78 NH PUC 421, Aug. 4, 1993. [N.H.] Re Town of Derry, DR 94-134, Order No. 21,301, 79 NH PUC 412, July 18, 1994.

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NH.PUC*08/10/94*[70588]*79 NH PUC 442*Long Distance North of New Hampshire et al.

[Go to End of 70588]

79 NH PUC 442

Re Long Distance North of New Hampshire et al.

DE 87-249 et al.

Order No. 21,319

New Hampshire Public Utilities Commission

August 10, 1994

ORDER clarifying 34 previous orders which had authorized competitive intrastate toll services, to specify that such authority was limited to the resale of intrastate toll communications and did not include authority to offer competitive local exchange services.

1. CERTIFICATES, § 123

[N.H.] Telecommunications — Intrastate toll service — Interexchange carriers — Interim authority — Resale of services — Prohibition on local exchange services. p. 442.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing toll service — Intrastate toll service — Resale basis — Interexchange carriers — Interim authority — Prohibition on local exchange services. p. 442.

3. SERVICE, § 171

[N.H.] Resale of service — Telephone — Intrastate toll services — Interexchange carriers — Interim authority to compete — Prohibition on local exchange services. p. 442.

BY THE COMMISSION:

ORDER

[1-3] On June 14, 1994, by Order No. 21,270 in DE 94-070, the Commission granted a petition by MFS Intelenet of New Hampshire,

Page 442

Inc. requesting authority to conduct business as a telecommunications utility in New Hampshire; and

WHEREAS, in response to objections, the Commission later clarified Order No. 21,270 by Supplemental Order No. 21,298, to specify that said authority was limited to the resale of intrastate telecommunications toll services and did not encompass local exchange service; and

WHEREAS, the Commission has granted 34 other petitions for substantially identical authority as delineated below; and

WHEREAS, the Commission wishes to clarify all the listed orders, removing any misunderstanding as to the nature of the specific authority granted; it is hereby

ORDERED, that the following orders are clarified to limit the authority granted therein to authority to offer intrastate toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire.

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

20,039 DE 87-249 Long Distance North of NH
 20,040 DE 90-002 AT&T Communications of NH, Inc.
 20,041 DE 90-108 MCI Telecommunications, Corp.
 20,042 DE 90-127 US Sprint
 20,372 DE 91-092 Cable & Wireless Communications Inc.
 20,544 DE 91-114 NOS Communication, Inc.
 20,685 DE 91-135 WATS/800 Inc.
 20,632 DE 91-165 Wiltel of New Hampshire, Inc.
 20,728 DE 92-004 Network Plus, Inc.
 20,756 DE 92-007 Trans National Communications, d/b/a
 Member's Long Distance Advantage
 20,642 DE 92-029 Norstan Network Services, Inc.
 20,574 DE 92-061 Corporate Telemanagement Group, Inc.
 20,545 DE 92-104 Atlantic Connections, Ltd.
 20,649 DE 92-116 Alternative Communications Technology, Inc.
 20,721 DE 92-117 Phoenix Network, Inc.
 20,601 DE 92-122 PAC of New Hampshire, Inc.
 20,738 DE 92-128 EXCEL Telecommunications, Inc.
 20,575 DE 92-133 LDDS Communications, Inc.
 d/b/a ATC New Hampshire, Inc.
 20,903 DE 92-198 American Teletronics Long Distance, Inc.
 20,769 DE 92-225 Innovative Telecom Corporation
 20,985 DE 92-245 Matrix Telecom d/b/a PhoneSave and
 Small Business Network
 20,960 DE 93-051 Enterprise Telcom Services, Inc.
 20,969 DE 93-053 TeleDebit, L.P.
 20,967 DE 93-057 Telegroup, Inc.

20,962 DE 93-073 SAI of New England, Inc.
 20,961 DE 93-080 Hertz Technology of New Hampshire, Inc.
 20,963 DE 93-085 LCI International of New Hampshire, Inc.
 20,983 DE 93-117 West Coast Telecommunications, Inc.
 20,965 DE 93-139 AmeriConnect
 21,054 DE 93-189 Startel Communications, Inc.
 d/b/a Telestar Long Distance
 21,074 DE 93-223 GE EXCHANGE Corp. of New Hampshire d/b/a
 GE EXCHANGE and d/b/a GE Capital EXCHANGE

21,086 DE 93-230 Tel-Save, Inc.
 21,106 DE 93-264 Quest Telecommunications, Inc.
 21,270 DE 94-070 MFS Intelenet of New Hampshire, Inc.

By order of the New Hampshire Public Utilities Commission this tenth day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re ACT of New Hampshire, Inc., DE 92-116, Order No. 20,649, 77 NH PUC 670, Oct. 27, 1992. [N.H.] Re American Teletronics of New Hampshire, Inc., DE 92-198, Order No. 20,903, 78 NH PUC 340, July 7, 1993. [N.H.] Re AmeriConnect Inc. of New Hampshire, DE 93-139, Order No. 20,965, 78 NH PUC 516, Sept. 13, 1993. [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 ATC New Hampshire, Inc., DE 92-133, Order No. 20,575, 77 NH PUC 431, Aug. 18, 1992. [N.H.] Re Atlantic Connections, Ltd., DE 92-104, Order No. 20,545, 77 NH PUC 364, July 20, 1992. [N.H.] Re Cable and Wireless Communications, Inc., DE 91-092, Order No. 20,372, 77 NH PUC 37, Jan. 20, 1992. [N.H.] Re Corporate Telemanagement Group of New Hampshire, Inc., DE 92-061, Order No. 20,574, 77 NH PUC 430, Aug. 18, 1992. [N.H.] Re Enterprise Telcom of New Hampshire, Inc., DE 93-051, Order No. 20,960, 78 NH PUC 504, Sept. 10, 1993. [N.H.] Re Excel Telecommunications, Inc., DE 92-128, Order No. 20,738, 78 NH PUC 34, Jan. 26, 1993. [N.H.] Re GE Exchange Corp. of New Hampshire, DE 93-223, Order No. 21,074, 78 NH PUC 735, Dec. 21, 1993. [N.H.] Re Hertz Technologies of New Hampshire, Inc., DE 93-080, Order No. 20,961, 78 NH PUC 507, Sept. 10, 1993. [N.H.] Re Innovative Telecom Corp., DE 92-225, Order No. 20,769, 78 NH PUC 108, Feb. 23, 1993. [N.H.] Re LCI International of New Hampshire, Inc., DE 93-085, Order No. 20,963, 78 NH PUC 512, Sept. 13, 1993. [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 Matrix Telecom of New Hampshire, Inc., DE 92-245, Order No. 20,985, 78 NH PUC 560, Oct. 5, 1993. [N.H.] Re MCI Telecommunications Corp., DE 90-108, Order No. 20,041, 76 NH PUC 59, Jan. 21, 1991. [N.H.] Re MFS Intelenet of New Hampshire, Inc., DE 94-070, Order No. 21,270, 79 NH PUC 370, June 14, 1994. [N.H.] Re MFS Intelenet of New Hampshire, Inc., DE 94-070, Order No. 21,298, 79 NH PUC 408, July 13, 1994. [N.H.] Re MLDA, Inc. (Members Long Distance Advantage), DE 92-007, Order No. 20,756, 78 NH PUC 94, Feb. 9, 1993. [N.H.] Re Network Plus NH, Inc., DE 92-004, Order No. 20,728, 78 NH PUC 20, Jan. 20, 1993. [N.H.] Re Norstan Network Services of New Hampshire, Inc., DE 92-029, Order No. 20,642, 77 NH PUC 661, Oct. 21, 1992. [N.H.] Re NOS Communications Inc. of New Hampshire, DE 91-114, Order No. 20,544, 77 NH PUC 363, July 20, 1992. [N.H.] Re PAC of New Hampshire, Inc., DE 92-122, Order No. 20,601, 77 NH PUC

532, Sept. 11, 1992. [N.H.] Re Phoenix Network of New Hampshire, Inc., DE 92-117, Order No. 20,721, 78 NH PUC 13, Jan. 6, 1993. [N.H.] Re QTI of New Hampshire, Inc., DE 93-264, Order No. 21,106, 79 NH PUC 34, Jan. 18, 1994. [N.H.] Re SAI of New England, Inc., DE 93-073, Order No. 20,962, 78 NH PUC 509, Sept. 10, 1993. [N.H.] Re Startel Communications, Inc., DE 93-189, Order No. 21,054, 78 NH PUC 708, Dec. 7, 1993. [N.H.] Re TeleDebit of New Hampshire, Inc., DE 93-053, Order No. 20,969, 78 NH PUC 523, Sept. 15, 1993. [N.H.] Re Telegroup of Iowa, Inc., DE 93-057, Order No. 20,967, 78 NH PUC 519, Sept. 14, 1993. [N.H.] Re Tel-Save, Inc., DE 93-230, Order No.

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21,086, 78 NH PUC 750, Dec. 30, 1993. [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. [N.H.] Re WATS/800 of New Hampshire, Inc., DE 91-135, Order No. 20,685, 77 NH PUC 771, Nov. 30, 1992. [N.H.] Re West Coast Telecommunications of New Hampshire, Inc., DE 93-117, Order No. 20,983, 78 NH PUC 556, Oct. 1, 1993. [N.H.] Re WilTel of New Hampshire, Inc., DE 91-165, Order No. 20,632, 77 NH PUC 649, Oct. 13, 1992.

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NH.PUC*08/15/94*[70589]*79 NH PUC 445*Public Service Company of New Hampshire

[Go to End of 70589]

79 NH PUC 445

Re Public Service Company of New Hampshire

DR 93-179

Order No. 21,320

New Hampshire Public Utilities Commission

August 15, 1994

ORDER denying a request by Granite State Electric Company that it be allowed to change from limited intervenor status to full intervenor status in a proceeding examining the renegotiation of rates payable by an electric utility for power purchased from certain wood-fired small power producers, where the scope of the proceeding had been significantly narrowed. However, other parties are allowed to change from full intervenor status to limited intervenor status or to withdraw from the case completely, with the commission explaining that intervenors should not be compelled to continue participating in a case against their will, especially when the issues to be addressed have been narrowed so much.

1. ELECTRICITY, § 3

[N.H.] Wood-fired generating plant — Small power producers (SPPs) — Renegotiation of rates — Issues to be addressed — Narrowing of issues — Reduction in number of wood-fired

SPPs to be addressed — Dismissal of parties. p. 446.

2. PARTIES, § 18

[N.H.] Intervenors — Full versus limited intervention — Change in intervenor status — Factors — Narrowing of issues in proceeding — Justification for either withdrawal or limiting intervention — Inability to compel intervenors to continue participating — But no justification for changing from limited to full intervenor status. p. 446.

BY THE COMMISSION:

ORDER

I. PROCEDURAL BACKGROUND

The Public Utilities Commission (Commission) on October 15, 1993 issued an order of notice initiating a docket to consider the status of negotiations between Public Service Company of New Hampshire (PSNH) and thirteen small power producers. The docket is the result of a provision within the Rate Agreement between PSNH and Northeast Utilities, as defined in RSA 362-C:2 I, and as accepted by the Commission in DR 89-244, *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385 (1990), under which Northeast Utilities is required to use its best efforts to renegotiate the rates of the following thirteen small power producers: Briar Hydro/Essex Hydro, Errol Dam, Greggs Falls, Pembroke Hydro, Pennacook Upper Falls (the five hydropower SPPs), Bio-Energy Corporation, Bridgewater Steam Power, Bristol Energy Corporation, TIMCO Inc., Hemphill Power and Light, Bethlehem Pinetree Power, Tamworth Pinetree Power and Whitefield Power (the eight woodburning SPPs). The Commission created a separate docket, DR 94-002, to review new arrangements between PSNH and the 5 hydropower SPPs. These new arrangements, which

Page 445

were approved in Report and Order No. 21,190 (April 19, 1994), modified the rates, terms and conditions under which PSNH purchases power from these hydropower SPPs.

As a result of 1994 legislation, the Commission was blocked from taking any action with respect to the woodburning SPPs' rates, with the exception of review of the agreements already executed and filed regarding TIMCO, Inc. (TIMCO) and Bristol Energy Corporation (Bristol), which is also sometimes referred to as Alexandria Power. *See* Senate Bill 790, now codified at Chapter 362.

This Order will address the requests for change in party status filed by various parties and two requests to withdraw from the case entirely. It will also address the request by Staff that a Motion to Strike Testimony and Motion to Preserve Documents be withdrawn.

II. CHANGES IN PARTY STATUS

[1] Granite State Electric Company (Granite State) filed on July 21, 1994 a motion to change its status from limited intervenor to full intervenor. Granite State argued that it wished to become a full intervenor in order to present testimony on issues raised by the provisions in the two

agreements regarding wheeling power. It asserted that in order for the record to be complete, it needed to intervene, as no other participant had raised the issues it intended to raise.

The Office of Consumer Advocate (OCA), PSNH, Bristol and TIMCO objected to the request in pleadings filed August 1, 1994. OCA argued that intervention as a full party at this point would impair the prompt and orderly conduct of the hearings and could disrupt settlement discussions that had long been in the making. PSNH similarly argued that Granite State's late intervention as a full party would disrupt the orderly conclusion of the docket and would irreparably harm PSNH and its customers. Finally, Bristol and TIMCO, in a joint objection, argued that in addition to the points raised by PSNH, Granite State was raising issues that would broaden the scope of the proceeding which perhaps would be better handled in a broadly noticed generic docket on these issues.

There were no objections raised to Granite State's comments, which were filed on June 28, 1994, being made part of the record.

We have reviewed the motion and objections filed thereto and conclude that pursuant to N.H. Admin. Rules, PUC 203.02, Granite State's request should be denied. The request comes so late in the proceeding that change to full intervention at this time would adversely affect the prompt and orderly conduct of the proceeding, which we cannot allow. Further, we note that the request was made too late in the process; the issue Granite State raises grows out of the language of the agreements, which have been part of the public record since their filing in February, 1994. Although we will not allow Granite State to present testimony or participate as a full intervenor, we will consider its comments filed on June 28, 1994 as those comments are relevant to the instant proceeding and no party or Staff has objected to them.

[2] Campaign for Ratepayers Rights (CRR), the Society for Protection of New Hampshire Forests (Forest Society) and New Hampshire Timberland Owners Association (Timberland Owners) requested in filings dated July 7, July 12, and August 3, 1994 respectively that they no longer felt a need to participate as full party intervenors but would remain as limited intervenors for the duration of the docket. Timberland Owners, however, stated that it wished to remain a full party as to the issue of the mitigation fund described in the two Settlement Agreements. There have been no objections to these requests.

We see no basis on which to compel the parties to remain as full intervenors and, in fact, appreciate their efforts in narrowing the scope and number of players in this case. CRR and the Forest Society will be changed to limited parties. Timberland Owners will remain a full party as to the mitigation fund issue and a limited party as to all other issues.

Finally, Southern NH Resources, Conservation and Development Area, the Northeast Forest Users Coalition and the Granite State Division of the Society of American Foresters have indicated that they no longer found a need to participate in this docket and asked to withdraw entirely. There have been no objections to these requests.

As with the parties seeking to reduce their role, we see no basis on which to compel a party to continue in this case if it feels the issues of concern have been addressed or are being addressed by other participants. Southern NH Resources, Conservation and Development Area,

the Northeast Forest Users Coalition and the Granite State Division of the Society of American Foresters, therefore, will no longer be parties to this docket.

III. REQUEST TO WITHDRAW STAFF MOTIONS

On August 8, 1994 the Staff requested by letter that its Motion to Preserve Documents and Motion to Strike Testimony be withdrawn. We have not yet ruled on the two motions and, in light of the Staff's request, will refrain from doing so.

Based upon the foregoing, it is hereby

ORDERED, that the Motion to Change Intervention Status by Granite State Electric Company is DENIED; and it is

FURTHER ORDERED, that the requests of Campaign for Ratepayers Rights and the Society for the Protection of New Hampshire Forests to become limited parties are GRANTED; and it is

FURTHER ORDERED, that the request of the New Hampshire Timberland Owners Association to remain a full party as to mitigation fund issues and become a limited party as to all other issues is GRANTED; and it is

FURTHER ORDERED, that the requests of Southern NH Resources, Conservation and Development Area, the Northeast Forest Users Coalition and the Granite State Division of the Society of American Foresters to withdraw are GRANTED; and it is

FURTHER ORDERED, that the request of Staff to withdraw its Motion to Strike Testimony and Motion to Preserve Documents is GRANTED.

By order of the New Hampshire Public Utilities Commission this fifteenth day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,190, 79 NH PUC 213, Apr. 19, 1994.

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NH.PUC*08/15/94*[70590]*79 NH PUC 447*Hertz Technologies of New Hampshire, Inc.

[Go to End of 70590]

79 NH PUC 447

Re Hertz Technologies of New Hampshire, Inc.

Additional applicant: Hertz Technologies, Inc.

DE 94-137
Order No. 21,321

New Hampshire Public Utilities Commission

August 15, 1994

ORDER authorizing an interexchange telephone carrier to assign and transfer its certificate of authority to a telecommunications affiliate not actually incorporated in New Hampshire.

1. CERTIFICATES, § 137

[N.H.] Transfer — To affiliate — Interexchange telephone carrier — Factors — Registration with Secretary of State. p. 448.

2. CERTIFICATES, § 74

[N.H.] Grant or refusal of operating authority — Who may possess — Telecommunications carriers — Incorporation within state versus mere registration with Secretary of State — New state law. p. 448.

BY THE COMMISSION:

ORDER

Page 447

[1, 2] On July 8, 1994, Hertz Technologies of New Hampshire, Inc. (Hertz-NH) and Hertz Technologies, Inc. (Hertz-Tech) jointly petitioned the New Hampshire Public Utilities Commission (Commission) to assign to Hertz-Tech the Certificate of Authority to Conduct Business as a Telecommunications Utility in the State of New Hampshire granted to Hertz-NH in docket DE 93-080, Order No. 20,961; and

WHEREAS, the petition is filed in response to the passage of Laws of 1994, Chapter 193, Section 4 (effective July 23, 1994) amending RSA 374:25 to exempt from the requirement of incorporation in New Hampshire telecommunications companies which are fully registered with Secretary of State; and

WHEREAS, Hertz-Tech submitted a copy of its Certificate of Authority from the Secretary of State, dated July 15, 1994; and

WHEREAS, Hertz-Tech submitted evidence of its technical, financial and managerial competence to provide the services for which it is requesting authorization; and

WHEREAS, Hertz-Tech will provide the same services as are now provided under the tariff of the New Hampshire Corporation and submitted tariff pages identical to the tariff pages of Hertz-NH with the exception of the name of the carrier and title Original; it is hereby

ORDERED, that the Certificate of Authority to Conduct Business as a Telecommunications Utility in the State of New Hampshire, which was granted to Hertz-NH in Order 20,961 and clarified in Order No. 21,319, is hereby assigned to Hertz-Tech which is thereby authorized to provide intrastate telecommunications services, specifically excluding local exchange services, for the service territory for the entire State of New Hampshire; and it is

FURTHER ORDERED, that Hertz-Tech shall comply with the terms of Order No. 20,961 and clarified in Order No. 21,319 and all rules, regulations, and orders of the Commission and shall assure all obligations of Hertz-NH, Inc.; and it is

FURTHER ORDERED, that the following tariff pages are approved: Hertz Technologies, Inc. New Hampshire PUC Tariff No. 1: Pages 1 through Page 46 Original; and it is

FURTHER ORDERED, that Hertz-Tech shall file a compliance tariff in accordance with NH Admin. Rules, Puc PART 1600 within 15 days of this order.

By Order of the New Hampshire Public Utilities Commission this fifteenth day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hertz Technologies of New Hampshire, Inc., DE 93-080, Order No. 20,961, 78 NH PUC 507, Sept. 10, 1993. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 21,319, 79 NH PUC 442, Aug. 10, 1994.

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NH.PUC*08/15/94*[70591]*79 NH PUC 448*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 70591]

79 NH PUC 448

Re Sprint Communications Company of New Hampshire, Inc.

DE 94-156

Order No. 21,322

New Hampshire Public Utilities Commission

August 15, 1994

ORDER authorizing an interexchange telephone carrier to eliminate holiday discount offerings for business customers.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Interexchange carrier — Holiday rate discounts — Elimination as to business customers. p. 449.

BY THE COMMISSION:

ORDER

[1] On July 27, 1994, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to eliminate the holiday discount for business customers in its New Hampshire PUC No. 4 Tariff; and

WHEREAS, Sprint proposed an effective date of September 1, 1994; and

WHEREAS, permitting competitors to revise service provisions at the competitors' discretion allows the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages for Sprint's Tariff NHPUC No. 4 are approved for effect as filed:

5th Revised Page 1
1st Revised Page 9;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this fifteenth day of August, 1994.

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NH.PUC*08/15/94*[70592]*79 NH PUC 449*Northern Utilities, Inc.

[Go to End of 70592]

79 NH PUC 449

Re Northern Utilities, Inc.

Additional applicant: Public Service Company of New Hampshire

DR 94-090
Order No. 21,323

New Hampshire Public Utilities Commission

August 15, 1994

ORDER approving an amended interruptible gas sales contract between a natural gas local distribution company and an electric utility, for supplying the Newington Station generating plant which had been recently converted to gas. The commission cautions that its approval of the contract does not set any precedent or policy on gas procurement practices, particularly with respect to those contract provisions for "streaming," whereby the gas utility procures a certain supply specific to the electric utility.

1. RATES, § 384

[N.H.] Gas rate design — Interruptible service — Sales to electric utility — Necessity of contract amendments — Transportation pricing changes — Provisions for "streaming" — Incorporation of plant conversion costs. p. 450.

2. GAS, § 7

[N.H.] Operation — Procurement practices — "Streaming" — Procurement of supply specific to one customer — Special contract provisions. p. 450.

BY THE COMMISSION:

ORDER

Northern Utilities, Inc. (Northern) and Public Service Company of New Hampshire (PSNH) entered an Interruptible Gas Sales Agreement (Gas Sales Agreement) on May 1, 1992, which the New Hampshire Public Utilities Commission (Commission) approved by Order No. 20,488 (May 26, 1992) in Docket DR 91-095. PSNH operates Newington Station, a utility boiler which is dual fueled and can operate on either oil or natural gas.

On May 10, 1994, Northern filed a Newington Station Conversion Cost Recovery Amended and Restated Interruptible Gas Sales and Interruptible Transportation Agreement (Restated Agreement) executed by Northern and PSNH for Commission approval. The Restated Agreement was designed to reflect current Federal Energy Regulatory Commission

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(FERC) regulation and Commission approved transportation policies. Northern and PSNH asked that the Restated Agreement be approved on an interim basis, effective immediately, to allow gas to be burned at Newington Station, thus lowering costs to consumers, while the terms of the Restated Agreement were fully evaluated.

After discussion with members from the Office of Consumer Advocate (OCA) and the Commission Staff (Staff), Northern and PSNH withdrew the Restated Agreement and, on May 13, 1994, submitted instead an Interim Amendment to the Newington Station Conversion Cost Recovery Interruptible Sales Agreement (Interim Amendment) which addressed only the sales service pricing requirements under current FERC and Commission regulation. This was approved, on an interim basis, in Order No. 21,228 (May 16, 1994), with interim approval expiring on July 15, 1994.

As required in Order No. 21,228, Northern submitted, on June 1, 1994, an executed Amended and Restated Agreement with PSNH (Amended and Restated Agreement) for on-going use of natural gas at Newington Station. In Order No. 21,300 (July 13, 1994), the expiration of the Interim Amendment was extended another thirty (30) days to allow Staff further time to review the new provisions in the June 1st filing; the interim approval is now set to expire on

August 14, 1994. Because August 14th falls on a Sunday, pursuant to N.H. Admin. R., Puc 202.03, the expiration date is the close of business on August 15, 1994.

Based on several discussions with Staff, Northern filed on August 12, 1994, an executed amendment with PSNH to the June 1st filing which clarified the gas supply purchasing provisions of the interruptible sales service; two basic gas supply procurement scenarios were envisioned. One involved Northern meeting the Newington Station load through the use of "streaming", i.e., a specifically purchased gas supply for an individual customer, while the other scheme involved using any excess gas from Northern's system supply portfolio. The import of delineating which procurement scheme is used rests on the different pricing provisions associated with each alternative.

In a memorandum to the Commission dated August 12, 1994, Staff reviewed the contents of the June 1st and August 12th filings. Staff recommended that the Commission accept the agreement reached between Northern and PSNH, as described in the June 1st and August 12th filings, based on the following:

1.) The pending agreement does not change the basic intent of the original contract reached in May of 1992. In particular, those provisions regarding the sharing of margins between Northern and PSNH to recover the Newington Station conversion costs remain the same. Only those changes in the procurement and delivery of gas with their accompanying pricing, as necessitated by the recent FERC "unbundling" and the Commission intrastate transportation Orders, are made.

2.) The use of streaming will be limited to this contract. Newington Station is an extremely large customer and has such an uncertain use rate, being dependent on being dispatched from the New England power pool, that streaming may be the only reasonable way of procuring a gas supply for PSNH. The Commission, however, has not ruled on the general issue of streaming and Northern agrees that it cannot view this contract as setting a precedent on this issue.

As noted further in Staff's memorandum, the OCA also recommended approval of the Amended and Restated Agreement, as subsequently modified by the August 12th amendment.

[1, 2] We find the agreement reached between Northern and PSNH to be in the public good. We agree with Staff that the current agreement maintains the spirit and purpose of the original Gas Sales Agreement entered into and approved in May of 1992. As such, we will approve the Amended and Restated Agreement, as modified by the August 12th amendment, with an effective date of August 16, 1994.

We also find that the peculiarities of Newington Station justify the use of gas streaming, at least during the conversion cost recovery period. However, we have not reached a general

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conclusion concerning this practice and we do not view our decision here as setting any definitive policy on gas streaming.

By the terms of the Gas Sales Agreement dated May 1, 1992, which was approved by Order No. 20,488 (May 26, 1992) in Docket DR 91-095, this Amended and Restated Agreement is due

to expire upon recovery of both Northern and PSNH's Newington Station conversion costs or on May 16, 1997, whichever occurs earlier.

Based upon the foregoing, it is hereby

ORDERED, that the Amended and Restated Agreement, filed with the Commission on June 1, 1994 and subsequently amended on August 12, 1994, is approved, with an effective date of August 16, 1994; and it is

FURTHER ORDERED, that the practice of gas streaming will be limited to the Amended and Restated Agreement, as amended on August 12, 1994.

By order of the New Hampshire Public Utilities Commission this fifteenth day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 94-090, Order No. 21,228, 79 NH PUC 280, May 16, 1994. [N.H.] Re Northern Utilities, Inc., DR 94-090, Order No. 21,300, 79 NH PUC 411, July 13, 1994. [N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DR 91-095, Order No. 20,488, 77 NH PUC 250, May 26, 1992.

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NH.PUC*08/16/94*[70593]*79 NH PUC 451*Relay New Hampshire

[Go to End of 70593]

79 NH PUC 451

Re Relay New Hampshire

DR 94-180

Order No. 21,324

New Hampshire Public Utilities Commission

August 16, 1994

ORDER finding that the state's telecommunications relay service (TRS) for the deaf and hearing-impaired has been overfunded, and therefore reducing the monthly TRS surcharge from 10 cents per access line to two cents per access line.

1. RATES, § 572.1

[N.H.] Telephone rate design — Telecommunications relay service — For the deaf and hearing-impaired — Funding via monthly access line surcharge — Overfunding — Resulting reduction in monthly surcharge. p. 451.

BY THE COMMISSION:

ORDER

[1] On November 8, 1991, Sprint began providing Telecommunications Relay Service (TRS) in New Hampshire which is funded by including 10 cents per month in basic exchange rates; and

WHEREAS, a Stipulation Agreement Re Cost Recovery (Stipulation) was signed by the Local Exchange Carriers (LECs) in DE 90-225 on May 28, 1991 and approved by the New Hampshire Public Utilities Commission (Commission) in *Dual Party Relay Service*, Report and Order No. 20,236, 76 NHPUC 593 (1991) in which the signatories agreed that the amount of the charge per month for TRS would be included in basic exchange rates and adjusted annually as necessary; and

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WHEREAS, the LECs have been collecting 10 cents per month per access line in basic exchange rates and depositing the revenue in a bank account pursuant to the Telephone Relay Service Trust Agreement and Stipulation signed January 28, 1992; and

WHEREAS, the Commission Staff receives monthly statements from the account which indicate the amount collected is in excess of the revenue required to cover the costs of TRS; and

WHEREAS, the account balance as of July 17, 1994, was approximately \$865,000 and the average monthly cost for TRS is approximately \$36,000; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to the instant order; it is hereby

ORDERED *NISI*, that the amount collected for TRS in basic exchange rates be reduced by all New Hampshire LECs from 10 cents per month to 2 cents per month and the amount collected in seasonal rates, during the off season, be reduced from 5 cents per month to 1 cent per month; and it is

FURTHER 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 September 23, 1994; and it is

FURTHER ORDERED, that the LECs file revised tariff pages reflecting this change on September 30, 1994, for effect with the first full billing cycle on or after October 1, 1994, in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective September 26, 1994, 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 sixteenth day of August, 1994.

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NH.PUC*08/22/94*[70594]*79 NH PUC 452*Public Service Company of New Hampshire

[Go to End of 70594]

79 NH PUC 452

Re Public Service Company of New Hampshire

DR 94-002

Order No. 21,325

New Hampshire Public Utilities Commission

August 22, 1994

ORDER authorizing a change in the peak reduction factor used in time-of-day rates applicable to the hydro class under renegotiated rate agreements for an electric utility's purchases of power from five qualifying hydropower small power producers, pursuant to Order No. 21,190 (79 NH PUC 213, *supra*).

1. COGENERATION, § 24

[N.H.] Rates — Renegotiated rate agreements — Change in peak reduction factor — Time-of-day class. p. 452.

2. RATES, § 326

[N.H.] Electric rate design — Time-of-day rates — For purchases of power from hydro-powered qualifying facilities — Change in peak reduction factor — Renegotiated rate agreements. p. 452.

3. ELECTRICITY, § 5

[N.H.] Least-cost planning — Hydropower plant — Purchases from small power producers — Renegotiated rate agreements — Change in peak reduction factor. p. 452.

BY THE COMMISSION:

ORDER

[1-3] On April 19, 1994, the New

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Hampshire Public Utilities Commission (Commission) issued Order No. 21,190, *inter alia*, approving the agreements between Public Service Company of New Hampshire (PSNH) and five hydroelectric producers negotiated in accordance with RSA 362-C:3 and ordering the parties and Staff to report to the Commission their recommendations on whether and if so how, the peak reduction factor (PRF) should be changed to reflect these new agreements; and

WHEREAS, on May 19, 1994, PSNH filed the Joint Recommendations of the Commission

Staff, the Office of the Consumer Advocate and Public Service Company of New Hampshire Regarding Peak Reduction Factor, which stated their agreement that the PRF for the Time-of-Day hydro class should be recalculated, outlined three options for that recalculation, and expressed their preference for the third option; and

WHEREAS, option three would change the PRF of the Time- of-Day class effective with the next PRF calculation for January 1995, would remove the five hydro projects from all three years of the three year rolling average but would not require that the remaining members of the class refund payments made for 1994; and

WHEREAS, the Commission finds that option three appropriately balances the interests of the ratepayers in not overpaying independent power producers for their capacity with fairness to the hydroelectric producers who relied on the payments they have already received; and

WHEREAS, the public and, in particular, the remaining members of the Time-of-Day hydro class, should be offered an opportunity to respond in support of, or in opposition to the instant order; it is hereby

ORDERED *NISI*, that the third option for the recalculation of the Peak Reduction Factor as of January 1995 is approved; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rule PUC 1601.05(j), Public Service Company of New Hampshire cause an attested copy of this Order *Nisi* to be published once in a newspaper having statewide circulation, such publication to be no later than September 1, 1994 and it is to be documented by affidavit filed with this office on or before September 16, 1994; and it is

FURTHER 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 September 16, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective September 21, 1994, 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-second day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,190, 79 NH PUC 213, Apr. 19, 1994.

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NH.PUC*08/23/94*[70595]*79 NH PUC 453*Energy Policy Act of 1992

[Go to End of 70595]

Re Energy Policy Act of 1992

DE 93-071

Order No. 21,326

New Hampshire Public Utilities Commission

August 23, 1994

ORDER finding no need to promulgate any new generic rate-making standards for long-term purchases of wholesale power by electric utilities from independent power producers (IPPs).

In response to passage of the Energy Policy Act of 1992, the commission had addressed four specific issues: (1) the impact of the obligation to purchase from IPPs on utility cost of capital; (2) the potential for unfair advantages enjoyed by IPPs by virtue of their relatively higher proportions of debt in capital structure; (3) the need for a preapproval process for long-term wholesale power purchase contracts; and

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(4) assurances of fuel supply adequacy as a condition for approval of any such contact.

As to the first two issues, the commission finds no more than a nebulous connection between IPP purchase obligations and lowered utility bond ratings, so that any such problems should be dealt with on a case-by-case basis rather than through development of a set standard. Similarly, any adverse impacts from higher IPP debt levels are deemed better handled on a case-by-case basis. Moreover, no need is found for a contract preapproval process or for fuel supply assurances, with the commission noting that such issues are already adequately addressed in the commission's existing integrated least-cost resource planning procedures.

1. COGENERATION, § 1

[N.H.] Energy Policy Act of 1992 — Legislatively initiated investigatory proceeding — Review of impact of purchase obligations on utility cost of capital — Proposals for contract preapproval process — No need for new generic rate-making standards — Treatment on case-by-case basis. p. 458.

2. COGENERATION, § 17

[N.H.] Energy Policy Act of 1992 — Legislatively initiated investigatory proceeding — Contracts — Proposals for long-term wholesale purchase preapproval process — Rejection. p. 458.

3. COGENERATION, § 24

[N.H.] Energy Policy Act of 1992 — Legislatively initiated investigatory proceeding — Rates — Long-term wholesale purchases — No need for new generic rate-making standards. p. 458.

4. RETURN, § 87

[N.H.] Electric utilities — Factors affecting reasonableness — Obligations to purchase power from independent power producers (IPPs) — Higher levels of debt in IPP capital structures — Provisions of the Energy Policy Act of 1992 — No need for new generic rate-making standards — Handling of impacts on case-by-case basis. p. 458.

5. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Impact of obligations to purchase power from independent power producers — Provisions of the Energy Policy Act of 1992 — No need for new generic rate-making standards — Handling of impacts on case-by-case basis. p. 458.

APPEARANCES: David Saggau, Esq. on behalf of Granite State Electric Company; LeBoeuf, Lamb, Leiby and MacRae by Scott Mueller, Esq. on behalf of Concord Electric Company and Exeter and Hampton Electric Company; William Bayard on behalf of New Hampshire Electric Cooperative, Inc.; George Sansoucy, on behalf of Waste Management of New Hampshire, Inc.; Rep. Amanda Merrill; Kenneth Picton, Esq. on behalf of Connecticut Valley Electric Company, Inc.; Gerald Eaton and Thomas Getz, Esq. on behalf of Public Service Company of New Hampshire; Kenneth Colburn on behalf of the Business and Industry Association of New Hampshire; James Anderson, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; Eugene F. Sullivan III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On April 16, 1993, the New Hampshire Public Utilities Commission (Commission) issued an order of notice, which was revised on May 7, 1993, regarding a new docket opened in

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conformance with the requirements of Section 712 of the federal Energy Policy Act of 1992 (the Act) which amended § 111 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.* (PURPA). The Act required public utility commissions to determine no later than October 24, 1993 whether there is a need to implement an electric ratemaking standard pertaining to long term wholesale power purchases, by addressing the following four issues (hereinafter referred to as the Section 712 issues):

(i) the potential for increases or decreases in the cost of capital for electric utilities that make long term wholesale power purchases and any resulting increases or decreases in retail electric rates that may result from purchases of long term wholesale power in lieu of utility construction of new generation facilities;

(ii) whether the use by exempt wholesale generators (EWGs) of capital structures that employ proportionally greater amounts of debt than the capital structures of electric

utilities (a) threatens reliability, (b) provides EWGs with an unfair advantage relative to electric utilities;

(iii) whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply; and

(iv) whether to require as a condition for the approval of the purchase of such [long-term] power that there be reasonable assurances of fuel supply adequacy.

The Commission made Public Service Company of New Hampshire (PSNH), Connecticut Valley Electric Company, Inc. (CVEC), the New Hampshire Electric Cooperative, Inc. (NHEC), Concord Electric Company, Exeter and Hampton Electric Company (collectively the UNITIL Companies) and Granite State Electric Company (Granite State) mandatory parties to the proceeding. Other entities were offered an opportunity to move to intervene.

The Business and Industry Association of New Hampshire (BIA), Representative Amanda Merrill and Campaign for Ratepayers Rights (CRR) moved for full intervention and Waste Management of New Hampshire, Inc. (Waste Management) moved for limited intervention. There were no objections raised to the intervention of BIA, Representative Merrill or Waste Management; the Commission, therefore, granted BIA and Representative Merrill full intervention and Waste Management limited intervention.

CRR, in addition to its petition to intervene, requested Public Utility Regulatory Policies Act (PURPA) compensation, waiver of certain filing requirements and asked that the Commission initiate a rulemaking regarding compensation for costs of participation and examination of PURPA and its operations in New Hampshire. The Commission granted CRR's request for full intervention and waiver of filing requirements, denied CRR's request for PURPA compensation, rulemaking to expand funding standards and expansion of the scope of this docket to include other PURPA standards and the workings of PURPA in New Hampshire.

Pursuant to the Commission's understanding of the Act's mandate to investigate the Section 712 issues, the Commission on May 27, 1993 issued data requests to more than 80 independent power producers (IPPs) operating in the State. (For the sake of ease we will refer to these power producers as IPPs for Independent Power Producers, though some of them also are accurately identified as Exempt Wholesale Generators, Small Power Producers and Qualifying Facilities.) While most IPPs responded, some with requests for confidential treatment which were granted, a group of IPPs sought remedy in the federal courts, arguing the Commission had no authority to conduct such an inquiry. The Federal Court for the District of New Hampshire found the Commission had the authority to make this inquiry; that decision was affirmed by the Court of Appeals for the First Circuit. *See Bristol Energy Corp. v. New Hampshire Public Utilities Commission*, 13 F. 3d 471 (1st Cir. 1994).

Upon receipt of the favorable ruling from the appellate court, the Commission resumed its efforts to obtain the information it believed necessary to complete the inquiry mandated by the

Act. After months of litigation over protective treatment of the data, the outstanding IPP data responses were filed with the Commission on May 5, 1994.

The parties and Commission Staff (Staff) filed Comments on June 17, 1994. The Commission heard evidence on the Section 712 issues on July 19, 1994. This report summarizes the pre-filed comments and evidence presented at the hearing and further evaluates the Section 712 issues and the Commission's current regulatory processes.

II. POSITIONS OF PARTIES AND THE STAFF

A. *PSNH*

PSNH filed comments encouraging some changes in Commission practice. PSNH believes the obligation to purchase power from IPPs has an adverse impact on the cost of capital of the purchasing utility (issue i) though at the hearing PSNH stated that neither PSNH nor Northeast Utilities have suffered lowered bond ratings due to IPP purchases. PSNH was silent on the effect of these purchases on retail rates.

PSNH argued that IPPs generally carry higher debt than regulated utilities, which gives them an unfair competitive advantage (issue ii). PSNH did not, however, propose standard treatment to address what it considered an unfair advantage.

While current Commission procedures for review of resource options through our integrated resource plans (IRPs) was described as useful (issue iii), PSNH suggested expanding the IRP process to include greater evaluation of new resources and the need for power, require greater disclosure of IPP financial records and make IPPs dispatchable along NEPOOL lines. PSNH did not advocate a new standard regarding these issues but instead recommended inclusion of these issues in IRP proceedings.

PSNH argued that long term fuel supply was critical and should be a condition of any long term purchase contract (issue iv).

B. *Granite State Electric*

Granite State's comments asserted that IPP purchases can increase the purchasing utility's cost of capital (issue i) but with increased flexibility in contract terms, the adverse impact can be minimized. Granite State cautioned the Commission not to take any action which would prohibit flexibility in setting those contract terms.

Granite State did not believe that IPPs will have higher debt levels in the future, though historically that had been the case (issue ii). Either way, Granite State did not believe that the level of debt affected the reliability of the provider.

Granite State did not urge the Commission to implement procedures to grant advance approval for long term power purchases (issue iii), arguing that the current IRP process and the three state review now in place for Granite State and its affiliates through New England Power Company to be sufficient.

Finally, Granite State did not believe the Commission should enact a standard requirement of fuel supply as a condition of long term power purchases (issue iv), believing the issue must be addressed in the context of a particular utility, rather than through a generic standard setting process.

C. *CVEC*

CVEC filed comments stating that both the impact of long term wholesale power purchases and the construction of new power generation facilities on the purchasing utility's cost of capital (issue i) can be significant, though one must determine on a case by case basis the actual effect of these purchases or construction on retail rates. CVEC also stated that although IPPs are often more highly leveraged than utilities, their degree of debt financing does not appear to affect their reliability or provide them with an unfair advantage over utilities (issue ii).

CVEC noted existing processes for Commission evaluation of fuel supply (issues iii and iv) and stated it did not believe additional regulatory processes were needed for approval of contracts from IPPs, beyond the current mechanisms for review of IRPs, retail rate filings, fuel and purchased power adjustments and individual contracts between utilities and IPPs.

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D. *The UNITIL Companies*

The UNITIL Companies filed comments stating that the Commission has an adequate basis to find that the Section 712 issues, for the most part, are reflected in current regulatory and ratemaking processes at the Commission and have been so since 1988, citing *Re Public Service Company of New Hampshire*, 73 NHPUC 117 (1988) and subsequent codification (at NH RSA 378:37 through 39) of least cost planning principles and the necessity of filing IRPs.

According to the UNITIL Companies, a purchasing utility's cost of capital and the influence of long term purchased power contracts on cost of capital (issue i) are evaluated as part of the Commission's current IRP process. Similarly, the impact of IPP capital structures on the purchasing utility (issue ii) and the adequacy of fuel supply (issue iv) are already part of the Commission's regulatory standards.

The UNITIL Companies noted that although the Commission does not preapprove specific resources in an IRP (issue iii), the Commission does determine the adequacy of the utility's planning process by evaluating and assessing those specific resources and has the authority and obligation to preapprove long term wholesale power purchases undertaken by retail utilities in the state.

E. *Other Intervenors*

NHEC, CRR and BIA and Representative Merrill, although full parties to this docket, filed no comments. Limited intervenor Waste Management, Inc. filed no comments.

F. *OCA*

OCA filed comments stating that while IPPs have traditionally carried high debt levels (issue i), the Commission should not establish a standard regarding debt and its affect on the purchasing utility, but rather deal with the question on a case by case basis. OCA stated at the hearing that its understanding was that some utilities had seen their bond ratings downgraded due to their purchase obligations from IPPs.

OCA argued that higher IPP debt may lead to an unfair advantage (issue ii) but that was difficult to ascertain in a generic proceeding. OCA recommended that the Commission consider the consequences of any unfair advantage in the context of a rate case. OCA did not address

whether IPP debt levels affected reliability.

OCA stated that pre-approval (issue iii) might be useful but should not be a guarantee of full recovery if circumstances were to change. Any such approval, however, could be done in the context of current IRP cases.

The current IRP process is sufficient to ensure adequate fuel supply (issue iv), according to OCA.

G. Staff

The Staff filed comments that reviewed the development of IPPs in the State and then addressed the §712 issues. Staff argued that long term power purchase obligations from IPPs can have an effect on the purchasing utility's cost of capital, but one must evaluate the effect on a case by case basis, given that the effect could be to increase or decrease the purchasing utility's cost of capital (issue i). Similarly, the impact on retail rates could be positive or negative and, therefore, shouldn't be dealt with generically.

Staff asserted that the debt levels carried by IPPs are at times higher than that of regulated utilities (issue ii) but that did not seem to affect the reliability of the IPP or give the IPP an unfair advantage. At the hearing, Staff stated it disagreed with PSNH and did not see a need for review of the financial records of IPPs.

Staff did not believe that pre-approval of long term contracts was appropriate and therefore did not advocate new Commission procedures for pre-approval (issue iii). In Staff's view, the IRP process will allow an opportunity for analysis of a utility's supply options but should focus on its planning process rather than on individual contracts or supply decisions.

Similarly, Staff did not believe that the Commission needed to enact new standards on fuel supply (issue iv), given the apparent steps IPPs have taken to provide for adequate supplies on their own. In Staff's view, the current

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IRP process is sufficient to encourage conservation, efficient use of utility facilities and ensure fair rates. No further standard was necessary, in Staff's opinion.

III. COMMISSION ANALYSIS

[1-5] We have reviewed the prefiled comments of the Parties and Staff and the testimony presented at the July 19, 1994 hearing. At the outset, we should note the uniformity of responses of the Parties and Staff on these issues. There was little disagreement on the issues raised and no call for creating new standards or significantly altering our current handling of these issues. Based on the evidence presented, it is clear that the state's electric utilities and our state funded consumer advocacy group as well as our Commission Staff believe we need take no further action as a result of Section 712 of the Act.

We will address the Section 712 issues identified by the Act for inquiry and our analysis of the evidence presented.

- i. The potential for increases or decreases in the cost of capital for electric utilities that make long term wholesale power purchases and any resulting increases or decreases

in retail electric rates that may result from purchases of long term wholesale power in lieu of utility construction of new generation facilities

Many participants found a link in the literature between long term purchase obligations from IPPs and lowered bond ratings for some utilities, though no utility before us stated that it had suffered lowered bond ratings. Staff noted that there was no evidence that long term purchase obligations from IPPs would have a more deleterious effect on utility bond ratings than a utility decision to construct needed capacity. All participants argued that these issues have to be addressed on a case by case basis and do not lend themselves to a set standard of treatment. Granite State, in fact, argued that the relationship between long term power purchase obligations and bond ratings made flexibility in contract terms all the more important, and establishing standards could work to the disadvantage of utilities that need flexibility in contract negotiations.

We have been presented with no evidence to suggest that a Commission standard is needed regarding long term power purchases from IPPs and their impact on the purchasing utility's cost of capital or retail rates and will decline to adopt any such standard. We will continue to address these issues in the context of utility least cost integrated resource plans.

ii. Whether the use by exempt wholesale generators (EWGs) of capital structures that employ proportionally greater amounts of debt than the capital structures of electric utilities (a) threatens reliability, (b) provides EWGs with an unfair advantage relative to electric utilities

The evidence presented on the effect of IPPs' debt leverage on reliability or advantage in the marketplace was mixed. PSNH and CVEC felt that some IPPs carried higher debt than utilities and in some cases may have an unfair advantage. Granite State and Staff argued that debt levels were dropping or were not necessarily any higher than utilities and that in any case, given the higher cost of project financing compared to utility financing the higher debt levels did not give IPPs an unfair advantage over utilities. OCA argued that when high debt leads to an unfair advantage over a utility, the utility should be allowed to protect itself, but this should be evaluated on a case by case basis. No one argued that the level of debt affected IPP reliability, and Staff argued that based on the data produced by the New Hampshire IPPs, levels of debt did not affect reliability. All participants recommended that the issue be dealt with on a case by case basis and not through new standards.

We have been presented with no evidence to suggest that a Commission standard is needed regarding reliability and unfair advantage of IPPs because of their debt levels. We will decline to adopt any such standard.

iii. Whether to implement procedures for the advance approval or disapproval of the

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purchase of a particular long-term wholesale power supply

The participants agreed that our current IRP process is sufficient and that we should not require preapproval of individual long term purchases. PSNH argued that there should be greater obligations imposed on IPPs regarding dispatchability, monitoring of generation and financial disclosure, though PSNH argued this wasn't necessarily an issue that required adoption of a

standard. As PSNH noted, discussions such as were generated by this issue were significant to help people develop their understanding of these issues.

We agree with the arguments of Staff that our focus should be on the planning process rather than on individual contracts, and our current IRP process is a valuable and adequate tool to ensure sound utility planning on long term wholesale power purchases. We will decline, therefore, to adopt new standards requiring preapproval of long term wholesale power purchases.

iv. Whether to require as a condition for the approval of the purchase of such [long-term] power that there be reasonable assurances of fuel supply adequacy

The evidence presented on adequacy of fuel supply was similar to that presented on other issues. Every participant but one stated that the issue is now part of the current IRP process. PSNH, however, suggested greater Commission involvement in reviewing fuel supply contracts and reliability of IPP generation. Staff argued that the New Hampshire IPPs have taken steps to ensure adequacy on their own, without regulatory requirement.

No one argued that the Commission should adopt standards on this issue. Rather, the parties recommended that the Commission should deal with it on a case by case basis within the context of the current IRP process. Based on these recommendations and confidence in our current process, we will decline to adopt a standard regarding assurance of fuel supply by IPPs.

Based on the evidence presented on all four of the Section 712 issues, we see no basis on which to develop new standards, as our current IRP process and forces in the marketplace adequately address the Section 712 issues. We appreciate the efforts of all participants in this inquiry.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which is attached hereto, it is hereby

ORDERED, that after inquiry into the four issues identified in Section 712 of the Energy Policy Act of 1992, the Commission finds no basis on which to develop standards regarding the Section 712 issues; and it is

FURTHER ORDERED, that the foregoing report and all pre-filed testimony submitted in this docket be forwarded to the Department of Energy in compliance with the provisions of the Energy Policy Act of 1992.

By order of the New Hampshire Public Utilities Commission this twenty-third day of August, 1994.

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NH.PUC*08/23/94*[70596]*79 NH PUC 459*New England Telephone

[Go to End of 70596]

79 NH PUC 459

Re New England Telephone

DR 93-239
Order No. 21,327

New Hampshire Public Utilities Commission

August 23, 1994

ORDER authorizing a local exchange telephone carrier to revise its service terms for digipath digital service, to (1) eliminate the minimum 10-channel requirement, (2) introduce more installment payment plan options, (3) allow longer-term payment plans, and (4) reduce certain rate plan charges.

1. RATES, § 553

[N.H.] Telephone rate design — Digipath

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digital service — Changes in service requirements — Elimination of minimum channel requirements — Introduction of more payment plan options. p. 460.

2. SERVICE, § 151

[N.H.] Terms and conditions of service — Changes in service requirements — Elimination of minimum channel requirements — Introduction of more payment plan options — Digital telecommunications services. p. 460.

3. PAYMENT, § 17

[N.H.] Billing practices — Installment plans — Introduction of more payment plan options — Offering of longer-term payment plans — Digital telecommunications services. p. 460.

BY THE COMMISSION:

ORDER

[1-3] On December 2, 1993, New England Telephone (NET) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to revise its Digipath Digital Service (DDSII) tariff; and

WHEREAS, this filing introduces an 84 month payment option; eliminates the ten channel requirement to obtain a contract; introduces the ability to spread the Service and Equipment charge over the optional payment periods (36, 60 and 84 months); revises the Variable Term Payment Plan termination liability language in addition to other changes which reduce the termination liability; reduces many of the rates associated with the 36 and 60 month payment plans; and complies with Order No. 20,996 issued October 13, 1993 in Docket DR 93-056 by this Commission; and

WHEREAS, Order No. 21,081, issued December 30, 1993, suspended the proposed tariff

pages to allow Staff time to investigate the proposed rates and accompanying cost support; and

WHEREAS, Order No. 21,176, issued March 28, 1994 suspended the proposed revisions to allow Staff to continue to work with the Company to resolve questions concerning the cost support and revenue projections; and

WHEREAS, Staff has reviewed the proposed tariff filing and additional cost and revenue materials filed by the Company; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revisions to be in the public good; it is therefore

ORDERED, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 75

Part C - Section 9:
First Revision of Page 2
First Revision of Pages 5 through 12

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of the date of this Order; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this twenty-third day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 93-056, Order No. 20,996, 78 NH PUC 572, Oct. 13, 1993. [N.H.] Re New England Teleph. Co., DR 93-239, Order No. 21,081, 78 NH PUC 747, Dec. 30, 1993. [N.H.] Re New England Teleph. Co., DR 93-239, Order No. 21,176, 79 NH PUC 191, Mar. 28, 1994.

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NH.PUC*08/24/94*[70597]*79 NH PUC 461*UNITIL Service Corporation

[Go to End of 70597]

79 NH PUC 461

Re UNITIL Service Corporation

Additional applicants: Concord Electric Company; Exeter and Hampton Electric Company

DE 94-081
Order No. 21,328

New Hampshire Public Utilities Commission

August 24, 1994

ORDER granting confidential treatment of certain data responses submitted in a proceeding in which a parent holding company had filed an integrated least-cost resource plan for its two electric utility operating subsidiaries. The data responses included certain bid analyses and pending contractual terms which could place the company at a competitive disadvantage if disclosed. While the commission approves confidentiality and also orders its staff to return the responses to the company within 45 days after a final order in the case, the commission denies the company's request to further compel commission staff to turn over to the company staff's own internal notes and memoranda pertaining to the data responses.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidential treatment — Commercially sensitive data responses — In integrated least-cost resource planning proceeding — Return of responses upon issuance of final order. p. 461.

2. PROCEDURE, § 19

[N.H.] Discovery and inspection — Confidential treatment — Commercially sensitive data responses — Internal commission staff notes and memoranda — Pertaining to data responses — Return of responses upon issuance of final order — No return of staff records and materials. p. 461.

BY THE COMMISSION:

ORDER

[1, 2] On August 12, 1994, the UNITIL Companies (UNITIL) filed a motion with the New Hampshire Public Utilities Commission (Commission) for confidential treatment of its responses to particular Data Requests (Responses) made by the Commission Staff as part of the discovery process in this docket; and

WHEREAS, UNITIL specifically requests that the Responses be returned to UNITIL and that Staff destroy any notes, memoranda, and other information derived from the Responses within 45 days from the date of a final order in this docket or final order in any appeal, and certify to UNITIL that they have been destroyed; and

WHEREAS, UNITIL states in its motion that the Responses include information about UNITIL's analysis of bids submitted in response to an RFP as well as copies of the bids, confidential discussions on single system status, and confidential discussions on pending contractual agreements which would benefit competitors, impair UNITIL's negotiating ability,

and harm customers; and

WHEREAS, UNITIL states in its motion that the Responses constitute sensitive commercial information exempted from public disclosure under RSA 91-A:5(iv); and

WHEREAS, the information contained in the Responses is a necessary and important part of the Staff's review of UNITIL's Integrated Least Cost Resource Planning; and

WHEREAS, the Commission recognizes the need for protection of these terms, finding the benefits of non- disclosure of the Responses to outweigh the benefits of disclosure; and

WHEREAS, the Commission recognizes the value of Staff having an opportunity to study the Responses in order to improve its knowledge of the increasingly competitive electricity marketplace; and

WHEREAS, UNITIL would file with FERC for approval any contract awarded to any winning bidder, making a winning bid public information; and

WHEREAS, the Commission has in place

Page 461

procedures for protection of confidential materials which have served both the parties and the Commission well, that is, confidential materials will be kept segregated from the public and, when not being used, kept in locked cabinets, and Staff members reviewing the materials are bound by the Commission's order not to disclose the contents of the materials; it is hereby

ORDERED, that UNITIL's motion is GRANTED IN PART, to wit: the Responses are granted confidential treatment; the Responses shall be maintained with reasonable precautions to ensure their protection and shall not be published or otherwise disclosed to anyone other than Staff members who are working on review of the Integrated Least Cost Resource Plan; the Responses shall be returned to UNITIL within 45 days from the date of final order in this proceeding or final order in any appeal; and it is

FURTHER ORDERED, that UNITIL's motion is DENIED IN PART, to wit: Staff is not required to destroy any notes, memoranda and other information derived from the Responses nor certify to UNITIL that they have been destroyed; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission to reconsider this order in light of RSA 91-A should circumstances so warrant.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of August, 1994.

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NH.PUC*08/24/94*[70598]*79 NH PUC 462*Bretton Woods Telephone Company, Inc.

[Go to End of 70598]

Re Bretton Woods Telephone Company, Inc.

DR 94-157
Order No. 21,329

New Hampshire Public Utilities Commission

August 24, 1994

ORDER suspending a local exchange telephone carrier's proposed tariffs for the introduction of custom calling, call management, and voice mail services, and for the elimination of seasonal service rates, to allow for further review by commission staff.

1. RATES, § 553

[N.H.] Telephone rate design — Special services — Custom calling, call management, and voice mail services — Suspension of proposed tariffs — Factors — Failure to submit supporting documentation — Need for further staff review. p. 462.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Factors — Failure to submit supporting documentation — Need for further staff review — Tariffs for enhanced telephone services. p. 462.

BY THE COMMISSION:

ORDER

[1, 2] On July 26, 1994 Bretton Woods Telephone Company (BWT or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce Custom Calling, Call Management and Voice Mail Services, to delete its Seasonal Service offering, and to make other modifications to its Tariff No. 3; and

WHEREAS, the Company provided no supporting documentation with its proposed filing;

WHEREAS, and the proposed filing requires further investigation by Staff; it is hereby

ORDERED, that the proposed revisions to

NHPUC No. 3

Contents, Page 1, Third Revision

Index, Page 1, Third Revision

Page 462

Index, Page 2, First Revision

Definitions, Page 2, First Revision

Definitions, Page 3, First Revision

Definitions, Page 8, First Revision

Part III, Section 1, Page 3, First Revision
Part III, Section 4, Page 1, First Revision
Part V, Section 2, Original Page 2
Part VII, Section 2, Original Pages 1-14
are suspended pending further investigation.

By order of the New Hampshire Public Utilities Commission this twenty-fourth day of August, 1994.

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NH.PUC*08/25/94*[70599]*79 NH PUC 463*Metropolitan Fiber Systems

[Go to End of 70599]

79 NH PUC 463

Re Metropolitan Fiber Systems

DE 94-025

Order No. 21,330

New Hampshire Public Utilities Commission

August 25, 1994

ORDER allowing late interventions in a docket addressing an application for a certificate to provide nonswitched, private line, intrastate intraLATA interexchange telephone service, where the intervenors were newly formed telephone companies that could not have timely applied for intervenor status.

1. PARTIES, § 18

[N.H.] Intervenors — Grounds for allowing late intervention — Newly formed company not in existence as of original deadline. p. 463.

BY THE COMMISSION:

ORDER

[1] On August 12, 1994, Contoocook Valley Telephone Company, Inc. (Contoocook) and Hollis Telephone Company, Inc. (Hollis) petitioned the New Hampshire Public Utilities Commission for permission to intervene in this docket; and

WHEREAS, Contoocook is a newly-formed, wholly-owned subsidiary of MCT, Inc., the holding company which owns all of the outstanding common stock of Merrimack County Telephone Company, a current intervenor in this docket; and

WHEREAS, Hollis is a newly-formed, wholly-owned subsidiary of Telecommunication Systems of New Hampshire, Inc., the holding company which owns all of the outstanding shares of Wilton Telephone Company, Inc., a current intervenor in this docket; and

WHEREAS, Contoocook and Hollis agree to accept the record in this docket thus far, as well as the existing procedural schedule, and

WHEREAS, Contoocook and Hollis aver the same rights and interests set forth in the petition of six independent telephone companies (GST *et al.*) dated April 18, 1994, are represented by the same counsel as GST *et al.*, and propose to consolidate their participation in this docket with GST *et al.*; and

WHEREAS, the Commission finds that intervention by Contoocook and Hollis is in the interest of justice and will not impair the orderly and prompt conduct of the proceeding, as required by RSA 541-A:32 and Puc 203.02; it is hereby

ORDERED, that full intervenor status is granted to Contoocook and to Hollis.

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of August, 1994.

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NH.PUC*08/31/94*[70600]*79 NH PUC 464*Startel Communications, Inc.

[Go to End of 70600]

79 NH PUC 464

Re Startel Communications, Inc.

DR 94-174

Order No. 21,331

New Hampshire Public Utilities Commission

August 31, 1994

ORDER approving an interexchange telephone carrier's proposal to introduce several new outbound and inbound toll service and "800" service products.

1. SERVICE, § 468

[N.H.] Telephone — Toll packages — Outbound/inbound options — "800" offerings. p. 464.

BY THE COMMISSION:

ORDER

[1] On August 5, 1994, Startel Communications, Inc., a New Hampshire corporation, d/b/a

Telstar Communications, Inc. and d/b/a Telstar Long Distance (Startel) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking approval of its NHPUC Tariff No. 2 which replaces its NHPUC Tariff No. 1; and

WHEREAS, Startel's NHPUC Tariff No. 2 incorporates considerable revisions to its original tariff among which include the introduction of a group of outward and inward bound toll products called Telstar Discovery, Telstar Gemini, Telstar Apollo, Telstar Saturn, Telstar Band 9, Telstar Mercury 800, Telstar Explorer 800, Telstar Across America, Telstar Across America 800, Telstar Travel Card and concomitantly makes rate changes in association with the new product introductions; and

WHEREAS, the filing expands the choice of telephone services available, fosters competition and competitive entry, and will allow the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that Startel's NHPUC Tariff No. 2 is approved as filed; and

FURTHER ORDERED, that Startel file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this thirty-first day of August, 1994.

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NH.PUC*08/31/94*[70601]*79 NH PUC 464*Public Service Company of New Hampshire

[Go to End of 70601]

79 NH PUC 464

Re Public Service Company of New Hampshire

DR 94-132

Order No. 21,332

New Hampshire Public Utilities Commission

August 31, 1994

ORDER approving an electric utility's proposed special service contract with an industrial customer, Lockheed Sanders, Inc., which contract provides for discounted demand and energy charges for a 10-year period in order to retain the customer's load.

1. RATES, § 333

[N.H.] Electric rate design — Industrial customer — Special contract rates — Discounted demand and energy charges — Factors — Load retention. p. 464.

BY THE COMMISSION:

ORDER

[1] On June 21, 1994, Public Service

Page 464

Company of New Hampshire (PSNH) filed a request for approval of a special contract, Special Contract No. NHPUC-95, between PSNH and Lockheed Sanders, Inc. (Lockheed Sanders) effective July 6, 1994 or upon approval by the Commission; and

WHEREAS, Lockheed Sanders is a Delaware corporation having several places of business in New Hampshire, with its principal business engaged in the research, development and manufacture of electronic systems used primarily by the defense industry; and

WHEREAS, Special Contract No. NHPUC-95 is designed to retain the provision of electric service from PSNH to Lockheed Sanders at its five locations in Hudson, Manchester, Merrimack and Nashua, New Hampshire for a period of ten years from the effective date of Special Contract No. NHPUC-95; and

WHEREAS, PSNH contends and Lockheed Sanders confirms that Lockheed Sanders would, absent this special contract, actively pursue alternative lower cost supplies of electricity immediately at two of its facilities and move to acquire alternative sources of electricity at its other New Hampshire facilities as quickly as circumstances warrant as it enters a period of reduced federal defense monies and an increasingly competitive arena for Department of Defense contracts; and

WHEREAS, Lockheed Sanders has pursued cost cutting measures such as energy conservation, a reduction in property taxes, and labor force reductions from over 7,000 in 1990 to 4,500 today to enhance its competitive position; and

WHEREAS, Lockheed Sanders has worked with the State of New Hampshire's Office of Business and Industrial Development which has indicated its willingness to provide appropriate assistance to Lockheed Sanders in the future; and

WHEREAS, PSNH is proposing to provide discounted electric service to each Lockheed Sanders facility in the form of discounted energy and demand charges for a ten-year period; and

WHEREAS, Lockheed Sanders agrees that PSNH will continue to be its only provider of electric service for a period of 10 years subject to certain provisions that allow either party to terminate Special Contract No. NHPUC-95 prior to the end of its scheduled term but no sooner than sixty months from the Effective Date; and

WHEREAS, PSNH believes Special Contract No. NHPUC-95 will accomplish its three goals of pricing energy closer to marginal cost, providing PSNH with a stable revenue stream, and giving Lockheed Sanders an incentive to expand in New Hampshire; and

WHEREAS, Lockheed Sanders will be charged no less than 103% of PSNH's short-term avoided costs for all energy and demand in excess of base nor a rate greater than the tariffed rates; and

WHEREAS, by retaining service to Lockheed Sanders, PSNH maintains some level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers; and

WHEREAS, PSNH contends that this filing is consistent with its 1994 Integrated Resource Plan and is made in accordance with the Commission's established economic development policy and adheres to the Commission's "Final Checklist for Economic Development and Business Retention Discounted Rates" (Checklist) as specified in Order No. 20,882 in docket DR 91-172, the Generic Discounted Rates docket; and

WHEREAS, upon review of the filing and the Staff recommendation, the Commission finds that although Special Contract NHPUC-95 meets many of our criteria of the Checklist outlined in DR 91-172, it is designed primarily for load retention and therefore primarily benefits PSNH shareholders during the Fixed Rate Period; and

WHEREAS, the Commission finds the benefits of Special Contract No. NHPUC-95 between Public Service Company of New Hampshire and Lockheed Sanders is in the public interest; it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-95 is approved as filed effective October 1, 1994, unless the Commission provides otherwise in a Supplemental Order issued prior thereto; and it is

Page 465

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-95, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rates afforded Lockheed Sanders in Special Contract No. NHPUC-95; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, PSNH shall publish an attested copy of this order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than September 12, 1994, and document such publication by affidavit filed with the Commission on or before September 27, 1994; 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 September 27, 1994.

By order of the New Hampshire Public Utilities Commission this thirty-first day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,882, 78 NH PUC 316, June 23, 1993.

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NH.PUC*08/31/94*[70602]*79 NH PUC 466*Claremont Gas Corporation

[Go to End of 70602]

79 NH PUC 466

Re Claremont Gas Corporation

DE 94-056

Order No. 21,333

New Hampshire Public Utilities Commission

August 31, 1994

ORDER affirming the commission's authority to make random checks with customers of a natural gas local distribution company as to the company's progress in converting customer appliances to other fuels pursuant to an order authorizing the company to discontinue service. However, the commission does agree to keep the company's customer list confidential. For the earlier decision authorizing abandonment and requiring the conversion program, see Order No. 21,309 (79 NH PUC 426), *supra*.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Customer lists — As part of appliance conversion program — As condition for authority to abandon service — Local gas distribution company. p. 467.

2. COMMISSIONS, § 43

[N.H.] Jurisdiction over particular matters — Appliance conversion program — As condition for authority to abandon service — Inquiry into compliance — Knowledge but confidentiality of associated customer lists — Local gas distribution company. p. 467.

3. SERVICE, § 244

[N.H.] Abandonment or discontinuance — Terms and conditions for approval of abandonment — Substitution of service — Conversion of customers to other suppliers — Conversion of appliances — Commission oversight as to compliance with conversion requirements — Local gas distribution company. p. 467.

BY THE COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission) in Report and Order No. 21,309 approved a detailed settlement agreement by which Claremont Gas Corporation (Claremont) would abandon its natural gas

distribution system and convert those customers who were interested in bottled propane service provided by Claremont's parent company, Synergy. Claremont customers were also given the option of converting to competitor propane suppliers if they so wished.

As part of the Commission's responsibility to ensure compliance with the terms of Order No. 21,309, the Commission Staff (Staff) indicated its intentions to make random checks with Claremont customers regarding the conversion process, using Claremont's "master" customer list which had earlier been requested in the proceeding though not yet submitted.

Claremont, on August 30, 1994, filed with the Commission a letter requesting confidential treatment of the customer list and further requesting that the Staff be prohibited from using that customer information to contact customers claiming, *inter alia*, that the Commission lacked jurisdiction to make such inquiries because they were not explicitly discussed in the settlement agreement or Order No. 21,309. Claremont withheld the filing of the master customer list pending Commission action on its letter request. Claremont also requested a hearing on this matter.

[1] We have reviewed the August 30, 1994 letter and will grant the request for confidential treatment over the master list to the extent that it prohibits disclosure to the public. We routinely protect the privacy of utility customers and, as this list includes names, addresses and telephone numbers, we agree it should not be disclosed to the public.

[2, 3] We do not agree, however, with Claremont's assertion that the Commission has no jurisdiction to make inquiries of customers. RSA 365:5 explicitly authorizes the Commission to "investigate or make inquiry in a manner to be determined by it as to any rate charged or proposed or as to any act or thing having been done, or having been omitted or proposed by any public utility; and the commission shall make such inquiry in regard to any rate charged or proposed or to any act or thing having been done or having been omitted or proposed by any such utility in violation of any provision of law or order of the commission." Further, RSA 365:19 authorizes independent investigations after hearing "as in its judgment the public good may require." These statutes clearly authorize us, and our Staff, to make inquiries of customers regarding compliance with a recent order.

Claremont argues in its August 30, 1994 letter that because neither the settlement agreement nor Order No. 21,309 discussed the possibility of contacting customers regarding compliance with the terms of the order, the Commission lacks the authority to do so. We reject this argument. In effect Claremont is stating that the Staff may only contact customers if the company gives its permission or the Commission issues an order that specifically authorizes Staff to contact customers. We find this argument to be totally without merit. In fact if we were to accept this argument we would have to seek permission to do what by statute we are required to do: fulfill our role as arbiter between utility and customer interests on an on-going basis. *See* RSA 363:17-a. We will, therefore, instruct Claremont to deliver the master customer list to the Commission by the close of business today in order that it may be used by Staff to contact customers selected either randomly or in response to complaints received by the Commission.

Although it may not be necessary for the Staff to have the master customer list in hand in order to contact customers, we nonetheless authorize the Staff to make such inquiries with or without the list in hand. We will offer Claremont the opportunity, through a company employee or counsel, to be present at any meetings or telephone contacts with Claremont customers.

Based upon the foregoing, it is hereby

ORDERED, that the request for confidential treatment over the master customer list is GRANTED IN PART, as it extends to disclosure to the public; and it is

FURTHER ORDERED, that the request to prohibit the use of the master customer list to contact customers is DENIED; and it is

FURTHER ORDERED, that the Staff is authorized to conduct random inquiries of Claremont customers and to afford a representative of Claremont the opportunity to be present; and it is

FURTHER ORDERED, that the request

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for a hearing on this matter is DENIED.

By order of the New Hampshire Public Utilities Commission this thirty-first day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Corp., DE 94-056, Order No. 21-309, 79 NH PUC 426, Aug. 5, 1994.

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NH.PUC*08/31/94*[70603]*79 NH PUC 468*Pennichuck Water Works, Inc.

[Go to End of 70603]

79 NH PUC 468

Re Pennichuck Water Works, Inc.

DF 94-192

Order No. 21,334

New Hampshire Public Utilities Commission

August 31, 1994

ORDER authorizing a water utility to reissue and resell \$5.4 million worth of tax-exempt bonds.

1. SECURITY ISSUES, § 38

[N.H.] Necessity of commission authorization — For issuance of bonds or other securities. p. 468.

2. SECURITY ISSUES, § 95

[N.H.] Types of indebtedness — Bonds — Reissuance — Tax-exempt bonds — Water utility. p. 469.

BY THE COMMISSION:

ORDER

On August 25, 1994, Pennichuck Water Works, Inc. filed a petition for authority to reissue and resell \$5,400,000 of unsecured debt in tax exempt financing, consisting of \$3,300,000 Series A Bonds and \$2,100,000 Series B Bonds; and

WHEREAS, the debt consists of two \$3,000,000 tax exempt bonds, one issued in December 1989 at 7.855 and the second issued in July 1991 at 7.67%, both with a maturity date of December 1, 2019 and containing a put/call feature allowing for a remarketing on December 1, 1994; and

WHEREAS, General Electric Fleet Services, to whom the bonds were issued, has agreed to allow Pennichuck Water Works, Inc. to redeem the bonds three months early on September 1, 1994 without premium or penalty; and

WHEREAS, AMBAC Indemnity Corporation has agreed to provide credit insurance on the bonds at a fee consisting of a one-time, up front payment of approximately \$103,000 or 1% of the total debt service of the bonds, which would be amortized over the remaining 25 year life of the bonds; and

WHEREAS, the petition represents that Pennichuck Water Works, Inc. has obtained a commitment from the Nuveen Funds (John Nuveen & Co.) to purchase the bonds on September 1, 1994 on an insured basis with \$3,300,000, not subject to the federal alternative minimum tax, at a 6.35% fixed rate and \$2,100,000, subject to the alternate minimum tax, at a 6.45% fixed rate; and

WHEREAS, the bond would be noncallable for ten (10) years and redeemable at par beginning on December 1, 2008; and

WHEREAS, Pennichuck Water Works, Inc., which was authorized an overall cost of capital of 8.81% in DR 92-220, has stated that the overall cost of capital will decrease to 8.71%; and

WHEREAS, the Company made an erroneous assumption that authorization by the commission for the remarketing of the two bond issues was not required and is now asking the Commission to consider the new bond issuance with expedited treatment due to the closing date of September 1, 1994; and

[1] 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

[2] 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, that the petition of Pennichuck Water Works, Inc. for a \$5,400,000 tax exempt bond issuance, consisting of \$3,300,000 Series A Bonds and \$2,100,000 Series B Bonds is hereby approved; and it is

FURTHER ORDERED, that on January first and July first of each year Pennichuck Water Works, Inc. shall file with this Commission a detailed statement, showing the disposition of proceeds until the whole of such proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall record deferred taxes on the insurance costs and the unamortized issuance costs of the redeemed bonds, in accordance with FAS 109, Accounting for Income Taxes; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall file the final version of the terms and conditions of the bond issuance.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 1994.

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NH.PUC*08/31/94*[70604]*79 NH PUC 469*AT&T Communications of New Hampshire, Inc.

[Go to End of 70604]

79 NH PUC 469

Re AT&T Communications of New Hampshire, Inc.

DR 94-161
Order No. 21,335

New Hampshire Public Utilities Commission

August 31, 1994

ORDER authorizing an interexchange telephone carrier to introduce a "state calling service" for governmental customers, which service is a virtual private network intrastate toll service similar to software defined network service.

1. SERVICE, § 468

[N.H.] Telephone — Intrastate toll service — Virtual private network services — For state and local government customers — Akin to software defined network service. p. 469.

BY THE COMMISSION:

ORDER

[1] On August 1, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce its State Calling Service (SCS) as a new intrastate offering for state and local government entities; and

WHEREAS, SCS is a virtual private network toll product similar to AT&T's software defined network service; and

WHEREAS, this petition seeks to offer SCS solely as an add-on to its interstate offering; and

WHEREAS, AT&T revised the filing upon Commission Staff request, to clarify the rate schedules in the proposed tariff; and

WHEREAS, AT&T proposed the tariff become effective September 1, 1994; and

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WHEREAS, the filing expands the choice of services available, fosters competition and competitive entry, and will allow the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages of AT&T Tariff No. 1, AT&T Custom Network Service, are approved for effect as revised:

Table of Contents:

12th Revised Page 1
Original Page 20

Section 18:

Original Page 1
1st Revised Page 2 in lieu of Original
Original Page 3
Original Page 4
1st Revised Page 5 in lieu of Original
1st Revised Page 6 in lieu of Original
1st Revised Page 7 in lieu of Original
Original Page 8;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with

this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this thirty-first day of August, 1994.

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NH.PUC*08/31/94*[70605]*79 NH PUC 470*Granite State Electric Company

[Go to End of 70605]

79 NH PUC 470

Re Granite State Electric Company

DE 94-063

Order No. 21,336

New Hampshire Public Utilities Commission

August 31, 1994

ORDER noting intervention by the Conservation Law Foundation and adopting a procedural schedule in an electric utility's least-cost planning docket.

1. PARTIES, § 18

[N.H.] Intervenors — Factors affecting approval — Lack of objection from other parties. p. 470.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Least-cost planning docket — Procedural schedule. p. 470.

APPEARANCES: Steven E. Thomas, Esq. on behalf of Granite State Electric Company; Kenneth R. Traum of Office of Consumer Advocate on behalf of residential ratepayers; Amy L. Ignatius, Esq. on behalf of the New Hampshire Public Utilities Commission

BY THE COMMISSION:

REPORT

I. INTRODUCTION

On June 1, 1994, Granite State Electric (GSE) filed its 1994 Least Cost Plan with the New Hampshire Public Utilities Commission (Commission). On August 16, 1994, the Commission conducted a prehearing conference to address a) the Motion to Intervene by the Conservation Law Foundation, Inc. (CLF) and b) the issuance of a procedural schedule to govern the remainder of this proceeding.

A. CLF Intervention

[1] On August 10, 1994, CLF timely filed a Motion to Intervene in this docket, though CLF did not appear at the prehearing conference on August 16, 1994. There were no objections to CLF's request to intervene.

B. Procedural Schedule

[2] During the conference the parties and Commission Staff (Staff) agreed to the following schedule:

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

September 7, 1994	Staff, OCA & Intervenor Data Requests to GSEC
September 23, 1994	GSEC Data Responses
September 30, 1994	Technical Session I
October 7, 1994	Follow-up Data Requests by Staff, OCA & Intervenor to GSEC
October 21, 1994	GSEC Follow-up Data Responses
November 7, 1994	Technical Session II
November 23, 1994	Staff, OCA & Intervenor Testimony
December 5, 1994	GSEC Data Requests to Staff, OCA and Intervenor
December 19, 1994	Staff, OCA and Intervenor Data Responses
January 4, 1995	Settlement Conference
January 11-12, 1995	Hearing on the Merits.

II. COMMISSION ANALYSIS

We find that CLF filed its Motion to Intervene in a timely manner and will grant the request.

The procedural schedule agreed upon by the parties and Staff provides ample opportunity to develop a full record in this proceeding without undue delay, appears to be in the public good, and is hereby approved.

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 to Intervene by the Conservation Law Foundation, Inc. be granted; and it is

FURTHER ORDERED, that the procedural schedule that shall govern the remainder of this proceeding will be as recommended by the parties and Staff.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 1994.

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NH.PUC*08/31/94*[70606]*79 NH PUC 471*Beaver Village Realty Trust

[Go to End of 70606]

79 NH PUC 471

Re Beaver Village Realty Trust

DE 92-226

Order No. 21,337

New Hampshire Public Utilities Commission

August 31, 1994

ORDER further extending until November 30, 1994, the appointment of Southern New Hampshire Water Company as receiver of a small water utility serving the Porcupine Park area of Salem, pending resolution of the operational status of the small utility.

1. RECEIVERS, § 1

[N.H.] Appointment as receiver — Extension of period of receivership — Further continuation of receivership — Factors — Pending proceeding to resolve issues of ownership and operation — Larger water utility as receiver for small water utility. p. 471.

BY THE COMMISSION:

ORDER

[1] WHEREAS, on March 25, 1993 the New Hampshire Public Utilities Commission (Commission) appointed a receiver for the Beaver Village Realty Trust water system (water system) located in a subdivision known as Porcupine Park in the Town of Salem by Report and Order No. 20,795, following investigation and hearings as recounted therein; and

WHEREAS, Order No. 21,048, dated November 30, 1993, appointed Southern New Hampshire Water Company (Southern) to replace the initial receiver of the water system for a 30 day period; and

WHEREAS, following a hearing held on December 14, 1993, Order No. 21,076, dated

Page 471

December 28, 1993, continued Southern's receivership until May 31, 1994; and

WHEREAS, a Commission Staff (Staff) Progress Report dated May 19, 1994 described various efforts involving Staff, the Attorney General's Office, the Department of Environmental Services, Porcupine Park customers, the developer (William Dickey) and Southern to resolve the water system's deficiencies; and

WHEREAS, Order No. 21,238, dated May 24, 1994, continued Southern's receivership until

August 31, 1994; and

WHEREAS, Southern and the Attorney General's Office are currently making efforts to obtain compliance by William Dickey with an April 26, 1994 Interim Consent Order requiring cooperation between Southern and Dickey on construction of a tie-in to the Salem municipal system; and

WHEREAS, it is in the public good to ensure safe drinking water by having Southern continue operation of the water system without an additional hearing, based on the hearings and record in this docket to date; and

WHEREAS, the appointment of Southern by Order No. 21,048 was subject to certain terms and conditions regarding, *inter alia*, billing, "jobbing" rates, repairs, and property taxes; and

WHEREAS, the water system cannot be allowed to operate indefinitely under receivership; and

WHEREAS, further effort by the various parties is necessary before resolution of the issues is possible; it is hereby

ORDERED, that Southern's receivership of the water system be continued until November 30, 1994, subject to the same terms and conditions contained in Order No. 21,048; and it is

FURTHER ORDERED, that Southern immediately mail a copy of this order to each Porcupine Park customer; and it is

FURTHER ORDERED, that Staff submit a progress report to the Commission by October 31, 1994.

By order of the New Hampshire Public Utilities Commission this thirty-first day of August, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 20,795, 78 NH PUC 169, Mar. 25, 1993. [N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 21,048, 78 NH PUC 697, Nov. 30, 1993. [N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 21,076, 78 NH PUC 740, Dec. 28, 1993. [N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 21,238, 79 NH PUC 291, May 24, 1994.

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NH.PUC*09/01/94*[70607]*79 NH PUC 472*West Epping Water Company, Inc.

[Go to End of 70607]

79 NH PUC 472

Re West Epping Water Company, Inc.

DE 94-009

Order No. 21,338

New Hampshire Public Utilities Commission

September 1, 1994

ORDER authorizing a water utility to expand its service area within the Town of Epping to include a small apartment complex whose septic system had failed and for which no other provider of water service was available.

1. SERVICE, § 210

[N.H.] Extensions — Water utility — Factors affecting approval — Request for service in small apartment complex — Lack of alternative service provider. p. 473.

BY THE COMMISSION:

ORDER

Page 472

[1] WHEREAS, on January 3, 1994, West Epping Water Company, Inc. (West Epping Water) filed a petition to expand its existing service area in the Town of Epping to include a one and one half acre lot on Mill Road containing a 12 unit apartment building; and

WHEREAS, the same apartment building was the subject of docket DE 90-061 opened in April, 1990 upon petition of West Epping Water to serve the building at that time following failure of the building's septic system which threatened the existing well on the lot; and

WHEREAS, subsequent to the closing of DE 90-061 when "the company, through Richard Fisher, agreed that this docket should be closed without prejudice and that future filing would be made when all matters had been settled by the company" (Order No. 19,960 dated October 16, 1990), West Epping Water extended service to the building without Commission approval; and

WHEREAS, the West Epping Water system was not previously, but now is, of sufficient size to fall under Department of Environmental Services (DES) requirements; and

WHEREAS, West Epping Water is in the process of addressing the five significant deficiencies noted in a May 23, 1994 DES sanitary survey of the system; and

WHEREAS, Commission Staff is aware of no service problems or customer complaints in the West Epping Water system; and

WHEREAS, the Town of Epping Water and Sewer Commission has filed a letter with the Commission that appears to indicate that it has no objection to West Epping Water's requested expansion to serve the apartment building; and

WHEREAS, there is no other water utility seeking to serve the proposed area; and

WHEREAS, West Epping Water has stated that it has not charged any of its customers to

date; and

WHEREAS, upon investigation and consideration, the Commission finds that allowing West Epping Water to expand its service territory as requested is in the public good; and

WHEREAS, the public should be afforded an opportunity to respond to this petition; it is hereby

ORDERED *Nisi*, that West Epping Water is granted authorization, pursuant to RSA 374:22 and 26, effective September 30, 1994, to expand its service territory to include Town of Epping Tax Map 10, Lot 145, on Mill Road; and it is

FURTHER ORDERED, that all persons interested in responding be notified that they may submit their comments or file a written request for a hearing before the Commission by September 28, 1994; and it is

FURTHER ORDERED, that West Epping Water effect such notification by (1) causing an attested copy of this order to be published no later than September 14, 1994, once in a newspaper having general circulation in the Epping area; (2) providing a copy of this order by first class mail to each property owner and to each end user served by the system, and to the Epping Town Clerk, postmarked on or before September 14, 1994; and (3) documenting compliance with these notice provisions by affidavits to be filed with the Commission on or before September 28, 1994; and it is

FURTHER ORDERED, that this authorization is conditioned on West Epping Water's submission of approval of the suitability and availability of water from DES pursuant to RSA 374:22 III regarding the proposed expansion, and its remedying of the significant deficiencies noted in the DES sanitary survey within the time guidelines utilized by DES; and it is

FURTHER ORDERED, that West Epping Water provide to the Commission a complete list of all current property owners and end users served by the system, and their mailing addresses, by September 14, 1994; and it is

FURTHER ORDERED, that West Epping Water file with the Commission by September 28, 1994 its written intentions regarding rates, including a date by which it commits to file a rate case.

By order of the Public Utilities Commission of New Hampshire this first day of September, 1994.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re West Epping Water Co., DE 90-061, Order No. 19,960, 75 NH PUC 679, Oct. 16, 1990.

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NH.PUC*09/01/94*[70608]*79 NH PUC 474*LCI International of New Hampshire, Inc.

[Go to End of 70608]

79 NH PUC 474

Re LCI International of New Hampshire, Inc.

DR 94-175

Order No. 21,339

New Hampshire Public Utilities Commission

September 1, 1994

ORDER authorizing an interexchange telephone carrier to introduce a residential calling card service as well as enhanced "800" offerings.

1. SERVICE, § 468

[N.H.] Telephone — Toll service — Residential calling card service — Enhanced "800" service features. p. 474.

BY THE COMMISSION:

ORDER

[1] On August 8, 1994, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International of New Hampshire, Inc. (LCI) seeking to introduce its WorldCard Plus Calling Card and Enhanced 800 Features and make a textual change to its Personal 800 Service; and

WHEREAS, the WorldCard Plus Calling Card is a calling card designed for residential use that will allow customers to make calls while away from home anywhere in the United States which are billed to the customer's home telephone number; and

WHEREAS, the Enhanced 800 Features are optional features customers can use with LCI's 800 products; and

WHEREAS, the filing also includes a revision to its Personal 800 service that limits Personal 800 intrastate service availability to customers who presubscribe to LCI interstate service; and

WHEREAS, the petition expands the choice of services available, fosters competition and competitive entry, and will allow the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages are approved for LCI, NH P.U.C. No. 1 as filed:

Check Sheet

4th Revised Page 1

Table of Contents
4th Revised Page 2
4th Revised Page 3

Section 2
1st Revised Page 5
Original Page 16
Original Page 17

Section 4
Original Page 20
Original Page 21;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this first day of September, 1994.

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NH.PUC*09/01/94*[70609]*79 NH PUC 475*WilTel of New Hampshire, Inc.

[Go to End of 70609]

79 NH PUC 475

Re WilTel of New Hampshire, Inc.

DR 94-176
Order No. 21,340

New Hampshire Public Utilities Commission

September 1, 1994

ORDER approving an interexchange telephone carrier's proposal for adding switched data transmission services to its "CustomOne" program, and to modify associated anniversary dates for making annual commitments so as to synchronize a customer's commitment period with the customer's billing cycle.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special "CustomOne" discount plans — Additional service features — Switched data transmission service — Annual customer commitment period — Synchronization with billing cycles. p. 475.

BY THE COMMISSION:

ORDER

[1] On August 9, 1994, WilTel of Hampshire, Inc. (WilTel) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Switched Data Service to the existing CustomOne Service, modify the definition of annual commitment and excluding from joint use WilPlus IV and Casual Calling; and

WHEREAS, Switched Data Service consists of two distinct offerings: Switched 56/64 Kbps Service which is a dial-up service for transmitting data at speeds of 56 Kbps and 64 Kbps and Multirate ISDN which is a dial-up service for transmitting data at a speed of N times 64 Kbps (where N equals 1 to 24); and

WHEREAS, the CustomOne Service to which Wiltel seeks to add Switched Data Service is a customized service authorized by Commission Order No. 21,185; and

WHEREAS, defining Annual Commitment as commencing with the first full billing cycle following the earliest service start date, as proposed by Wiltel, will accurately reflect the CustomOne product description; and

WHEREAS, operating support system constraints of Wiltel compel the exclusion of WilPlus IV and Casual Calling from joint use applications; and

WHEREAS, granting Wiltel's petition expands the choice of telephone services available to New Hampshire customers, thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages of WilTel's NHPUC Tariff No. 2 are approved as filed:

2nd Revised Page 8
 1st Revised Page 34
 2nd Revised Page 63.1
 1st Revised Page 63.2
 Original Page 63.2.1
 Original Page 63.2.2
 2nd Revised Page 63.3
 3rd Revised Page 63.4;

and it is

FURTHER ORDERED, that WilTel file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

By order of the New Hampshire Public Utilities Commission this first day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re WiTel of New Hampshire, Inc., DE 94-041, Order No. 21,185, 79 NH PUC 201, Apr. 5, 1994.

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NH.PUC*09/01/94*[70610]*79 NH PUC 476*JFC Utility Corporation

[Go to End of 70610]

79 NH PUC 476

Re JFC Utility Corporation

DE 94-173

Order No. 21,341

New Hampshire Public Utilities Commission

September 1, 1994

ORDER approving a transfer of indirect control of a very small water utility through a series of stock transactions.

1. CONSOLIDATION, MERGER, AND SALE, § 13

[N.H.] Necessity of authorization — Transfer of indirect control — Series of stock transactions — But no change in service or operation — Very small water utility. p. 476.

2. SECURITY ISSUES, § 96

[N.H.] Common stock — Series of purchase and sale transactions — Transfer of indirect control — But no change in service or operation — Very small water utility. p. 476.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, JFC Utility Corp. (JFC) is a public utility serving six customers in Silver Lake, New Hampshire, pursuant to a franchise granted by the New Hampshire Public Utilities Commission (Commission) in Order No. 16,723 (October 18, 1983); and

WHEREAS, John F. Chick & Son, Inc. (Chick) is the owner and operator of a woods product company which includes, among its assets, all of the stock of JFC; W. Richard Kitchen, Jr. owns all of the Chick stock; and

WHEREAS, on August 5, 1994, JFC filed a petition for transfer of indirect control of its public water utility franchise, works and system, which was amended on August 29, 1994, in which the petitioners state that Mr. Kitchen intends to sell all of the Chick stock to Mr. Carlo

Simoni of New York, New York or his nominee, after which Mr. Kitchen will acquire 50% of the voting stock of JFC from Chick; and

WHEREAS, upon completion of the stock transactions, Chick and Kitchen will each own 50% of the voting stock of JFC and JFC will continue its operations unchanged; and

WHEREAS, due to the small size of the utility and the fact that this transaction only affects the indirect control of the utility, the Commission finds expedited treatment of the transfer to be appropriate; and

WHEREAS, the Commission, after investigation and consideration is satisfied that the granting of the petition as amended will be in the public good, particularly given the commitment that the operations of JFC will remain unchanged; it is hereby

ORDERED, that the transfer of indirect control of JFC through the sale of Mr. Kitchen's stock in Chick to Mr. Simoni and the subsequent purchase by Mr. Kitchen of 50% of the voting stock of JFC be and hereby is authorized, to the extent required by RSA 369:1, 374:30, 374:32 and 374:33.

By order of the New Hampshire Public Utilities Commission this first day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re John F. Chick & Sons, Inc., DE 83-265, Order No. 16,723, 68 NH PUC 621, Oct. 18, 1983.

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NH.PUC*09/06/94*[70611]*79 NH PUC 477*Integrated Water Systems, Inc.

[Go to End of 70611]

79 NH PUC 477

Re Integrated Water Systems, Inc.

DR 94-178
Order No. 21,342

New Hampshire Public Utilities Commission

September 6, 1994

ORDER approving additional revisions in a water utility's service tariffs, to specify that a customer may be liable for a portion of reconnection charges if a utility employee makes a premises visit to disconnect service for nonpayment and the customer pays all past due bills at that time.

1. RATES, § 308

[N.H.] Installation and disconnection work — Fee schedules — Disconnection and reconnection fees — Factors affecting liability for reconnection fees — Premises visit for disconnection purposes and payment of past due bills then — Water utility. p. 477.

BY THE COMMISSION:

ORDER

[1] On May 2, 1994 the Commission issued Order No. 21,214 in Docket DR 93-164 approving revisions to the terms and conditions under which Integrated Water Systems, Inc. (Integrated) provides service to customers in a limited area in the Town of Barnstead, New Hampshire; and

WHEREAS, the revisions included miscellaneous service fees; and

WHEREAS, upon submission of a revised tariff in accordance with the above Commission order, certain language was inadvertently omitted from the final version of the tariff; and

WHEREAS, the omitted language regards the collection of a portion of the reconnection fee in the event a customer pays all past due charges at the time an Integrated representative goes to the customer's premises to disconnect service; and

WHEREAS, on August 8, 1994, Integrated submitted a revised tariff page including language regarding the service fee associated with an attempt to disconnect service; and

WHEREAS, a review of the revisions which specify a charge of one-half of the reconnection fee of \$60.00 to cover travel and labor associated with a trip to the customer's premises is found to be in the public good; it is hereby

ORDERED, that the revisions contained in First Revised Page 10, Section 15.B Integrated Water Systems NHPUC No. 4 Water are hereby approved for effect on the date of this order; and it is

FURTHER ORDERED, that within 14 days, Integrated submit a revised tariff page annotated with this order number and date in accordance with Puc 1601.04; and it is

FURTHER ORDERED, that when Integrated notifies a customer in writing of its intention to disconnect service for failure to render payment, it shall include notice that the customer may be subject to an additional fee associated with an attempt to disconnect service if a customer pays all past due charges at the time the utility goes to the customer's premises to disconnect service.

By order of the New Hampshire Public Utilities Commission this sixth day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 93-164, Order No. 21,214, 79 NH PUC 257, May

2, 1994.

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NH.PUC*09/07/94*[70612]*79 NH PUC 478*Public Service Company of New Hampshire

[Go to End of 70612]

79 NH PUC 478

Re Public Service Company of New Hampshire

DR 94-057

Order No. 21,343

New Hampshire Public Utilities Commission

September 7, 1994

ORDER approving an electric utility's proposed special service contract with a manufacturing customer, Excalibur Shelving Systems, which contract provides for discounted demand charges for a five-year period in order to retain the customer's load.

1. RATES, § 333

[N.H.] Electric rate design — Industrial customer — Special contract rates — Discounted demand charges — Factors — Load retention. p. 478.

BY THE COMMISSION:

ORDER

[1] On March 25, 1994, Public Service Company of New Hampshire (PSNH) filed a request for approval of Special Contract No. NHPUC-93, between PSNH and Excalibur Shelving System (Excalibur) effective April 11, 1994 or upon approval by the Commission; and

WHEREAS, Excalibur is a New Hampshire corporation located in Hopkinton, New Hampshire, with its principal business engaged in the manufacturing of wooden shelving; and

WHEREAS, Special Contract No. NHPUC-93 is designed to retain electric service from Excalibur, a Rate G customer with a peak demand of approximately 150 kW with energy usage of 25,000 kWh per month, for a period of five years from the effective date of Special Contract No. NHPUC-93; and

WHEREAS, PSNH believes Excalibur would, absent this special contract, no longer remain a PSNH customer and would in PSNH's opinion install self-generation to serve its load; and

WHEREAS, PSNH is proposing to provide discounted electric service to Excalibur in the form of discounted demand charges through a special contract under the same terms as Rate SGD, Sawmill Generation Deferral Rate, which was approved by the Commission on August 25,

1993 after full review of the record in docket DR 93-083 (Report and Order 20,945); and

WHEREAS, PSNH believes Excalibur meets all the requirements of Rate SGD except for the designation under AVAILABILITY of Rate SGD that only customers who have a primary or secondary Standard Industrial Classification (SIC) code of 242 are eligible for service under Rate SGD; and

WHEREAS, PSNH represents that no other customers will be adversely affected by Excalibur receiving discounted service under Rate SGD; and

WHEREAS, during its deliberations at its public meeting on July 18, 1994 the Commission concluded that it was not yet satisfied that Excalibur does not have in-state competitors who would be disadvantaged were Excalibur to receive a discounted rate and instructed PSNH to obtain confirmation from the Department of Resources and Economic Development (DRED) that Excalibur has no competitors in New Hampshire and that DRED supports PSNH and Excalibur's representations; and

WHEREAS, on August 29, 1994 PSNH filed with the Commission a letter from DRED dated July 29, 1994 which stated that it had conducted a search of its database of New Hampshire companies at an 8-digit SIC code level (2341-0203) and, finding that there were no other companies with a corresponding designation, concluded that Excalibur is the only company in the State operating in this distinct area; and

WHEREAS, Special Contract NHPUC-93 is designed primarily for load retention and therefore primarily benefits PSNH shareholders during the Fixed Rate Period; and

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WHEREAS, upon review of the filing, the analysis of DRED and the Staff recommendation, the Commission finds that Excalibur appears to meet the criteria for service under Rate SGD except for the SIC code classification; and

WHEREAS, Special Contract NHPUC-93 between Public Service Company of New Hampshire and Excalibur Shelving Systems, Inc. is in the public interest; it is hereby

ORDERED *Nisi*, that Special Contract NHPUC-93 is approved as filed effective October 7, 1994 unless the Commission orders otherwise in Supplemental order issued prior thereto; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-93, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rates afforded Excalibur in Special Contract No. NHPUC-93; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, PSNH notify all persons desiring to be heard by causing an attested copy of this order to be published once in a statewide newspaper of general circulation, such publication to be no later than September 19, 1994 and documented by affidavit filed with this office on or before October 4, 1994; 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 4, 1994.

By order of the New Hampshire Public Utilities Commission this seventh day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-083, Order No. 20,945, 78 NH PUC 471, Aug. 25, 1993.

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NH.PUC*09/07/94*[70613]*79 NH PUC 479*ACC Long Distance of New Hampshire, Corporation

[Go to End of 70613]

79 NH PUC 479

Re ACC Long Distance of New Hampshire, Corporation

DE 94-017

Order No. 21,344

New Hampshire Public Utilities Commission

September 7, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition. p. 479.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 479.

BY THE COMMISSION:

ORDER

[1, 2] On March 14, 1994, ACC Long Distance of New Hampshire, Corp., (ACC), petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26; and

WHEREAS, ACC has demonstrated the financial, managerial and technical ability to offer

service as conditioned by this order; and

WHEREAS, interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze

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competition during the two-year Trial Period (October 1, 1993 to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993); and

WHEREAS, the public good is served by permitting interim competition by telecommunications companies; and

WHEREAS, the public should be provided an opportunity to respond in support of, or in opposition to this petition; it is hereby

ORDERED, *NISI*, that ACC is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. ACC shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, ACC shall notify the Commission of the change.
5. ACC is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. ACC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. ACC shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. ACC shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.
9. ACC shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.
10. ACC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ACC pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local

Exchange Companies.

11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter ACC shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and

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intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow ACC to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that ACC shall publish an attested copy of the Notice of Conditional

Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than Sept. 19, 1994, and an affidavit proving publication shall be filed with the Commission on or before October 4, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. ACC shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that ACC shall file a compliance tariff with the Commission before September 21, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 7, 1994, 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 seventh day of September, 1994.

Notice of Conditional Approval of
ACC LONG DISTANCE OF NEW HAMPSHIRE, CORP. Granting Interim Authority to
Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On March 14, 1994, ACC Long Distance of New Hampshire, Corp., (ACC), a New Hampshire corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,344, issued in Docket No. DE 94-017, the Commission granted ACC conditional approval to operate as of October 7, 1994 subject to the right of the public and interested parties to comment on ACC or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on ACC's petition to do business in the State should submit written comments no later than October 4, 1994 to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*09/07/94*[70614]*79 NH PUC 482*Network Long Distance, Inc.

[Go to End of 70614]

79 NH PUC 482

Re Network Long Distance, Inc.

DE 94-147

Order No. 21,345

New Hampshire Public Utilities Commission

September 7, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition. p. 482.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 482.

BY THE COMMISSION:

ORDER

[1, 2] On July 8, 1994, Network Long Distance, Inc., (Network), petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26; and

WHEREAS, Network has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order; and

WHEREAS, interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993 to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993); and

WHEREAS, the public good is served by permitting interim competition by telecommunications companies; and

WHEREAS, the public should be provided an opportunity to respond in support of, or in

opposition to this petition; it is hereby

ORDERED, *NISI*, that Network is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. Network shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, Network shall notify the Commission of the change.
5. Network is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. Network shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Network shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of

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Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

8. Network shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.

9. Network shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

10. Network shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Network pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter Network shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

- a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow Network to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Network shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than Sept. 19, 1994, and an affidavit proving publication shall be filed with the Commission on or before October 4, 1994; and it is

FURTHER ORDERED, that pursuant to

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RSA 363-A:1, et seq. Network shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that Network shall file a compliance tariff with the Commission

before September 21, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 7, 1994, 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 seventh day of September, 1994.

Notice of Conditional Approval of
NETWORK LONG DISTANCE, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On July 8, 1994, Network Long Distance, Inc., (Network), a Delaware corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,345, issued in Docket No. DE 94-147, the Commission granted Network conditional approval to operate as of October 7, 1994 subject to the right of the public and interested parties to comment on Network or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on Network's petition to do business in the State should submit written comments no later than October 4, 1994 to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*09/07/94*[70615]*79 NH PUC 484*One Call Communications, Inc.

[Go to End of 70615]

79 NH PUC 484

Re One Call Communications, Inc.

DE 94-158
Order No. 21,346

New Hampshire Public Utilities Commission

September 7, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate long-distance services — Interim authority — Trial period to assess benefits of competition. p. 485.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate toll services — Interim authority — Trial period to assess benefits of competition. p. 485.

BY THE COMMISSION:

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 ORDER

[1, 2] On July 25, 1994, One Call Communications, Inc. (Opticom), also d/b/a OPTICOM, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26; and

WHEREAS, Opticom has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order; and

WHEREAS, interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993 to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993); and

WHEREAS, the public good is served by permitting interim competition by telecommunications companies; and

WHEREAS, the public should be provided an opportunity to respond in support of, or in opposition to this petition; and

WHEREAS, Opticom, at item 7 of its petition and through its supplementary petition at Exhibit H requested confidential treatment of the financial data contained in Exhibit G, and evidenced: (1) the likelihood of substantial competitive injury, (2) the extent to which data of the sort in dispute is customarily disclosed to the public, and (3) a balancing of the private competitive interest versus the public interest in disclosure, pursuant to RSA 91-A; it is hereby

ORDERED, *NISI*, that Opticom is granted interim authority to offer as a telecommunications

public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. Opticom shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, Opticom shall notify the Commission of the change.
5. Opticom is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. Opticom shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Opticom shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. Opticom shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.
9. Opticom shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.
10. Opticom shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Opticom pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.
12. During the Trial Period, within 60 days following the end of each calendar quarter Opticom shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

Page 485

- a. For each intrastate toll service offered:
 - (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
 - (2) intrastate minutes of use;

- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow Opticom to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Opticom shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than September 19, 1994, and an affidavit proving publication shall be filed with the Commission on or before October 4, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Opticom shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, *NISI*, that based on Opticom's submission thus far, Opticom is hereby denied confidential treatment of the proprietary financial information in Exhibit G of its petition, unless ordered otherwise by the Commission after expiration of the *Nisi* period; and it is

FURTHER ORDERED, that Exhibit G shall be kept confidential during the pendency of the *Nisi* period, during which Opticom or any interested party may submit a written argument detailing the reasons why some or all of Exhibit G should be accorded protective treatment; and it is

FURTHER ORDERED, that Opticom shall file a compliance tariff with the Commission before September 21, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 7, 1994, 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 seventh day of September, 1994.

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Notice of Conditional Approval of
ONE CALL COMMUNICATIONS, INC. d/b/a OPTICOM
Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire and Denying Confidential Treatment of Financial Data

On July 25, 1994, One Call Communications, Inc., (Opticom), also d/b/a OPTICOM, an Indiana corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,346, issued in Docket No. DE 94-158, the Commission granted Opticom conditional approval to operate as of October 7, 1994 subject to the right of the public and interested parties to comment on Opticom or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on Opticom's petition to do business in the State or its request for confidentiality of certain financial information should submit written comments no later than October 4, 1994 to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*09/12/94*[70616]*79 NH PUC 487*Dunbarton Telephone Company

[Go to End of 70616]

79 NH PUC 487

Re Dunbarton Telephone Company

DR 93-233

Order No. 21,347

New Hampshire Public Utilities Commission

September 12, 1994

ORDER finding that a small local exchange telephone carrier's heretofore limited technological offerings had not rendered its service inadequate to the point of justifying the transfer of certain customers to another local carrier. Moreover, after reviewing the results of a customer survey, the commission determines that there is insufficient demand for expansion of calling areas from Dunbarton to Manchester.

1. SERVICE, § 433

[N.H.] Telephone — Intramunicipal calls — In town served by two different carriers — Elimination of cumbersome dialing requirements. p. 490.

2. RATES, § 573

[N.H.] Telephone service — Extended area calling — Results of customer survey — No current demand for expansion of calling area. p. 490.

3. SERVICE, § 449

[N.H.] Telephone — Special services — Caller ID — Switched digital services — Interstate equal access — Gradual technological upgrades — Small local exchange carrier. p. 490.

4. SERVICE, § 124

[N.H.] What constitutes adequate service — Telephone carriers — Public demand for technological advances — Efforts of small carriers to keep pace with change — Impact of

Page 487

fewer or more slowly offered service features and options — Not necessarily tantamount to inadequate service. p. 490.

5. RATES, § 565

[N.H.] Telephone rate design — Pay station service — Intramunicipal calls — In town served by two different carriers — Calls charged at toll rates if between two carriers' areas — Solution — Payment by credit card rather than coin. p. 490.

APPEARANCES: Devine, Millimet and Branch, by Frederick J. Coolbroth, Esq., on behalf of Dunbarton Telephone Co.; Victor D. DelVecchio, Esq., on behalf of New England Telephone;

Ransmeier and Spellman, by Dom D'Ambruoso, Esq., on behalf of Merrimack County Telephone Co.; Broderick and Dean, by Mark W. Dean, Esq., on behalf of Granite State Telephone Inc.; James A. Sanborn on behalf of Union Telephone Co.; Debra Martone on behalf of GTE New Hampshire; Thomas Lyle, of the Office of Consumer Advocate on behalf of residential ratepayers; Amy Ignatius, Esq., on behalf of the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On October 28, 1993, The New Hampshire Public Utilities Commission (Commission) received a letter and petition from residents of the municipality of Goffstown who receive telephone service from Dunbarton Telephone Company (Dunbarton) requesting that a public hearing be held to consider making the franchise boundary between the Dunbarton Exchange and the New England Telephone and Telegraph Company (NET) Goffstown exchange coterminous with the Goffstown municipal boundary.

On November 22, 1993, the Staff of the Commission held a public meeting in Goffstown to meet with the residents served by Dunbarton. The purpose of the meeting was to provide a forum for the residents to express their concerns so that Staff could develop a greater understanding of the specific issues that existed. The concerns expressed by the residents included complaints about the local calling area, inability to call from NET pay phones in Goffstown to the Dunbarton served customers in Goffstown without incurring toll charges, billing errors for intramunicipal calls between the two franchise areas and request for expanded service offerings as well as a change in the franchise boundaries.

At the conclusion of the informational meeting Dunbarton and NET agreed to investigate and correct any problems causing free intramunicipal calls to be billed as toll including the refund of any intramunicipal calls previously billed as toll. Dunbarton also committed to exploring methods of negating toll calls from pay phones located within Goffstown to Dunbarton customers also located within Goffstown. It was believed the solution for the payphone problem would be for customers to use a credit card when placing an intramunicipal call. This is how NET had previously resolved the same problem within its operating territory.

On December 13, 1993, an order of notice was issued that scheduled a hearing for January 19, 1994, at 7:00 PM. In addition, the order of notice made Dunbarton and NET mandatory parties to the proceeding and instructed both to be prepared to discuss the economic implications of the petition if it were to be approved by the Commission. Additionally, Dunbarton was ordered to serve a copy of the order of notice on current and known prospective customers who live in the municipality of Goffstown. Subsequently, Motions to intervene were received from Union Telephone Company, Contel of New Hampshire, Inc. and Contel of Maine, Inc., d/b/a GTE, Merrimack County Telephone, Inc. and Granite State Telephone Company. All requests for intervention were granted.

On December 29, 1993, the Commission received a Motion by Dunbarton Telephone Company, Inc. for Rehearing and for Dismissal

of the Petition. The Commission issued Order No. 21,101 on January 14, 1994, denying Dunbarton's Motion for Rehearing and Dismissal. In denying the motion the Commission found that sufficient allegations existed to justify a hearing and what may have been construed as adequate service some years ago may not be constituted as adequate in today's modern age of telecommunications. The order did relieve both Dunbarton and NET from the obligation of providing detailed cost analysis of potential changes in costs and revenues that would be the result of a franchise boundary change. However, both companies were instructed to be prepared to discuss preliminary cost estimates that would result if a franchise boundary change was ordered.

At the January 19, 1994, public informational hearing, there were speakers for and against any change to the service territories of Dunbarton and NET. The original petitioner, Mark Goucher, spoke in favor of extending the local calling area to include the Manchester Exchange for those Goffstown residents served by Dunbarton even if it meant an increase in their basic monthly telephone bill. Another customer testified he wanted things to remain status quo and over the years he had received excellent service from Dunbarton Telephone.

Attendance at the public hearing was curtailed due to a severe winter storm. Several residents had called to state that they would be unable to attend the hearing due to the inclement weather. As a result, the Commission sent a letter on January 26, 1994, to the petitioners notifying them that anyone who could not attend the hearing should submit their views by letter. Three letters were received from Goffstown residents, each stressing the desire for free calling to Manchester.

On February 7, 1994, the Commission received correspondence from Senator Ann J. Bourque requesting that a survey be conducted of Dunbarton's customers concerning interest in expanding calling areas. If the survey was conducted she would withdraw House Bill 1575, co-sponsored with Representative Bruce R. Hunter. On February 9, 1994, similar correspondence was received from Representative Beverly T. Rodeschin, Chairperson of the House of Representatives' Science, Technology and Energy Committee. Representative Rodeschin requested confirmation that the Commission investigation was addressing the issues raised in HB 1575, specifically, Dunbarton's alleged billing problems and customer concerns regarding extended calling area.

On February 28, 1994, the Commission issued Order No. 21,141. The order confirmed that Docket DE 93-233 would address the same issues raised in HB 1575 including a customer survey which would be conducted. In addition, it was further noted that many of the concerns raised by the petitioners would be addressed in DRM 94-001, the on-going statewide investigation into extended area service. The order instructed Staff and Dunbarton to develop and conduct a survey of Dunbarton customers regarding expansion of the calling area from Dunbarton's territory into Manchester, recognizing the increase to all Dunbarton customers as a result of Dunbarton's lost toll revenue. The order further instructed the parties to consider cost data developed by Dunbarton for its survey conducted under DE 92-013 and toll revenue implications utilizing data collected in DRM 94-001. The order denied Dunbarton's request for investigating two way extended calling between the Manchester and Dunbarton exchanges and

that no further public informational hearings were required.

On May 19, 1994, The Commission received a letter from Dunbarton with an enclosed copy of the customer survey agreed to by Staff and Dunbarton. The survey requested customers to signify if they were for or against expanding Dunbarton's flat rate local calling area by including the Manchester exchange. Additionally, the survey asked the customers if there were any services they would like to see the telephone company offer that presently are not available. The survey was mailed as a bill stuffer on May 31, 1994, with a return deadline of June 30, 1994.

On July 18, 1994, the Commission received from Dunbarton the survey results along with all of the customer ballots submitted. Out of 1,115 customers balloted, only 220 (19.7%) were in favor of adding the Manchester exchange to the flat rate local calling area, 542

Page 489

(48.6%) voted Against and 353 (31.7%) failed to respond. The move to add Manchester to the Dunbarton calling area failed due to the customer survey response.

With regard to other services desired by Dunbarton Customers, the responses reflected that 33 customers desired toll free service to exchanges other than Goffstown, 27 customers requested Caller ID, 25 requested interstate equal access and 10 requested return envelopes with their bills.

II. COMMISSION ANALYSIS

[1-5] The petition sought relief from inadequate telephone service on behalf of 32 households located within the town of Goffstown. Specifically, the petitioners were requesting that Dunbarton relinquish its telephone franchise within Goffstown to NET. The petition defined inadequate as meaning telephone service that was disproportionate to telephone service that was available to the NET telephone subscribers within the Goffstown Exchange. Particular issues identified in the petition were: inconvenient dialing requirements for in-town calls and economic hardship due to the cost of toll calls to the Manchester Exchange and vice versa.

The Commission has reviewed all information pertaining to this Docket including the transcript of the January 19, 1994 informational hearing and the results of the survey mailed to all Dunbarton subscribers. The Commission investigation into the issues has revealed the following:

1) Inconvenient dialing was the requirement to dial 1 + 7 digits when making an intramunicipal call within Goffstown between NET's and Dunbarton's franchise areas. This problem has been eliminated as a result of the statewide dialing pattern change ordered in conjunction with Docket DE 93-003, in which the customer controls the method of dialing toll and multiple exchange intramunicipal calls by dialing either 7 digits or 1 plus 10 digits. The dialing plan became mandatory on August 10, 1994.

2) Economic hardship caused by Manchester being a toll call has been an issue for consideration in the past. Docket DE 92-013 was opened on January 16, 1992, due to a petition filed by a number of Dunbarton customers interested in expanding the local calling area from Dunbarton to Manchester and Goffstown. Subsequently, a traffic study was conducted to determine if call volumes were sufficient from Dunbarton to

Manchester and Goffstown to support a cost analysis and to ultimately conduct a poll in an effort to add these exchanges to Dunbarton's local calling area. Call volumes to Manchester supported further action leading to a poll of the subscribers while the traffic to Goffstown failed to meet minimum requirements for establishing a community of interest. Ultimately a poll was conducted of the Dunbarton customers to determine if the majority of the subscribers were in favor of expanding the local calling area to include Manchester and to pay the resulting increase in their basic monthly telephone bill. Only 21.8% of the Dunbarton customers voted in favor of adding Manchester to their local calling area and thus the poll failed and the docket was closed.

As a result of this docket, a second poll was conducted of the Dunbarton customers to add Manchester to their local calling area. The second poll also failed to muster support for the expansion of the Dunbarton local calling area with only 19.7% of the Dunbarton subscribers voting in favor.

3) With regard to the issue of other services desired by Dunbarton customers that currently are not offered, the Commission understands that Dunbarton has the technical capability to offer Caller ID and other Signaling System Seven (SS7) dependent services. Currently, Dunbarton is working with NET to establish SS7 connectivity. Once this is accomplished, Dunbarton will file a tariff to offer SS7 dependent services including Caller ID. Technical capability also exists for the introduction of interstate equal access. Dunbarton has begun the balloting process to allow its customers to select their desired interstate IXC and Equal access is scheduled to commence on November 21, 1994.

4) One other item arising out of the customer survey was the desire to have

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Dunbarton include a return envelope with its monthly bills. Dunbarton implemented this change as of August, 1994.

We find that the primary issue driving the Dunbarton petition was the desire on the part of some of the Dunbarton customers located within Goffstown to enjoy the same local calling area and services that are enjoyed by the Goffstown citizens served by NET. The concern voiced by the Dunbarton petitioners is not unique within New Hampshire but also does not constitute inadequate telephone service. This same concern was the motivating factor that initiated the current investigation into EAS in Docket DRM 94-001.

To provide the next generation of services, Dunbarton has recently installed a new Digital switch capable of providing the services identified within the customer responses to the survey. It must be noted that Dunbarton is working to make these services available to its customers and in fact will offer SS7 (Caller ID, etc.) type services to Dunbarton customers before the services are offered to some of NET's customers. Therefore, we find that the allegation that Dunbarton service is inadequate due to lack of advanced service offerings is unfounded at this time. However, we encourage Dunbarton to be more responsive to its customers.

The resolution to the problem of customers incurring toll charges when placing intramunicipal Goffstown calls from payphones has been determined to be the utilization of a credit card when placing such calls. The Commission will instruct Dunbarton Telephone

Company to educate its subscribers on the use of credit cards when placing these type of calls.

In regards to the issue of expanding Dunbarton's local calling area to include Manchester, we recognize that this issue was not successfully resolved for those desiring this calling capability, however, the issue will continue to be explored within Docket DRM 94-001, the statewide generic investigation of Extended Area Service. As such, we will deny the petitioners request to relocate the franchise boundary.

Our order will issue accordingly.

ORDER

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

ORDERED, the petition seeking termination of Dunbarton Telephone Company's franchise rights within the municipality of Goffstown is denied; and it is

FURTHER ORDERED, that the issues associated with Extended Area Service (EAS) from the Dunbarton Exchange be further considered within the confines of DRM 94-001, the statewide generic EAS investigation; and it is

FURTHER ORDERED, that Dunbarton Telephone Company take appropriate steps to notify and educate its subscribers on the use of credit cards when placing a direct dialed intramunicipal call in Goffstown from a payphone, to allow the call to be charged as local (i.e., 10 cents).

By order of the New Hampshire Public Utilities Commission this twelfth day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Dunbarton Teleph. Co., DR 93-233, Order No. 21,101, 79 NH PUC 28, Jan. 14, 1994.

[N.H.] Re Dunbarton Teleph. Co., DR 93-233, Order No. 21,141, 79 NH PUC 113, Feb. 28, 1994.

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NH.PUC*09/12/94*[70617]*79 NH PUC 492*New England Telephone

[Go to End of 70617]

79 NH PUC 492

Re New England Telephone

DR 94-113

Order No. 21,348

New Hampshire Public Utilities Commission

September 12, 1994

ORDER authorizing a local exchange telephone carrier to revise its service terms for network

reconfiguration service, to introduce a network access port for termination of voice grade analog private lines and to allow termination of FLEXPATH digital private branch exchange service on the SUPERPATH network access port.

1. SERVICE, § 463

[N.H.] Telephone — Network reconfiguration service — Analog private line service — Digital private branch exchange service — Establishment of network access ports. p. 492.

BY THE COMMISSION:

ORDER

[1] On June 2, 1994, New England Telephone (NET) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to modify its Network Reconfiguration Service (NRS) for effect July 2, 1994; and

WHEREAS, on July 1, 1994 Order No. 21,286 issued suspending the proposed tariffs pending further investigation; and

WHEREAS, NET's proposed modifications include the introduction of a Network Access Port for termination of voice grade analog private lines and the addition of language to allow termination of FLEXPATH^R Digital PBX Service on the SUPERPATH^R Network Access Port; and

WHEREAS, NET has provided supporting cost and revenue information which demonstrates that the proposed rates in the filing exceed their marginal cost and provide a contribution during the first year of the product life cycle; and

WHEREAS, Staff has reviewed the proposed tariff modifications and recommended their approval; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revisions to be in the public good; it is therefore

ORDERED, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 75, Part C -

Section 5

Fourth Revision of Page 1

Fifth Revision of Page 2

Third Revision of Page 3

Eighth Revision of Page 4

Section 11

Second Revision of Page 1

Original Page 1.1

Second Revision of Pages 2 through 6

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of the date of this Order; and it is

FURTHER ORDERED, that the above addition to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the New Hampshire Public Utilities Commission this twelfth day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 94-113, Order No. 21,286, 79 NH PUC 396, July 1, 1994.

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NH.PUC*09/12/94*[70618]*79 NH PUC 493*Paul E. Zimmerman

[Go to End of 70618]

79 NH PUC 493

Re Paul E. Zimmerman

DE 94-209

Order No. 21,349

New Hampshire Public Utilities Commission

September 12, 1994

ORDER directing an individual to show cause why he should not be declared a public utility due to his provision of unauthorized intrastate telecommunications services to tenants through a public branch exchange system.

1. PUBLIC UTILITIES, § 33

[N.H.] Regulatory status — Factors — Ownership, operation, or management of utility plant — Used in conveying telephonic messages — Status as individual notwithstanding. p. 493.

2. FINES AND PENALTIES, § 7

[N.H.] Grounds for imposing — Operation without proper authorization — Telecommunications carrier — Show cause order. p. 493.

3. SERVICE, § 463

[N.H.] Telephone — Public branch exchange system — Unauthorized service to tenants —

Questions of regulatory status — Show cause order. p. 493.

BY THE COMMISSION:

ORDER

[1-3] WHEREAS, the staff of the New Hampshire Public Utilities Commission (Commission) on information and belief, alleges Paul E. Zimmerman (Zimmerman) is providing intrastate telecommunications service in the State of New Hampshire; and

WHEREAS, Zimmerman has not applied for or been granted franchise authorization pursuant to RSA 374:22; and

WHEREAS, pursuant to RSA 362:2 the term "public utility" includes, in pertinent part, every person owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone and telegraph messages for the public; and

WHEREAS, Zimmerman 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 Chapter 1600; and

WHEREAS, the Commission staff alleges, on information and belief, that Zimmerman is charging customers for unauthorized intrastate telecommunications services in violation of, *inter alia*, RSA 374:22, 378:1 *et seq.*; and 374:2; it is hereby

ORDERED, that docket DE 94-209 be established for the purpose of investigating whether Zimmerman should be fined up to \$25,000, pursuant to RSA 365:41, or whether Zimmerman should be subjected to criminal prosecution or other appropriate sanctions pursuant to *inter alia*, RSA 365:41 or 374:41 *et seq.* for operating as a public utility without authority and for charging rates without authority; and it is

FURTHER ORDERED, that Zimmerman appear before the Commission in a hearing at the offices of the Commission, 8 Old Suncook Road, Concord, New Hampshire at 1:00 P.M. on October 13, 1994, for the purpose of showing cause why he should not be found to be in violation of, *inter alia*, RSA 374:2, 374:22, and 378:1 *et seq.*, and subjected to the sanctions cited above; and it is

FURTHER ORDERED, that Zimmerman provide the Commission the names and addresses of each tenant to whom telephone service is provided through Zimmerman's public branch exchange (PBX), no later than two weeks from the date of this Order; and it is

FURTHER ORDERED, that Zimmerman provide the Commission the names of all the interexchange carriers and/or resellers from

Page 493

whom telecommunications services are purchased, no later than two weeks from the date of this Order; and it is

FURTHER ORDERED, that New England Telephone and Telegraph Company (NYNEX) be

made a mandatory party to this proceeding.

By order of the New Hampshire Public Utilities Commission this twelfth day of September, 1994.

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NH.PUC*09/12/94*[70619]*79 NH PUC 494*Claremont Gas Corporation

[Go to End of 70619]

79 NH PUC 494

Re Claremont Gas Corporation

DE 94-056

Order No. 21,350

New Hampshire Public Utilities Commission

September 12, 1994

ORDER clarifying the extent of protective treatment afforded a natural gas local distribution company's customer lists vis-a-vis the commission's monitoring of the company's progress in converting customer appliances to other fuels as a condition for abandoning service. For the earlier decision authorizing confidentiality, see Order No. 21,333 (79 NH PUC 466), supra.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Customer lists — Master list, security deposit list, and service priority list — All as part of appliance conversion program — As condition for authority to abandon service — Local gas distribution company — Commission oversight as to compliance with conversion requirements — Inquiries with customers. p. 494.

BY THE COMMISSION:

ORDER

[1] By letter dated August 30, 1994, Claremont Gas Corporation (Claremont) requested an order confirming protective treatment of three lists pertaining to its customers: the so-called master list; the list of customer deposits; and the list of priority customers. The letter stated that at the July 21, 1994 hearing the New Hampshire Public Utilities Commission (Commission) impliedly granted protective treatment for the lists of customer deposits and priority customers and that Staff had agreed that these lists were subject to protective treatment. Although the letter contained arguments and requests for relief in narrative form, it was not styled as a motion and did not otherwise conform to the provisions of Rule Puc 204.02. Nonetheless, the Commission accepted the pleading and on August 31, 1994 issued Order No. 21,333 which, inter alia, granted confidential treatment of the master list and denied Claremont's request to prohibit Staff from

using the master customer list to contact customers.

In a letter dated September 8, 1994, Claremont points out that "(n)otwithstanding RSA 363:17-b,III, NHPUC Order No. 21,333 addressed only the treatment of the master list of customers." That letter further states that Claremont has been assured by Staff counsel that the aforementioned order "should be read to encompass all three of the customer lists for which confidential treatment had been requested"; the letter also seeks notification if the views of the Commissioners vary from that of Staff.

Based on the foregoing and for the reasons set forth in Order No. 21,333; it is hereby ORDERED, that Claremont's request for confidential treatment of its customer deposits list and priority customers is GRANTED as it extends to disclosure to the public.

Further, in order to avoid the need for supplemental orders, counsel for Claremont is urged to direct requests for relief to this Commission in the form of motions or other appropriately captioned pleadings.

By order of the New Hampshire Public Utilities Commission this twelfth day of September, 1994.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Corp., DE 94-056, Order No. 21,333, 79 NH PUC 466, Aug. 31, 1994.

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NH.PUC*09/13/94*[70620]*79 NH PUC 495*AT&T Communications of New Hampshire, Inc.

[Go to End of 70620]

79 NH PUC 495

Re AT&T Communications of New Hampshire, Inc.

DR 94-201

Order No. 21,351

New Hampshire Public Utilities Commission

September 13, 1994

ORDER authorizing an interexchange telephone carrier to increase from one minute to three minutes the billing increment for operator-assisted and sent-paid calls made from pay stations, in order to reduce fraud and uncollectibles.

1. RATES, § 565

[N.H.] Telephone rate design — Coin or pay station service — Toll calling — Operator-assisted or sent-paid calls — Billing increment — Increase from one to three minutes — Purpose — Reduction in fraud and uncollectibles. p. 495.

BY THE COMMISSION:

ORDER

[1] On August 26, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to increase the additional period increments associated with Operator Station, Sent Paid Coin, and Person-Sent Paid Coin from one minute to three minutes; and

WHEREAS, the initial period increment associated with this service is already three minutes; and

WHEREAS, the rates for the three minute additional increments are three times the approved per minute rate; and

WHEREAS, the purpose of the filing is to reduce uncollectibles due to fraud for coin calls from payphones, which is in the public good; and

WHEREAS, AT&T proposed the tariff become effective September 26, 1994; it is hereby

ORDERED, that the following tariff pages of AT&T Tariff No. 4, AT&T Long Distance Service, are approved for effect as filed:

Section 2:

2nd Revised Page 9

5th Revised Page 14

4th Revised Page 16;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this thirteenth day of September, 1994.

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NH.PUC*09/13/94*[70621]*79 NH PUC 495*New England Telephone

[Go to End of 70621]

79 NH PUC 495

Re New England Telephone

DR 94-207
Order No. 21,352

New Hampshire Public Utilities Commission

September 13, 1994

ORDER authorizing a local exchange telephone carrier to eliminate four-party residential service in the Exeter area, so as to facilitate interstate equal access as well as emergency 911 services.

Page 495

1. SERVICE, § 452

[N.H.] Telephone — Party-line service — Elimination of — Factors — Facilitation of interstate toll carrier presubscription — Facilitation of emergency 911 services. p. 496.

BY THE COMMISSION:

ORDER

[1] On September 1, 1994, New England Telephone (NET) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to remove four-party residence service from the Exeter exchange as of November 19, 1994, coincident with the replacement of the 2B ESS switch with a 5ESS digital switch; and

WHEREAS, customers with four-party service cannot presubscribe to an interstate carrier; and

WHEREAS, the E911 Call Bureau would not be able to automatically identify the service address of a caller with four-party service; and

WHEREAS, NET will contact each of its twenty-four customers of four-party residence service in the Exeter exchange by mail and ask them to choose a class of service and a carrier for interLATA calling; and

WHEREAS, NET will try to contact by phone, customers who do not respond to the direct mailing; and

WHEREAS, NET requests that any customers who do not respond to the direct mailing and who cannot be reached subsequently by phone by November 1, 1994, be assigned Measured Service-4E Low Usage Residence Service; and

WHEREAS, the Service and Equipment charge to change the class of service and the set modification charge, if required, will be waived for these customers; and

WHEREAS, NET will not choose a long distance carrier for interLATA calls for those customers who do not respond to the direct mailing and cannot be reached by telephone; and

WHEREAS, Staff has reviewed the proposed tariff modifications and recommended their

approval; and

WHEREAS, after reviewing the petition and the Staff recommendation, the Commission finds the proposed tariff revision to be in the public good; it is therefore

ORDERED, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 75 - Part A - Section 5

Twenty-First Revision of Page 8

Fourteenth Revision of Page 9.1

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as filed; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k); and it is

FURTHER ORDERED, that NET include a copy of this order in the direct mail notification made to the twenty-four affected customers.

By order of the New Hampshire Public Utilities Commission this thirteenth day of September, 1994.

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NH.PUC*09/19/94*[70622]*79 NH PUC 496*Public Service Company of New Hampshire

[Go to End of 70622]

79 NH PUC 496

Re Public Service Company of New Hampshire

DE 94-080

Order No. 21,353

New Hampshire Public Utilities Commission

September 19, 1994

ORDER granting confidential treatment of certain data responses related to Clean Air Act compliance measures and submitted in an electric utility's integrated least-cost resource planning proceeding. The data responses included sensitive cost analyses and pending contractual terms, the disclosure of which could jeopardize

Page 496

the company's negotiations with vendors. While the commission approves confidentiality, it defers ruling on the utility's request for the return or destruction of the information at the conclusion of the proceeding.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidential treatment — Commercially sensitive data responses — Relating to Clean Air Act compliance measures — In integrated least-cost resource planning proceeding. p. 497.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidential treatment — Sensitive cost data — In integrated least-cost resource planning proceeding — Return or destruction of data upon issuance of final order — Deferral of ruling. p. 497.

BY THE COMMISSION:

ORDER

[1, 2] On April 29, 1994, Public Service Company of New Hampshire (PSNH) filed its 1994 Integrated Least Cost Resource Plan with the New Hampshire Public Utilities Commission (Commission). On August 26, 1994, PSNH filed a Motion for Protective Order. This Motion seeks protective treatment of PSNH's responses to certain data requests propounded by the Commission Staff, and accompanying this Motion was a proposed Non-Disclosure Agreement which PSNH wants individual Staff members to execute. The Commission Staff filed a partial objection to this request, taking issue only with the requested methodology of maintaining confidentiality; and

WHEREAS, PSNH contends that the Commission Staff has requested certain information about sensitive issues related to bringing Merrimack Station II into compliance with the Clean Air Act Amendments of 1992, the disclosure of which would harm PSNH in its ability to negotiate with vendors and, therefore, harm ratepayers; and

WHEREAS, PSNH states in its motion that such information constitutes sensitive commercial information exempted from public disclosure under RSA 91-A:5(iv); and

WHEREAS, the information requested by the Staff is a necessary and important part of Staff's review of PSNH's Integrated Least Cost Resource Plan; and

WHEREAS, the Commission recognizes the need for protection of such information and finds that the benefits of protecting PSNH's responses outweigh the benefits of public disclosure; and

WHEREAS, the Commission recognizes the value to Staff of having an opportunity to study the requested information in order to improve its knowledge of the increasingly competitive electricity marketplace; and

WHEREAS, PSNH specifically requests that the Commission Staff be ordered to return or destroy all requested information at the conclusion of this proceeding "on terms acceptable to PSNH"; and

WHEREAS, the Commission has existing internal procedures which adequately afford protective treatment to confidential materials; that is, confidential materials are segregated and

stored in locked cabinets, and Staff members who review such materials are bound by the Commission's order not to disclose the contents of any materials which are subject to protective treatment; it is hereby

ORDERED, that PSNH's motion is GRANTED IN PART, in that PSNH's responses are granted confidential treatment, but such responses shall be maintained according to existing Commission procedures which reasonably ensure their protection, and such responses shall not be published or otherwise disclosed to anyone other than Staff members who are working on review of the Integrated Least Cost Resource Plan; and it is

FURTHER ORDERED, that PSNH's motion is DENIED IN PART, to wit: Staff is not required to enter into any Non-Disclosure Agreement and the issue of whether Staff must

Page 497

return or destroy any information is deferred until the conclusion of this case; and it is

FURTHER ORDERED, that this order is subject to the ongoing rights of the Commission to reconsider this issue should circumstances so warrant.

By order of the New Hampshire Public Utilities Commission this nineteenth day of September, 1994.

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NH.PUC*09/19/94*[70623]*79 NH PUC 498*New England Telephone Company

[Go to End of 70623]

79 NH PUC 498

Re New England Telephone Company

DR 94-108

Order No. 21,354

New Hampshire Public Utilities Commission

September 19, 1994

ORDER further suspending a local exchange telephone carrier's proposed tariff revisions, to allow commission staff additional time for investigating the filing. The proposed revisions reflected a significant rate increase for "SUPERPATH" digital services.

1. PROCEDURE, § 42

[N.H.] Suspension — Of proposed tariff terms — For substantial rate increase — Extension of suspension period — Local exchange telephone carrier. p. 498.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed tariff terms — For substantial rate increase — Extension of suspension period — To allow for effective investigation — Local exchange telephone carrier. p. 498.

BY THE COMMISSION:

ORDER

[1, 2] On May 24, 1994 New England Telephone Company (NET or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to modify its SUPERPATH 1.544 Mbps digital service tariff; and

WHEREAS, the proposed tariff pages were suspended by Order No. 21,272 issued June 22, 1994 so that Staff could investigate the proposed rates and accompanying cost support; and

WHEREAS, Staff requires additional time to investigate the filing; it is hereby

ORDERED, that the proposed revisions to NHPUC No. 75

Part C - Section 2 -

Third Revision of Table of Contents Page 1

Second Revision of Page 1

Second Revision of Page 2

First Revision of Page 2.1

Third Revision of Page 3

Original Page 3.1

Third Revision of Page 4

Second Revision of Page 5

Original Pages 6 through 11

Elimination of Price List Page

are suspended pending further investigation.

By order of the New Hampshire Public Utilities Commission this nineteenth day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Telephone Co., DR 94-108, Order No. 21,272, 79 NH PUC 374, June 22, 1994.

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NH.PUC*09/19/94*[70624]*79 NH PUC 499*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 70624]

79 NH PUC 499

Re Sprint Communications Company of New Hampshire, Inc.

DR 94-206

Order No. 21,355

New Hampshire Public Utilities Commission

September 19, 1994

ORDER authorizing an interexchange telephone carrier to introduce its new "Worldwide" service which provides volume discounts for combined intrastate, interstate, and international calling, and also to close its virtual private network (VPN) service to new customers and to make changes in certain VPN-related rates.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Interexchange carrier — Introduction of "Worldwide" service — Volume discounts for combined intrastate, interstate, and international calling — Moratorium on new virtual private network (VPN) customers — Concomitant changes in VPN-related rates. p. 499.

BY THE COMMISSION:

ORDER

[1] On August 30, 1994, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Sprint Worldwide, grandfather existing Virtual Private Network (VPN) customers, reduce the VPN Forced Route Advance per minute usage rate, and make minor text changes; and

WHEREAS, Sprint Worldwide is a toll service to which volume discounts apply for combined interstate, intrastate and international usage; and

WHEREAS, Sprint is proposing to grandfather existing VPN customers but will no longer offer VPN to new customers after September 30, 1994; and

WHEREAS, the proposed revisions include changing the rate for VPN Forced Route Advance calls to On-Net to Off-Net or Off-Net to Off-Net rates for the call, whichever is applicable; and

WHEREAS, Sprint requested these revisions become effective October 1, 1994; and

WHEREAS, the Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competitive entry and competition in the New Hampshire intra- state toll market; and

WHEREAS, the proposed introduction of Sprint Worldwide expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in

New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages for Sprint's NHPUC Tariff No. 4 are approved for effect as filed:

- 6th Revised Page 1
- 1st Revised Page 46
- 1st Revised Page 55
- 2nd Revised Page 72
- 1st Revised Page 73
- 1st Revised Page 83;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this nineteenth day of September, 1994.

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NH.PUC*09/19/94*[70625]*79 NH PUC 500*Williams Communications Inc.

[Go to End of 70625]

79 NH PUC 500

Re Williams Communications Inc.

DE 94-184

Order No. 21,356

New Hampshire Public Utilities Commission

September 19, 1994

ORDER denying a telecommunications carrier's petition for assignment of an "N11" number for information service calls, pending the outcome of a docket on N11 assignments before the Federal Communications Commission.

1. SERVICE, § 455

[N.H.] Telephone — Numbers — Assignment of "N11" numbers — Rejection of N11 request — Factors — Related matter pending with the Federal Communications Commission. p. 500.

BY THE COMMISSION:

ORDER

[1] On August 15, 1994, Williams Communications Inc. (Williams) petitioned the New Hampshire Public Utilities Commission (Commission) for assignment of an N11 telephone number to be used in the provision of information services; and

WHEREAS, in 1992 the Commission had three similar requests in dockets DE 92-167, DE 92-176 and DE 92-183; and

WHEREAS, each of the three previous requests were rejected pending the outcome of the Federal Communications Commission docket CC 92-105 on the assignment of N11 codes, which is still pending; and

WHEREAS, N11 codes, such as 911, are a limited resource and should be reserved for a significant national use; it is hereby

ORDERED, that Williams' petition is denied.

By order of the New Hampshire Public Utilities Commission this nineteenth day of September, 1994.

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NH.PUC*09/19/94*[70626]*79 NH PUC 500*Granite State Electric Company

[Go to End of 70626]

79 NH PUC 500

Re Granite State Electric Company

DR 93-188

Order No. 21,357

New Hampshire Public Utilities Commission

September 19, 1994

ORDER modifying Order No. 21,143 with respect to an electric utility's conservation and load management program budget, to reallocate additional funds to its small commercial and industrial (C&I) programs and concomitantly reduce funding for its "Energy Initiative" and "Design 2000" plans, due to the popularity and cost-effectiveness of the C&I programs. For the earlier decision, see 79 NH PUC 123, supra.

1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Budget reallocations — Additional funding for small commercial and industrial (C&I) programs — Less funding for "Energy Initiative" and "Design 2000" plans — Factors — Popularity and customer acceptance of C&I programs. p. 500.

BY THE COMMISSION:

ORDER

[1] On February 28, 1994 by Order No. 21,143 the New Hampshire Public Utilities

Page 500

Commission (Commission) approved a settlement that established the budget for the three commercial and industrial (C&I) Conservation and Load Management (C&LM) programs offered by Granite State Electric Company (GSEC) as follows:

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

Energy Initiative	\$ 765,800
Design 2000	1,323,000
Small C&I	351,000

On July 11, 1994, GSEC requested by letter authorization to increase its Small C&I program by 25% or \$90,000 and to fund the increase by reducing the Energy Initiative and Design 2000 programs by \$50,000 and \$40,000 respectively. GSEC represented that it projected that it would be underspent in the latter two programs by year end, and that, conversely, demand for the Small C&I program could exceed the existing budget by the requested amount. Neither the Conservation Law Foundation or the Office of the Consumer Advocate, the only other parties in the instant docket, objected to the transfer of funds.

In response to questions by Commission Staff regarding rate impacts and cost benefit ratio, GSEC represented by letter filed September 13, 1994 that since all three commercial and industrial programs were funded from the same conservation cost factor, the intra-budget shift would not change the factor, and therefore customer rates would remain unchanged. Further, the Small C&I program was well accepted by customers and the requested increase would allow additional customers to participate without affecting the cost benefit ratio, especially since the new funds would be allocated across expense categories in the same manner as in the original budget.

The Commission, therefore, finds that the requested re- allocation of funds within the commercial and industrial C&LM budget is in the best interests of GSEC's customers and will add value to GSEC's 1994 C&LM program.

Based on the foregoing; it is hereby

ORDERED, that Granite State Electric Company's request to transfer \$90,000 to the Small C&I program from the Energy Initiative Program (\$50,000) and the Design 2000 Program (\$40,000) within its 1994 Conservation and Load Management Program is approved.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 93-188, Order No. 21,143, 79 NH PUC 123, Feb. 28, 1994.

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NH.PUC*09/19/94*[70627]*79 NH PUC 501*Eastman Sewer Company, Inc.

[Go to End of 70627]

79 NH PUC 501

Re Eastman Sewer Company, Inc.

DE 94-069

Order No. 21,358

New Hampshire Public Utilities Commission

September 19, 1994

ORDER approving the termination of a lease agreement between a company owning land and sewer plant and the utility operating the plant, for nonpayment of rent by the sewer utility. A license agreement is approved instead, under which the sewer utility retains operational authority, the owner is not deemed a public utility, and only a small license fee need be paid each year. The utility remains responsible for all plant-related maintenance, repairs, insurance, and taxes.

1. LEASES, § 1

[N.H.] Termination — Factors — Default on rent payments — Replacement with license agreement — Sewer service. p. 502.

2. PUBLIC UTILITIES, § 34

[N.H.] Regulatory status — Factors —

Page 501

Ownership of utility plant — Leasing out of plant — Owner not deemed public utility — Operator/lessor deemed public utility — Sewer service. p. 502.

3. PUBLIC UTILITIES, § 36

[N.H.] Regulatory status — Factors — Lease arrangements — Termination of lease — Replacement with license agreement — Responsibility of operator/licensee for plant maintenance, insurance, and taxes — Utility status remaining with operator — Sewer service. p. 502.

BY THE COMMISSION:

ORDER

[1-3] On April 11, 1994, Eastman Sewer Company, Inc. ("Eastman" or the "Company") advised the Commission of certain changes in the arrangements between Eastman and Controlled Environment Corporation ("CEC") which owns the real estate and is responsible for other improvements associated with the sewer facility. Eastman has been operating the sewer facility under a lease agreement originally entered into with CEC in 1982. During the course of the Company's franchise docket before the Commission, this agreement was modified to meet the definition of a capital lease to allow the Company to both capitalize the system assets and to gain more control over the system it uses to provide service.

The value of this capital lease was the subject of Commission review during the Company's first rate case, DR 90-170, in which the Commission established the ratemaking value of the lease. Unable to make the lease payments originally called for in the lease agreement, the Company defaulted under the terms of the lease, and the lease was terminated by ELC, Inc., the successor lessor to CEC.

As a result of the Company's default, the parties to the lease entered into a long term "License Agreement" to allow Eastman to continue its provision of regulated sewer service. The April 11, 1994 communication from the Company included a copy of this License Agreement.

On April 26, 1994 Commission Staff sent a letter to the Company's attorneys advising that it had a number of concerns regarding the License Agreement. Staff's concerns were 1) that the termination of the capital lease appeared to violate Order No. 19,600, issued in DS 88-117 and dated November 2, 1989 under which Eastman was authorized to provide service; 2) that termination of the capital lease resulted in both ELC, Inc. and the Company becoming public utilities requiring specific Commission authorization to provide service; 3) that the License Agreement was unclear as to the responsibility for the funding of capital additions to the system; 4) that the License Agreement restricted Eastman's ability to expand its franchise territory; and 5) that ELC, Inc. was the proper recipient of the rates established by the Commission in DR 90-170 and that the books of the utility should be maintained by the owner of the assets, ELC, Inc.

As a result of discussions between Staff and the Company, on August 9, 1994 the Company submitted a revised License Agreement for Commission approval. The revised Agreement is included herewith as Attachment 1.

The Company has indicated that ELC, Inc., the licensor, has agreed to the modifications made to the License after discussions with Staff. Staff has also concurred that the modifications to the License Agreement have removed their expressed concerns with the original Agreement, and that Commission approval of the Agreement is appropriate.

We have reviewed the License Agreement as modified and find it to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the License Agreement between Eastman Sewer Company, Inc. and ELC, Inc., as an affiliate agreement pursuant to RSA 366:3, is hereby approved.

By order of the New Hampshire Public Utilities Commission this nineteenth day of September, 1994.

Page 502

ATTACHMENT 1
LICENSE AGREEMENT

AGREEMENT made as of this ____ day of August, 1994, by and between ELC, Inc., a New Hampshire corporation with a place of business at Grantham, New Hampshire (the "Licensor"), and Eastman Sewer Company, Inc., a New Hampshire corporation with a place of business at Grantham, New Hampshire (the "Licensee").

WITNESSETH:

WHEREAS, Licensor is the owner of certain real estate located in Grantham and Springfield, New Hampshire, more particularly described on Exhibit A attached hereto (the "Premises");

WHEREAS, Licensor, by virtue of a Bill of Sale, Assignment and Undertaking from Controlled Environment Corporation ("CEC") dated March 31, 1992, is the Lessor under a certain lease, as amended, between CEC as lessor and Eastman Sewer Company, Inc. as lessee (the "Lease");

WHEREAS, said Lease is being terminated this date by Licensor for non-payment of rent thereunder;

WHEREAS, the property subject to Lease consists of the sewer treatment facility located on Licensor's Premises, and all other pipes, equipment and easements utilized in the operation of said sewer treatment facility, including the spray irrigation system located on the Eastman golf course (collectively, the "Sewer System");

WHEREAS, the Licensee holds a public utility franchise to provide sewer disposal service to certain residents at the Eastman Development, and utilizes the Sewer System to do so;

WHEREAS, Licensor has no public utility franchise and has no desire or intention of obtaining same or of operating the Sewer System;

WHEREAS, Licensor desires to grant to the Licensee, and Licensee desires to accept, a license to continue to operate the Sewer System, but only in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual obligations and promises set forth below, the parties agree as follows:

1. *Granting of License.* The Licensor hereby grants to the Licensee, and the Licensee hereby accepts from the Licensor, a license to enter upon the Premises and to continue to operate the Sewer Facility in order to provide public utility sewer disposal service in accordance with the terms and conditions set forth herein.

2. *Consideration and Term.* The consideration for the license granted to the licensee shall be payment of \$2,200 per year, payable on July 1 of each year during the term hereof, and payment of certain other expenses related to the Premises as set forth herein. The term of this license shall

commence upon the date of this Agreement first above written, and shall expire and terminate on January 1, 2044, unless sooner terminated as provided hereinafter (the "License Term").

3. *Scope of License.* Throughout the License Term, the Licensee shall maintain at its own expense any equipment and structures currently maintained on the Premises and necessary to the operation of the Sewer System. The Licensee shall continue to operate the Sewer System on the Premises and provide sewer treatment services during the License Term, and at its own expense. The Licensee shall not use the Premises for any use other than the conduct of its public utility business. No additional structures or improvements shall be constructed or placed on the premises by Licensee without Licensor's review and approval, which may be withheld in Licensor's reasonable discretion; all such approved structures or improvements shall be made at Licensee's expense. The license granted hereby shall be non-exclusive, and the Licensor retains all rights, title and interest in and to the Premises, provided the Licensor shall not materially interfere with the Licensee's exercise of its license hereunder.

4. *Representations and Warranties of Licensee.* The Licensee hereby represents and warrants to the Licensor that the public utility business which it currently conducts on the Premises is in material compliance with all

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applicable federal, state and local laws and regulations, including but not limited to environmental and public utility law and regulations, and that it shall continue to be conducted in material compliance with such laws and regulations throughout the License Term. The Licensee further agrees to obtain all necessary permits or approvals and renewals there, for the operation of its public utility business throughout the License Term. Licensee shall keep Licensor informed of all matters materially related to its compliance with such laws and regulations.

5. *Indemnification by Licensee.* The Licensee assumes sole responsibility for and shall pay all expenses, liabilities and claims arising from the operation of the Sewer System and the utility business during the License Term; further, the Licensee hereby indemnifies and holds harmless the Licensor against and from any loss, cost, claim or expense which the Licensor may incur as a result of the Licensee's business operations or any other activities of Licensee on the Premises during the License Term.

6. *Insurance.* Licensee hereby agrees at all times throughout the License Term to obtain and maintain and to keep in force for the mutual benefit of Licensor and Licensee fire, extended coverage, vandalism and malicious mischief insurance on the buildings located at the premises described in Exhibit A, in 100% replacement value form, less a reasonable "deductible" amount agreeable to the Licensor. Licensee agrees and covenants to pay to Licensor, upon presentation to Licensee of the appropriate billing, an amount equal to the Licensor's cost for such insurance. Licensee further covenants and agrees at all times throughout the License Term to obtain and keep in force for the mutual benefit of the Licensee and the Licensor comprehensive general public liability insurance against claims for personal injury, death or property damage in such amounts and with such insurers as shall be acceptable to Licensor, but in no event less than \$500,000 per person and \$1,000,000 per occurrence.

All policies of insurance required to be maintained by this Paragraph 6 shall name the

Licensee and the Licensor as insureds as their respective interest may appear, and shall contain an agreement by the insurers that such policies shall not be cancelled without at least ten days' prior written notice to the Licensor. Licensor shall be provided with copies of all policies.

7. *Taxes and Utilities.* Licensee shall pay all real estate taxes levied or assessed on or with respect to the Premises. Licensee also shall pay all personal property taxes, including inventory taxes, levied or assessed in respect of the personal property and trade fixtures on the Premises belonging to the Licensee or persons, firms or corporations other than Licensor. Licensee also shall pay when due all gas, telephone and electricity charges incurred on the Premises. Licensee will make its own arrangements for the delivery of all necessary fuels to the Premises for providing heat for the Premises, and will pay when due all charges for such fuel.

8. *Default.* In the event that the Licensee exceeds the scope of the license granted hereby, or otherwise defaults under any of the provisions of this Agreement, the licensor shall provide the licensee with written notice of such default by either hand- delivery or first class United States mail, postage prepaid and return requested, which return receipt shall be conclusive evidence of the time of receipt by the Licensee, unless the notice of default is hand-delivered. If the Licensee fails to cure such default within seven (7) days of its receipt of such notice of default, the license granted hereby automatically shall be revoked, and the Licensee shall immediately cease all operations on the Premises and remove its equipment (other than fixtures) and any other personal property within ninety (90) days of such termination. Upon any default by the Licensee, the Licensor shall be entitled to assert any or all of its remedies at law and in equity, including without limitation specific performance and/or monetary damages.

9. *Termination.* The License Term shall expire and terminate upon the occurrence of any of the following events:

- a) January 1, 2044;
- b) Cessation of the Licensee's operations as a public utility regulated by the New

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Hampshire Public Utilities Commission of the Sewer System;

- c) a change of control of Licensee;
- d) insolvency of Licensee or the commission of an act of insolvency;
- e) the making of an assignment by Licensee for the benefit of creditors;
- f) the filing of any petition or the commencement of any proceeding by or against Licensee for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, compositions or extensions, provided that in the event any such proceedings are instituted against Licensee, termination of the License Term shall occur only if such proceedings are not dismissed within thirty (30) days; and
- g) the filing of any petition or the commencement of any action seeking by eminent domain or otherwise to take the Premises or any portion thereof, including any portion of the improvements located thereon.

Upon the expiration of the License Term, the license granted hereby automatically shall terminate and be of no further force and effect. Unless Licensee has exercised the option to purchase set forth in Section 9A hereof, upon such expiration date, the Licensee shall cease to conduct all operation on the Premises, and shall remove its equipment and other personal property within ninety (90) days. The Premises is the property of Licensor and shall remain so upon termination of the License Term.

9A. The Licensee may at its election purchase the Sewer System (but not the Premises) at the expiration of the term of this License in 2044, upon payment of \$1 to Licensor and assumption of those liabilities that have been incurred by Licensor with respect to the Sewer System and with the prior written consent of Licensee, provided that the License has not previously been terminated under the provisions of Paragraph 9(b)-(g) hereof, that the Licensee is not then in default of any of the provisions of this License and that the Licensee provides Licensor notice of its intention to exercise its option to purchase at least six (6) months prior to the expiration of the term hereof.

9B. Licensor reserves the right to sell or transfer the spray irrigation system located on the Eastman golf course in the event that either:

- (1) such sale or transfer of the spray irrigation system is made expressly subject to the Licensee's right to use it under the terms of this License Agreement; or
- (2) said system is no longer required by Licensee for use in its public utility business.

10. *Assignment.* Neither this Agreement, nor the license granted hereby, shall be assigned by the Licensee without the prior written consent of the Licensor, which may be withheld in the sole and absolute discretion of Licensor.

11. *General Provisions.* This Agreement shall be binding upon, and shall inure to the benefit of, the heirs, executors, administrators, successors and permitted assigns of each party. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and may be amended or modified only by a written instrument executed by the parties. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. No assent, express or implied, by Licensor to any breach of any Licensee's obligations hereunder shall be deemed to be a waiver of any succeeding breach of said obligation or of any other obligation hereunder. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the date first above written.

LICENSOR:
ELC, INC.
By: John B. Clover, its President
duly authorized

LICENSEE:
EASTMAN SEWER COMPANY, INC.
By: Tony Hanslin, its President
duly authorized

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Eastman Sewer Co., Inc., DS 88-117, Order No. 19,600, 74 NH PUC 431, Nov. 2, 1989.

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NH.PUC*09/19/94*[70628]*79 NH PUC 506*WilTel of New Hampshire, Inc.

[Go to End of 70628]

79 NH PUC 506

Re WilTel of New Hampshire, Inc.

DR 94-188

Order No. 21,359

New Hampshire Public Utilities Commission

September 19, 1994

ORDER approving an interexchange telephone carrier's proposal for reducing rates for certain of its "CustomOne" services, and for increasing rates and adding a nonday rate period to its "WilMAX" service, which allows single billing for a customer making toll calls from multiple locations.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special "CustomOne" discount plans — Additional rate reductions. p. 506.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special "WilMAX" package plans — Single billing for customer calling from multiple locations — Addition of nonday rate period — Rate increases. p. 506.

BY THE COMMISSION:

ORDER

[1, 2] On August 22, 1994, WilTel of New Hampshire, Inc. (WilTel) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce a Non-Day rate period for WilMAX Service, reduce CustomOne Service rates and increase WilMAX Service rates; and

WHEREAS, WilMAX Service is an authorized telecommunications service designed for calling from multiple customer locations to stations throughout the state and arranged so the customer receives a single bill for all locations; and

WHEREAS, WilTel's petition seeks to add a non-day rate period to the existing WilMAX Service; and

WHEREAS, the non-day rates for both WilMAX Reseller Service and WilMAX Carrier Service are proposed as \$0.0252 per 6 seconds for Switched Service and \$0.0120 per 6 seconds for Dedicated Access Service; and

WHEREAS, WilTel seeks to increase its existing WilMAX Reseller Service and WilMAX Carrier Service rates from \$0.0247 to \$0.0252 per six seconds for day Switched Service and from \$0.0118 to \$0.0120 per six seconds for day Dedicated Access Service; and

WHEREAS, the petition also seeks to reduce numerous rates for CustomOne Service; and

WHEREAS, granting WilTel's petition supports the fostering of competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages of WilTel's NHPUC Tariff No. 2 are approved as filed:

3rd Revised Page 63.1
 2nd Revised Page 63.2
 1st Revised Page 63.2.2
 3rd Revised Page 63.3
 4th Revised Page 63.4
 1st Revised Page 63.5
 1st Revised Page 63.6

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1st Revised Page 63.7;

and it is

FURTHER ORDERED, that WilTel file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this nineteenth day of September, 1994.

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NH.PUC*09/20/94*[70629]*79 NH PUC 507*Concord Electric Company

[Go to End of 70629]

79 NH PUC 507

Re Concord Electric Company

DF 94-189

Order No. 21,360

New Hampshire Public Utilities Commission

September 20, 1994

ORDER authorizing an electric utility to issue and sell up to \$6 million in first mortgage bonds, the proceeds of which are to be used for paying off outstanding short-term debt, redeeming other bonds via sinking fund payments, and financing additions and betterments.

1. SECURITY ISSUES, § 95

[N.H.] Types of indebtedness — Bonds — Issuance of first mortgage bonds — Purpose of proceeds — Redemption of other bonds — Paying off short-term debt — Additions and betterments — Electric utility. p. 507.

BY THE COMMISSION:

ORDER

WHEREAS, on August 24, 1994, Concord Electric Company (the "company") filed a Petition under RSA 369:1, 2, and 4, to issue and sell \$6,000,000 of First Mortgage Bonds, Series I, by private sales to an institutional investor(s) for a term not to exceed thirty years at an interest rate not to exceed 9%; and

WHEREAS, the company's Petition states that the \$6,000,000 of its Series I First Mortgage Bonds will be sold under a 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 (1) to pay off outstanding short-term indebtedness incurred for additions, extensions and betterments to the Company's property; (2) to finance future expenditures for additions, extensions and betterments to property, plant and equipment; (3) to redeem \$930,000 principal amount outstanding of First Mortgage Bonds Series D, 8.70% and \$1,000,000 principal amount outstanding of First Mortgage Bonds Series G, 9.85%; (4) to defray the costs and expenses of the financing and redemption 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 D, 8.70% and Series G, 9.85%, 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, on September 9, 1994 the company filed testimony and a draft Eighth Supplemental Indenture with a proposed issuance date of October 14, 1994 to First Colony Life Insurance Company, which provides for First Mortgage Bonds, Series I with a maturity of October 14, 2024 at an interest rate of 8.49%; and

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WHEREAS, the proceeds will be used to (1) pay off short term indebtedness (\$3,481,525); (2) to redeem \$2,430,000 principal amount of Series D and Series G bonds including \$1,000,000 of redemption via sinking fund payments; and (3) to defray the costs and expenses of the financing; and

WHEREAS, the commission, after investigation and consideration, is satisfied that the granting of the Petition will be for the public good; and

ORDERED, that the company be and hereby is authorized, pursuant to the provisions of RSA 369:1, 2, and 4, to issue and sell \$6,000,000 of First Mortgage Bonds, Series I at a interest rate of 8.49%, for a term not to exceed thirty years, such Bonds to be sold to First Colony Insurance Company 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:

(1) to pay off outstanding short-term indebtedness incurred for additions, extensions and betterments to the Company's property.

(2) to redeem \$930,000 principal amount outstanding of First Mortgage Bonds Series D, 8.70% and \$500,000 principal amount outstanding of First Mortgage Bonds Series G, 9.85%.

(3) to redeem \$1,000,000 of First Mortgage Bonds, Series G via sinking funds payments.

(4) to defray the costs and expenses of the financing and redemption contemplated by this petition or for other proper 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 D, 8.70% and Series G, 9.85%, and the remaining unamortized debt expense related to said issue; and it is

FURTHER ORDERED, that deferred taxes (normalization) be established for any current expensing of unamortized issuance expenses carried forward from the redeemed bonds; 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.

By order of the Public Utilities Commission of New Hampshire this twentieth day of September, 1994.

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NH.PUC*09/20/94*[70630]*79 NH PUC 508*Exeter and Hampton Electric Company

[Go to End of 70630]

79 NH PUC 508

Re Exeter and Hampton Electric Company

DF 94-190

Order No. 21,361

New Hampshire Public Utilities Commission

September 20, 1994

ORDER authorizing an electric utility to issue and sell up to \$10 million in first mortgage bonds, the proceeds of which are to be used for reducing outstanding short-term debt, redeeming other bonds, and financing additions and betterments.

1. SECURITY ISSUES, § 95

[N.H.] Types of indebtedness — Bonds — Issuance of first mortgage bonds — Purpose of proceeds — Redemption of other bonds — Reduction of short-term debt — Additions and betterments — Electric utility. p. 509.

BY THE COMMISSION:

Page 508

ORDER

WHEREAS, on August 24, 1994, Exeter & Hampton Electric Company (the "company") filed a Petition under RSA 369:1, 2, and 4, to issue and sell \$10,000,000 of First Mortgage Bonds, Series K, by private sales to an institutional investor(s) for a term not to exceed thirty years at an interest rate not to exceed 9%; and

WHEREAS, the company's Petition states that the \$10,000,000 of its Series K First Mortgage Bonds will be sold under a Supplemental Indenture supplementing the company's existing Indenture of Mortgage and Deed of Trust dated as of December 1, 1952, 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 (1) to pay off outstanding short-term indebtedness incurred for additions, extensions and betterments to the company's property; (2) to finance future expenditures for additions, extensions and betterments to property plant and equipment; (3) to redeem \$1,235,000 principal amount outstanding of First Mortgage Bonds Series F, 8.70% and \$930,000 principal amount outstanding of First Mortgage Bonds Series G, 8 7/8% and \$1,120,000 principal amount outstanding of First Mortgage Bonds Series H, 8.50% and \$1,000,000 principal amount outstanding of First Mortgage Series I, 9.85%; (4) to defray the costs and expenses of the financing and redemption 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, 8.70%, Series G, 8 7/8%, Series H, 8.50% and Series I, 9.85%, 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, on September 9, 1994 the company filed testimony and final terms and conditions of the proposed Bonds which are to be placed with First Colony Life Insurance Company in the principle amount of \$9,000,000 at an interest rate of 8.49%; and

WHEREAS, the revised issuance amount of \$9,000,000 will be used to redeem (1) \$1,235,000 of Series F, 8.70% First Mortgage Bonds due November 15, 2001, \$930,000 of Series G, 8.78% First Mortgage Bonds, due April 1, 2004, and \$1,400,000 of Series I, 9.85% due October 15, 1997; (2) to reduce short term debt in the amount of \$4,810,172; (3) to defray the costs of expenses of the financings and redemptions contemplated by this petition or for other corporate purposes; and (4) finance future construction in the amount of \$473,137; and

WHEREAS, the commission, after investigation and consideration, is satisfied that the granting of the Petition will be for the public good; it is hereby

ORDERED, that the company be and hereby is authorized, pursuant to the provisions of RSA 369:1, 2, and 4, to issue and sell \$9,000,000 of First Mortgage Bonds, Series K at a interest rate of 8.49%, for a term not to exceed thirty years, such Bonds to be sold to First Colony Life

Insurance Company 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:

(1) to pay off outstanding short-term indebtedness incurred for additions, extensions and betterments to the Company's property.

(2) to finance future expenditures for

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additions, extensions and betterments to property plant and equipment.

(3) to redeem \$1,235,000 principal amount outstanding of First Mortgage Bonds Series F, 8.70% and \$930,000 principal amount outstanding of First Mortgage Bonds Series G 8 7/8%2 and \$1,000,000 principal amount outstanding of First Mortgage Series I 9.85%.

(4) to defray the costs and expenses of the financing and redemption contemplated by this petition or for other proper corporate purposes; and it is

FURTHER ORDERED, that deferred taxes (normalization) be established for any current expensing of unamortized issuance expenses carried forward from the redeemed bonds, 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, 8.70% Series G, 8 7/8%, and Series I, 9.85%, and the remaining unamortized debt expense related to said redemptions; 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.

By order of the Public Utilities Commission of New Hampshire this twentieth day of September, 1994.

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NH.PUC*09/20/94*[70631]*79 NH PUC 510*Long Distance North of New Hampshire, Inc.

[Go to End of 70631]

79 NH PUC 510

Re Long Distance North of New Hampshire, Inc.

DR 94-210
Order No. 21,362

New Hampshire Public Utilities Commission

September 20, 1994

ORDER authorizing an interexchange telephone carrier to introduce intrastate directory assistance service, at a rate of 60 cents per call.

1. SERVICE, § 449

[N.H.] Telephone — Information service — Intrastate directory assistance — Interexchange carrier. p. 510.

2. RATES, § 553

[N.H.] Telephone rate design — Information service — Intrastate directory assistance — Charge of 60 cents per call — Interexchange carrier. p. 510.

BY THE COMMISSION:

ORDER

[1, 2] On September 8, 1994, Long Distance North of New Hampshire, Inc. (LDN) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce intrastate Directory Assistance; and

WHEREAS, the proposed rate for a call to LDN's intrastate directory assistance is 60 cents per call; and

WHEREAS, LDN requested an effective date of October 7, 1994; and

WHEREAS, the proposed change expands the choice of telephone services to New Hampshire customers thereby fostering

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competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good; it is hereby

ORDERED, that the following tariff pages for NHPUC No. 2 are approved for effect as filed:

7th Revised Page 2
4th Revised Page 4
4th Revised Page 19.2
1st Revised Page 33.14;

and it is

FURTHER ORDERED, that LDN file properly annotated tariff pages in compliance with

this Commission order no later than two weeks from the issuance date of this order.

By order of the New Hampshire Public Utilities Commission this twentieth day of September, 1994.

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NH.PUC*09/20/94*[70632]*79 NH PUC 511*Nashua Hydro Associates

[Go to End of 70632]

79 NH PUC 511

Re Nashua Hydro Associates

DR 94-149

Order No. 21,363

Re Newfound Hydro Associates

DR 94-167

Order No. 21,363

New Hampshire Public Utilities Commission

September 20, 1994

ORDER finding that two water-powered qualifying facilities should be removed from an electric utility's nontime-of-day rate schedules and should determine their associated peak reduction factors independently, consistent with Order No. 21,325 (79 NH PUC 452), supra.

1. COGENERATION, § 24

[N.H.] Rates — Renegotiated rate agreements — Change in peak reduction factor — Independent determination — Removal from nontime-of-day class — Hydro facilities. p. 511.

2. RATES, § 326

[N.H.] Electric rate design — Time-of-day rates — Change from nontime-of-day class — For purchases of power from hydro-powered qualifying facilities — Change in peak reduction factor — Independent determination — Renegotiated rate agreements. p. 511.

3. ELECTRICITY, § 5

[N.H.] Hydropower plant — Purchases from small power producers — Renegotiated rate agreements — Change in peak reduction factor — Independent determination — Removal from nontime-of-day class. p. 511.

BY THE COMMISSION:

ORDER

[1-3] On July 15, 1994, Nashua Hydro Associates ("NHA") filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting an independent determination of its peak reduction factor ("PRF") (DR 94-149). On August 3, 1994, Newfound Hydro Associates ("Newfound") filed a similar petition requesting comparable relief (DR 94-167).

Both NHA and Newfound are PURPA qualifying facilities operating under long-term rate orders, and selling their entire output to Public Service Company of New Hampshire (PSNH). NHA is a one megawatt (MW) hydroelectric small power producer (SPP) located in Nashua, New Hampshire, while Newfound is a 1.5 MW hydroelectric SPP located in Bristol, New Hampshire. Both facilities operate under long-term rate orders, Order No. 17,283 (69 NHPUC 618) for NHA and Order No. 17,158 (69 NHPUC 435) for Newfound.

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Both facilities receive capacity payments based upon a methodology established in Order No. 17,104 in DE 83-62 (69 NHPUC 352). Both facilities are grouped with the class of "non Time-Of-Day" (or "All-Hours") hydroelectric SPPs. Subsequently, Order No. 19,728 in DE 88-107 (75 NHPUC 124) clarified the interpretation and application of the procedures set out in Order No. 17,104. This subsequent order provided for capacity payment based upon individual PRFs for non-hydro SPPs.

Both facilities request a "one-time change" removing each of them from the non Time-Of-Day hydro class in a manner consistent with the Commission's treatment of the five hydroelectric facilities (in the Time-Of-Day class) as approved in Order No. 21,325 in DR 94-002. Each facility would be completely removed from the 1995 PRF calculation for the non Time-Of-Day class. Both facilities have requested that their capacity payments beginning in 1995 be based upon a three-year rolling average of their individual PRFs.

In addition to the relief sought, Newfound states in its petition that it "believes that capacity payments to individual SPP's should be related to the reliable delivery of capacity by each project, rather than the class as a whole, over the three-year average period."

The Commission finds that the requests for independent determination of PRFs by NHA and Newfound are consistent with the treatment of non-hydro SPPs in DR 88-107, and are consistent with the removal of the five hydros from the Time-Of-Day class in DR 94-002. Furthermore, the Commission finds, without further analysis, that the determination of the PRF for these two facilities on a stand alone basis is just and reasonable. The Commission will, therefore, grant the requested relief.

The Commission will not, however, make a determination, at this time, as to the appropriateness of capacity payments based upon individual SPPs' PRFs rather than the PRF class approach that is currently in place.

The Commission further finds that the public and, in particular, the remaining members of the non Time-Of-Day hydro class, should be offered an opportunity to respond in support of, or in opposition to the instant petitions and this order.

Based on the foregoing; it is hereby

ORDERED *NISI*, that Nashua Hydro Associates' and Newfound Hydro Associates' petitions for independent determinations of their peak reduction factors are granted; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rule PUC 1601.05(j), Nashua Hydro Associates and Newfound Hydro Associates together cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than October 3, 1994 to be documented by affidavit filed with this office on or before October 17, 1994; and it is

FURTHER ORDERED, that Nashua Hydro Associates and Newfound Hydro Associates together provide a copy of this Order *Nisi*, via first class mail, to Public Service Co. of New Hampshire and to all of the members of the non Time-Of-Day class of hydroelectric facilities no later than October 3, 1994; and it is

FURTHER 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 17, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective October 20, 1994, 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 twentieth day of September, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,325, 79 NH PUC 452, Aug. 22, 1994.

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NH.PUC*09/20/94*[70633]*79 NH PUC 513*Bottom Line Telecommunications, Inc.

[Go to End of 70633]

79 NH PUC 513

Re Bottom Line Telecommunications, Inc.

DE 94-168

Order No. 21,364

New Hampshire Public Utilities Commission

September 20, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 513.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 513.

BY THE COMMISSION:

ORDER

[1, 2] On August 3, 1994, Bottom Line Telecommunications of New Hampshire, Inc., (BLT), petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26; and

WHEREAS, BLT has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order; and

WHEREAS, interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993 to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993); and

WHEREAS, the public good is served by permitting interim competition by telecommunications companies; and

WHEREAS, the public should be provided an opportunity to respond in support of, or in opposition to this petition; it is hereby

ORDERED, *NISI*, that BLT is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. BLT shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, BLT shall notify the Commission of the change.
5. BLT is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for

Telecommunications Companies.

6. BLT shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. BLT shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

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8. BLT shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.

9. BLT shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

10. BLT shall compensate the appropriate Local Exchange Company for all originating and terminating access used by BLT pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter BLT shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow BLT to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that BLT shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than Oct. 3, 1994, and an affidavit proving publication shall be filed with the Commission on or before Oct. 17, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. BLT shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

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FURTHER ORDERED, that BLT shall file a compliance tariff with the Commission before October 4, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 20, 1994, 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, 1994.

Notice of Conditional Approval of
 BOTTOM LINE TELECOMMUNICATIONS OF NEW HAMPSHIRE, INC.
 Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 3, 1994, Bottom Line Telecommunications of New Hampshire, Inc., (BLT), a New Hampshire corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,364, issued in Docket No. DE 94-168, the Commission granted BLT conditional approval to operate as of October 20, 1994, subject to the right of the public and interested parties to comment on BLT or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on BLT's petition to do business in the State should submit written comments no later than October 17, 1994, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*09/20/94*[70634]*79 NH PUC 515*Public Service Company of New Hampshire

[Go to End of 70634]

79 NH PUC 515

Re Public Service Company of New Hampshire

DR 94-135
Order No. 21,365

New Hampshire Public Utilities Commission

September 20, 1994

ORDER approving an electric utility's proposed special service contract with an industrial customer, Monadnock Paper Mills, Inc., which contract provides for discounted demand and energy charges for a 10-year period in order to retain the customer's load.

1. RATES, § 333

[N.H.] Electric rate design — Industrial customer — Special contract rates — Discounted demand and energy charges — Factors — Load retention. p. 515.

BY THE COMMISSION:

ORDER

[1] On June 27, 1994, Public Service Company of New Hampshire (PSNH) filed a request

for approval of Special Contract No. NHPUC-96, between PSNH and Monadnock Paper Mills, Inc. (Monadnock) effective July 11, 1994 or upon approval by the Commission; and

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WHEREAS, Monadnock is a New Hampshire corporation with its principal business engaged in the manufacturing of specialty papers and high quality printing papers at its facility in Bennington, New Hampshire; and

WHEREAS, Special Contract No. NHPUC-96 is designed to retain electric service from Monadnock, a Rate LG customer who serves a portion of its own load with several generators and receives the remainder of its power needs from PSNH; and

WHEREAS, Monadnock will continue to receive service at tariffed rates until June 1, 1995, at which time it will receive discounted rates for a period of ten years; and

WHEREAS, Special Contract No. NHPUC-96 provides discounted electric service to Monadnock in the form of reduced demand and energy charges up to the level of Contract Demand, 4,000 kW, as defined in Special Contract No. NHPUC-96; and

WHEREAS, PSNH believes Monadnock would, absent this special contract, no longer remain a PSNH customer and would in PSNH's opinion install cogeneration equipment to serve that portion of its load now served by PSNH; and

WHEREAS, PSNH represents that no other customers will be adversely affected by Monadnock receiving discounted electric service under Special Contract No. NHPUC-96; and

WHEREAS, the Commission is not yet satisfied that Monadnock does not have in-state competitors who would be disadvantaged were Monadnock to receive a discounted rate; and

WHEREAS, upon review of the filing and Staff's recommendation, the Commission finds that Monadnock appears to have a viable alternative energy source; and

WHEREAS, absent any deleterious effects on potential competitors, Special Contract NHPUC-96 between Public Service Company of New Hampshire and Monadnock Paper Mills, Inc. is in the public interest; it is hereby

ORDERED *Nisi*, that Special Contract No. NHPUC-96 is approved as filed effective October 20, 1994 unless the Commission orders otherwise in Supplemental order issued prior thereto; and it is

FURTHER ORDERED, that before the effective date of this Order *Nisi*, PSNH file with the Commission confirmation from the Department of Resources and Economic Development (DRED) that Monadnock has no competitors in New Hampshire; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-96, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rates afforded Monadnock in Special Contract No. NHPUC-96; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, PSNH notify all persons desiring to be heard by causing an attested copy of this order to be published once in a

statewide newspaper of general circulation, such publication to be no later than October 3, 1994 and documented by affidavit filed with this office on or before Oct. 17, 1994; 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 17, 1994.

By order of the New Hampshire Public Utilities Commission this twentieth day of September, 1994.

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NH.PUC*09/20/94*[70635]*79 NH PUC 517*Public Service Company of New Hampshire

[Go to End of 70635]

79 NH PUC 517

Re Public Service Company of New Hampshire

DR 93-237

Order No. 21,366

New Hampshire Public Utilities Commission

September 20, 1994

ORDER adopting a settlement agreement as to an electric utility's 1994 conservation and load management (C&LM) programs, providing for a budget of \$2.6 million and continuation of all existing C&LM projects except the state facility demonstration project. Also, new educational and energy crafted home programs are established. The utility is warned about its chronic underspending of C&LM funds, and therefore is ordered to accrue interest on unspent C&LM monies. It also is warned about implementing C&LM programs without prior commission approval, although it is allowed to recover the costs of one such unapproved program (for residential home conservation), given the success of the plan. The commission defers ruling on the necessity of allocating to C&LM activities any savings stemming from renegotiated hydropower purchase contracts, but states that it is leaning against such a requirement.

1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Adoption of annual budget — Components — Continuation of existing projects — Introduction of new educational and energy crafted home programs — Recovery of lost fixed cost revenues — Settlement. p. 518.

2. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Effect of failure to meet goals — Impact of underspending — Accrual of interest on unspent funds — No allocation of unspent funds to shareholders. p. 521.

3. CONSERVATION, § 1

[N.H.] Conservation and load management (C&LM) programs — Electric utility — Effect of renegotiated hydropower purchase contracts — Allocation of associated savings to C&LM activities — Deferral of ruling. p. 522.

4. ELECTRICITY, § 5

[N.H.] Hydropower operations — Renegotiation of hydro purchase contracts — Allocation of associated savings — To conservation and load management programs — Electric utility — Deferral of ruling. p. 522.

5. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Program components — Necessity of commission approval — Impact on cost recovery of failure to obtain approval. p. 522.

6. EXPENSES, § 19

[N.H.] Conservation and load management programs — Electric utility — Residential energy conservation program — Authorization for cost recovery — Despite no preapproval for program — Factors — Significant success of program. p. 522.

APPEARANCES: Catherine E. Shively, Esq. on behalf of Public Service Company of New Hampshire; Michael W. Holmes, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; Robert J. Frank, Esq. and George McCluskey on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

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REPORT

I. PROCEDURAL HISTORY

Public Service Company of New Hampshire (PSNH) filed its proposed 1994 Conservation and Load Management (C&LM) Program and Budget on December 1, 1993. Thereafter we issued Order No. 21,189 which approved a procedural schedule and granted requests for intervention filed by the Conservation Law Foundation (CLF) and George E. Sansoucy (Sansoucy).

The Office of Consumer Advocate (OCA) pre-filed the testimony of Kenneth E. Traum, as did Staff in the form of joint testimony of George R. McCluskey, John C. Cutting and James J. Cunningham, Jr. PSNH, CLF and Sansoucy filed no testimony prior to the final hearing.

During the final hearing held on July 1, 1994 the parties presented a settlement agreement executed by PSNH, OCA and the Staff. The Agreement left unresolved three specified issues which will be addressed below. Although the Agreement was not filed prior to the hearing, CLF filed written comments regarding the same on June 30, 1994. Neither CLF nor intervenor Sansoucy appeared at the final hearing.

At the final hearing PSNH presented oral testimony from Michael Townsley, Manager of Demand Program Planning for Northeast Utilities (NU), Richard Soderman, Manager of Regulatory Planning for NU, and Gary Long, Vice President of Customer Service and Economic Development for PSNH. Staff called one witness, George McCluskey, who is the Staff Manager of Energy Planning in the Economics Department of the Commission. The OCA offered the testimony of Kenneth Traum who is the Finance Director for that office. The hearing addressed the partial settlement as well as the issues left unresolved by the same.

II. SETTLEMENT AGREEMENT

As stated above, the Staff and parties have settled all but three issues raised in this proceeding. The Settlement Agreement (attached hereto as Exhibit A) discusses in detail the various components of PSNH's C&LM activities. We will highlight the issues addressed in the Settlement and then consider the unresolved issues which were the subject of the final hearing.

[1] The Settlement provides a general stipulation that PSNH will continue to implement all of its 1993 C&LM programs with the exception of the State Facility Demonstration Project.¹⁽³¹⁾ New program offerings in 1994 include the Energy Crafted Home Program and funding for several C&LM educational programs. Descriptions and proposed budgets for all 1994 programs are included in the Agreement.

The Agreement acknowledges a base budget for 1994 C&LM expenditures of \$2.6 million. This amount was approved as part of the Settlement Agreement and order approving the same in PSNH's most recent Least Cost Integrated Planning docket (DE 92-080). In that proceeding, funding for 1994 and 1995 C&LM activities was set at \$2.6 million or greater per year as long as these expenditures did not cause a base rate increase.

With respect to recovery of lost fixed cost revenues (LFCR) for vulnerable customers who participate in the Energy Service Program (ESP), the Agreement proposes the following terms:

- (a) PSNH shall not seek recovery of LFCR for the one 1993 vulnerable customer (i.e., Papertech) since no energy conservation measures have been installed to date;
- (b) PSNH shall not charge vulnerable customer LFCR against the C&LM balance without prior Commission approval; and
- (c) Tracking and reporting vulnerable customer LFCR shall not be considered a charge against the C&LM balance.

Beginning in 1995, PSNH shall have LFCR recovery from non-vulnerable ESP customers contingent upon the implementation of evaluation studies to verify energy and demand savings estimates. During the interim period, however, PSNH may utilize studies performed by its affiliated companies in other jurisdictions to support its LFCR claims.

We also take note that a 50 percent rebate

component has been added to the ESP program, and that PSNH is free to offer this program component to vulnerable customers.

III. UNRESOLVED ISSUES AND POSITIONS OF THE PARTIES

The Parties were unable to agree on the following issues:

(a) whether interest should be applied to the unspent monthly balances during the period May 16, 1991 through December 31, 1993 and subsequent months;

(b) what portion, if any, of the savings resulting from renegotiation of hydro power contracts should be earmarked for C&LM; and

(c) whether PSNH is entitled to recover funds spent in 1993 (\$60,742) on the Residential Home Energy Conservation Program (RHECP).

A. Interest on Unspent Funds

i. PSNH

PSNH opposes the application of any interest on unspent C&LM funds, contending that it is contrary to the provisions of the Rate Agreement approved in DE 89-244 and the settlements approved by the Commission in DE 92-028 and DE 92-080. Because the Rate Agreement established a funding mechanism for C&LM activity through ongoing collections via customer rates, PSNH asserts that it would be inappropriate to apply interest to unspent funds. As Mr. Soderman testified, PSNH contends that because the funding mechanism established by the Rate Agreement and in the subsequent C&LM proceeding (DE 92-028) does not provide for interest, it would be inappropriate to apply interest retroactively. PSNH contends that the application of interest now would be inconsistent with the Rate Agreement and previous settlements which were approved by the Commission. In his testimony, Mr. Soderman contrasted C&LM funding with FPPAC procedures, pointing out that FPPAC specifically includes interest on over or underrecoveries.

PSNH specifically points to the unspent C&LM balances which were calculated in DE 92-028 and DE 92-080 and which did not include interest. Mr. Soderman testified that during those proceedings it was clear that interest was not part of the funding mechanism established in the Rate Agreement.

PSNH also argues that the Commission would be engaging in retroactive ratemaking if it applied interest to unspent C&LM funds in this proceeding.

If the Commission does apply interest, PSNH contends that the appropriate rate is the prime rate which was recently agreed to in the Customer Deposit Rules. According to PSNH, any interest application which the Commission orders should be applied only to 1994 expenditure levels and not to any previously unspent balances.

ii. OCA

OCA contends that interest should accrue on all amounts underspent beyond the amounts acknowledged by the parties in DE 92-028, and after December 31, 1993 interest should accrue on the total underspending. OCA asserts that the appropriate interest rate is the consumer discount rate (or credit card rate).

At the final hearing, Kenneth Traum testified on behalf of OCA, stating that interest should be applied in order to make ratepayers whole. He observed that the unspent C&LM funds were

obtained through base rates, and ratepayers have not been provided with the benefits of the expenditures to which PSNH had previously committed. As further justification for applying interest, Mr. Traum pointed out that the underspending was under PSNH's control, not the ratepayers, and therefore PSNH should not benefit from its underspending.

OCA contends that the consumer discount rate or credit card interest rate should be applied to the accumulated balance because this rate would make ratepayers whole while penalizing PSNH for underspending its committed C&LM funds.

iii. Staff

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Staff takes the position that interest should be applied to all monthly unspent C&LM balances beginning in May 1991 through December 31, 1993. Staff calculates interest by applying each month's prime rate to the total unspent monthly balances during that period. By accruing interest in this manner Staff calculates a fund balance available for the 1994 C&LM budget²⁽³²⁾. The result of this calculation is a 1993 ending balance of \$2,837,929 which differs by \$222,116 from PSNH's calculated balance of \$2,615,813.

Staff contends that the intent of the Joint Recommendation which was approved in DE 89-244 was to establish a methodology whereby PSNH would match its C&LM monthly expenditures to revenues received from customers until reaching the agreed upon annual total of \$1.167 million (which increased annually at a rate of 5.5 percent per year for 7 years). At the final hearing Mr. McCluskey testified that this stipulated funding level was "paltry for a company the size of PSNH," and that NU has "incredible expertise" in the C&LM area - expertise which was available to PSNH through its affiliation with NU. Staff attributes PSNH's failure to achieve its spending level to a lack of effort on the part of PSNH to comply with its commitment to institute C&LM programs despite having the capability to do so.

Staff introduced an exhibit during the final hearing which indicates that PSNH in fact dramatically underspent its C&LM funds during the period in question. For instance, during the period of May 16, 1991 through the end of 1991 PSNH spent only 32 percent of the funds available for C&LM programs. In 1992 only 18 percent of available funds were utilized. Overall, for the time period in question PSNH only spent 28 percent of its available C&LM funds. Underspending occurred in all but one month during the period in question.

In response to PSNH's contention that the issue of interest had been addressed in previous proceedings, Staff countered that the Settlement Agreement in DE 92-028 only addressed interest on C&LM funds available and did not consider the possibility that those funds would be greatly underspent. Staff therefore contends that interest should be applied to the unspent monthly balances beginning in May 1991 and continuing through December 1993.

B. Hydro Savings

i. PSNH

PSNH asserts that no funds saved from renegotiating the Hydro contracts should be earmarked for C&LM. It takes the position that based upon the current need for savings in FPPAC, no savings associated with these contracts should be allocated to C&LM. According to

PSNH any reallocation of the existing FPPAC rate will result in a underrecovery which will impact future FPPAC calculations. (Tr. at 44).

ii. OCA

OCA supports the PSNH position that any hydro savings resulting from renegotiated contracts should continue to flow through FPPAC as a benefit to ratepayers. However, if in the future the pressure on rates declines and PSNH demonstrates that it can efficiently administer higher C&LM budgets, OCA argues that the issue of hydro savings should be reexamined.

iii. Staff

Staff takes the position that 25 percent of the hydro savings should be used to fund C&LM activity. Mr. McCluskey testified that the parties in the 1992 least cost planning process agreed to increased levels of C&LM expenditures (i.e., \$2.6 million in 1994 and 1995). In order to reach those spending levels, Staff contends that funds must be made available. Hydro savings were identified in DE 92-080 as a source of available funds outside the annual 5.5 percent rate escalations.

Mr. McCluskey further testified that to the extent that these savings are not approved for C&LM, it will be difficult for PSNH to sustain the \$2.6 million budget level. He further indicated that a major beneficiary of these funds will be industrial customers who are served through the Energy Service Program (ESP). Staff contends that twenty-five (25) percent of

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the hydro savings is a reasonable sum to earmark for C&LM programs.

C. Recovery of RHECP Costs

i. PSNH

PSNH contends that although these funds were expended without Commission approval, the Commission should allow recovery because the opportunity to participate came about on short notice and the program provided a reasonably low cost and low risk means to enhance conservation efforts in the residential market. In light of New Dartmouth Bank's need for a quick decision, PSNH claims that the time required for standard regulatory approval would have precluded its participation in the program. Therefore, according to PSNH, denial of cost recovery would be a disincentive for PSNH to seek other similar opportunities in the future. (Tr. at 47-49.)

ii. OCA

OCA takes the position that allowing PSNH to recover retroactively the funds expended for an unapproved C&LM program would set a risky precedent for the Commission with respect to how future claims for similar treatment would be adjudicated. Therefore, OCA opposes cost recovery of the \$60,742 incurred by PSNH for implementation of RHECP.

iii. Staff

Staff supports PSNH's request to recover these program costs despite the fact that PSNH failed to seek prior Commission approval.

IV. COMMISSION ANALYSIS

A. Settlement Agreement

As noted above, the Settlement reflects agreement among the Staff and parties with regard to all but three enumerated issues. The Settlement reflects a comprehensive agreement with regard to the proposed C&LM programs and associated budget. We find the terms of the Settlement to be reasonable and in the public interest. We approve the C&LM programs and budgets as set forth in the Settlement and turn our attention to the unresolved issues.

B. Interest On Unspent C&LM Funds

[2] We will first review PSNH's past C&LM efforts in relation to this issue and discuss our expectations for future activity. It is evident from the Settlement Agreement in DE 89-244 that PSNH made a commitment to deliver C&LM programs up to the funding limits established in that proceeding. PSNH has failed to fulfill that commitment, and as a result ratepayers have been denied the full benefits of those C&LM expenditures. On average PSNH spent only 28% of its available C&LM funds since May 1991 (Tr at 126). Given PSNH's size and association with NU, we find it difficult to believe that PSNH was unable to spend its indisputably modest C&LM budget³⁽³³⁾. Although the parties to the Settlement Agreement in DE 89-244 may have anticipated some underspending for PSNH's C&LM activities, we do not believe that the existence of annual C&LM balances in excess of \$1.0 million for both 1992 and 1993 was contemplated by the parties or the Commission.

Moreover, the ratepayers' loss was PSNH's gain. During the final hearing Mr. Soderman testified that PSNH shareholders are entitled to retain the benefits of underspending C&LM funds. We disagree. The shareholders of PSNH should not benefit from the Company's failure to abide by the letter and spirit of previous settlements and Commission orders. We reject PSNH's position, that as a matter of principle, the benefits of underspending budgeted C&LM funds should accrue to its shareholders. We accept Staff's position that it is appropriate to accrue interest at the prime rate on unspent sums from the period of May 1991 through December 1993.

We also accept Staff's interpretation of the Settlement Agreement which we approved in DE 92-028. The section of that Agreement which PSNH claims is dispositive is contained within a provision that relates to *funding*; there

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is no reference to whether it may be appropriate at some juncture to apply interest on unspent funds. It is illogical to conclude that the Staff and parties reached such a comprehensive agreement with regard to the level and nature of C&LM activity if PSNH's performance was simply left to its own discretion. Therefore, we find that Staff did not waive any right to seek interest on unspent funds in proceedings subsequent to DE 92-028.

In sum, we find that the record adequately supports a finding that the underspending was substantially attributable to factors which were within the control of PSNH. As such, we believe the application of interest is appropriate in order to conform the current C&LM balance to account for sums which should have been expended to implement conservation measures which ultimately benefit ratepayers.

At this time we order the application of interest only to accumulated unspent funds through

December 31, 1993. However, we may revisit this issue with regard to current and future C&LM balances should PSNH fail to implement approved C&LM programs. We will apply the prime interest rate to the monthly C&LM underspent amounts through December 1993 as set forth in Exhibit 3 and accept the interest calculation contained therein. The total amount of interest in Exhibit 3 for the period May 16, 1991 through December 31, 1993 equals \$222,116. This amount will be added to the C&LM funds available for 1994 and beyond.

We also believe it is appropriate to express our expectations with regard to PSNH's future performance in this area. We expect that PSNH will diligently undertake to meet its 1994 C&LM goals, and to do so with a level of resolve that is concomitant with the expertise and resources available through its affiliation with NU. Our evaluation of PSNH's 1994 C&LM performance will focus on how the Company responds to our directive to provide, within the agreed budget, cost effective C&LM in a timely manner for all customer classes.

C. Hydro Savings

[3, 4] We are compelled to express a threshold concern that this issue was not noticed as part of this proceeding, and therefore we decline to address the hydro savings at this time. All the parties will have the opportunity to revisit this issue within the scope of the next FPPAC docket DR 94-172. Although we are reserving judgement on the merits of allocating any portion of the hydro savings to C&LM until a full record is developed, we want the parties to recognize that we are not inclined to apply these funds to C&LM. While we have not had an opportunity to explore this issue in depth, based on the current record we believe that these savings are better used to reduce rates through the FPPAC mechanism.

D. Cost Recovery For RHECP

[5, 6] It is clear that PSNH implemented this program without Commission approval and in doing so accepted the risk of being denied cost recovery. Clearly, the better tact would have been for PSNH to seek expedited consideration of this matter. In the future we expect PSNH or any other utility to bring such matters before the Commission if cost recovery is later sought.

Despite this omission, we are swayed by Staff's testimony relative to the success of the program and the fact that we are encouraging other utilities to adopt similar programs. We also commend PSNH on its effort to leverage a small C&LM budget with an alternative financing program. We will approve PSNH's request for full cost recovery in the amount of \$60,742, but we do so with some qualifications given OCA's legitimate concerns in opposition to PSNH's request.

Our approval for cost recovery in this proceeding should not be construed as a precedent for similar requests in the future by this or any other utility. The C&LM review process is designed to establish budget and program parameters. Therefore, regardless of program results or budget action, any decisions to deviate from approved parameters should be undertaken with the understanding that the risk of disallowance is real.

Our order will issue accordingly.

Upon consideration of the foregoing report, which is made a part hereof, it is hereby ORDERED, that the proposed Settlement Agreement is just and reasonable and is hereby APPROVED; and it is

FURTHER ORDERED, that PSNH shall forthwith add to its C&LM budget for 1994 and beyond the sum of \$222,116; and it is

FURTHER ORDERED, that PSNH shall not be required to add to its C&LM budget any funds which have been saved as a result of the recently renegotiated hydro power contracts; and it is

FURTHER ORDERED, that PSNH shall be allowed cost recovery for amounts spent in 1993 on the Residential Home Energy Conservation Program.

By order of the New Hampshire Public Utilities Commission this twentieth day of September, 1994.

ATTACHMENT A
OFFER OF SETTLEMENT

This Offer of Settlement ("Settlement") is jointly sponsored by Public Service Company of New Hampshire ("PSNH" or "Company"), the Staff of the New Hampshire Public Utilities Commission ("Staff") and the Office of the Consumer Advocate ("OCA"), collectively referred to as the "Parties". The Conservation Law Foundation ("CLF") filed an intervention in the proceeding and participated in the May 9, 1994 Technical Session and the June 7, 1994 Settlement Conference. An additional party, George E. Sansoucy, filed an intervention in the proceeding, but did not participate in the May 9, 1994 Technical Session or the Settlement Conferences. If accepted by the Commission, this Settlement will significantly narrow the issues to be determined by the Commission following hearing in the PSNH 1994 Conservation and Load Management ("C&LM") Pre-Approval docket.

I. Background and Procedural History

During 1991, a number of parties representing various interests affected by PSNH's resource planning engaged in an informal collaborative review of potential C&LM strategies. The collaborative process was divided into two phases. The first phase examined the appropriateness of C&LM expenditures in excess of the base level included in the Rate Agreement, that is, \$1.167 million in 1989 dollars escalated annually at 5.5% during the fixed rate period. A majority of the parties to the Phase 1 process recommended: (1) staying within the rate path provided for in the Rate Agreement; and (2) re-examining programs and spending levels beyond 1992 in the context of PSNH's integrated least cost plan. The second phase addressed C&LM program design issues.

The parties to Phase II entered into a Settlement Agreement which was approved by the Commission by Order No. 20,626 in DE 92-028. The parties to the Settlement Agreement agreed that PSNH should pursue three programs, the Residential Low Income Conservation Program (RLICP), the Energy Service Program (ESP) for Large Commercial and Industrial customers and the State Facility Demonstration Project, agreed on program design and provided the Commission with an estimated eighteen month budget for the period July 1, 1992 through

December 31, 1993.

In PSNH's 1992 Least Cost Integrated Plan ("LCIP") proceeding, DE 92-080, the parties entered into a Settlement Agreement, and agreed that for the years 1994 and 1995 PSNH would fund C&LM activities at a level of \$2.6 million or greater as long as these C&LM expenditures would not cause a base-rate increase. The parties also agreed that in addition to funds from existing sources, the parties would recommend to the Commission the use of (i) 80% of the proceeds from the sales of surplus sulfur dioxide (SO₂) allowances; (ii) 25% of the net savings resulting from the Business Finance Authority refinancing of PSNH taxable debt from tax-exempt pollution control bonds; and (iii) a portion of any savings generated from negotiations with hydro producers, with the savings portion to be determined by the Commission when results are submitted for approval. Each party reserved its right to recommend to

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the Commission what it considers to be an appropriate portion.

In order to utilize the available C&LM funds to facilitate the maximum C&LM investment, PSNH agreed in DE 92-080 to pursue the addition of a financing/leasing component to the ESP in 1994. The financing/leasing component will offer customers an interest rate buy-down for qualifying energy efficiency measures identified through ESP. PSNH also agreed that it would only request recovery of Lost Fixed Cost Revenues for vulnerable customers on a case-by-case basis.

On December 1, 1993, PSNH filed its proposed 1994 C&LM Pre-Approval filing with the Commission, proposing three separate residential programs, one commercial and industrial ("C&I") program and one educational program for a total cost of \$2.669 million for the 1994 program year. The three proposed residential programs were: (1) Residential low Income Conservation Program (RLICP); (2) Residential Home Energy Conservation Program (RHECP) and (3) Energy Crafted Home Program (ECH). The proposed C&I program was the Energy Services Program (ESP). The proposed educational program was the "Savings Through Energy Management" (STEM).

The Commission held a duly noticed pre-hearing conference in this docket on April 8, 1994, at which time the procedural schedule was established. On May 9, 1994 the parties participated in a technical session and the OCA and Staff submitted testimony on May 26 and 27 respectively.

On June 7, 1994, the Company, Staff, OCA and CLF participated in a settlement conference, at which they agreed to pursue partial settlement of the issues in this case and to that end scheduled an additional settlement conference on June 15, 1994. The hearing was continued and an additional settlement conference was held on June 22, 1994. This Partial Settlement Agreement represents the results of those discussions.

II. Positions of the Parties

A. Staff's Position

Staff made several recommendations in its testimony. First, Staff disagreed with the Company's contention that the accumulated unspent C&LM funds as of December 31, 1993 was

\$2.685 million. Instead, Staff believed the correct figure should include funds available for 1990 and accumulated interest which equals \$4.986 million. When that amount is added to the base level of C&LM funding plus the funds available from debt refinancing, the sale of surplus SO₂ allowances and the renegotiation of hydro power contracts, Staff contended \$8.745 million was available for the 1994 and 1995 program years. As a result of discussions among the parties, Staff has agreed not to request use of the funds earmarked for 1990. Accordingly, Staff now believes the accumulated underspending as of December 31, 1993 is \$2,837,929 million, and the total funds available for 1994/1995 is \$6.54 million. Second, Staff expressed concern about the Company's performance in achieving commission approved C&LM spending goals. Third, Staff recommended that the Company be allowed to recover the cost of implementing a pilot residential loan program involving New Dartmouth Bank. Fourth, Staff recommended that the Commission approve a revised version of the Residential Home Energy Conservation Program, that is, a version that excludes measures that have no direct energy savings benefits. Fifth, Staff opposed recovery of LFCR for vulnerable customers⁴⁽³⁴⁾ (including Papertech, Inc.) and for non-vulnerable customers recommended that beginning 1995 recovery be made contingent on the development and approval of a method to verify the Company's energy savings projections. With regard to the direct C&LM costs incurred by PSNH in the Papertech case

⁵⁽³⁵⁾, Staff recommended that one half of those costs be denied. Sixth, Staff expressed concern that the financing/leasing component of ESP that the parties to DE 92-080 agreed would be available in 1994 is still under development. In light of that fact, Staff recommended that recovery of the independent consultant's cost to review the proposal be denied. Seventh, Staff opposed the Company's request for unlimited flexibility to pay some or all of the measure costs for select ESP customers. Finally, Staff was critical of the

Page 524

general lack of cost support for the proposed budget.

B. OCA's Position

The OCA testified that it supports maximum use of cost-effective C&LM resources within the 5.5% rate projections. The OCA went on to address five specific issues. First, the OCA recommended that 25% of the savings from the debt refinancing should be earmarked for C&LM as agreed in DR 92-080. Second, the OCA stressed the importance of maintaining a reasonably stable level of C&LM activity and argued that allocation of the available funds should continue as agreed in DE 92-028. Third, the OCA opposed the proposed suspension of two educational programs. Fourth, the OCA supported continuation of the RLICP with changed eligibility guidelines. Finally, the OCA recommended continuation of the New Dartmouth Bank loan program, but opposed retroactive recoupment of the pilot cost.

The OCA's position on the two unresolved issues for which we did not prefile testimony are: (1) Interest should be accrued in all amounts underspent beyond that agreed to by the parties in DE 92-028. Since those forecasted balances ended 12/31/93, after that date interest should be accrued on the total underspending. The interest rate should be the consumer discount rate or credit card rate in order to make ratepayers whole while penalizing PSNH for underspending. (2)

On the hydro savings, at this point in time the savings should continue to totally flow through FPPAC to immediately benefit ratepayers. In the future if pressure on rates declines and PSNH can efficiently handle higher C&LM spending levels, this issue should be revisited.

C. PSNH's Position

As noted above, PSNH initially proposed (1) continuation of the existing Residential Low Income Conservation Program and Energy Service Program with certain program modifications, (2) suspension of the State Facility Demonstration Project, (3) continuation of a pilot Residential Home Energy Conservation Loan Program implemented by PSNH during the fall of 1993, (4) addition of the existing "Savings through Energy Management" ("Stem") program to the C&LM budget to prevent suspension of the program due to budget cuts and suspension of the certain elementary education programs, and (5) addition of PSNH participation with the Governor's Office of Energy and Community Services in the Ecological Innovations Comfort System Home (EICSH), now referred to as the Energy Crafted Home (ECH), program.

PSNH's position regarding additional issues raised by Staff and OCA testimony is (1) C&LM spending by PSNH during the period January 1, 1990 through May 15, 1991 was considered by the parties in establishing the Net Accumulated C&LM balance of \$1,044,831 as of June 30, 1992 approved by the Commission in DE 92-028; it is PSNH's opinion that the settling parties in DE 92-028 agreed that no interest should accrue on the Net Accumulating C&LM balance (page 12 of the Settlement Agreement), and that the Net Accumulated C&LM balance as of December 31, 1993 (excluding any interest) is \$2,615,817; (2) the issue of the percentage of hydro savings to be allocated to C&LM was not noticed by the Commission as an issue in this docket or identified by the parties as an issue at the procedural hearing in the case, was raised in Staff's testimony and should not be heard in this case; (3) one hundred percent of direct costs for C&LM measures expended through the ESP program for Papertech should be recoverable, (4) recovery of LFCR for vulnerable customers should be decided by the Commission on a case by case basis based on the specific facts of each situation pursuant to the DE 92-080 Settlement Agreement; (5) the anticipated costs associated with consultant review of the ESP financing program should be chargeable to the C&LM balance.

III. Unresolved Issues

The Parties were unable to agree on the following issues:

- (a) Whether interest should be applied to

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the unspent monthly balances during the period May 16, 1991 through December 31, 1993 and subsequent months.

(b) The portion of the savings resulting from renegotiation of hydro power contracts that should be earmarked for C&LM. However, the parties have agreed that the issue can be addressed in this case and the parties recommend that the Commission take administrative notice of PSNH's testimony on this issue in Docket No. DR 94-002.

(c) Whether PSNH is entitled to recover amounts spend in 1993 on the Residential Home Energy Conservation Program.

IV. 1993 C&LM Expenditures and Proposed 1994 C&LM Programs

The parties agree that the 1993 costs as described below are properly chargeable as C&LM expenditures, and that during 1994 PSNH should pursue the C&LM programs described in its Pre-Approval filing as amended below.

A. 1993 C&LM Expenditures

PSNH expenditures for C&LM in 1993 totaled \$512,543, including total direct program costs of \$112,499 for the RLICP, \$60,742 for the RECP, \$141,264 for the ESP, \$116,902 for the SFDP, and \$67,430 for general administration expense and \$13,706 for lost fixed cost revenue. PSNH's 1993 C&LM expenditures are set forth on Exhibit A, attached hereto.

B. Residential Low Income Conservation Program

The RLICP was originally designed to encourage cost-effective, electric, energy conservation improvements in the low income, residential sector for space heat customers. As originally designed, PSNH anticipated serving about 450 customers annually via RLICP. Of the 498 customers that received energy audits in 1993 only about 200 had measures installed. Virtually all of the remaining customers visited in 1993 had measures installed in the first quarter of 1994. The parties agree that the \$117,860 expended on RLICP in 1993 (including \$5,361 of LFCR) should be charged to the C&LM account.

The parties agree to drop the phrase "Low Income" from the name of the program, as customer contacts have found the existing name to be a deterrent to program acceptance, and expand the target market to include high use customers. Target participation for this program in 1994 shall be 450 low income customers, comprised of 315 single-family dwelling units and 135 multi-family dwelling units, and 190 high use customers. The estimated average cost of providing installation services to low income customers is approximately \$650, and the estimated average cost of providing service to high use customers is approximately \$850. During 1994, PSNH will monitor the amount expended per dwelling to insure that the percentage of customers receiving installation services costing in excess of \$1,500 remains at levels substantially similar to that experienced during 1993 and early 1994 (i.e., approximately 3%).

PSNH and the OCA have agreed to investigate adoption and use of modified low income guidelines for low income program eligibility. Income guidelines for federally subsidized housing take into account extraordinary expenses experienced by medically and physically challenged persons, and PSNH and the OCA believe that such guidelines might be easily adapted for use in the Residential Home Energy Conservation Program. Until modification of existing program guidelines is approved by the parties and/or the Commission, PSNH and the OCA will cooperate to expand current program notification to include medically and physically challenged persons that may not be aware of their eligibility under existing program criteria. The parties understand and agree consent to investigation of program criteria changes shall not affect their right to take a position for or against any proposed changes to program eligibility criteria when such investigation is complete.

The estimated total 1994 budget for the revised program is \$675,000 comprised of \$66,000 PSNH labor; \$3,000 NUSCO labor; \$492,000 outside services (including \$25,000

for software development); and \$114,000 of LFCR attributable to measures installed in 1993 and 1994. Estimated 1994 budget totals for the Residential Low Income Conservation Program are set forth on Exhibit B, attached hereto.

C. Residential Home Energy Conservation Program

The Residential Home Energy Conservation Program (RHECP) was initiated by PSNH and the New Dartmouth Bank as a pilot loan program in October, 1993. The program provided energy conservation loans at or slightly below market interest rates for PSNH power and light customers, and below market interest rates for PSNH electric space heating customers. Loans totaling \$1,175,971 were approved for a total cost to PSNH of \$60,742 including interest rate buydown costs. The Staff and PSNH agree that the pilot was successful and that the associated implementation cost should be charged to the C&LM account as a 1993 cost.

The parties also agree to continue the RHECP in 1994 but with a limited menu of eligible measures. Eligible measures for 1994 are insulation upgrades, air sealing, storm windows and doors, hot water conservation measures, thermostat upgrades and window repair and replacement, and other related expenses associated with the installation of such measures. Financing will also be available for the installation of cost-effective heat pumps for space and water heating, and space cooling. Financing for the installation of a heat pump is conditional on an energy audit which provides customer payback information. Non-subsidized program financing shall be allowed for electric thermal storage units (i.e. electrical thermal storage units shall not be eligible for an interest rate buydown). PSNH agrees to file with the Commission a full program description within seven days of reaching final written agreement with its financial partner in the program.

The target participation for this program in 1994 shall be 287 single-family home space heat customers and 135 multi-family space heating units. PSNH shall conduct post-program process and impact analyses to attempt to address concerns regarding the cost-effectiveness of installed measures. The total cost of the 1994 program is estimated at \$170,000. The parties agree that in the absence of an approved method to evaluate the performance of installed measures, PSNH is precluded from requesting recovery of LFCR for this program. Estimated 1994 budget totals for the Residential Home Energy Conservation Program are set forth on Exhibit B, attached hereto.

D. Energy Service Program

ESP was designed to overcome some of the traditional market barriers that have inhibited third party investment in energy conservation by offering qualifying customers technical energy conservation assistance and related coordination services. Customers participating in ESP receive: (1) a Preliminary Facility Evaluation (PFE) free of charge; (2) a detailed Energy Analysis Survey provided by a Conservation Project Developer (CPD), with half of the cost paid by PSNH and half by the customer, with the customer's portion reimbursed if identified measures are installed; financial services provided by CPDs; PSNH assistance in the review, selection and implementation of proposed energy conservation measures; and review of installed measures by a Quality Assurance Contractor.

During 1993, PSNH arranged PFEs for thirteen customers for a total cost of \$141,264. To date, no energy conservation measures have been installed by customers as a result of this

program.

To encourage customer investment in conservation equipment, the parties agree to add a rebate component to the program. Conservation equipment rebates will be: (1) offered to all customers participating in the program on a first come first served basis; (2) PSNH will rebate the cost of the equipment to not less than a 1.5 year payback for manufacturing and not less than a 3 year payback for non-manufacturing; (3) rebates will not exceed 50% of the total cost of the conservation equipment; and (4) rebates will not exceed more than \$125,000 per customer per year, not to exceed \$200,000 per

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customer.

Additionally, PSNH has agreed to buydown the interest rates on loans offered by CPDs. This option is intended as an interim measure and may be withdrawn pending the availability of financing/leasing services from corporate arranged sources for ESP on or before September, 1994 as approved in DE 92-080. To be eligible for the buydown, CPDs must submit bids separating design, installation and financing services. In addition the buydown will be limited similarly to the rebates described above, that is, (1) the buydown will be offered to all customers on a first come, first served basis; (2) PSNH will buydown the interest rate to not less than a 1.5 year payback for manufacturing and not less than a 3 year payback for non-manufacturing; (3) the buydown will not exceed 50% of the total cost of the conservation equipment; and (4) the buydown will not exceed more than \$50,000 per customer.

The total 1994 budget for ESP is \$1,451,000 including: \$149,000 for PSNH labor; \$68,000 for NUSCO services; \$105,000 for Energy Analysis Surveys (EAS); \$163,000 for quality assurance review of PFEs, EASs and review of Energy Audits; \$56,000 for inspection of completed energy conservation projects; \$20,000 for collaborative consulting services; \$16,000 for education; \$754,000 for equipment rebates; \$135,000 for interest rate buydowns; and \$75,000 for LFCR. Estimated 1994 budget totals for the Energy Service Program are set forth on exhibit B, attached hereto.

E. State Facility Demonstration Project

PSNH completed the first State Facility Demonstration Project at the New Hampshire Technical College during 1993 at a cost \$116,902. Lost fixed cost recovery associated with the project for the period ending December 31, 1993 totaled \$8,345. Since no other state facility agreed to host the second demonstration project, the parties agreed to terminate the program and return unused funds to the RLICP and ESP in the ratio of 38% and 62% respectively as agreed in the DE 92-028 Settlement Agreement. For 1994, \$12,000 of LFCR associated with State Facility Demonstration project measures installed in 1993 is budgeted.

F. Energy Crafted Home Program

The ECH program will replace the Ecological Innovations Comfort System Home (EICSH) program that was initially proposed for 1994. The Energy Crafted Home program is a new program for 1994. The Governor's Office of Energy and Community Services ("ECS") is seeking the assistance of utilities and other groups to bring the Energy Crafted Home to New Hampshire.

PSNH proposes to cooperate with ECS to assist with start-up of a statewide Energy Crafted Home program in New Hampshire, with overall program administration to be provided by ECS.

The Energy Crafted Home Program facilitates the construction of homes incorporating the latest energy efficiency technology. Builders attend a two day workshop where qualified trainers provide instruction regarding Energy Crafted Home construction, including framing, insulation, lighting, mechanical systems, moisture control, windows and house siting. Builders must also attend a one day ventilation workshop. Participants receive a manual to use as a reference tool in the building process, and software to assist builders in designing an Energy Crafted Home is also available.

After completion of the course builders are eligible to plan and construct an Energy Crafted Home. Plans will be required to meet certain standards, and will be certified by ECS or its subcontractor. Two visual inspections of construction are required, followed by a final inspection that includes a blower door and ventilation test. Building plan certification and on-site inspections will be paid for by the builder. Certified buildings constructed by a qualified builder may advertise as an Energy Crafted Home and information aids and promotional material are available to help builders promote and sell Energy Crafted Homes.

Energy Crafted Home grants will be provided for the construction of homes by the New Hampshire Technical Institute students or in other similar educational circumstances which will maximize community exposure to Energy Crafted Home requirements, goals and results;

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for Habitat for Humanity home construction; and in other similar circumstances designed to maximize the program exposure. It is estimated that the amount budgeted for this activity will be sufficient to support construction of six Energy Crafted Homes. PSNH is not seeking LFCR for these homes but reserves the right to raise this issue in the future if program activity is expanded. Staff opposes recovery of LFCR for this program.

For 1994, the parties agree on an Energy Crafted Home total budget of \$53,000. Of this amount, \$17,000 is anticipated for promotion and advertising of the Energy Crafted Home program, including development of a video, brochure, data base and the presentation of seminars and other similar educational programs. Approximately \$36,000 will be spent to promote the Energy Crafted Home program via grants to builders to cover the incremental cost of building new model homes to energy crafted specifications.

G. Conservation and Load Management Educational Programs

During 1994 PSNH will deliver several educational programs including, the elementary school teacher consultant "Conservation" program, the "Savings Through Energy Management" ("STEM") program, the High School Lesson program, the Scouting program, conservation literature distribution, and maintenance of a conservation film and video library. PSNH is proposing to suspend the elementary school teacher "Conservation" program and the STEM program after 1994. The 1994 budget for those two programs is \$17,000 and \$10,000 respectively.

H. 1994 Budget Summary

PSNH C&LM expenditures budgeted for 1994 total \$2.6 million, including total program costs of \$561,000 for the RCP, \$170,000 for the RHECP, \$1,466,000 for the ESP, \$27,000 for educational programs, \$53,000 for the EICH, \$122,000 for general administration expense and \$201,000 for lost fixed cost revenue. PSNH's budgeted 1994 C&LM expenditures are set forth on Exhibit B, attached hereto.

V. Recovery of Lost Fixed Cost Revenues

In DE 92-080, PSNH agreed that in regard to vulnerable customers it would only request recovery of LFCR on a case-by-case basis depending on the circumstances associated with each customer's situation. PSNH states that with the exception of Papertech none of the ESP customers served in 1993 or targeted for service in 1994 currently qualify as a vulnerable customer. The Company has agreed not to seek recovery of LFCR associated with Papertech at this time as no measures have been installed by Papertech to date, and therefore the issue is not ripe for Commission decision. The parties agree with PSNH will not charge vulnerable customer LFCR against the C&LM balance without prior Commission approval. Tracking and reporting vulnerable customer LFCR shall not be considered a charge against the C&LM balance.

With regard to the recovery of LFCR from other ESP customers and Staff's recommendation that beginning 1995 such recovery be made conditional on the implementation of evaluation studies to verify the engineering estimates of kW and kWh savings, the parties agree that PSNH can utilize data from evaluation studies performed by its affiliated operating companies in Massachusetts and Connecticut. Prior to the submission of the 1995 pre-approval filing Staff and the Company will meet to discuss the nature of the information to support the recovery of LFCR.

VI. PSNH 1995 C&LM Pre-approval Filing

The PSNH 1995 C&LM Pre-Approval filing will be filed with the Commission on or before October 1, 1994.

VII. Miscellaneous Provisions

1. Except as expressly stated herein, the making of this Settlement establishes no principles or precedent and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation affecting the Company.

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2. This Settlement is the product of settlement negotiations. The content of those negotiations shall be confidential and for the sole purpose of promoting settlement and all previous and/or draft offers of settlement shall be without prejudice to the position of any party or participant presenting such offer.

3. This Settlement is submitted on the condition that it be approved in full by the Commission and on the condition that if the Commission does not approve the Settlement in its entirety, the Settlement shall be deemed withdrawn and shall not constitute a part of the record in this or any proceeding or be used for any purpose.

4. This Settlement Agreement shall be binding upon all parties and customers who are either signatories to this Agreement or have not entered an objection to it.

5. This Settlement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed an original thereof for all purposes, but all such counterparts shall together constitute but one and the same instrument.

July 1, 1994

Respectfully Submitted,

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE
Catherine E. Shively
Senior Counsel

NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION STAFF
Robert J. Frank
Staff Attorney

STATE OF NEW HAMPSHIRE
OFFICE OF THE CONSUMER ADVOCATE
Kenneth E. Traum
Finance Director

See Commission Files For Exhibit A & Exhibit B

FOOTNOTES

¹This project was terminated due to the lack of an available demonstration facility.

²We note that Staff's calculations with regard to the unspent C&LM balance (before interest) which was available for the period ending December 31, 1993 is virtually identical to that of PSNH which is reflected in Exhibit 2. As such, we accept Staff's calculation reflected in Exhibit 3.

³We do not accept PSNH's contention that it needed the entire time period in question to establish infrastructure. PSNH's own witness in DE 92-028 testified that PSNH's affiliation with NU would result in PSNH "taking full advantage of the experience and the resources that NUSCO now brings to the C&LM activity."

DE 92-028, Transcript p. 53. Thus, the record does not support PSNH's contention regarding the need for time to spend its C&LM budget.

⁴Vulnerable customers are defined in the Settlement Agreement to DE 92-080 as those for whom PSNH petitions the Commission for approval of special contracts.

⁵See Report and Order No. 21,030.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 92-028, Order No. 20,626, 77 NH PUC 607, Oct. 9, 1992. [N.H.] Re Public Service Co. of New Hampshire, DR 93-162, Order No.

21,030, 78 NH PUC 672, Nov. 8, 1993.

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NH.PUC*09/23/94*[70636]*79 NH PUC 531*White Rock Water Company, Inc.

[Go to End of 70636]

79 NH PUC 531

Re White Rock Water Company, Inc.

DR 94-139

Order No. 21,367

New Hampshire Public Utilities Commission

September 23, 1994

ORDER suspending a water utility's proposal for a 37% increase in rates, to allow for proper investigation.

1. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed rate increase — To allow for adequate investigatory period — Water utility. p. 531.

BY THE COMMISSION:

ORDER

[1] On August 29, 1994 White Rock Water Co., Inc. (White Rock) filed proposed rate schedules and supporting documentation which if approved would result in a 37% increase over its present annual revenues; and

WHEREAS, White Rock amended its filing on September 21, 1994, in compliance with N.H. Admin. Rule Puc 1603.03(b); and

WHEREAS, the proposed tariff page pertaining to White Rock's permanent rate increase is proposed for effect on September 28, 1994; and

WHEREAS, a thorough investigation is necessary prior to rendering a decision thereon; it is hereby

ORDERED, that White Rock Water Company, Inc. NHPUC No. 1 Water Tariff Seventh Revised Page No. 17 is hereby suspended.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1994.

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[Go to End of 70637]

79 NH PUC 531

Re Public Service Company of New Hampshire

DR 93-179

Order No. 21,368

New Hampshire Public Utilities Commission

September 23, 1994

ORDER approving renegotiated rate agreements between an electric utility and two wood-fired biomass independent power producers (IPPs), Bristol Energy Corporation and TIMCO, Inc. The renegotiated agreements essentially are buyouts of long-term rate orders, with a mitigation fund established in case the IPPs can find no other market for their output and cease operations. Associated ratepayer savings are expected to reach \$60 million, and the commission determines that the utility used its "best efforts" in renegotiation, as required by prior order.

1. COGENERATION, § 17

[N.H.] Contracts — Long-term agreements — Modification and renegotiation — Buyout of long-term rate orders — Settlement — Wood-fired biomass independent power producers. p. 537.

2. COGENERATION, § 17

[N.H.] Contracts — Long-term agreements — Modification and renegotiation — Buyout of long-term rate orders — Terms and conditions — Permission for continued operation and marketing of output — Establishment of mitigation fund — For retraining of plant employees in case of cessation — No recovery of carrying charges — Passing through of associated savings to ratepayers — Resolution of property tax

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liabilities — Wood-fired biomass independent power producers. p. 537.

3. ELECTRICITY, § 4

[N.H.] Operating practices — Least-cost planning — Wood-fired biomass plant — Purchases from independent power producers — Renegotiated rate agreements — Buyout of long-term rate orders. p. 537.

APPEARANCES: Full intervenors: Rath, Young, Pignatelli and Oyer by M. Curtis Whittaker,

Esq. and Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; D. Dickenson Henry, Jr. for Audubon Society of New Hampshire; Jeanne M. Sole, Esq. for Conservation Law Foundation; Broderick and Dean by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Kenneth A. Colburn for Business and Industry Association; Richard C. Walker for Town of Springfield, New Hampshire; Michael B. Jenish for PREMCO, Inc.; Robert Berti for North Country Procurement, Inc.; Brown, Olson and Wilson by Robert A. Olson, Esq., Daniel W. Allegretti, Esq., and Paul A. Savage, Esq. for Bristol Energy Corporation and TIMCO, Inc.; Office of Consumer Advocate by James R. Anderson, Esq. on behalf of residential ratepayers; Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

Limited intervenors: David J. Saggau, Esq. for Granite State Electric Company; Backus, Meyer and Solomon by Robert A. Backus, Esq. for Campaign for Ratepayers Rights; David L. Harrigan, Esq. for Society for the Protection of New Hampshire Forests; Orr and Reno by David W. Marshall, Esq. for New Hampshire Timberland Owners Association (limited intervenor for all but mitigation fund issues).

BY THE COMMISSION:

I. PROCEDURAL HISTORY

The Public Utilities Commission (Commission) on October 15, 1993 issued an order of notice initiating a docket to consider the status of negotiations between Public Service Company of New Hampshire (PSNH) and thirteen small power producers. The docket is the result of a provision within the Rate Agreement between Northeast Utilities Service Company and the State of New Hampshire, as defined in RSA 362-C:2 I (Rate Agreement), and as accepted by the Commission in DR 89-244, *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 4th 385 (1990), under which Northeast Utilities is required to use its best efforts to renegotiate the rate orders of the following thirteen small power producers: Briar Hydro/Essex Hydro, Errol Dam, Greggs Falls, Pembroke Hydro, Penacook Upper Falls (the five hydropower Independent Power Producers (IPPs)), Bristol Energy Corporation, Bio-Energy Corporation, Bridgewater Steam Power, TIMCO, Inc., Hemphill Power and Light, Bethlehem Pinetree Power, Tamworth Pinetree Power, and Whitefield Power (the eight woodburning IPPs) (collectively the IPPs).

At a hearing held on November 3, 1993, the Commission granted the following requests for intervention: New Hampshire Timberland Owners Association (Timberland Owners), Society for the Protection of New Hampshire Forests (Forest Society), Audubon Society of New Hampshire (Audubon), New Hampshire Electric Cooperative, Inc. (NHEC), Campaign for Ratepayers Rights (CRR), Conservation Law Foundation (CLF), Business and Industry Association of New Hampshire (BIA), Town of Springfield, New Hampshire, Northeast Forest Users Coalition, Southern New Hampshire Resource Conservation and Development Area, PREMCO, Inc., North Country Procurement, Inc., and the Society of American Foresters, Granite State Division. Representative Beverly T. Rodeschin did not seek intervention but asked to be kept informed of the case by means of the service list. See Report and Order No. 21,037 (November 18, 1993). The eight woodburning IPPs were later made parties to the proceeding. Report and Order No. 21,058 (December 13, 1994). In Report and Order No. 21,089 (January 3, 1994), however, the five

hydropower IPPs were separated from this docket to be considered in Docket DR 94-002.

Though final executed contracts were due to be filed by December 23, 1993, on December 13, 1993, PSNH stated that it intended to request an extension of time in which to file the contracts under negotiation and on December 21, 1993 filed such a request. The Commission granted the request and ordered the contracts be filed no later than January 17, 1994. *See* Report and Order No. 21,089 (January 3, 1994). On December 23, 1994, PSNH did submit a draft contract used in negotiations with Bristol Energy Corporation (Bristol), TIMCO, Inc. (TIMCO), Bridgewater Power Company, L.P. (Bridgewater) and Bio-Energy Corporation (Bio-Energy). Ultimately the only woodburning IPPs reaching agreement were Bristol and TIMCO.

The Commission also created a separate docket, DR 94-002, to review new arrangements between PSNH and the 5 hydropower IPPs. Report and Order No. 21,089 (January 3, 1994) These new arrangements, which were approved in Report and Order No. 21,190 (April 19, 1994), modified the rates, terms and conditions under which PSNH purchases power from these hydropower IPPs.

Between November, 1993, and February, 1994, the Commission received recommendations regarding the scope of the docket from all parties and the Staff. The Commission established the scope of the docket and ordered a scheduling conference for April 4, 1994 to develop a schedule for the swift conclusion of the docket. Report and Order No. 21,173 (March 24, 1994). CRR and Timberland Owners sought reconsideration of the scope determination, which was denied. Report and Order No. 21,220 (May 10, 1994).

As a result of 1994 legislation, the Commission was precluded from taking any action with respect to the woodburning IPPs' rate orders, with the exception of review of the contracts already executed and filed regarding TIMCO and Bristol. *See* Senate Bill 790, now codified as Laws of 1994, Chapter 362, §13 effective June 8, 1994.

The Forest Society, on April 19, 1994, requested the appointment of a mediator, to which Bristol, TIMCO, Bridgewater and Bio-Energy objected. In light of the mediator provisions in Senate Bill 790, the Commission denied the request. Report and Order No. 21,234 (May 23, 1994). The Commission also accepted the representation of the settling woodburning IPPs that they were extending the date by which they would honor the contracts until October 1, 1994.

On May 6, 1994 PSNH filed direct testimony of William T. Frain, Jr., John W. Noyes, Joseph J. Staszowski and Dennis C. Delay. On June 27, 1994 testimony was filed by Timberland Owners' witness Charles Neibling, OCA's consultant Neil Talbot and Staff witnesses Thomas C. Frantz, Scott W. Harrold and George R. McCluskey filing jointly.

Subsequent to the passage of SB 790 the parties and Staff submitted a stipulation requesting a further narrowing of issues to be considered in this proceeding. On June 23, 1994 the Commission issued Order No. 21,278 accepting the stipulation of all the parties and Staff. The order also granted PSNH confidential treatment of the response to Staff Data Request 15.

Because of some confusion regarding the extent of the Commission's approval of the Stipulation of issues, the Commission clarified its approval, specifically noting its acceptance of

the factual issues agreed upon without further evidence. The Commission also dismissed the six non-settling woodburning IPPs from participation in this docket but stated its intent to open a new docket for consideration of these six rate orders. Order No. 21,297 (July 8, 1994).

On July 22, 1994, PSNH filed Rebuttal Testimony of John W. Noyes and a legal memorandum addressing the legal relevance of portions of Mr. Noyes' Testimony. Staff objected to those portions of Mr. Noyes' testimony related to PSNH's efforts in negotiations and filed a Motion to Preserve Documents related to PSNH's "best efforts" and a Motion to Strike Testimony, to which OCA and PSNH objected. Staff later requested withdrawal of the motions, as a result of further settlement discussions.

In an effort to structure the case and limit time in hearings spent on procedural matters, the Commission conducted a final prehearing conference on July 29, 1994. As a result,

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witness lists and statements of issues were filed by PSNH, GSEC, Bristol, TIMCO, Timberland Owners and Staff.

GSEC sought to change its status as limited intervenor to full intervenor on July 21, 1994, to which OCA, PSNH, Bristol and TIMCO objected in filings dated August 1, 1994. In Order No. 21,320 (August 15, 1994), the Commission denied the request of GSEC to change its status from limited intervenor to full intervenor. In that same Order, the Commission granted the requests of CRR, Forest Society and Timberland Owners to participate as limited intervenors for the duration of the docket, although Timberland Owners stated that it wished to remain a full party as to the issue of the mitigation fund described in the two contracts. The Commission also granted the requests of Southern NH Resources, Conservation and Development Area, Northeast Forest Users Coalition and the Granite State Division of the Society of American Foresters to withdraw. Order No. 21,320 also granted Staff's request to withdraw its Motions to Preserve Documents and to Strike Testimony.

After extensive settlement discussions, on August 4, 1994 PSNH filed a Joint Settlement signed by PSNH, OCA, Audubon, NHEC, Bristol, TIMCO and BIA. Staff did not support the Joint Settlement. Both the Forest Society and Timberland Owners reserved their rights to present their views on the Mitigation Fund proposals in the two contracts as modified by the Joint Settlement, however, neither party appeared at the hearing on the merits and the testimony of the Timberland Owners was never entered into evidence. On August 17, 1994 an Addendum to the Joint Settlement was filed, which was executed by the parties above as well as the Staff.

A hearing on the merits of the Joint Settlement and the Addendum thereto was held on August 18, 1994. As is set forth below, the Addendum to the Joint Settlement states that Staff will support any modifications to the Rate Agreement necessitated to effectuate the Joint Settlement and the Addendum. In response to this agreement by Staff to support any modifications to the Rate Agreement, the Commission questioned whether the Joint Settlement and the Addendum required a modification of the Rate Agreement. PSNH stated at the August 18, 1994 hearing that amendment was not necessary; Staff stated it was not certain as to whether the Rate Agreement authorized the treatment of certain savings as delineated in the Joint Settlement and the Addendum.

The Commission asked the parties and the New Hampshire Department of Justice (Attorney General's office), a signatory to the Rate Agreement, to file memoranda on whether the Rate Agreement had to be amended by August 29, 1994 (later extended to September 2, 1994 at the request of the Attorney General's office). On September 2, 1994, instead of filing a memorandum, PSNH submitted a draft of a *FIFTH AMENDMENT TO THE RATE AGREEMENT* (Fifth Amendment). In the cover letter PSNH indicated that the Fifth Amendment was subject to approval by its creditors.

On September 16, 1994 Northeast Utilities Service Company (NUSCO), PSNH's parent company, the other signatory to the Rate Agreement, and the Attorney General's office filed an executed copy of the Fifth Amendment for Commission consideration pursuant to Paragraph 17 of the Rate Agreement.¹⁽³⁶⁾

The Amendment provides, in pertinent part, that it modifies the Rate Agreement, to the "limited extent necessary to allow for the implementation of the [Settlement]...", it further provides, however, that the Amendment "shall not: (i) apply to, and may not be construed as authorizing or implementing, or as precedent with respect to, any other past or future transactions with any small power producers identified in the rate agreement." Fifth Amendment at 2, ¶2.

This report and order will address the agreements with Bristol and TIMCO, the Joint Settlement and the Addendum to the Joint Settlement, and the Fifth Amendment.

II. POSITIONS OF PARTIES AND STAFF

As set forth in the Procedural History, all of the parties and Staff entered into a settlement agreement addressing all of the issues to be resolved in this proceeding. We believe,

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however, that it is necessary to set forth the initial positions of the parties and Staff, as delineated in their prefiled testimony, in order to fully comprehend the settlement agreement. We will only set forth the positions of those parties who prefiled testimony which was subsequently placed into the record as an Exhibit at the August 18, 1994 hearing on the merits.

A. *Public Service Company of New Hampshire*

PSNH submitted the direct testimony of William T. Frain, Jr., President and Chief Operating Officer of PSNH, John W. Noyes, Vice President and Controller of PSNH and Northeast Utilities Service Company, Joseph J. Staszowski, Manager of Generation and Transmission Resource Planning for Northeast Utilities Service Company and Dennis C. Delay, Senior Economist for PSNH, and the rebuttal testimony of Mr. Noyes, Exhibits 3,4,5,6 and 9, respectively, in support of the proposed contracts.

Mr. Noyes, in his direct testimony, addressed in relevant part, three specific areas; 1) the current cost recovery methodology for the monies paid to the eight biomass plants under the Rate Agreement, 2) PSNH's efforts to renegotiate the rate orders of the eight biomass plants, and 3) an overview of the proposed contracts and PSNH's proposal for assignment of the savings and cost recovery from ratepayers resulting from the proposed contracts.

In summarizing the proposed contracts which would replace the rate orders, Mr. Noyes stated that PSNH would pay \$41.5 million to the two IPPs in exchange for the cancellation of the rate orders (the actual amount to be paid the two IPPs is dependent on the date the contracts are consummated). He further testified that the contracts would allow the IPPs to continue to operate, providing they were able to locate suitable purchasers of their electric output. If the plants are not able to operate, the contracts provide for the funding of mitigation funds to aid any displaced workers. The mitigation funds may also be used for the development of any new wood chip markets.

Mr. Noyes further testified that pursuant to the Rate Agreement, which provided for PSNH's emergence from bankruptcy, only a portion of the payments made to certain IPPs, including the two IPPs at issue herein, were to be recovered immediately from ratepayers via the semi-annual Fuel and Purchased Power Adjustment Clause (FPPAC). The remaining portion of the actual payments are deferred and amortized over a ten year period commencing with the subsequent FPPAC period until the end of the Fixed Rate Period (June 1, 1997), at which time additional deferrals will cease and the entire then-current payments made to the IPPs will be passed on to customers on a semi-annual basis.

He also testified that in order to provide an incentive to PSNH to renegotiate these rate orders, only 90% of the deferred amounts could be recovered from ratepayers. Based on this provision of the Rate Agreement, Mr. Noyes proposed conversely that PSNH receive 10% of the benefits of the contracts and that ratepayers receive 90% of the benefits of the contracts.

The savings estimated by Mr. Noyes under the contracts are \$125 million in nominal savings or a net present value of approximately \$59 million²⁽³⁷⁾. These calculations include replacement power costs, the issuance cost to raise the purchase price of \$41.5 million, the Company's contribution to the mitigation funds, and additional tax liabilities.

Mr. Noyes also requested that the Company and customers split the savings generated by the contracts after the Fixed Rate Period on a 50/50 basis with the Company's 50% of savings applied to reduce the deferral account.

Thus, Mr. Noyes requested the Commission find the proposed contracts in the public interest, approve the financing of the buyout costs, approve the Company's retention of 10% of the savings as calculated by the Company at \$1.4 million, terminate existing interconnection agreements with the IPPs, include buyout costs in the cost of the contracts and approve the "sharing" methodology proposed by the Company.

Mr. Staszowski testified relative to the cost of purchasing power from the two biomass plants under the rate orders in comparison to the cost of cancelling the rate orders and acquiring

the lost energy from existing, under-utilized Company-owned plants or power purchases. His analysis lays the foundation for the savings calculations in Mr. Noyes' testimony. That is, Mr. Staszowski testified that removing these two plants from the PSNH system would not lead it to incur any other costs, such as, increased operation and maintenance expenses or increased capital costs.

Mr. Delay testified that less than 50 individuals are directly employed by the plants. He further testified that increased economic activity resulting from a reduction in rates to PSNH's customers would outweigh any loss of jobs that may result from consummation of the contracts.

B. Office of the Consumer Advocate

The OCA submitted the testimony of Neil H. Talbot of the Tellus Institute, Exhibit 7.

Mr. Talbot addressed four major areas in his testimony, 1) the rate impact of the two contracts, 2) the economics of wood-fired power plants, 3) the economic impact of alternative contracts, and 4) factors not taken into account in PSNH's buyout evaluation.

In regard to ratepayer savings, Mr. Talbot estimated a savings of \$49.2 million present value dollars due to the buyouts, disregarding certain potential, unquantified factors which might reduce this amount set forth in the fourth section of his testimony.

Mr. Talbot went on to testify that he believed that the plants could operate profitably in the range of 5.0 to 6.6 cent/kWh, assuming an allowance for the recovery of depreciation and a 1.0 cent/kWh profit margin. Mr. Talbot went on to conclude, given the low prices available for energy in New England, that the plants could not operate profitably in the wholesale market.

In the third section of his testimony, Mr. Talbot testified relative to alternative means of reducing the costs of these IPPs to New Hampshire ratepayers such as buydowns rather than buyouts. He was not, however, able to reach any conclusions as the net benefits of such an arrangement based on the information available.³⁽³⁸⁾

In the final section of his testimony, Mr. Talbot testified relative to certain "factors not taken into account in this buyout evaluation". These factors included the "positive benefits of resource diversity ... economic and environmental 'externalities', environmental impacts, employment impacts, and effects on the wood industry and forest practices." Based on his analysis of these factors, Mr. Talbot concluded that the buyouts were not in the public interest as he believed these unquantified, intangible factors outweighed the benefits of reduced rates to ratepayers brought about by a "buyout" of the rate orders versus a "buydown" of the rate orders.

C. Staff

Staff submitted the joint testimony of Thomas C. Frantz, Scott W. Harrold and George R. McCluskey, respectively the Commission's Electric Utility Analyst, Economist, and Manager of Energy Planning.

Staff's testimony addressed five major areas; 1) a summary of the two buyout contracts, 2) an assessment of the projected savings, 3) assessment of the contract terms, 4) Least Cost Integrated Resource Planning (LCIP) and 5) its conclusions.

In regard to the projected savings, Staff estimated the net present value of savings to ratepayers as a result of the contracts at \$60.71 million. However, Staff did note certain concerns relative to the assumptions upon which that figure was based. Those concerns included the use of the avoided cost stream in PSNH's 1994 LCIP which has not yet been reviewed by the Commission, the assumption that Merrimack Station would be brought into compliance with the Clean Air Act, and PSNH's dispatch of these wood plants during periods of light loading (negative avoided costs) as required by the Commission, thereby overstating the contract savings

to ratepayers.

Staff concluded, however, that its first two concerns would not significantly affect the savings projection, and it did not quantify the effect of PSNH's dispatch of the plants during periods of light loading.

Staff further testified that it believed the 90% savings referred to by Mr. Noyes in his

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direct testimony was in reality approximately \$300,000 and not \$1.4 million, and that the proposed 50/50 split of the savings after the Fixed Rate Period was not provided for in the Rate Agreement.

Staff's testimony also delineated a number of concerns in regard to specific provisions of the contracts.

Those concerns included certain provisions in Section IV of the contract allowing the IPPs to sell power to specific "end users" within and outside PSNH's service territory, which, in Staff's opinion, could constitute retail wheeling.

Another concern raised by Staff was the lack of detail in the contracts or the testimony relative to the so-called mitigation funds. That is, although the contracts state that PSNH and the IPPs will each contribute to a fund to mitigate the effects of any possible closure of either plant, there were sparse details provided relative to qualification for or administration of the funds.

Staff raised a concern relative to Section VI.A.1. of the contracts requiring a finding by the Commission that NU/PSNH had used its "best efforts" to renegotiate these rate orders. Staff's concern related to the fact that the Commission in Report and Order No. 21,173 had apparently delayed consideration of this issue until some time in the future and the fact that there was insufficient substantiation of "best efforts" in the pre-filed case of the Company.

Finally, Staff addressed the LCIP aspects of the contracts. Although Staff testified that the contracts were consistent with LCIP principles, they disagreed with the analysis of PSNH in arriving at that same conclusion.

Staff testified that PSNH's analysis, providing ratepayer savings, did not establish that the contracts were consistent with LCIP. Staff testified that LCIP required "least cost" alternatives not lower cost alternatives. Thus, Staff contended that the proper analysis is to compare the sum of the buyout costs and replacement power costs against the costs of purchasing the same amount of power on a long term basis. Applying this methodology, Staff concluded that the agreements were consistent with LCIP.

In his rebuttal testimony, Mr. Noyes took issue with this contention. Mr. Noyes testified that such an analysis ignores the reality of the situation. That is, the rate orders are in place and any reduction in the cost of power from these rate orders is consistent with LCIP, under the circumstances.

In conclusion, Staff believed the contracts were in the best interest of all stakeholders.

D. Settlement Agreement and Addendum

[1-3] All of the parties to this proceeding executed a Joint Settlement Agreement and an Addendum thereto in an attempt to resolve all of the issues to this proceeding, including "best efforts", in a mutually acceptable manner.

Initially, we will treat the Joint Settlement and the Addendum, Exhibits 10 and 11 respectively, as an integrated agreement (hereinafter Settlement), and where there are conflicts or inconsistencies in the two documents the addendum will control. Transcript at pp. 43-44, August 18, 1994. The major aspects of the Settlement are as follows:

- 1) A finding that the contracts are in the public interest and should, therefore, be approved by the Commission;
- 2) The establishment of mitigation funds to retrain wood plant employees, and to address the possible economic ramifications of plant closures to be administered by the Newfound Economic Development Corporation, in the case of Bristol, and the New Hampshire Timberland Owners Association, in the case of TIMCO;
- 3) A finding that PSNH has used its best efforts in renegotiating the two rate orders herein;
- 4) A finding that the rate orders and their attendant interconnection agreements will be transferred to PSNH and cancelled;
- 5) Contract or settlement costs, including PSNH's contribution to the Mitigation Funds, issuance costs to raise the capital necessary to buy the rate orders, and Business Profit Tax liabilities will be established in separate accounting funds, from one another and the IPP Deferral Account, to be amortized over ten years beginning in 1994 and passed through FPPAC during the Fixed Rate

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Period, thereafter in a manner to be determined by the Commission;

- 6) PSNH will not seek to recover any of the carrying charges on the capital required to purchase the rate orders during the Fixed Rate Period;
- 7) PSNH will pass through a guaranteed \$2.5 million of the projected savings to ratepayers, \$1 million will immediately be applied to reduce the Deferral Account and the remaining \$1.5 million will flow through to ratepayers in equal amounts in the next three FPPAC proceedings;
- 8) Any Cumulative Net Profits or IPP buyout of PSNH's right to the same obtained pursuant to the contracts shall be treated in the same manner as contract savings;
- 9) During the Fixed Rate Period all savings resulting from the contracts will be applied first to reduce contract costs and then to reduce the Deferral Account;
- 10) The 10% share of savings applicable to PSNH shareholders during the Fixed Rate Period shall be computed at \$550,000;
- 11) Subsequent to the Fixed Rate Period, 50% of all savings shall be applied to the Deferral Account, and 50% will be allocated to ratepayers, retail and wholesale, through

FPPAC or its successor;

12) Staff will support any request to modify the Rate Agreement necessitated by this Settlement; and

13) PSNH shall not close on the contract with Bristol Energy until it has complied with Section 13 of the Rate Agreement.

III. COMMISSION ANALYSIS

As set forth above, on June 23, 1994, we limited the issues for our consideration in this proceeding to those issues stipulated by the parties and Staff in light of the passage of SB 790. Report and Order 21,278. Thus, the issues for our consideration are:

1) the terms of the two settlements [contracts], including the sale of electricity from the affected facilities, mitigation fund administration and other conditions necessary for the implementation of the agreement; 2) savings projections for ratepayers, the effect on the deferral account; 3) the direct loss of jobs at the subject facilities; and 4) the effect on local taxes. *Re Public Service Company of New Hampshire And Small Power Producers - Woods*, Report and Order No. 21,278 at 7 (June 23, 1994).

Initially, we will address the effect on local taxes. Laws of 1994, Chapter 362, §13 provides in pertinent part that "[n]o agreement between qualifying small power producers [IPPs] ... which involves the complete buyout of a long term rate order shall be approved by the commission unless ... the [IPP] owner agrees to either the continuation by the owners of any existing payment in lieu of tax agreement or the elimination of any agreement in which the utility is exempted from paying local property taxes."

Because TIMCO has not entered into an agreement with the Town of Barnstead to make a payment in lieu of taxes pursuant to RSA 362-A:6 (Supp. 1993), and because there is no agreement through which TIMCO is exempted from paying local property taxes, Laws of 1994, Chapter 362, §13 is inapplicable to this wood plant.

In contrast, Bristol has entered into a payment in lieu of taxes with the Town of Alexandria. The Settlement, which is signed by Bristol, contains a clause that will not allow the consummation of the contract until Bristol complies with §13. Settlement at 4, ¶5.

Thus, the issue of property tax liability has been resolved to the extent required under Laws of 1994, Chapter 362, §13.

In regard to the terms of the contracts, as they relate to the sale of electricity from the two plants, at the August 18, 1994 hearing Staff and all of the parties stipulated that those provisions of the contracts that allow the two facilities to continue to operate and make sales of energy and power are not intended to grant any authority to the two plants beyond what is allowed under the terms of existing Federal and State law and Commission decisions. Testimony confirmed that the terms of the contracts as they relate to sales were intended to limit the plants' rights to sell power.

Thus, the contracts create no greater rights than exist under current law, and grant no approvals for the sale of power beyond those permitted by those laws. Transcript, pp. 28-32,

August 18, 1994.

In regard to mitigation fund administration, we find the use of Mitigation Funds for each area affected appropriate, and applaud the parties for creating a system which ensures local input into the uses of the Funds. Because these are ultimately ratepayer monies being expended, however, we will not completely remove ourselves from the Funds' oversight. Therefore, we will require quarterly reporting of the status of the Funds, beginning January 1, 1995.

We expect the fund administrators and advisors to be fair, evenhanded and responsible in their allocations, and we will require them to provide a fund proposal review mechanism that is open and inclusive. While we will not interject ourselves into the decision-making process of the fund administrators, and will not act as an "appeal tribunal" regarding disbursements, we will require assurance that all those who believe they are economically affected by these two contracts

4(39) have a fair opportunity to obtain mitigation assistance.

We find the savings projections to ratepayers, both retail and wholesale, of approximately \$60 million dollars, net present value, acceptable and consistent with the overall guiding principles of LCIP given the reality of the situation. That is, the potential for protracted litigation and the continuation of the costs of the rate orders during the course of that litigation lead us to the conclusion that the contracts are consistent with LCIP.

Because the effect was not quantified, we make no finding with respect to the appropriateness of purchases at times of light loading.

Although the deferral account is increased in the short term, in the long term the contracts result in a shorter recovery period and less risk to both ratepayers and PSNH.

In regard to the effect on employment at the plants, testimony reveals that less than 50 jobs would be lost in the event the plants cease to operate as a result of the contracts. We find that the existence of the mitigation funds, the potential for alternative sales of power from these plants and the benefits of controlling electric rates to outweigh the potential loss of employment.

One of the terms of the Settlement which we are being asked to approve is a finding that PSNH has used its best efforts in renegotiating these two rate orders. In earlier stages of this proceeding, the Commission indicated a desire to separate this issue from the others that are part of this docket. In considering the Settlement as a whole, however, we have concluded that inclusion of the resolution of this issue, only insofar as these two rate orders are concerned, is in the public interest. Furthermore, we want to emphasize that in approving this resolution of the best efforts issue we are not in any way precluding our review of PSNH's best efforts in renegotiating the rate orders of the six non-settling woodburners.

Thus, we find these two contracts, viewed in light of Laws of 1994, Chapter 362, §13, which negates the need to analyze the potential loss of a substantial portion of the State's wood burning IPPs, and the Settlement to be in the public good.

Finally, Paragraph 17 of the Rate Agreement provides that it "shall not be modified except upon express written agreement of the Parties", and that any such modification is "also subject to the approval of the NHPUC". Rate Agreement p. D-24. As indicated above, the Parties to the

Rate Agreement, NUSCO and the Attorney General's office, have executed a Fifth Amendment which amends the Rate Agreement solely for the purpose of allowing our acceptance of the terms and conditions of the Settlement. In light of our finding that the Settlement and the contracts are in the public good, we also find the Fifth Amendment in the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that the agreement reached between Public Service Company of New Hampshire and Bristol Energy Corporation, as modified by the Joint Settlement and

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Addendum to the Joint Settlement, is in the public good, is consistent with the provisions of RSA 362-A (Limited Electric Energy Policy Act), RSA 378:39 (least cost planning), and the Laws of 1994, Chapter 362, §13 and, therefore, is APPROVED; and it is

FURTHER ORDERED, that the agreement reached between Public Service Company of New Hampshire and TIMCO, Inc., as modified by the Joint Settlement and Addendum to the Joint Settlement is in the public good, is consistent with the provisions of RSA 362-A (Limited Electric Energy Policy Act) and RSA 378:39 (least cost planning) and, therefore, is APPROVED; and it is

FURTHER ORDERED, that the administrators of the two Mitigation Funds report to the Commission the status of the funds on a quarterly basis with the first report to be on January 1, 1995.

By order of the New Hampshire Public Utilities Commission this twenty-third day of September, 1994.

FOOTNOTES

¹The September 16th letter enclosing the executed Fifth Amendment did not indicate whether it had been approved by the creditors.

²See Exhibit #5.

³Mr. Talbot's inability to set a price certain for the profitable operation of the plants, and his inability to assess the benefits of buydowns versus buyouts was due in major part to a lack of access to any financial information relative to the wood-burning plants.

⁴Because there appears to be no representation for those individuals and companies that actually chip wood, as compared to those individuals that own the timberland from which the chips are derived, we are concerned that all affected parties receive equal access to and consideration from those individuals and organizations controlling the mitigation funds. Our concerns relative to the mitigation funds are highlighted in a letter received by the Commission from Crowley Land Clearing, Inc. (Crowley) on August 22, 1994. In the letter Crowley indicates that it is, among other things, a wood chipping company with a short term contract with Bristol.

Crowley indicates that the economic effect on Bristol's closure would be devastating to it and its 34 employees. Crowley's letter further indicates some frustration in contacting those parties in control of the mitigation funds, and in obtaining the terms and conditions relative to access to the fund.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,037, 78 NH PUC 686, Nov. 18, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,058, 78 NH PUC 713, Dec. 13, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,089, 79 NH PUC 1, Jan. 3, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,173, 79 NH PUC 181, Mar. 24, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,190, 79 NH PUC 213, Apr. 19, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,220, 79 NH PUC 270, May 10, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,234, 79 NH PUC 285, May 23, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,278, 79 NH PUC 379, June 23, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,297, 79 NH PUC 407, July 8, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,320, 79 NH PUC 445, Aug. 15, 1994.

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NH.PUC*09/28/94*[70638]*79 NH PUC 541*Integrated Water Systems, Inc.

[Go to End of 70638]

79 NH PUC 541

Re Integrated Water Systems, Inc.

DR 94-094

Order No. 21,369

New Hampshire Public Utilities Commission

September 28, 1994

ORDER denying a water utility's request for an 84.2% temporary increase in rates, and authorizing only a 12.1% temporary increase instead. The commission acknowledges the improvements the new owners have made and those still needed, but finds the utility's expense levels extravagant for a company of its size. However, to maximize cash flow, the utility is allowed to change from quarterly to monthly billing.

1. RATES, § 186

[N.H.] Presumptions and burden of proof — As to new rate proposals — Temporary rates versus permanent rates — Lesser burden for temporary rate plans. p. 543.

2. RATES, § 636

[N.H.] Temporary rates — Commission discretion — Less stringent burden of proof — Necessity for continuing safe and adequate service. p. 543.

3. RATES, § 595

[N.H.] Water rate design — Temporary rates — Factors — Gradualism and prevention of rate shock — Need for capital improvements — New ownership. p. 543.

4. EXPENSES, § 95

[N.H.] Payroll — Management salaries — Partial disallowance — In setting temporary rates — Factors — Small size of company versus number of management-level employees — Disallowance of proportionate associated office expenses — Water utility. p. 544.

5. VALUATION, § 25

[N.H.] Measure for rate making — Average versus year-end figures — 13-month averages — Commission standard. p. 544.

6. RATES, § 604

[N.H.] Water rate design — Change in structure — Necessity of metering — Submission of metering plan. p. 544.

7. SERVICE, § 473

[N.H.] Water — Equipment and facilities — Need for capital improvements — Gradualism. p. 545.

8. RETURN, § 19

[N.H.] Reasonableness — Guarantee of profit versus opportunity to earn reasonable return — Role of regulation. p. 545.

9. PAYMENT, § 20

[N.H.] Billing and collections — Billing period — Change from quarterly to monthly billings — To improve cash flow — Water utility. p. 545.

APPEARANCES: Gallagher, Callahan and Gartrell by John L. Pendleton, Esq. for Integrated Water Systems, Inc.; Joanne V. Heger for the Locke Lake Association; James R. Anderson, Esq. of Office of Consumer Advocate for residential ratepayers; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

REPORT

I. PROCEDURAL HISTORY

On May 12, 1994, Integrated Water Systems, Inc. (Integrated) filed with the New Hampshire Public Utilities Commission (Commission) a notice of intent to file rate schedules and on June 21, 1994 Integrated filed its report of Proposed Rate Changes and accompanying tariffs and testimony. Integrated requested temporary rates in the amount of 84.2% over current rates, effective July 21, 1994 and permanent rates in the amount of 156.8% over current rates. The Commission suspended the proposed rate schedules from taking effect by Order No. 21,287 (July 5, 1994).

The Commission, on June 30, 1994, issued an Order Of Notice setting a prehearing conference for July 19, 1994 at 2:00 p.m. to address procedural matters relative to the temporary and permanent rate requests. On July 13, 1994, Joanne V. Heger filed a Motion for Intervention on behalf of Locke Lake Colony Association, which was not opposed. At the prehearing conference, the Commission granted the Association's motion for full party status and established a procedural schedule which included a public hearing on September 7, 1994 at Barnstead Town Hall. Report & Order No. 21,314 (August 9, 1994).

In accordance with the procedural schedule, prefiled testimony was received from Thomas S. Lyle of the Office of Consumer Advocate (OCA) and James L. Lenihan and Mark A. Naylor of the Commission Staff (Staff). The Association did not file testimony.

Although the parties met to discuss settlement, none was reached. On September 6, 7 and 8, 1994, the Commission heard three days of testimony on the temporary rate request and conducted a public hearing in Barnstead, which over 100 customers attended. The Commission took comments from customers opposing rate increases in the magnitude requested by Integrated, though many acknowledged the need for some increases and upgrade of the system. OCA and Staff stated their recommendations for temporary rates in the amount of 9.2% and 44.4% respectively.

II. POSITIONS OF PARTIES AND STAFF

A. *Integrated*

Integrated's request for temporary rates was presented in testimony by its President, Raymond Seeley, and by its CPA, Eugene Leone. Mr. Seeley testified that Integrated is currently losing money and has been losing money since it took over the Locke Lake system. He indicated that Integrated is charging the same rates as those of the prior owner, and that those rates have been in effect since 1986. Mr. Seeley pointed out the level of improvements that have been put into the system, and the nature of the system in terms of its original lack of engineering. He further testified to Integrated's request to convert to monthly billing in order to accelerate cash flows. Mr. Seeley also testified to the financial circumstances of Integrated, indicating that its survivability was at stake without a substantial increase in revenues. He pointed out that Integrated has been unable to raise additional debt capital due to its operating losses. Mr. Leone testified to Integrated's current financial circumstances and supported the claim that Integrated was not profitable. He described Integrated's exhibits submitted in support of its temporary rate petition, including the use of a seven month average for its rate base, and that the temporary rate request was based solely on actual figures in the test period without proforma adjustments for additions to plant or known increases in expenses.

B. *The Association*

The Association did not file testimony but stated at the temporary rate hearing that while Integrated was entitled to an increase of some amount, the magnitude of the increase was too high. The Association stated that repairs should be prioritized and spread over a five or ten year period, that salaries and benefits were too great for so small a system to absorb, and that Locke Lake customers shouldn't fund Integrated's expansion plans.

C. OCA

The OCA, through its Economist Thomas Lyle, recommended an increase in revenue for purposes of temporary rates of 9.2% over test

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year revenue. OCA developed much of its position by comparing the financial data of Integrated with that of Locke Lake Water Company, the previous owner of the water system. Each company owned and operated the system for six months in 1993. In several areas, Mr. Lyle reduced Integrated's level of expense to that of the previous owner, questioning the basis for such increases. In addition, Mr. Lyle used information provided by Ms. Heger regarding salaries and wages for employees at the Town of Alton Water Department, a department which operates a system which is similar in size to that of Integrated, in order to make further comparisons. He then substituted these salaries for those requested by Integrated, citing the relatively similar size and geographic location of the two water systems. Mr. Lyle also made numerous adjustments to Integrated's expenses in areas such as electricity, maintenance, administrative and general, rent and depreciation. In addition, a number of items were removed from rate base as being unnecessary in providing water service to Integrated's customers.

D. Staff

Staff, through the prefiled testimony of witness Mark A. Naylor, recommended a revenue increase for temporary rates of 44.4%. The rate base recommended by Mr. Naylor used a 13-month average based on plant balances of both Integrated and Locke Lake Water Company during 1993. In addition, one-half of the amount of a number of assets were removed from rate base as either being oversized, retained by the previous owner, or shared with an affiliate company. Three other assets were removed in their entirety, pending further investigation. Further adjustments related to depreciation and the effect on accumulated depreciation were also made as a result of these changes to rate base. Mr. Naylor also calculated operation and maintenance expense by combining the actual expenses of both Integrated and Locke Lake Water Company during 1993, with some adjustments. At hearing, Mr. Naylor made a correction to his recommendation for property tax expense, increasing his overall recommendation to a 46.9% increase in revenue.

Mr. James Lenihan provided Staff testimony with respect to the rate structure and the billing frequency of Integrated. Mr. Lenihan recommended that Integrated retain its current fixture rate rather than adopt a flat rate in order to avoid customer confusion in the calculation of the customer's anticipated higher billing. In addition, Mr. Lenihan asserted that a move to a flat rate for temporary rates lacks any cost justification. Mr. Lenihan also provided testimony on his opposition to Integrated's proposal to change its billing frequency to monthly from quarterly, arguing that there was no demonstrated customer benefit.

III. COMMISSION ANALYSIS

[1, 2] In establishing temporary rates our actions are guided by RSA 378:27 and the prior cases of the Commission and of the New Hampshire Supreme Court interpreting this law. The statute gives the Commission discretion to prescribe "reasonable temporary rates..." when they are in the public interest. The New Hampshire Supreme Court has said that a reasonable temporary rate is one that results from a process that must consider the competing interests of investor and customer and must determine the appropriate recognition that each deserves. *Appeal of Conservation Law Foundation of New England, Inc.*, 127 NH 606 (1986). Our Supreme Court has also found that the standard which we are to employ in determining a temporary rate increase is less stringent than the standard for permanent rates because temporary rates must be determined expeditiously, without the same investigation that is necessary to determine permanent rates. *Appeal of Office of Consumer Advocate*, 134 NH 651 (1991). Prior decisions of this Commission have indicated that "the Commission must have evidence that temporary rates are needed to ensure a properly operating and financially sound utility." *Re Hampton Water Works*, 76 NH PUC 629, 632 (1991), rehearing denied, 76 NH PUC 712 (1991).

[3] After reviewing the evidence presented in this temporary rate proceeding, which is

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necessarily less comprehensive and thorough in nature than a permanent proceeding, and weighing the competing interests of the customers and the investors, we can not grant the temporary rates requested by Integrated. First, we find no adequate evidence to conclude that the magnitude of the requested revenues is necessary to allow the company to continue to provide adequate service to its customers. Second, to grant the requested 84.2% temporary rate increase would, in our opinion, run contrary to the principles of gradualism and avoidance of rate shock, principles that have long been recognized in utility regulation.

We have reviewed the evidence and evaluated the financial circumstances facing Integrated, as well as the difficulty of managing a system that has not been adequately maintained. Despite these problems, we do not consider that a rate increase of the magnitude requested by Integrated is appropriate.

Since there exists only a six-month period to evaluate Integrated's Operation and Maintenance Expense, we are unable to precisely establish a full test year's expenses. We are not persuaded that Integrated's six-month calculation should simply be doubled, since testimony revealed that extraordinary expenses were initially incurred to provide adequate service. Rather, we will use a blending of the two companies' operations as provided in Staff's and OCA's testimony. This is not absolutely accurate but is fairer than doubling Integrated's numbers.

[4] We feel that Integrated's temporary rate request is unnecessarily high, due in large part to two management-level salaries that appear to be unsustainable for a company of this size. Such salaries may be appropriate if Integrated takes on the ownership of other water systems, but have not yet been shown to be appropriate given current operations and given that the salaries exceed those of the similarly sized Alton Water Department. We will make the following disallowances, understanding that this is a temporary rate that is subject to adjustment if a fuller record in

Integrated's permanent rate case leads to different results.

Using OCA Exhibit 24 as a guide, we will disallow \$3,000 of salary on a monthly basis. We leave to Integrated the method of allocating the disallowance. We will also disallow a portion of phone expense as OCA suggested on the basis that the level of service being provided exceeds that which is reasonably necessary for customers to contact Integrated's office, reducing the monthly cost from \$600 to \$350 (disallowing \$250). We will also reduce requested expenses based on our review of the evidence at hearing: portions of legal and accounting monthly expenses (each will go from \$600 to \$200 allowed), and remove from monthly expenses any rate case expenses, pump tests and Locke management contract because all of these can be amortized over a long period of time and should not be considered as part of temporary rate calculations.

Staff's correction to property tax expense as described at the hearing is appropriate and will be incorporated into the temporary rate.

[5] We will accept Staff's calculation of rate base using a 13-point average; that is the standard of the Commission and we see no basis to change for this case. We also agree with Staff on the adjustments made for items partially or totally removed from rate base; the wall partition should, however, be added back to rate base as it remained in service at the conclusion of the test year.

The total revenue requirement approved for temporary rates is \$151,951, an increase of 12.1% over current rates. In reaching this calculation we have used a cost of capital of 9.18%, as proposed by the Company, on the cost of property used and useful in the public service, less depreciation, which we believe to be a reasonable return for temporary rate purposes.

[6] It is clear that Integrated's prior commitment to metering is critical, as most of the customers appear to favor their installation. We will require a detailed plan from Integrated as part of the permanent rate case as to the timing and financing of meters.

From the public hearing comments it is evident that Integrated should concentrate its efforts on improving customer relations, and to this end that it should work more closely with the Association. We will not order the creation of a new advisory committee at this juncture, since an Association structure is in place that

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may be able to serve the same need. We will require, however, at the time of the permanent rate proceeding, some plan from Integrated to involve the Association in an advisory capacity.

[7] While we recognize Integrated's willingness to improve the water system, we think that it needs to undertake capital improvements with the ultimate rate impact on the customers in mind. We therefore will require Integrated to come up with a plan for such improvements as part of the permanent rate case.

[8] We remind Integrated that regulation by this Commission is not a guarantee of profit, but is instead an opportunity to earn a reasonable rate of return. Regulation is not a guarantee of reimbursement for expenses, as expenses must be prudent. Some of Integrated's decisions to date exhibit questionable judgment, and in some cases may not have been prudent in light of its cash flow problems.

[9] In order to address Integrated's cash flow needs, we will approve a change to monthly billing as of November 1. Since the parties and Staff have agreed that Integrated will remain on a fixture rate at this time, we will allow Integrated to change its next quarterly billing from service rendered to bills rendered for implementing the temporary rates. Therefore, the October bill will remain quarterly, and will include the temporary rate increase. Monthly bills will then commence as of November 1, and will also include the temporary rate increase. The calculation of working capital for inclusion in rate base will be altered accordingly.

Our order will issue accordingly.

ORDER

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

ORDERED, that Integrated Water Systems, Inc. (Integrated) is authorized to increase its rates to recover revenues in the amount of \$151,951 on a temporary basis; and it is

FURTHER ORDERED, that, as part of the permanent rate proceeding, Integrated produce plans for metering, customer relations, and capital improvements, as set forth in this report; and it is

FURTHER ORDERED, that Integrated move to a monthly billing for all customers effective November 1, 1994.

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of September, 1994.

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

ATTACHMENT 1

REVENUE REQUIREMENT CALCULATION:

13-month average per Naylor testimony Att. 1 but re-adding wall petition		\$254,485
O & M expenses (see below)	\$105,626	
Times .1233 (mo. billing)	× .1233	13,024
		<hr/>
RATE BASE		\$267,509
Times: rate of return		× 9.18%
		<hr/>
Net Operating Income		\$ 24,557
Less: Adjusted test year income (below)		8,103
		<hr/>
Revenue Deficiency		\$ 16,454
Add: Test Year Revenue		135,497
		<hr/>
REVENUE REQUIREMENT		\$151,951
% Increase		12.1%

OPERATION & MAINTENANCE EXPENSES:

Per Naylor testimony (Att. 3)		\$151,143
Salary disallowance		(36,000)
Phone disallowance		(3,000)
Legal expense disallowance		(4,800)
Accounting expense disallowance:		
Amount in Naylor O & M	\$4,117	
Allowed amount	(2,400)	(1,717)

ADJUSTED OPERATION & MAINTENANCE EXPENSE	\$105,626
ADJUSTED TEST YEAR INCOME:	
Revenue	\$135,497
O & M (above)	105,626
Depreciation	15,617
Amortization	(1,124)
Property tax	7,275 (127,394)
ADJUSTED TEST YEAR INCOME	\$ 8,103

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 21,287, 79 NH PUC 397, July 5, 1994.

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NH.PUC*10/03/94*[70639]*79 NH PUC 546*MCI Telecommunications Corporation of New Hampshire

[Go to End of 70639]

79 NH PUC 546

Re MCI Telecommunications Corporation of New Hampshire

DR 94-216
Order No. 21,370

New Hampshire Public Utilities Commission

October 3, 1994

ORDER authorizing an interexchange telephone carrier to introduce directory assistance as part of its new "HotelDirect" service, at a rate of 59 cents per call.

1. RATES, § 553

[N.H.] Telephone rate design — Information service — Directory assistance — In conjunction with "HotelDirect" toll calling — Charge of 59 cents per call — Interexchange carrier. p. 546.

2. SERVICE, § 449

[N.H.] Telephone — Information service — Directory assistance — In conjunction with "HotelDirect" toll calling — Interexchange carrier. p. 546.

BY THE COMMISSION:

ORDER

[1, 2] On September 14, 1994, MCI Telecommunications Corporation of New Hampshire (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Directory Assistance charges for its Option X - HotelDirect service, for effect October 14, 1994; and

WHEREAS, the proposed Directory Assistance rate is \$.59 per call, the same as other Directory Assistance charges in MCI's tariff;

Page 546

and

WHEREAS, the proposed service addition will expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following tariff pages for MCI's NHPUC No. 1 - are approved for effect as filed:

33rd Revised Page 1
21st Revised Page 3.1
1st Revised Page 59.9;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1994.

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NH.PUC*10/03/94*[70640]*79 NH PUC 547*Tilton Northfield Aqueduct Company, Inc.

[Go to End of 70640]

79 NH PUC 547

Re Tilton Northfield Aqueduct Company, Inc.

DF 94-218
Order No. 21,371

New Hampshire Public Utilities Commission

October 3, 1994

ORDER authorizing a water utility to issue \$30,000 in securities, so as to finance the development of test wells for assuring compliance with the Safe Drinking Water Act.

1. SECURITY ISSUES, § 57

[N.H.] Issuance of securities — Mortgage of real property — Purposes — To finance development of test wells — To assure compliance with the Safe Drinking Water Act — Water utility. p. 547.

BY THE COMMISSION:

ORDER

[1] WHEREAS, Tilton Northfield Aqueduct Company, Inc. (the "Company"), a public utility operating in Tilton and Northfield, New Hampshire, under the jurisdiction of this Commission, seeks authority, pursuant to RSA 369 to issue thirty-thousand dollars (\$30,000) in securities; and

WHEREAS, the securities will be in the form of a mortgage of the Company's real estate and security agreement on its personal property through the Bank of New Hampshire at an interest rate of 1 3/4% over prime; and

WHEREAS, the Company represents that the borrowing will be used to develop test wells in the Tilton-Northfield area for the purpose of site evaluation in order to insure compliance with the Safe Drinking Water Act; and

WHEREAS, the Commission, based upon a review of Staff recommendation, finds the proposed issuance of this debt to be consistent with the public good; it is hereby

ORDERED, that Tilton Northfield Aqueduct Company, Inc. is authorized to issue securities in the amount of \$30,000 at an interest rate of 1 3/4% over prime, in accordance with the terms, conditions, and purposes described in its application; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, Tilton Northfield Aqueduct Company shall file with this Commission a detailed statement duly sworn to by its Treasurer, showing the disposition of the proceeds of this financing, until there is a full accounting of the whole of said proceeds.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1994.

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NH.PUC*10/03/94*[70641]*79 NH PUC 548*AT&T Communications of New Hampshire, Inc.

[Go to End of 70641]

Re AT&T Communications of New Hampshire, Inc.

DR 94-220
Order No. 21,372

New Hampshire Public Utilities Commission

October 3, 1994

ORDER authorizing an interexchange telephone carrier to eliminate holiday discount offerings for its "PRO WATS" customers.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Interexchange carrier — Holiday rate discounts — Elimination as to "PRO WATS" customers — Reductions in other discounts. p. 548.

BY THE COMMISSION:

ORDER

[1] On September 16, 1994, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to eliminate the holiday discount for AT&T All PRO WATS, decrease the AT&T All PRO WATS usage discount, and discontinue availability of the All PRO WATS Partners Option for new customers in New Hampshire; and

WHEREAS, AT&T All PRO WATS is an optional toll calling plan which includes discounts based on both interstate and intrastate usage; and

WHEREAS, AT&T proposed the filing become effective October 17, 1994; and

WHEREAS, the Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competitive entry and competition in the New Hampshire intrastate toll market, while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following tariff pages for AT&T's NHPUC Tariff No. 4 are approved for effect as filed:

Table of Contents:

3rd Revised Page 7

Section 3:

1st Revised Page 5

2nd Revised Page 6

1st Revised Page 7;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1994.

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NH.PUC*10/03/94*[70642]*79 NH PUC 548*Long Distance North of New Hampshire, Inc.

[Go to End of 70642]

79 NH PUC 548

Re Long Distance North of New Hampshire, Inc.

DR 94-221

Order No. 21,373

New Hampshire Public Utilities Commission

October 3, 1994

ORDER approving an interexchange telephone carrier's proposal for making certain short-term promotional offerings effective on only seven days' notice and for introducing a debit or prepaid calling card service.

1. RATES, § 582

[N.H.] Telephone rate design — Interexchange carrier — Short-term promotional

Page 548

offerings — Notice period. p. 549.

2. RATES, § 243

[N.H.] Schedules and procedure — Notice and publication — Seven days' notice — For special short-term promotional offerings — Interexchange telephone carrier. p. 549.

3. SERVICE, § 468

[N.H.] Telephone — Toll service — Introduction of debit or prepaid calling card service. p. 549.

BY THE COMMISSION:

ORDER

[1-3] On September 19, 1994, Long Distance North of New Hampshire, Inc., (LDN) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce Debit Card Service, and Promotional Offerings on seven days notice; and

WHEREAS, Debit Card Service is a prepaid calling card issued by LDN either to an end user, or organization or commercial entity for distribution to its patrons or members, which allows a customer to pay a fixed amount in advance for long distance calling and is debited 40 cents per minute each time the card is used; and

WHEREAS, the promotion notice to the Commission will specify rates, terms, conditions and time intervals applicable to each promotional offering seven days prior to the start of the promotion; and

WHEREAS, Promotional Offerings are only available for a limited time; and

WHEREAS, the proposed Promotional Offerings tariff expands LDN's flexibility in offering promotions to stimulate existing customer usage, attract new customers, win back former customers or increase awareness of LDN services; and

WHEREAS, the proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of LDN's Tariff NHPUC No. 2 are approved for effect as filed:

- 8th Revised Page 2
- 5th Revised Page 4
- 5th Revised Page 19.2
- 1st Revised Page 33.2
- 1st Revised Page 33.15
- Original Page 33.16
- 1st Revised Page 33.17 in lieu of Original;

and it is

FURTHER ORDERED, that LDN file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order

By order of the Public Utilities Commission of New Hampshire this third day of October, 1994.

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NH.PUC*10/03/94*[70643]*79 NH PUC 549*New England Telephone Company

[Go to End of 70643]

Re New England Telephone Company

DR 94-224
Order No. 21,374

New Hampshire Public Utilities Commission

October 3, 1994

ORDER authorizing a local exchange telephone carrier to reclassify eight of its exchanges to higher rate groups, where each had exceeded its existing rate group limit for the last two years.

1. RATES, § 538

[N.H.] Telephone rate design — Exchange

Page 549

groups — Reclassification of rate groups — Factors — Exceeding of past rate group limits — Local exchange carrier. p. 550.

BY THE COMMISSION:

ORDER

[1] On September 22, 1994, New England Telephone and Telegraph Company (NET or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to reclassify the Pike, Hancock, Franklin, Sunapee, Peterborough, Marlborough, Hampton and Nashua exchanges, which have exceeded their rate group limits for two consecutive years as of June 1994, and to reclassify portions of exchanges and localities serving some municipalities.

In compliance with the Company's tariff, NHPUC - No. 75, Part A, Page 6, Paragraph 5.1.3, NET has sworn that the Company's records evidence that the total weighted main telephone exchange lines in the local service area of the respective exchange, locality and/or municipality have exceeded the upper limit of the respective rate group for two consecutive annual study periods and are eligible for reclassification. NET estimates revenues to increase by \$358,750 in the first year this filing is in effect.

Based on the foregoing, it is hereby

ORDERED, that NET is authorized to implement the rate group reclassification submitted in the Company's filing of September 22, 1994; and it is

FURTHER ORDERED, that the following tariff pages of New England Telephone are approved:

NHPUC - No. 75, Part A - Section 5

Page 8, Twenty-second Revision

Page 22, Fourteenth Revision
Page 23, Sixteenth Revision
Page 24, Thirteenth Revision
Page 25, Thirteenth Revision
Page 26, Fourteenth Revision
Page 27, Twelfth Revision

and it is

FURTHER ORDERED, that NET send an individualized notice by first-class mail to each customer directly affected by the rate group reclassification, on or before November 15, 1994, indicating the amount of the rate change for that customer; and it is

FURTHER ORDERED, that the above tariff pages shall be effective as filed; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this third day of October, 1994.

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NH.PUC*10/03/94*[70644]*79 NH PUC 550*Northern Utilities, Inc.

[Go to End of 70644]

79 NH PUC 550

Re Northern Utilities, Inc.

DR 94-226

Order No. 21,375

New Hampshire Public Utilities Commission

October 3, 1994

ORDER granting protective treatment of certain gas supply contract terms deemed commercially sensitive in the course of a proceeding establishing a natural gas firm transportation cost of gas adjustment applicable in the winter period.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Identification of gas suppliers and associated contract terms — Protective treatment. p. 551.

Page 550

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of commercially sensitive pricing information and trade secrets — Gas supply information — In course of winter-period firm transportation cost of gas adjustment proceeding. p. 551.

BY THE COMMISSION:

ORDER

[1, 2] On September 22, 1994, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment for identifying Northern's gas suppliers and certain terms of the gas supply agreements negotiated by Northern with said suppliers; and

WHEREAS, the documents for which Northern seeks protective treatment are "identifying Northern's gas suppliers and certain terms of the gas supply agreements negotiated with such suppliers"; and

WHEREAS, in its Motion, Northern states that the documents contain confidential commercial information and trade secrets which fall within the exemption from public disclosure of RSA 91-A:5, IV; and

WHEREAS, Northern seeks protection of this information as it relates to the pending Cost of Gas Adjustment (CGA) proceeding in both the discovery and hearing phases of this docket; and

WHEREAS, in its Motion, Northern states that it does not disclose the identifying information and terms to anyone outside its corporate affiliates and representatives; and

WHEREAS, the Commission recognizes that the information identified above is critical to the review of the CGA filing by the Commission, the Commission Staff (Staff), and the Office of Consumer Advocate (OCA).

Based on the foregoing, it is hereby

ORDERED, that Northern's Motion for Protective Treatment is granted to allow Staff and the OCA to fully review the CGA filing and to protect from public disclosure the information delineated above which is relevant to the pending CGA proceeding; and it is

FURTHER ORDERED, that with regard to the CGA identifying information and terms, Northern shall submit a redacted CGA filing for public review and provide unredacted copies to the Commission, Staff, and the OCA; and it is

FURTHER ORDERED, that this Order is subject to the on- going rights of the Commission, on its own Motion or on the Motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1994.

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NH.PUC*10/04/94*[70645]*79 NH PUC 551*EnergyNorth Natural Gas, Inc.

[Go to End of 70645]

79 NH PUC 551

Re EnergyNorth Natural Gas, Inc.

DR 94-230

Order No. 21,376

New Hampshire Public Utilities Commission

October 4, 1994

ORDER granting protective treatment of certain gas supply contract terms deemed commercially sensitive in the course of a proceeding establishing a natural gas firm transportation cost of gas adjustment applicable in the winter period.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Identification of gas suppliers and associated contract terms — Protective treatment. p. 552.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection —

Page 551

Protective treatment — Of commercially sensitive pricing information and trade secrets — Gas supply information — In course of winter-period firm transportation cost of gas adjustment proceeding. p. 552.

BY THE COMMISSION:

ORDER

[1, 2] On September 27, 1994, EnergyNorth Natural Gas, Inc., (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment for identifying ENGI's gas suppliers and certain terms of the gas supply agreements negotiated by ENGI with said suppliers; and

WHEREAS, the documents for which ENGI seeks protective treatment are identifying ENGI's gas suppliers and certain terms of the gas supply agreements negotiated with said suppliers; and

WHEREAS, in its Motion, ENGI states that the documents contain confidential commercial information and trade secrets which fall within the exemption from public disclosure of RSA 91-A:5, IV; and

WHEREAS, ENGI seeks protection of this information as it relates to the pending Cost of Gas Adjustment (CGA) proceeding in both the discovery and the hearing phases of this docket; and

WHEREAS, in its Motion, ENGI states that it does not disclose the identifying information and terms to anyone outside its corporate affiliates and representatives; and

WHEREAS, the Commission recognizes that the information identified above is critical to the review of the CGA filing by the Commission, the Commission Staff (Staff), and the Office of Consumer Advocate (OCA).

Based on the foregoing, it is hereby

ORDERED, that ENGI's Motion for Protective Treatment is granted to allow Staff and the OCA to fully review the CGA filing and to protect from public disclosure the information delineated above which is relevant to the pending CGA proceeding; and it is

FURTHER ORDERED, that with regard to the CGA identifying information and terms, ENGI shall submit a redacted CGA filing for public review and provide unredacted copies to the Commission, Staff, and the OCA; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own Motion or on the Motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1994.

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NH.PUC*10/04/94*[70646]*79 NH PUC 552*Great Bay Power Corporation

[Go to End of 70646]

79 NH PUC 552

Re Great Bay Power Corporation

DF 93-132

Order No. 21,377

New Hampshire Public Utilities Commission

October 4, 1994

ORDER modifying an electric utility's plan of reorganization pursuant to bankruptcy, so that the utility may, if necessary, issue 6% of its common stock to a disbursing agent and issue only 34% to bondholders, rather than the 40% to bondholders as previously authorized.

1. CORPORATIONS, § 21

[N.H.] Reorganization — Pursuant to bankruptcy — Debt financing plan — Sale of 60% of stock — Allocation of remaining 40% — Issuance to disbursing agent if necessary — Electric utility. p. 553.

2. SECURITY ISSUES, § 91

[N.H.] Type and amount — Debt financing plan — Pursuant to bankruptcy and reorganization — Sale of 60% of common stock —

Page 552

Allocation of remaining 40% — Issuance to disbursing agent if necessary — Electric utility. p. 553.

BY THE COMMISSION:

ORDER

[1, 2] WHEREAS, on September 21, 1994, Great Bay Power Corporation, ("Great Bay Power") and the Official Bondholders' Committee of Great Bay Power filed a motion to amend its previous authorizations modifying Order No. 21,216 consistent with the terms of a settlement agreement dated September 9, 1994, which was filed with the Bankruptcy Court for approval on September 13, 1994; and

WHEREAS, the motion requests authorization for the issuance of 6% of the new securities of Great Bay Power to a disbursing agent, if necessary, as an alternative to the 40% previously authorized, contending that it is consistent with the public good pursuant to RSA 369:1; and

WHEREAS, Great Bay Power seeks authorization to issue 34% of the new securities of Great Bay Power to the bondholders, if necessary, as an alternative to the 40% previously authorized; and

WHEREAS, Great Bay Power requests reaffirmation of the earlier authorizations contained in Order No. 20,975 and Order No. 21,216 to the extent that those authorizations are consistent with the amendment; and

WHEREAS, Great Bay Power requests that this Commission grant such additional authorization that it deems necessary to permit the amendment to be implemented in accordance with its terms; and

WHEREAS, Great Bay Power's Bondholder Committee believes that the proposed amendment is necessary for the resolution of its dispute with the Purchasers of 60% of the new securities for an equity investment of \$35,00,000; and

WHEREAS, the amendment merely provides the purchasers with a limited ability to receive additional consideration for their investment, in the event the securities do not increase at least 10% in value by the first anniversary of the effective date of the Amendment; and

WHEREAS, the Amendment will enable Great Bay Power to emerge from Chapter 11 of the

Bankruptcy Code without any debt obligations and proceeds of \$35,000,000 from the proposed financing as working capital for future operations, less amounts required to pay principal and interest on amounts advanced by other joint owners of Seabrook pursuant to a stipulation and consent order approved by the Commission in Order No. 20,841 and administrative expenses and reorganization costs; it is hereby

ORDERED, that Order No. 21,216 is modified to authorize the issuance of 6% of the Great Bay Power common stock to a disbursing agent, if necessary, as an alternative to the issuance of those securities to the bondholders; and it is

FURTHER ORDERED, that Great Bay Power is authorized to issue 34% of the new securities to the bondholders, if necessary, as an alternative to the 40% previously authorized; and it is

FURTHER ORDERED, that the earlier authorizations contained in Order No. 20,975 and Order No. 21,216 are reaffirmed to the extent that those authorizations are consistent with the Amendment and with the public good pursuant to RSA 369:1; and it is

FURTHER ORDERED, that Great Bay Power file with this Commission the signed version of the documents filed with this Commission.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Great Bay Power Corp., DF 93-075, Order No. 20,841, 78 NH PUC 259, May 18, 1993. [N.H.] Re Great Bay Power Corp., DF 93-132, Order No. 20,975, 78 NH PUC 533, Sept. 21, 1993. [N.H.] Re Great Bay Power Corp., DF 93-132, Order No. 21,216, 79 NH PUC 260, May 3, 1994.

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NH.PUC*10/04/94*[70647]*79 NH PUC 554*New England Telephone Company

[Go to End of 70647]

79 NH PUC 554

Re New England Telephone Company

DR 94-058
Order No. 21,378

New Hampshire Public Utilities Commission

October 4, 1994

ORDER approving a local exchange telephone carrier's special contract arrangements with Capital Region Health Care Corporation for the provision of Centrex service.

1. SERVICE, § 467

[N.H.] Telephone — Switching functions — Centrex service — Special contract arrangements — With health care facility. p. 554.

BY THE COMMISSION:

ORDER

[1] On April 4, 1994, New England Telephone Company (NET or the Company) petitioned for New Hampshire Public Utilities Commission approval of a special contract for Centrex service with Capital Region Health Care Corporation and requested proprietary treatment of the contract and supporting materials. NET's request for proprietary treatment was granted by Order No. 21,193 on April 20, 1994.

The proposed contract amends a prior agreement between NET and Concord Hospital for Centrex services which was approved by Commission Order No. 20,595 issued September 9, 1992 in docket DR 92-091. The amended contract includes two modifications: it allows for expansion of the customer's present Centrex service to locations that are served by Remote Switching Modules, and describes restrictions regarding the resale of Centrex service.

Since signing this contract, Capital Region Health Care Corporation, the parent company of Concord Hospital, has restructured and created a new subsidiary, MedNet Services (MedNet) to manage telecommunications services for the parent company and all of its subsidiaries. Consequently, it is no longer appropriate that the contract for Centrex service be between NET and Concord Hospital. MedNet has provided Staff with a copy of a letter MedNet received from NET confirming that a new contract would be printed reflecting the appropriate customer name.

Based on the materials filed by NET in support of this contract, Staff recommended the contract be approved. Upon review of the petition and the Staff recommendation, the Commission finds the proposed special contract to be in the public interest.

Based on the foregoing, it is hereby

ORDERED *NISI*, that New England Telephone's Special Contract with Capital Region Health Care Corporation is approved; and it is

FURTHER ORDERED, that NET provide this Commission with a new contract revised to reflect the correct customer/billing name; and it is

FURTHER ORDERED, that NET submit a revised first paragraph of the new Appendix E to reflect changes agreed to by the Company, MedNet and Staff; 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 statewide circulation, such publication to be no later than October 10, 1994 and it is to be documented by affidavit filed with this office on or before October 14, 1994; 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 October 14, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 17, 1994 unless the Commission provides otherwise in a supplemental order prior to the effective date.

Page 554

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 92-091, Order No. 20,595, 77 NH PUC 529, Sept. 9, 1992. [N.H.] Re New England Teleph. & Teleg. Co., DR 94-058, Order No. 21,193, 79 NH PUC 225, Apr. 20, 1994.

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NH.PUC*10/04/94*[70648]*79 NH PUC 555*World Telecom Group, Inc., dba AmeriVox

[Go to End of 70648]

79 NH PUC 555

Re World Telecom Group, Inc., dba AmeriVox

DE 94-154

Order No. 21,379

New Hampshire Public Utilities Commission

October 4, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 555.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 555.

BY THE COMMISSION:

ORDER

[1, 2] On July 21, 1994, World Telecom Group, Inc., d/b/a AmeriVox (AmeriVox), petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26; and

WHEREAS, AmeriVox has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order; and

WHEREAS, interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993 to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993); and

WHEREAS, the public good is served by permitting interim competition by telecommunications companies; and

WHEREAS, the public should be provided an opportunity to respond in support of, or in opposition to this petition; it is hereby

ORDERED, *NISI*, that AmeriVox is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. AmeriVox shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, AmeriVox shall notify the Commission of the change.

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5. AmeriVox is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. AmeriVox is exempted from NH Admin. Rules, Puc 403.02 Application for Service, Puc 403.04 Deposits, Puc 403.06 Discontinuance of Service, and Puc 403.07 Bill Forms with respect to debit cards as these Rules are not applicable to debit cards.

7. AmeriVox shall maintain its books and records in accordance with Generally Accepted

Accounting Principles.

8. AmeriVox shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

9. AmeriVox shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.

10. AmeriVox shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

11. AmeriVox shall compensate the appropriate Local Exchange Company for all originating and terminating access used by AmeriVox pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

12. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

13. During the Trial Period, within 60 days following the end of each calendar quarter AmeriVox shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

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h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow AmeriVox to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that AmeriVox shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than October 18, 1994, and an affidavit proving publication shall be filed with the Commission on or before October 31, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. AmeriVox shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that AmeriVox shall file a compliance tariff with the Commission before October 18, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 3, 1994, 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 fourth day of October, 1994.

Notice of Conditional Approval of
 WORLD TELECOM GROUP, INC. d/b/a AMERIVOX
 Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On July 21, 1994, World Telecom Group, Inc. d/b/a AmeriVox (AmeriVox), a Nevada corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,379, issued in Docket No. DE 94-154, the Commission granted AmeriVox conditional approval to operate as of November 3, 1994, subject to the right of the public and interested parties to comment on AmeriVox or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on AmeriVox's petition to do business in the State should submit written comments no later than October 31, 1994, to:

Dr. Sarah P. Voll

Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*10/10/94*[70649]*79 NH PUC 557*Access Transmission Services, Inc.

[Go to End of 70649]

79 NH PUC 557

Re Access Transmission Services, Inc.

DE 94-151
Order No. 21,380

New Hampshire Public Utilities Commission

October 10, 1994

ORDER noting interventions and adopting a procedural schedule in a docket addressing an application for a certificate to provide nonswitched, private line, intrastate intraLATA interexchange telephone service. Commission

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notes that although certain of the private line services might end up being provided within a single exchange, that does not transform the application into one for local intraexchange service.

1. CERTIFICATES, § 123

[N.H.] Telecommunications service — Nonswitched private line service — Intrastate intraLATA interexchange service — Procedural schedule for addressing application — Scope of proceeding. p. 559.

2. SERVICE, § 433

[N.H.] Local intraexchange versus private line services — Impact of private line services being provided wholly within one exchange — Nonswitched service as a factor — Certificate proceeding. p. 559.

APPEARANCES: Glass, Seigle and Liston by Robert Glass, Esq. for Access Transmission Services, Inc.; Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. for Granite State Telephone, Inc., Merrimack County Telephone Company, Contoocook Valley Telephone, Inc., Dunbarton Telephone Company, Inc., Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company, Inc.; McManimon and Scotland by Martin C. Rothfelder, Esq. for Union Telephone Company, Inc.; Victor D. Del Vecchio, Esq. for New England Telephone; Mark R. Perkell, Esq. for Long Distance North of New Hampshire, Inc.; Mark DeFalco for Chichester Telephone Company, Kearsarge Telephone Company, and Meriden Telephone Company; James R. Anderson, Esq. for the Office of Consumer Advocate; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

On July 21, 1994, Access Transmission Services, Inc. (ATS) filed with the New Hampshire Public Utilities Commission (Commission) a petition for permission and approval to provide non-switched intrastate intraLATA private line telecommunications services in New Hampshire.

Timely requests for intervention were filed by Granite State Telephone, Merrimack County Telephone Company, Contoocook Valley Telephone, Inc., Dunbarton Telephone Company, Inc., Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company, Inc. (collectively referred to as Granite State *et al.*), Union Telephone Company (Union), New England Telephone Company (NYNEX), Long Distance North of New Hampshire, Chichester Telephone Company, Kearsarge Telephone Company, and Meriden Telephone Company.

ATS filed a request to limit the degree of participation of Union and Granite State *et al.* but at the prehearing conference withdrew that request. There were no objections to any request for intervention.

On August 25, 1994 the Commission issued an Order of Notice setting a prehearing conference for September 23, 1994, to address matters of intervention, set a procedural schedule and define the scope of the proceeding.

At the Commission's request, participants filed recommendations on the scope of the proceeding, which was more fully addressed at the prehearing conference. ATS recommended a proceeding similar to that of the MFS docket, DE 94-025 as the petitions were similar except for ATS' intention to offer interexchange as well as intraexchange private line service.

Granite State *et al.* requested clarification of ATS' petition, noting that if intraexchange local service were not requested, then the scope should be the same as in the MFS case. If intraexchange local service were requested, Granite State *et al.* enumerated a number of issues for litigation, including the

Commission's authority to permit intraexchange local service competition, what standards should govern a public good analysis of competition, whether ATS should operate under a trial period of competition, how stranded investment and universal service will be affected and whether competitor local exchange companies should be given similar regulatory treatment.

Union argued that in addition to the analysis normally undertaken pursuant to RSA Chapter 374, the Commission should clarify the nature of regulation under which ATS would be regulated and whether any deviation from regulatory standards should apply to existing telephone utilities as well.

The Commission Staff (Staff) argued that the petition did not involve competition in basic exchange and, therefore, the docket should be similar to the MFS docket in scope.

NYNEX did not file comments but at the prehearing conference stated that it concurred with the comments of Union and recommended that at some point the Commission may need to revisit the implications of RSA 374:22-f.

The procedural schedule agreed upon by all parties is as follows:

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

ATS Testimony	Oct 3, 1994
Technical Session/ Preliminary Settlement Conference	Oct 18, 1994
Last day for Staff & Intervenor rolling data requests	Oct 26, 1994
Last Day for ATS rolling data responses	Nov 9, 1994
Staff and Intervenor follow-up data requests	Nov 18, 1994
ATS responses to follow-up data requests (received in hand)	Dec 1, 1994
Settlement Talks Staff & Intervenor Testimony	Dec 5-6, 1994
Dec 14, 1994	
ATS Data requests to Staff & Intervenors	Jan 4, 1995
Data responses from Staff & Intervenors	Jan 18, 1995
Final Settlement Conference	Jan 24, 1995
Hearing on the Merits	Jan 31-Feb 3, 1995

[1, 2] We do not interpret ATS' petition as a request to provide intraexchange local telecommunications service. NET's Tariff, NHPUC No. 75 defines Exchange Service as:

The furnishing of central office line facilities to provide for telephone communications within the local service calling area on a measured, unlimited or semipublic service basis in accordance with the rates and regulations of the Tariff.

In contrast, the definition of Private Line Service in NET's Tariff is:

Channels and equipment furnished to a customer for communication between specified locations.

Based on NET's definitions of private line and exchange service, we find the ATS petition is seeking authority to offer private line service including private line service within an exchange,

in NET's exchange service territory. Since ATS is not seeking authority to offer exchange service, it is unnecessary to address the issue of competition in the provision of exchange service in this docket. As in *Re: AT&T Communications of New Hampshire*, 76

Page 559

NHPUC 3 (1991), this petition is not asking for authority to compete for exchange service and therefore, we will not entertain in this docket, discussions of the Commission's authority to authorize local exchange competition, (i.e., competition for exchange service). As noted by Staff in its comments on the scope of the proceeding, if approved, ATS will have no authority to engage in any switched service, and should not interpret any approval it receives from the Commission as authorization to provide exchange service. We agree with Union's statements that the standard matters reviewed in any petition for authority are found primarily within RSA Chapter 374, and they will equally apply in this instance.

We will accept ATS' withdrawal of its request to limit the intervention of certain parties. There being no objection to any requests for intervention, we will grant all requests.

We find the procedural schedule outlined above to be reasonable and will adopt it for the duration of the case. If, due to the similarity of the issues with the MFS docket, a more expedited schedule is possible, we will entertain a motion to amend that schedule.

Based on the foregoing; it is hereby

ORDERED, that all requests to intervene are hereby granted; and it is

FURTHER ORDERED, that the scope of the proceeding in addition to the standard review of a petition for authority pursuant to RSA 374 shall be limited to issues of ATS' provision of non-switched intrastate intraLATA private line telecommunications services in NET's service area; and it is

FURTHER ORDERED, that the procedural schedule as set forth above is hereby approved.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1994.

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NH.PUC*10/10/94*[70651]*79 NH PUC 560*Corporate Telemanagement Group of New Hampshire, Inc.

[Go to End of 70651]

79 NH PUC 560

Re Corporate Telemanagement Group of New Hampshire, Inc.

DR 94-219

Order No. 21,382

New Hampshire Public Utilities Commission

October 10, 1994

ORDER authorizing an interexchange telephone carrier to introduce an optional service feature to its business "800" service (a four- digit authorization code).

1. SERVICE, § 468

[N.H.] Telephone — Toll services — Introduction of new options — Business "800" calling — Authorization codes. p. 560.

BY THE COMMISSION:

ORDER

[1] On September 16, 1994, Corporate Telemanagement Group of New Hampshire, Inc. (CTG) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce an optional service enhancement to its 800 Business Line Product.

The optional service enhancement is a four digit authorization code which will cost the customer \$1.00 per code per month.

The proposed change expands the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of CTG's NHPUC Tariff No. 1 are approved for effect as filed:

Page 560

6th Revised Page 1
2nd Revised Page 36.1;

and it is

FURTHER ORDERED, that CTG file properly annotated tariff pages in compliance with the Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1994.

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NH.PUC*10/10/94*[70652]*79 NH PUC 561*MFS Intelenet of New Hampshire, Inc.

[Go to End of 70652]

Re MFS Intelenet of New Hampshire, Inc.

DR 94-212
Order No. 21,383

New Hampshire Public Utilities Commission

October 10, 1994

ORDER authorizing an interexchange telephone carrier to expand its calling card service options to include such offerings as speed dialing, account coding, voice messaging, and voice mail access.

1. SERVICE, § 468

[N.H.] Telephone — Intrastate toll services — Calling card services — Introduction of new calling card options — Speed dialing, account coding, voice messaging, and voice mail access. p. 561.

BY THE COMMISSION:

ORDER

[1] On September 9, 1994 MFS Intelenet of New Hampshire, Inc. (MFS) filed to expand advanced calling card services and to change rates for Measured Telecommunications Service (MTS) and 800 service rates. The proposed calling card features include: customer programmable speed dialing, accounting codes, conference calling, voice mail access, voice messaging for future delivery, and a news and information retrieval service.

MFS proposes to include the speed dialing and accounting code capabilities at no additional charge, and to introduce rate elements for the conference calling, voice mail, voice massaging, and information retrieval service features. MFS proposed changes in existing MTS and 800 service rates.

Granting MFS' petition expands the choice of telephone services available to New Hampshire customers, thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following tariff pages of MFS' tariff NH PUC No. 1 are approved as filed:

First Revised Page 25
Original Page 25.1
Original Page 25.2
First Revised Page 27
First Revised Page 28

Original Page 28.1;

and it is

FURTHER ORDERED, that MFS shall file a compliance tariff with the Commission within two weeks of the date of this Order in accordance with NH Admin. Rules, Puc PART 1600.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1994.

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NH.PUC*10/13/94*[70653]*79 NH PUC 562*Public Service Company of New Hampshire

[Go to End of 70653]

79 NH PUC 562

Re Public Service Company of New Hampshire

DR 94-193 et al.

Order No. 21,384

New Hampshire Public Utilities Commission

October 13, 1994

ORDER approving an electric utility's proposed special service contracts with eight ski resorts, which contracts provide for discounted rates for a 10-year period in order to retain the customers' loads.

1. RATES, § 333

[N.H.] Electric rate design — Industrial customer — Ski resorts with self-generation capabilities — Special contract rates — Discounted demand charges — Factors — Load retention. p. 562.

BY THE COMMISSION:

ORDER

[1] On August 25, 1994, Public Service Company of New Hampshire filed in accordance with the Commission's Rules and Regulations eight signed and conformed copies of special contracts intended to retain the load of the following ski areas:

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

Ski Area Town Contract No. Docket No.

Mount Sunapee	Newbury	NHPUC-97-1 DR 94-193
Gunstock Mountain	Gilford	NHPUC-97-2 DR 94-194
Bretton Woods	Carroll	NHPUC-97-3 DR 94-195
Cannon Mountain	Franconia	NHPUC-97-4 DR 94-196
Pats Peak	Henniker	NHPUC-97-5 DR 94-197
Wildcat Mountain	Pinkham's Grant	NHPUC-97-6 DR 94-198
Ragged Mountain	Danbury	NHPUC-97-7 DR 94-199
Temple Mountain	Temple	NHPUC-97-8 DR 94-200

PSNH proposes that these eight special contracts become effective October 1, 1994 or upon approval by the Commission and remain in effect for a period of ten years. The ski areas currently receive all of their electricity requirements from PSNH under tariffed rates. PSNH avers that electricity costs are, in an industry it believes is increasingly competitive, a major operating expense.

PSNH's self-generation analysis supports that each has the option of installing economic diesel or propane-fired electric generators and direct drive diesel compressors and snow guns as an alternative to continuing to purchase electricity from PSNH.

Special Contracts NHPUC-97-1 through NHPUC-97-8 provide that PSNH will be the sole supplier of firm service electricity delivered at discounted off-tariff rates to the ski areas. The proposed rates for the first year include a Customer Charge of \$117.42 per month, a Base Demand Charge of \$7.00 per kW-month of Base Demand as specified in the contracts, an Incremental Demand Charge of \$1.50 per kW-month of Incremental Demand which is defined as electric demand used by the ski area during the months of November through April which exceeds the monthly Base Demand, and an Energy Charge of \$0.0665 per kWh or the sum of FPPAC BA plus FPPAC rate plus Nuclear Decommissioning Charge, whichever is the greater. The proposed rates, which increase at 3

Page 562

percent per year for the ten year period, are expected to be above PSNH's marginal costs during the term of the special contracts.

PSNH estimates that the proposed rates provide the larger ski areas an average discount of 15.7 percent and the smaller ski areas an average discount of 18.2 percent. PSNH represents that it has nine ski areas in its service territory which make snow and have an alternative generating source and that all were offered the same terms and conditions as contained in Special Contracts NHPUC-97-1 through NHPUC-97-8.

PSNH states it is committed to offering any new ski area in its service territory having similar economic alternatives the same rates in the form of a special contract for the existing term of those proposed herein. PSNH asserts that approval of these special contracts will retain ski area load; furthermore, PSNH believes the proposed special contracts provide an incentive for expanding load thereby providing benefits to both PSNH and its customers.

Upon review of the filing and Staff's recommendation, the Commission finds that the ski areas appear to have a viable alternative energy source. Absent any deleterious effects on potential competitors, Special Contracts NHPUC-97-1 through NHPUC-97-8 are in the public interest.

Based on the foregoing, it is hereby

ORDERED *Nisi*, that Special Contracts NHPUC-97-1 through NHPUC-97-8 are approved as filed effective November 1, 1994 unless the Commission orders otherwise in a Supplemental order issued prior thereto; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contracts NHPUC-97-1 through NHPUC-97-8, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rates afforded the ski areas by our approval today of these special contracts; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, PSNH notify all persons desiring to be heard by causing an attested copy of this order to be published once in a statewide newspaper of general circulation, such publication to be no later than October 20, 1994 and documented by affidavit filed with this office on or before October 28, 1994; 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 28, 1994.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 1994.

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NH.PUC*10/17/94*[70654]*79 NH PUC 563*North Country Water Supply, Inc.

[Go to End of 70654]

79 NH PUC 563

Re North Country Water Supply, Inc.

DE 93-197

Order No. 21,385

New Hampshire Public Utilities Commission

October 17, 1994

ORDER requiring a water utility that serves a condominium complex, and was under a show cause order as to why it should not be deemed a public utility, to file a petition for authority to transfer its assets in the Bow Lake Estates to a duly regulated water utility.

1. PUBLIC UTILITIES, § 14

[N.H.] Regulatory status — Factors — Intercorporate relations — Ownership of assets through separate subsidiary — Request for exemption from regulation as public utility — Show cause order — Sale of assets and spinning off of subsidiary — Necessity of approval — Water utility. p. 564.

2. CONSOLIDATION, MERGER, AND SALE, § 13

[N.H.] Necessity of commission authorization — Sale of assets and spinning off of subsidiary — Public utility status as a factor —

Page 563

Impact of request for exemption from regulation as public utility — Show cause order — Water utility. p. 564.

BY THE COMMISSION:

ORDER

[1, 2] On July 19, 1994, the New Hampshire Public Utilities Commission (the Commission) issued Order 21,303 which directed North Country Water Supply, Inc. (North Country) to appear before the Commission on August 31, 1994 to show cause why failure to respond to its Staff's inquiries regarding North Country's request for a waiver from Commission regulation should not result in the Commission finding that the provision of water to Freedom Village should be franchised. On August 12, 1994, North Country submitted a letter that outlined its plan to split Bow Lake Estates from its holdings and form B. L. E. Water Works (BLE) as a corporate entity. BLE, which will be regulated by the Commission, will hold the assets and liabilities of the Bow Lake Estates water system. North Country will provide water to the Freedom Village Condominiums and will seek a waiver from regulation for that service. North Country represents that the financial books and records of the two companies will be separated as soon the Commission accepts the plan.

Based on the foregoing, it is hereby

ORDERED, that North Country file a petition for permission to transfer the Bow Lake Estates assets and liabilities from North Country to BLE and a petition for a waiver from regulation by the New Hampshire Public Utilities Commission of North Country for its provision of water to the Freedom Village Condominium water system by November 17, 1994; and it is

FURTHER ORDERED, that North Country provide documentation of the establishment of BLE as a corporate entity in the State of New Hampshire by December 1, 1994; and it is

FURTHER ORDERED, that North Country provide documentation of the separation of the financial books and records of North Country and subsequent transfer of the assets and liabilities of its Bow Lake Estates water system to BLE by December 1, 1994.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re North Country Water Supply, Inc., DE 93-197, Order No. 21,303, 79 NH PUC 413,

July 19, 1994.

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NH.PUC*10/17/94*[70655]*79 NH PUC 564*Residential Energy Code Pursuant to the Energy Policy Act of 1992

[Go to End of 70655]

79 NH PUC 564

Re Residential Energy Code Pursuant to the Energy Policy Act of 1992

DE 94-191

Order No. 21,386

New Hampshire Public Utilities Commission

October 17, 1994

ORDER initiating a rulemaking proceeding for amending the New Hampshire Code for Energy Conservation in New Building Construction as it pertains to residential premises, to bring the state code into compliance with the Model Energy Code, 1993, as developed by the Council of American Building Officials.

1. CONSERVATION, § 1

[N.H.] State energy code provisions — Construction standards for residential dwellings — Necessity of amendments — Factors — Compliance with national Model Energy Code — Rulemaking proceeding. p. 565.

Page 564

BY THE COMMISSION:

ORDER

[1] On August 26, 1994 the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice scheduling a hearing pursuant to 42 U.S.C.A. §6833 (a) to take comment and hear evidence on the efficacy of revising the residential standards of the *New Hampshire Code for Energy Conservation in New Building Construction* (State Code) to comply with the Council of American Building Officials (CABO) *Model Energy Code, 1993* (Model Code).

The same Order of Notice was subsequently reissued by the Commission due to scheduling conflicts setting a hearing date for October 11, 1994. The Order of Notice was served upon all municipalities, interested individuals and entities involved in the building trades and pertinent members of the New Hampshire General Court, and published in a newspaper of general

circulation with statewide distribution.

At the October 11, 1994 hearing the Commission heard testimony from its Staff Energy Planner, John C. Cutting. Mr. Cutting's testimony consisted of a comparison of the State Code and the Model Code. This comparison revealed that the standards and procedures contained in the Model Code resulted in more energy efficient building practices than those of the existing State Code. Mr. Cutting further testified that a 1991 analysis by the Alliance to Save Energy¹⁽⁴⁰⁾ of the 1989 Model Code entitled *Better Building Codes for Energy Efficiency* concluded that the increased costs in residential buildings resulting from an upgrade of the State Code to Model Code standards would be recouped by homeowners in less than six months. *Better Building Codes for Energy Efficiency*, at 45, 46.

Based on these findings, Mr. Cutting recommended that the Commission institute a rulemaking pursuant to RSA chapters 155-D and 541-A to amend the State Code.

In response to a question from the bench relative to federal funding, Scott Maltzie, Assistant Executive Director of the Governor's Office of Energy and Community Services, informed the Commission that the failure of the State Code to meet the standards of the Model Code requires that agency to annually request a waiver from the Federal Department of Energy in order to receive funding for fuel assistance and weatherization programs.²⁽⁴¹⁾

In light of this testimony, we will adopt Mr. Cutting's recommendation to begin a rulemaking proceeding to amend the State Code pursuant to the rulemaking provisions of RSA 155-D.

Based on the foregoing, it is hereby

ORDERED, that Staff schedule an informal conference(s) with interested entities and individuals pursuant to RSA 155-D: 10 to discuss amendments to the State Code that will bring it into compliance with the Council of American Building Officials (CABO) *Model Energy Code, 1993* in a manner that reflects the particular characteristics of the State; and it is

FURTHER ORDERED, that subsequent to these informal conferences Staff commence a rulemaking to amend the State Code that will bring it into compliance with the Council of American Building Officials (CABO) *Model Energy Code, 1993* in a manner that reflects the particular characteristics of the State; and it is

FURTHER ORDERED, that the "DE" prefix originally assigned to this docket be replaced with the "DRM" prefix reflecting our decision to commence the rulemaking process.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1994.

FOOTNOTES

¹The Alliance to Save Energy is a nonprofit coalition of business, government, environmental and consumer leaders dedicated to increasing the efficiency of energy use, which receives its financial support from corporations, foundations, individuals and government agencies.

²Mr. Maltzie stated that such waivers had been requested and granted for ten years.

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NH.PUC*10/17/94*[70656]*79 NH PUC 566*Public Service Company of New Hampshire

[Go to End of 70656]

79 NH PUC 566

Re Public Service Company of New Hampshire

DR 93-237

Order No. 21,387

New Hampshire Public Utilities Commission

October 17, 1994

ORDER modifying an electric utility's approved 1994 conservation and load management programs, to ease eligibility for the residential conservation program by not requiring so many program participants to be low-income. The change is deemed reasonable due to the utility encountering problems in identifying enough low-income customers to reach the target number of participants.

1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Residential conservation program — Eligibility and low-income requirements — Easing of eligibility criteria — Reduction in target number of low-income participants. p. 566.

BY THE COMMISSION:

ORDER

[1] On October 12, 1994 Public Service Company of New Hampshire (PSNH or Company) filed a letter with the New Hampshire Public Utilities Commission (Commission) requesting approval of a proposed modification to its Residential Conservation Program (RCP) applicable to the 1994 program year. Pursuant to the Settlement Agreement approved by the Commission on September 20, 1994 by Order No. 21,366, the target participation for the RCP was 450 low income customers and 190 high use customers, for a total of 640 customers.

PSNH submits that despite significant efforts to identify sufficient numbers of income eligible customers to meet the original target of 450 low income customers, it has been able to identify and serve only 140 income eligible customer (in addition to 271 carried over from the 1993 program year). The Company believes that it is unlikely that it will be able to identify and serve the remaining 310 low income customers in 1994 and is further concerned that the funds being spent in marketing the program are significant enough to threaten the cost effectiveness of the program itself.

PSNH proposes to modify the 1994 target participation by offering the RCP services to any

electric heating customer interested in receiving program services, up to the combined target number of 640. It will continue its current efforts to identify low income customers and its service schedule will assign first priority to such customers.

The Company avers that Staff and the Office of the Consumer Advocate, the other signatories to the DE 93-237 Settlement Agreement, have agreed to the proposed modification.

The Commission has reviewed the information provided by PSNH and the recommendation of Staff, and finds that, given the difficulty PSNH has encountered in identifying eligible customers, it is preferable to assure that PSNH will be able to meet its total goal of 640 participants than to continue to restrict the program to low income customers.

Based on the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's proposed modification to its Residential Conservation Program for the 1994 program year is approved, and that the restriction on 450 participants to customers satisfying a low income criteria is thereby eliminated for the 1994 program year.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1994.

Page 566

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-237, Order No. 21,366, 79 NH PUC 517, Sept. 20, 1994.

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NH.PUC*10/17/94*[70657]*79 NH PUC 567*Great Bay Water Company, Inc.

[Go to End of 70657]

79 NH PUC 567

Re Great Bay Water Company, Inc.

DR 94-185
Order No. 21,388

New Hampshire Public Utilities Commission

October 17, 1994

ORDER suspending a water utility's proposal for a 45% increase in rates, to allow for proper investigation.

1. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed rate increase — To allow for adequate investigatory period — Water utility. p. 567.

BY THE COMMISSION:

ORDER

[1] On September 21, 1994 Great Bay Water Co., Inc. (Great Bay) filed proposed rate schedules and supporting documentation which if approved would result in a 45% increase over its present annual revenues; and

WHEREAS, Great Bay amended its filing on October 12, 1994, in compliance with N.H. Admin. Rule Puc 1603.03(a); and

WHEREAS, a thorough investigation is necessary prior to rendering a decision thereon; it is hereby

ORDERED, that Great Bay Water Company, Inc. NHPUC 1 Water Tariff First Revised Page No. 15 is hereby suspended; and it is

FURTHER ORDERED, that a prehearing conference be held, pursuant to N.H. Admin. Rules Puc 203.05, before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on November 8, 1994, at 10:00 a.m.; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Great Bay notify all persons desiring to be heard at this hearing by publishing an attested copy of this Order of Notice no later than October 25, 1994, in a newspaper of general circulation in that portion of the state in which operations are conducted, said publication shall be documented by affidavit filed with the Commission on or before November 8, 1994; and it is

FURTHER ORDERED, Great Bay serve a summary of its proposed rate change and a copy of this Order of Notice in accordance with N.H. Admin. Rules, Puc 1601.05(j), on current and known prospective customers and the Newmarket Town Clerk by first class U.S. Mail, postmarked no later than October 25, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to Great Bay and the Office of the Consumer Advocate on or before November 3, 1994.

By order of the New Hampshire Public Utilities Commission this 17th day of October, 1994.

Any individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the American with Disabilities Act Coordinator, NHPUC, 8 Old Suncook Road, Concord, New Hampshire 03301-7319; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Preferably, notification of the need for assistance should be made on or before November 1, 1994.

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NH.PUC*10/18/94*[70658]*79 NH PUC 568*WilTel of New Hampshire, Inc.

[Go to End of 70658]

79 NH PUC 568

Re WilTel of New Hampshire, Inc.

DR 94-222

Order No. 21,389

New Hampshire Public Utilities Commission

October 18, 1994

ORDER approving an interexchange telephone carrier's proposal to introduce enhanced "800" service under its "CustomOne" products, to introduce a prepaid calling card service, and to eliminate the surcharge for "WilMAX" travel card services.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special "CustomOne" discount plans — Additional enhanced service features — Prepaid calling card service. p. 568.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special "WilMAX" package plans — Elimination of surcharge on travel card service. p. 568.

BY THE COMMISSION:

ORDER

[1, 2] On September 21, 1994, WilTel of New Hampshire Inc., (WilTel) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Enhanced 800 Service to existing CustomOne service, remove the surcharge for WilMAX Travel Card calls and introduce a Prepaid Calling Card service, for effect October 24, 1994.

CustomOne Enhanced 800 Service offers customers various options for 800 service and is provided on an intrastate basis at the same terms and conditions as the interstate tariff.

Prepaid Calling Card service is a debit card which allows a customer to pay a fixed amount in advance for long distance calling and is debited each time the card is used.

The proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of WilTel's Tariff NHPUC No. 2 are approved for effect as filed:

- 7th Revised Page 1
- 3rd Revised Page 6
- 3rd Revised Page 7
- 3rd Revised Page 43
- 3rd Revised Page 52
- 4th Revised Page 63.1
- 2nd Revised Page 63.5
- 2nd Revised Page 63.7
- Original Page 63.8
- Original Page 63.9
- Original Page 63.10;

and it is

FURTHER ORDERED, that WilTel file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1994.

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NH.PUC*10/18/94*[70659]*79 NH PUC 569*AT&T Communications of New Hampshire, Inc.

[Go to End of 70659]

79 NH PUC 569

Re AT&T Communications of New Hampshire, Inc.

DE 94-225

Order No. 21,390

New Hampshire Public Utilities Commission

October 18, 1994

ORDER authorizing an interexchange telephone carrier to rename its "MEGACOM Plus" service as "UniPlan" service.

1. SERVICE, § 468

[N.H.] Telephone — Toll service — Special service plans — Change in name — From "MEGACOM Plus" service to "UniPlan" service. p. 569.

BY THE COMMISSION:

ORDER

[1] On September 23, 1994, AT&T Communications of New Hampshire, Inc., (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to change the name of its MEGACOM Plus Service to AT&T UniPlan Service and to place the terms and conditions of AT&T UniPlan Service into its own section of the tariff, for effect October 24, 1994.

The filing is administrative in nature and does not change any rates, terms or conditions of the former AT&T MEGACOM Plus Service, but merely renames it and places it in its own section of AT&T's NHPUC Tariff No. 1.

Based on the foregoing, it is hereby

ORDERED, that the following pages of AT&T's NHPUC Tariff No. 1 are approved for effect as filed:

Table of Contents

13th Revised Page 1
4th Revised Page 5.1
Original Page 21

Section 3, AT&T MEGACOM WATS SERVICE

2nd Revised Page 1
2nd Revised Page 2
2nd Revised Page 3
2nd Revised Page 4
2nd Revised Page 5
2nd Revised Page 6
1st Revised Page 7
1st Revised Page 8
1st Revised Page 9
1st Revised Page 10
4th Revised Page 11
4th Revised Page 12
2nd Revised Page 13

Section 19, AT&T UNIPLAN SERVICE

Original Pages 1 through 11;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1994.

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NH.PUC*10/18/94*[70660]*79 NH PUC 570*Working Assets Funding Services, Inc., dba Working Assets Long Distance

[Go to End of 70660]

79 NH PUC 570

Re Working Assets Funding Services, Inc., dba Working Assets Long Distance

DE 94-092

Order No. 21,391

New Hampshire Public Utilities Commission

October 18, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 570.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 570.

BY THE COMMISSION:

ORDER

[1, 2] On May 9, 1994, Working Assets Funding Service, Inc., (Working Assets), d/b/a Working Assets Long Distance, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

Working Assets has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993, to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications

companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing; it is hereby

ORDERED, *MSI*, that Working Assets is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. Working Assets shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, Working Assets shall notify the Commission of the change.
5. Working Assets is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. Working Assets shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Working Assets shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be

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mailed.

8. Working Assets shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.

9. Working Assets shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

10. Working Assets shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Working Assets pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

11. New service offerings filed for approval with the Commission shall be accompanied by

tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter Working Assets shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow Working Assets to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Working Assets shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than October 28, 1994, and an affidavit proving publication shall be filed with the Commission on or before November 16, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Working Assets shall pay

all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that Working Assets shall file a compliance tariff with the Commission before November 1, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 17, 1994, 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 eighteenth day of October, 1994.

Notice of Conditional Approval of
WORKING ASSETS FUNDING SERVICES, INC. d/b/a WORKING ASSETS LONG
DISTANCE

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On May 9, 1994, Working Assets Funding Services, Inc., (Working Assets), a New Hampshire corporation, d/b/a Working Assets Long Distance, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,391, issued in Docket No. DE 94-092, the Commission granted Working Assets conditional approval to operate as of November 17, 1994, subject to the right of the public and interested parties to comment on Working Assets or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on Working Assets's petition to do business in the State should submit written comments no later than November 14, 1994, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*10/18/94*[70661]*79 NH PUC 572*USX Consultants, Inc.

[Go to End of 70661]

79 NH PUC 572

Re USX Consultants, Inc.

DE 94-159

Order No. 21,392

New Hampshire Public Utilities Commission

October 18, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 573.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 573.

Page 572

BY THE COMMISSION:

ORDER

[1, 2] On July 25, 1994, USX Consultants, Inc., (USX), a subsidiary of the USX Corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

USX has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993, to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications

companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing; it is hereby

ORDERED, *NISI*, that USX is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. USX shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, USX shall notify the Commission of the change.
5. USX is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. USX shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. USX shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. USX shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.
9. USX shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.
10. USX shall compensate the appropriate Local Exchange Company for all originating and terminating access used by USX pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.
12. During the Trial Period, within 60 days following the end of each calendar quarter USX shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.
 - a. For each intrastate toll service offered:
 - (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and

- 1995; otherwise monthly reports will identify total subscribers;
 (2) intrastate minutes of use;
 (3) intrastate revenue;

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- (4) type of access arrangement used;
 (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
 (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
 (2) for 800 services, terminating inbound minutes of use;
 (3) average call duration;
 (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow USX to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that USX shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than October 28, 1994, and an affidavit proving publication shall be filed with the Commission on or before November 16, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. USX shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that USX shall file a compliance tariff with the Commission before November 1, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 17, 1994, 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 eighteenth day of October, 1994.

Notice of Conditional Approval of
USX FUNDING SERVICES, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On May 9, 1994, USX Funding Services, Inc., (USX), an Ohio corporation, and a subsidiary of the USX Corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,392, issued in Docket No. DE 94-159, the Commission granted USX conditional approval to operate as of November 17, 1994, subject to the right of the public and interested parties to comment on USX or its operations before the Order becomes final.

For copies of the petition or Commission

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order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on USX's petition to do business in the State should submit written comments no later than November 14, 1994, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*10/18/94*[70662]*79 NH PUC 575*Home Owners Long Distance, Inc.

[Go to End of 70662]

79 NH PUC 575

Re Home Owners Long Distance, Inc.

DE 94-177
Order No. 21,393

New Hampshire Public Utilities Commission

October 18, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 575.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 575.

BY THE COMMISSION:

ORDER

[1, 2] On August 9, 1994, Home Owners Long Distance, Inc., (HOLD) a Texas corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

HOLD has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993, to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing; it is hereby

ORDERED, *NISI*, that HOLD is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.

3. HOLD shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.

4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, HOLD shall notify the Commission of the change.

5. HOLD is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. HOLD shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. HOLD shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

8. HOLD shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.

9. HOLD shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

10. HOLD shall compensate the appropriate Local Exchange Company for all originating and terminating access used by HOLD pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter HOLD shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each

LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;

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(4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow HOLD to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that HOLD shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than October 28, 1994, and an affidavit proving publication shall be filed with the Commission on or before November 16, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. HOLD shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that HOLD shall file a compliance tariff with the Commission before November 1, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 17, 1994, 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 eighteenth day of October, 1994.

Notice of Conditional Approval of
HOME OWNERS LONG DISTANCE, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 9, 1994, Home Owners Long Distance, Inc., (HOLD), a Texas corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,393, issued in Docket No. DE 94-177, the Commission granted HOLD conditional approval to operate as of November 17, 1994, subject to the right of the public and interested parties to comment on HOLD or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on HOLD's petition to do business in the State should submit written comments no later than November 14, 1994, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

=====

NH.PUC*10/18/94*[70663]*79 NH PUC 578*Midwest Fibernet, Inc.

[Go to End of 70663]

79 NH PUC 578

Re Midwest Fibernet, Inc.

DE 94-179
Order No. 21,394

New Hampshire Public Utilities Commission

October 18, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority

— Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 578.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 578.

BY THE COMMISSION:

ORDER

[1, 2] On August 10, 1994, Midwest Fibernet, Inc., (MFI) a Illinois corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

MFI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993, to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing; it is hereby

ORDERED, *NISI*, that MFI is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. MFI shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, MFI shall notify the Commission of the change.
5. MFI is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. MFI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. MFI shall file with the Commission each calendar year an Annual Report consisting of a

Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

8. MFI shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except

Page 578

those specifically waived herein.

9. MFI shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

10. MFI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by MFI pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter MFI shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800

service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow MFI to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that MFI shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than October 28, 1994, and an affidavit proving publication shall be filed with the Commission on or before November 16, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. MFI shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that MFI shall file a compliance tariff with the Commission before November 1, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

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FURTHER ORDERED, that this Order *Nisi* shall be effective November 17, 1994, 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 eighteenth day of October, 1994.

Notice of Conditional Approval of
MIDWEST FIBERNET, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 10, 1994, Midwest Fibernet, Inc., (MFI), a Illinois corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,394, issued in Docket No. DE 94-179, the Commission granted MFI conditional approval to operate as of November 17, 1994, subject to the right of the public and interested parties to comment on MFI or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on MFI's petition to do business in the State should submit written comments no later than November 14, 1994, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002,
Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*10/18/94*[70664]*79 NH PUC 580*Equal Net Communications, Inc.

[Go to End of 70664]

79 NH PUC 580

Re Equal Net Communications, Inc.

DE 94-181
Order No. 21,395

New Hampshire Public Utilities Commission

October 18, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 580.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 580.

BY THE COMMISSION:

ORDER

[1, 2] On August 12, 1994, Equal Net Communications, Inc., (ENC) a Texas

corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

ENC has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993, to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing; it is hereby

ORDERED, *MSI*, that ENC is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. ENC shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, ENC shall notify the Commission of the change.
5. ENC is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. ENC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. ENC shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. ENC shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.
9. ENC shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

10. ENC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ENC pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter ENC shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential

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or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow

ENC to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that ENC shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than October 28, 1994, and an affidavit proving publication shall be filed with the Commission on or before November 16, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. ENC shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that ENC shall file a compliance tariff with the Commission before November 1, 1994 in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 17, 1994, 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 eighteenth day of October, 1994.

Notice of Conditional Approval of
EQUAL NET COMMUNICATIONS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 10, 1994, Equal Net Communications, Inc., (ENC), a Texas corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,395, issued in Docket No. DE 94-181, the Commission granted ENC conditional approval to operate as of November 17, 1994, subject to the right of the public and interested parties to comment on ENC or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on ENC's petition to do business in the State should submit written comments no later than November 14, 1994, to:

Page 582

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

=====

NH.PUC*10/24/94*[70665]*79 NH PUC 583*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 70665]

79 NH PUC 583

Re Sprint Communications Company of New Hampshire, Inc.

DR 94-233

Order No. 21,396

New Hampshire Public Utilities Commission

October 24, 1994

ORDER authorizing an interexchange telephone carrier to introduce (1) "TimeBank" service, which provides one free minute of calling for every five minutes of paid toll calling when minimum monthly use reaches \$30; (2) "Business Sense" service, which provides for flat-rate calling based on monthly commitment levels rather than time-of-day, day-of-week, or usage-sensitive factors; and (3) a prepaid discounted debit calling card service.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Interexchange carrier — Introduction of new calling options — Free calling minutes when reach minimum monthly paid usage level — Flat-rate business service based on minimum monthly commitment levels — Prepaid debit calling card service. p. 583.

BY THE COMMISSION:

ORDER

[1] On September 28, 1994, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce TimeBank, Business Sense and Collector's Prepaid FONCARD and to make minor text changes to its NHPUC Tariff No. 4, for effect November 1, 1994.

TimeBank is an optional calling plan available to Sprint Service subscribers which awards free minutes based upon total minutes billed. Customers earn one free minute for every five minutes of paid long distance calling when the total monthly long distance charges are greater

than \$30.00.

Business Sense is a service which offers small business customers using switched domestic and or international calling a flat rate that is neither distance, time-of-day, day-of-week or usage sensitive for outbound, 800, FONCARD, VOICE FONCARD and switched data usage. Rates are based on monthly commitment levels with options for additional reductions when the customer commits to a one, two or three year term.

Collector's Prepaid FONCARD is a debit card which has a collector's value that is distinct from the value of the telecommunications service. The telecommunications service associated with the card is rated at Instant FONCARD rates.

Based on the foregoing, it is hereby

ORDERED, that the following pages of Sprint's NHPUC Tariff No. 4 are approved for effect as filed:

- 7th Revised Page 1
- 2nd Revised Page 2
- 1st Revised Page 6
- 2nd Revised Page 22
- 2nd Revised Page 24
- 2nd Revised Page 28
- 2nd Revised Page 31
- 1st Revised Page 44
- 2nd Revised Page 45
- 2nd Revised Page 46

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- 1st Revised Page 60
- Original Page 71-B
- 3rd Revised Page 72
- 2nd Revised Page 73
- Original Page 73-A
- Original Page 73-B
- 1st Revised Page 89
- Original Page 103-E
- Original Page 103-F
- Original Page 103-G
- Original Page 103-H;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 1994.

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NH.PUC*10/24/94*[70666]*79 NH PUC 584*Southern New Hampshire Water Company, Inc.

[Go to End of 70666]

79 NH PUC 584

Re Southern New Hampshire Water Company, Inc.

DR 94-060

Order No. 21,397

New Hampshire Public Utilities Commission

October 24, 1994

ORDER authorizing a water utility to eliminate connection fees for new customers in certain areas of Pelham, Londonderry, and Hudson, where the existing fees were found to represent a barrier to new customer growth and were an aberration from the utility's traditional main extension policies. Additionally, the commission notes that the fees were originally enacted to cover system-specific main extension costs, which no longer are a consideration given the averaging of the utility's various satellite system rates.

1. RATES, § 304

[N.H.] Connection fees — Elimination of — Water utility — Factors — Averaging of system rates — Barriers to customer growth. p. 585.

2. SERVICE, § 188

[N.H.] Extensions — Burden of cost — New customers — Connection fees — Elimination of — Water utility — Factors — Averaging of system rates — Barriers to customer growth. p. 585.

APPEARANCES: Larry S. Eckhaus, Esq. on behalf of Southern New Hampshire Water Company, Inc.; Kenneth E. Traum on behalf of the Office of Consumer Advocate; and E. Barclay Jackson, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 5, 1994, Southern New Hampshire Water Co., Inc. (Southern or the Company) petitioned the Commission to eliminate certain connection fees payable to Southern from new customers along certain roads in the towns of Pelham, Londonderry and Hudson, New Hampshire. Elimination of the connection fees requires amendments to certain Commission orders: No. 19,168 in consolidated Dockets DE 88-077 and DE 88-078, No. 18,883 in Docket

DR 87-171 and No. 17,111 in docket DE 84-176. On April 11, 1994, the Commission issued an Order of Notice scheduling a prehearing conference for May 4, 1994 to establish a procedural schedule to govern the Commission's examination of Southern's petition and to address any motions to intervene in the proceeding. On May 10, 1994, the Commission issued Order No. 21,221 approving the procedural schedule submitted by the Company, Staff and the Office of Consumer Advocate,

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which concluded with a hearing on the merits on August 10, 1994. At the hearing on the merits, the Parties and Staff presented to the Commission a Stipulation Agreement (Attachment 1).

II. STIPULATION OF THE PARTIES

The parties agreed to recommend that the Commission amend the following orders which would remove connection fees payable to Southern for new customers connecting to existing mains along certain roads in Pelham, Londonderry and Hudson, New Hampshire. The orders to be amended were as follows:

- a. Order No. 19,168 Docket DE 88-077, DE 88-078 (September 8, 1988) (Pelham)
- b. Order No. 18,883 Docket DR 87-171, (October 22, 1987) (Londonderry)
- c. Order No. 17,111 Docket DE 84-176 (July 16, 1984) (Hudson)

In these orders, the Commission had approved special contracts which allowed the imposition of connection fees payable to Southern by new customers in portions of the above towns.

The parties agreed that the attraction of new customers would spread the capital cost associated with the existing mains and overhead costs over a greater number of customers, thus benefiting existing customers. The parties also agreed that circumstances had changed since the imposition of connection fees and that the fees now represent a barrier to new customer growth. At the time the connection fees were imposed, the economy was significantly stronger and the housing market was expanding. As economic conditions declined, however, the anticipated customer growth was less than expected. The parties now agree that eliminating the connection fees will attract new customers and is more likely to enhance the company's revenue stream than continuing to apply them.

III. COMMISSION ANALYSIS

[1, 2] In its public deliberations on August 15, 1994, the Commission approved the Stipulation Agreement and the elimination of the connection fees to customers connecting to existing mains along certain roads in Pelham, Londonderry and Hudson. The Commission found the testimony of the parties in support of the Agreement persuasive, particularly regarding the change in economic conditions. It found that the connection fees now present a barrier to customers joining the system which affects all customers: if the customers elect not to join the system because the connection fee is too significant, then the economic benefit that new customers bring to the entire system cannot be realized.

Further, the original orders represent approval of special arrangements that departed from the terms and conditions of Southern's main extension policy, because of the particular circumstances surrounding the construction of the mains themselves. The fees were intended to recoup from new customers a portion of the capital expenditures of those specific mains at a time that the rates of each satellite system were more system specific. Since those orders were approved, the Commission has moved towards averaging the rates of Southern's satellite systems. Thus, it is no longer necessary to attempt to reimburse the existing customers of each system from a revenue stream derived from the new customers joining the system.

Based on the foregoing, it is hereby

ORDERED, that the Stipulation among Southern New Hampshire Water Company, the Office of the Consumer Advocate and Staff is hereby approved; and it is

FURTHER ORDERED, that the aforementioned orders are hereby amended consistent with the terms and conditions of the Stipulation Agreement.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 1994.

Attachment 1

STIPULATION AGREEMENT

I. AGREEMENT

This Stipulation Agreement ("Stipulation") entered into by and between Southern New

Page 585

Hampshire Water Company, Inc. ("Southern" or the "Company"), the Office of the Consumer Advocate ("OCA")(hereinafter sometimes collectively referred to as the "Parties") and the Staff ("Staff") of the New Hampshire Public Utilities Commission ("Commission"), for the purposes and subject to the terms and conditions hereinafter stated.

II. SUBJECT MATTER OF THIS STIPULATION

This Stipulation pertains to Southern's Petition, filed April 5, 1994, to amend the following Orders ("Orders") of the Commission to remove connection fees, payable to Southern, for new customers connecting to existing mains along certain roads in Pelham, Londonderry and Hudson, NH, (see also Attachment 1):

- A. Order No. 19,168, Docket DE 88-077, DE 88-078 (September 8, 1988) (Pelham)
- B. Order No. 18,883, Docket DR 87-171, (October 22, 1987) (Londonderry)
- C. Order No. 17,111, DE 84-176 (July 16, 1984) (Hudson)

III. PROCEDURAL HISTORY

On April 5, 1994, Southern filed a petition to eliminate certain connection fees payable to Southern from new customers along certain roads in the towns of Pelham, Londonderry and Hudson, New Hampshire. The Petition requested amendment of Commission Orders No. 19,168 in Docket DE 88-077, No. 18,883 in Docket DR 87-171 and No. 17,111 in Docket DE 84-176.

On April 11, 1994, the Commission issued an Order of Notice scheduling a prehearing conference for May 4, 1994 at which time a procedural schedule was proposed and adopted by the Commission. The Order of Notice was published in newspapers of general circulation and copies were mailed to the Town Clerks of Pelham, Londonderry and Hudson. The Company prefiled direct testimony and exhibits, pursuant to the Commission's Order of Notice, on April 29, 1994, in support of Southern's claim of changed circumstances justifying the elimination of the connection fees, and provided details of the consequences of such elimination.

On May 19, 1994 and May 20, 1994, the OCA and Staff, respectively, promulgated data requests of the Company which were answered on June 3, 1994. On June 17, 1994, Staff filed direct testimony in support of the Company's proposal.

IV. DISCUSSION

Southern's Tariff for Water Service in Various Towns in New Hampshire does not provide for "connection fees" payable to Southern, for connection to an existing main, although provision is made for customers to bear some or all of the cost of certain main extensions. The Orders relate to construction of mains undertaken by Southern, entirely or in part, to meet Southern's utility obligation or for other reasons. (see Attachment 1)

The Hudson connection fee was authorized in a special contract in 1984. It was found at the time that circumstances surrounding the provision of water service in that area of Hudson would not lend itself to the application of normal main extension tariff provisions. Both the developers and Southern contributed funds for the main extension.

The Londonderry connection fee was approved in a special contract in 1988 where extenuating circumstances, including "emergency" service to a school, warranted departure, at the time, from the main extension provisions. Both the developer and Southern contributed funds for the main extension.

The Pelham main extension was constructed under "emergency" conditions in order to construct a main from the Williamsburg system to serve the Stonegate system which was experiencing significant water quality and quantity problems. This main was totally financed by Southern.

In all three of the above situations, Southern requested, and the Commission approved, connection fees to offset the Company's contribution to the extension and reduce rate base. In the Londonderry extension, the Commission also approved refunds to the developer.

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The Parties and Staff are of the opinion that circumstances have changed and these "connection fees" now represent a barrier to new customer growth. In order to be more competitive with individual wells, Southern needs to lower the costs to customers connecting to existing mains where connection fees are presently in effect. When a potential customer chooses not to connect to the system because of a connection fee, not only does the Company not get the intended contribution to lower investment and reduce rate base, but the Company also loses the annual operating revenue from that potential customer, perhaps forever. Attracting additional revenue to already existing mains in service will spread capital costs associated with existing

mains and overhead costs over a greater number of customers, help Southern earn its fair rate of return at existing rates and help dampen the need for future rate increases, thereby benefitting existing customers.

At the time the connection fees were approved, the economy was significantly stronger with an expanding housing market. The anticipated growth in new homes, however, was less than expected as economic conditions declined. There has been a slow down in the development of new homes; the rate structure now in effect is based on the combined costs to serve a number of systems; and competition from individual wells has increased as a result of price decreases and legislative initiatives relaxing the requirements under which new wells may be installed. It is more likely that new customers will connect without connection fees than with them.

This Stipulation will not affect the rights of individuals entitled to refunds under Southern's main extension provisions, or the obligation of new customers to make contributions under those provisions. Nor does it affect the right of the Developer (Andy Mack) to receive his portion of refunds pursuant to Order No. 18,883, or the obligation of new customers to make contributions of the Developer's portion of the connection fee pursuant to said Order.

The connection fees already collected pursuant to the Orders were appropriate at the time. The connection fees were set in place in one set of circumstances, which have changed. The connection fee concept as applied to these mains is no longer effective. The fees that were implemented were properly justified and charged without discrimination as per Commission Orders. A refund, therefore, does not logically follow.

V. AGREEMENT

The Parties and Staff agree as follows:

1. The connection fees, payable to Southern, for new customers connecting to existing mains along certain roads in Pelham, Londonderry and Hudson, NH, approved by the Commission in the following Orders are eliminated:
 - A. Order No. 19,168, Docket DE 88-077, DE 88-078 (September 8, 1988) (Pelham)
 - B. Order No. 18,883, Docket DR 87-171, (October 22, 1987) (Londonderry) This does not affect the right of the Developer (Andy Mack) to receive his portion of refunds pursuant to Order No. 18,883
 - C. Order No. 17,111, DE 84-176 (July 16, 1984) (Hudson)

This Stipulation will not affect the rights of individuals entitled to refunds under Southern's main extension provisions, or the obligation of new customers to make contributions under those provisions.

2. The Company will attempt to renegotiate with the developer of the Londonderry extension, Andy Mack, in order to eliminate connection fees which would be refunded to the developer through 1997, subject to approval of the Commission.
3. There shall be no refund of connection fees already collected pursuant to the Orders.
4. Southern will work with the Parties and Staff and the selectmen of the three towns involved and attempt to approach the problems of future expansion in a cooperative spirit.

5. Pursuant to the Commission's Report

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and Order No. 21,221 (May 10, 1994) in this proceeding, connection fees collected from Mr. Robert Andrew pursuant to Docket DE 94-019, and from any other customers during the pendency of this proceeding shall be refunded.

VI. GENERAL CONDITIONS

This Stipulation is subject to the following conditions:

A. In view of the importance to the Parties and Staff 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 as soon as possible.

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 and Staff believe) the elimination of the connection fees 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 with regard to the subject matter of this Stipulation as expressly stated herein.

D. The Parties and Staff 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.

IN WITNESS WHEREOF, the Parties 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 his or her principle.

SOUTHERN NEW HAMPSHIRE
WATER COMPANY, INC.

By: Robert W. Phelps
President

OFFICE OF THE CONSUMER ADVOCATE

By:

NHPUC STAFF

By: Amy Ignatius, Esq.
General Counsel

ATTACHMENT 1

*CURRENTLY EFFECTIVE CONNECTION FEES PAYABLE TO SOUTHERN PURSUANT TO
COMMISSION APPROVED SPECIAL CONTRACTS*

*(42)

Docket No.: DE 88-077, DE 88-078

Order No.: 19,168

Date: September 8, 1988

Town: Pelham

Location of Connections: New customers receiving service along or through the main: Mammoth Road, Holstein Drive, Nashua Road, Gage Hill Road, Marsh Road.

Connection Fees:

5/8" - \$1,500.00

3/4 - 2,300.00

1" - 4,000.00

1 1/2" - \$ 7,900.00

2" - 12,600

Connections over 2" subject to individual Commission review.

Payment to: Southern NH Water Co.

Expiration Date: No expiration date specified

Justification: Need for new water supply - emergency situation at Stonegate; requests for service from potential customers, including major industrial park, residential customers, businesses and municipal buildings.

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Docket No.: DR 87-171

Order No.: 18,883

Date: October 22, 1987

Town: Londonderry

Location of Connections: Gilcreast Road(north of booster station), Pillsbury Road, Hardy Road, Spring Road, Bittersweet Lane, Mammoth Road, Wilshire Drive, Berkshire Lane, Currier Drive, Thornton Road, Ashley Drive, Holton Circle. (Company water service requirements, including satellites excluded; Developer's lands within project area excluded unless sold off and developed by others)

Connection Fees:

5/8" - \$1,575.00

3/4 - 2,362.50

1" - 3,937.50

1 1/2" - 7,875.00

- 2" - 12,600.00
- 3" - \$23,625.00
- 4" - 39,375.00
- 6" - 78,750.00
- 8" - 185,850.00

Payment to: Developer, Andrew C. Mack and Southern as follows: To Southern: Initial fees up to \$50,000; then, 75% to Developer, 25% to Southern until \$130,000 is paid to Developer; then 50% each to Developer and Southern.

Expiration Date: September 14, 1997

Justification: Opportunity for water service along the route, and lateral extensions therefrom, to others

Docket No.: DE 84-176

Order No.: 17,111

Date: July 16, 1984

Town: Hudson

Special Contract No.: 16, Winslow Farms

Location of Connections: River Road (int. Chalifoux & River, south to MA border; Winslow Farm Road; McKinney Drive; Pine Road)

Connection Fee: \$3,000.00 per connection

Payment to: Southern

Expiration Date: May 31, 2083

Justification: Public good.

FOOTNOTES

*This schedule excludes connection fees and refunds pursuant to Southern's Tariff for Water Service main pipe extension provisions.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., Inc., DE 84-176, Order No. 17,111, 69 NH PUC 381, July 16, 1984. [N.H.] Re Southern New Hampshire Water Co., Inc., DE 87-171, Order No. 18,883, 72 NH PUC 511, Oct. 22, 1987. [N.H.] Re Southern New Hampshire Water Co., Inc., DE 88-078, Order No. 19,168, 73 NH PUC 352, Sept. 8, 1988. [N.H.] Re Southern New Hampshire Water Co., Inc., DR 94-060, Order No. 21,221, 79 NH PUC 272, May 10, 1994.

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NH.PUC*10/25/94*[70667]*79 NH PUC 590*New Hampshire Electric Cooperative, Inc.

[Go to End of 70667]

79 NH PUC 590

Re New Hampshire Electric Cooperative, Inc.

DE 94-004

Order No. 21,398

New Hampshire Public Utilities Commission

October 25, 1994

ORDER adopting a market-based competitive bidding approach as the proper basis for determining an electric cooperative's avoided costs for purposes of pricing long-term purchases of power from qualifying small power production facilities.

1. COGENERATION, § 25

[N.H.] Rates — For long-term power purchase agreements — Factors — Avoided costs — As ceiling for rates payable to qualifying facilities — Other pricing provisions of the Public Utility Regulatory Policies Act. p. 592.

2. COGENERATION, § 30

[N.H.] Rates — For long-term power purchase agreements — Factors — Avoided costs — As ceiling for rates payable to qualifying facilities — Methods of computing avoided costs — For electric cooperative — Rates paid to traditional wholesale suppliers — Wholesale supplier's own avoided costs — Market value and competitive bids of alternative suppliers. p. 593.

3. COGENERATION, § 30

[N.H.] Rates — For long-term power purchase agreements — Factors — Avoided costs — As ceiling for rates payable to qualifying facilities — Method of computing avoided costs — For electric cooperative — Reliance on market-based competitive bids of alternative suppliers — Consistency with least-cost planning goals. p. 593.

APPEARANCES: Mark W. Dean, Esq. of Broderick & Dean on behalf of New Hampshire Electric Cooperative, Inc.; Kenneth R. Traum on behalf of the Office of Consumer Advocate; and Robert J. Frank, Esq. and George M. McCluskey on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

This proceeding was initiated as a result of a Settlement Agreement which we approved in the 1992 Least Cost Integrated Planning filing (DE 92-149) of New Hampshire Electric Cooperative (NHEC). The Staff and parties agreed in that proceeding to file recommendations for calculating NHEC's long-term avoided costs for supply arrangements with qualifying small power producers (QFs).¹⁽⁴³⁾

Pursuant to the above-referenced settlement, on December 21, 1993, NHEC pre-filed direct testimony of Mr. Dennis R. Eicher and related exhibits relative to its proposed method for calculating NHEC's long-term avoided cost rates. A duly noticed prehearing conference was held on May, 9, 1994; no requests for intervention were filed, and a final hearing was scheduled for June 30, 1994. Staff pre-filed direct testimony of George McCluskey, the Commission's Director of Energy Planning. No testimony was filed by the Office of Consumer Advocate (OCA). At the close of the final hearing, the Commission requested post-hearing legal briefs, which were timely filed by NHEC and Staff; OCA submitted a letter stating its position as well.

II. POSITIONS OF NHEC, STAFF AND OCA

A. NHEC

During the final hearing, NHEC presented the pre-filed and oral testimony of Mr. Eicher, a Professional Engineer employed by Power System Engineering, Inc., of Madison,

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Wisconsin. NHEC retained Mr. Eicher to provide technical assistance and testimony in this proceeding.

According to NHEC's witness, there are three "rational, but fundamentally different" approaches to calculating NHEC's long-term avoided costs. Eicher Pre-Filed Testimony, p. 27. These three methodologies and NHEC's position regarding each are discussed below.

1. NHEC's Wholesale Rate

NHEC maintains that its long-term avoided costs could be calculated using the wholesale rate which it pays to meet incremental power supply requirements.²⁽⁴⁴⁾ Eicher at 27-28. The advantage of this approach, according to NHEC, is that it accurately tracks the initial impact that a QF purchase would have on NHEC's purchased power expense.

NHEC argues that the approach is flawed, however, because wholesale rate structures generally do not accurately trace avoided costs from a societal standpoint. The wholesale rate which NHEC pays to PSNH includes embedded fixed costs, including nuclear generation, which do not reflect any societal reductions in capacity or energy costs (i.e., avoided costs). Transcript at 10. NHEC further criticizes this approach because it does not accurately reflect the "real economic value" of the power and energy produced by a QF.³⁽⁴⁵⁾ Based upon these considerations, NHEC argues that the wholesale rate approach is inferior to the two alternatives discussed below.

2. Wholesale Supplier's Avoided Cost

A second alternative discussed by NHEC involves calculating the avoided costs of NHEC's wholesalers to serve as a proxy for determining NHEC's long-term avoided costs. NHEC

contends that this approach yields a calculation which more accurately reflects the real economic value of QF generation. Despite this advantage, NHEC disfavors this methodology because it correlates to the unique circumstances of NHEC's *suppliers* (here, primarily PSNH), not those of NHEC. According to its own witness, the avoided costs of NHEC's wholesalers "may or may not reflect the Cooperative's avoided cost." Transcript at 33. NHEC thus appears to conclude that this approach should be rejected because it is analytically unsound.

3. Market Value

The third approach, and the one which NHEC favors, utilizes a market value to determine the costs which are avoided by a particular QF purchase. NHEC asserts that market value may be established by several different approaches; however, the most accurate and effective method involves utilizing competitive bidding procedures. NHEC maintains that the bidding provides a "forward-looking" rather than historical perspective.⁴⁽⁴⁶⁾

NHEC's witness discussed the theory underlying the competitive bidding methodology for determining avoided costs. Mr. Eicher testified that in a competitive bidding situation, particularly one where there is a large number of bids, an assumption is made that similarly situated QFs would agree to the same terms established for winning bids in the event that the selected bidder did not consummate a supply agreement with the purchasing utility.

According to NHEC, the market value of purchased capacity and energy "represents the real, long term economic value of the power and energy produced by a QF from a societal perspective." Eicher at 33. A competitive bidding process "inherently result(s) in rates which the Cooperative avoids by purchasing power and energy from one QF versus another QF with similar output characteristics." *Id.* at 8.

Mr. Eicher testified that if the Commission ordered the establishment of long-term avoided costs through competitive bidding, NHEC would have "the best of all worlds," because competitive bidding would provide a consistent methodology for evaluating QF purchases while at the same time encouraging the development of QFs. Transcript, p.12.

Mr. Eicher further testified that the competitive bidding approach, as opposed to the wholesale rate, increases the likelihood of

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maximum ratepayer savings.⁵⁽⁴⁷⁾

Overall, NHEC appears to take the position that although there are several plausible methodologies which could be considered in establishing NHEC's long-term avoided costs, only competitive bidding will effect a result which is accurate, fair and maximizes ratepayer benefits.

B. Staff

Staff maintains that NHEC's long-term avoided costs should be calculated using the applicable wholesale rate for the capacity and energy which would be displaced by each QF purchase. It is Staff's position that neither of the wholesale supplier avoided cost market value approaches discussed in NHEC's testimony are appropriate methodologies for calculating

NHEC's long-term avoided cost.

Staff argues that although an avoided cost calculation based on the wholesale rate may not be justified on economic efficiency grounds, it is justified based upon financial considerations. Staff believes that the potential negative consequences of using an artificially low avoided cost rate (based upon competitive bidding) outweigh economic efficiency considerations.⁶⁽⁴⁸⁾

Staff rejects utilizing the avoided cost of a wholesale supplier (here, primarily PSNH) because under PURPA and FERC regulations it is the *purchasing utility's* avoided cost which controls the rate to be paid to QFs.⁷⁽⁴⁹⁾

With regard to the "market value" approach favored by NHEC, Staff contends that this approach is analytically unsound and inconsistent with the concept of PURPA avoided cost. Staff asserts that the market value of QF output is a function of many factors which have no relation to the purchasing utility's avoided costs. Thus, according to Staff, "only by coincidence" will the purchase price of QF output equal the avoided costs of the purchasing utility. McCluskey Testimony, p. 8.

Staff supports the use of competitive bidding for evaluating NHEC's supply options, but encourages the Commission to strictly adhere to the concept of avoided cost by examining the actual capacity and energy costs which are avoided as a result of QF purchases. Staff points out that NHEC seeks to displace wholesale supplies through competitive bidding as opposed to utilizing bidding to meet projected load growth. The difference is that when a non-generating utility seeks to meet new demand, "the marginal costs can ... be minimized by competitively selecting from all available options a generation resource that minimizes the sum of energy and capacity costs." Post-Hearing Brief of Staff, p.8. When bidding is used to displace wholesale supplies, Staff insists that the *real* avoided cost is a function of the wholesale power rate. *Id.* at 9.

C. OCA

OCA presented no testimony at the hearing; however, a July 27, 1994 letter from Kenneth Traum filed after the hearing expressed OCA's support for the competitive bidding approach. OCA believes this approach "is in the best interests of [NHEC's] members even though it may impact future DSM/C&LM activities, etc.." [sic]

III. COMMISSION ANALYSIS

[1] This proceeding was initiated in order to ascertain the appropriate methodology for calculating NHEC's long-term "avoided costs"⁸⁽⁵⁰⁾, which in turn will establish the ceiling rates which certain QFs can command for long-term supply arrangements with NHEC. We will not address the collateral issues which were raised in this docket through the testimony of Staff and NHEC. As will be clear from our decision below, this case is likely to affect NHEC's 1994 Integrated Resource Planning.⁹⁽⁵¹⁾ With regard to any outstanding issues relative to QF purchases, until such time as they are addressed in subsequent proceedings, we simply direct NHEC to comply with the mandates of PURPA, applicable FERC regulations and LEEPA.

Under PURPA, utilities are required to pay QFs rates which meet the following criteria:

- (a) rates must be "just and reasonable" to NHEC's ratepayers and in the public interest;

(b) rates should be non-discriminatory

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with respect to QFs; and

(c) rates must not exceed the "incremental cost to the electric utility of alternative electric energy."

PURPA, 16 U.S.C. 824a-3 (1982).

FERC regulations which implemented PURPA were designed to provide further guidance to state commissions by establishing the purchasing utility's "avoided costs" as the theoretical framework for calculating QF rates.¹⁰⁽⁵²⁾ In this and most other areas of the country, early experiences with long-term avoided cost estimates often resulted in estimates bearing little relation to today's market. It is important to note, however, that nowhere in PURPA or in FERC's implementing regulations does it confine avoided cost calculations solely to the administrative arena. Within these broad guidelines, we have the discretion to develop methods which we deem to most accurately identify NHEC's long-term avoided costs for future QF capacity acquisitions.

While this undertaking requires us to establish procedures which promote PURPA's objective to encourage cogeneration and small power production, it is clear that ratepayers should not be required to subsidize such power production. See, House Report No. 1750, 95th Cong. 2d Sess. 98. Thus, rates must be "equitable" and the interests of NHEC's ratepayers should be protected. *Id.*

[2] It is within this context that we examine the alternative approaches which were discussed in the testimony of NHEC and Staff. We easily dispense with one approach raised in NHEC's original filing. It would be inappropriate and analytically unsound to use the displaced wholesale supplier's avoided cost as a proxy for NHEC. We believe that this approach fails to account accurately for the capacity and energy costs which NHEC would avoid as a result of a QF purchase. Moreover, we rejected a similar request by Connecticut Valley Electric Company to base its avoided costs on the avoided cost of its wholesale provider, Central Vermont Public Service. See Order No. 21,142 (February 28, 1994) and subsequent Report issued April 4, 1994, in Docket No. DR 93-151. There was no testimony or other evidence submitted which would support a finding that the avoided costs of NHEC's wholesalers has any real relation to the long-term avoided costs of NHEC.

We have carefully evaluated the positions advanced by NHEC, Staff and the OCA with regard to the use of competitive bidding. Staff maintains that such an approach is inconsistent with the mandates of PURPA because NHEC operates under a long-term wholesale contract and virtually all new capacity purchases would displace power supplied under this wholesale agreement.

[3] For the reasons articulated below, we find that a properly designed competitive bidding process to determine NHEC's long-term avoided costs for its future capacity solicitations is consistent with PURPA.

Although we have located no authority which expressly authorizes the use of competitive

bidding under these exact circumstances, it is clear that other states have adopted competitive bidding to establish long-term avoided costs, as noted by NHEC. See, for example, *Re: North Carolina Power*, 142 PUR 4th 117 (North Carolina, 1993); *Consumers Power Company*, 133 PUR 4th 497 (Michigan, 1992); *Re: Competitive Bidding By Investor-Owned Electric Companies*, 127 PUR 4th 306 (Oregon, 1991); *Re: Public Service Company of Colorado*, 93 PUR 4th 384 (Colorado 1988); *Re: Purchase of Electricity by Public Utilities From Qualifying Facilities*, 89 PUR 4th 185 (Virginia, 1988). While these cases are not dispositive for our purposes, it is clear that our approach is consistent with that of some other jurisdictions.

Competitive bidding provides a direct and systematic mechanism for identifying the alternative supply sources which are truly avoided by a utility which purchases QF power. In the case of NHEC, those alternative supply sources are limited to QFs (from whom NHEC must purchase output under the existing requirements of PURPA and LEEPA) unless the purchase is pursuant to the "requirements of governmental authorities". See, Eicher at 22-23, referring to Section II of the Amended Partial Requirements Resale Service Agreement between NHEC and PSNH. If NHEC acquires QF supplies, it will

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avoid the costs associated with the wholesale rate as well as the costs of *not* having to purchase from similarly situated QFs. We interpret PURPA and the FERC's regulations as permitting us to take into account all alternative supply sources, including other QFs, when determining long-term avoided costs.¹¹⁽⁵³⁾

Despite the analytical appeal of Staff's position, it would require us to accept a singular definition of avoided costs which we determine to be overly restrictive and unjustified. Competitive bidding provides a mechanism which, by definition, is intended to identify a utility's lowest cost alternative supply. It would place an unreasonable burden on ratepayers, who ultimately bear the burden of NHEC's power costs, to pay an avoided cost rate for QF power which bears no relation to market realities. We have located no restriction in PURPA, FERC regulations or under state law which requires us to disregard market realities when calculating NHEC's avoided costs with respect to QF purchases.

12(54)

Competitive bidding will also enable NHEC to purchase the lowest-priced QF power available and thereby encourage the efficient utilization of these supply options. This would further PURPA's objective of protecting the interests of ratepayers by establishing an "equitable" rate which minimizes the risk that NHEC's customers will be forced to subsidize the QF industry.

We acknowledge that Staff's position could have resulted in the same outcome, but the risks associated with the wholesale rate approach, as outlined in Mr. Eicher's testimony, militate against adopting Staff's approach. Among those risks is the possible legal uncertainty surrounding a QF's right to demand full avoided cost at the wholesale rate despite the existence of a competitive bidding mechanism for capacity acquisitions.

We conclude by finding that a properly designed and implemented competitive bidding

process will accurately measure NHEC's avoided cost for long-term purchases while at the same time offer the most protection to the interests of NHEC's customers. Our decision today relates only to long-term QF supply acquisitions. NHEC's short-term avoided costs should continue to be calculated according to the Settlement Agreement which we approved in DE 92-149 (Order No. 20,907 dated July 13, 1993).

Based on the foregoing, it is hereby

ORDERED, that properly designed and implemented competitive bidding procedures are hereby approved as a methodology for determining NHEC's long-term avoided costs.

By order of the New Hampshire Public Utilities Commission this twenty-fifth day of October, 1994.

FOOTNOTES

¹Under PURPA and the implementing regulation of the Federal Energy Regulatory Commission (FERC), a QF may request a contract for a "specified term". 18 C.F.R. section 292.304(d). If a specified term contract is requested, QFs may request rates which are based on an estimate of the utility's avoided costs. *Id.*

²As noted in Mr. Eicher's pre-filed testimony, Public Service Company of New Hampshire (PSNH) supplies approximately 90% of NHEC's total energy requirements under the Amended Partial Requirements Agreement. Eicher at 15. Thus, although the QF location would determine which supplier's delivery would be displaced, the PSNH wholesale rate would virtually always be determinative of NHEC's avoided costs under this methodology.

³According to NHEC, the real economic value of energy produced by a QF is determined by examining the cost associated with developing alternative production resources; these are the "real costs" avoided by the installation and production of a QF. Thus, "the real economic value to society has to do with fuel not burned, concrete not poured, steel not erected ... *not* the savings in a wholesale customer's purchased power bill." Eicher at 29.

⁴NHEC did not elaborate on this point, but it seems to be making the point that a competitive bidding approach would track fluctuations in the future independent generation market, and by so doing, its avoided costs would reflect the supply resources which are available at the time of each QF capacity purchase.

⁵Mr. Eicher testified that if the Commission determined that NHEC's wholesale rate dictated its PURPA long-term avoided costs, then presumably QFs could approach NHEC and demand that wholesale rate, even though NHEC was engaged in a

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competitive bidding process. The other danger according to Mr. Eicher is one of timing; if the Commission rules in this proceeding that avoided costs shall be determined based upon the wholesale rate, but also orders NHEC to engage in competitive bidding, the lag time before bidding procedures could be implemented would provide QFs with a window to request the wholesale rate. Transcript at 15-16.

⁶Staff contends that if NHEC uses an artificially low avoided cost to screen QF purchases or demand-side management investments, NHEC will not be able to attract least cost alternatives to the higher cost wholesale power. This, according to Staff, would place the interests of NHEC's wholesale suppliers above those of its customers. McCluskey at 10-11.

⁷Staff also contends that New Hampshire's Limited Electric Energy Producers Act, RSA Chapter 362-A (LEEPA), conclusively eliminates any ambiguity with regard to the suitability of this approach. That statute expressly provides that QF rates will be based on a "purchasing utility's avoided costs". RSA 362-A:4.

⁸The term "avoided costs" is a legislative invention which is undefined under historical economic theory. PURPA and FERC regulations establish general guidelines for establishing a purchasing utility's short and long-term avoided costs which are analogous to traditional marginal cost concepts.

⁹Likewise, we decline Staff's suggestion that we resolve what could be a contractual limitation on NHEC's right to solicit QF purchases. See, McCluskey at p.13. The issue of whether NHEC's wholesale contract with PSNH prohibits QF solicitations is one which should be resolved by the parties to that agreement. Presumably, NHEC would not advocate the competitive bidding approach if it believed that soliciting QF bids would violate its wholesale contract with PSNH.

¹⁰FERC defined "avoided costs" as the "the incremental costs to an electric utility of electric energy or capacity or both, which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 CFR 292.304(a)(2) (1987).

¹¹We note that in its Proposed Regulations relative to this issue, FERC "tentatively" concluded that purchases from other QFs fall within the meaning of "another source" referenced in PURPA's definition of incremental cost of alternative electric energy. See, *Regulations Governing Bidding Programs*, 53 Fed. Reg. 9324 (March 22, 1994).

¹²We believe that a bidding system which pays all QFs the offer of the highest winning bidder best reflects market realities because in a competitive market the highest bidder is a suitable proxy for the "best losing bidder". Under these circumstances, we also believe that competitive bidding provides the theoretical equivalent to an administrative determination of the utility's incremental cost.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DR 93-151, Order No. 21,142, 79 NH PUC 115, Feb. 28, 1994. [N.H.] Re New Hampshire Electric Co-op., Inc., DE 92-149, Order No. 20,907, 78 NH PUC 348, July 13, 1993.

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NH.PUC*10/31/94*[70668]*79 NH PUC 595*Northern Utilities, Inc.

[Go to End of 70668]

79 NH PUC 595

Re Northern Utilities, Inc.

DR 94-217

Order No. 21,399

New Hampshire Public Utilities Commission

October 31, 1994

ORDER adopting settlement agreement and approving a step rate increase of \$59,486 for a local gas distribution company, to cover the cost of a desperately needed capital improvement plan designed to address safety hazards associated with corrosion and a badly deteriorated bare steel piping system.

1. GAS, § 5.1

[N.H.] Safety matters — Problems with corrosion and deteriorated bare steel piping — Replacement project — Step rate increase to cover the costs thereof. p. 597.

2. RATES, § 380

[N.H.] Gas rate design — Special factors — Need to replace corroded bare steel piping system — Step increase — Settlement. p. 597.

Page 595

3. VALUATION, § 26

[N.H.] Date of valuation as a factor — Post-test-year additions — General policy of disallowance — Exceptions for extraordinary circumstances — Capital projects designed to correct safety hazards — Replacement of corroded bare steel piping system — Post-test-year adjustment allowed — Gas utility. p. 597.

APPEARANCES: LeBoeuf, Lamb, Greene & MacRae by Paul E. Connolly, Jr., Esq. and Scott J. Mueller, Esq. on behalf of Northern Utilities, Inc.; and for the Public Utilities Commission, Eugene F. Sullivan, Jr.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On July 21, 1992, the Commission issued its Order No. 20,546 (Docket No. DR 91-081) approving the Settlement Agreement on permanent rates for Northern. Article III of that Settlement Agreement provided for the implementation of step adjustments in base rates to be

effective for meter readings on or after November 1, 1992, and annually thereafter until the agreed bare steel replacement program is completed. Based on a review by the PUC Gas Safety Engineer, there definitely was a serious safety problem on the Company's bare steel distribution system. The Safety Engineer suggested to the Company that a two-phase program be implemented: the first phase would schedule replacement of areas that required immediate repair, the second phase would schedule replacement of areas that did not pose any immediate risk to safety. On September 15, 1994, Northern filed revised tariff pages and a petition with the Commission seeking authorization for a third annual step adjustment in the amount of \$69,171. On September 22, 1994, Northern filed a Report of Proposed Rate Changes for the subject proceeding. The Staff conducted an audit at the Company's headquarters in Westborough, Massachusetts on September 19-21, 1994 with respect to Northern's proposed step adjustment. Following extensive discussions including review of August and September actual documentation that was provided to the Staff in Concord, the Staff and Northern reached agreement on the issues in this proceeding. On October 20, 1994, a hearing was held regarding the Company's proposed step adjustment. At the hearing, the Company submitted testimony of Richard P. Cencini, Director of Regulatory Affairs, addressing the Settlement Agreement entered into by the Staff and the Company.

II. OVERALL SETTLEMENT AGREEMENT

The Company's original petition and exhibits proposed a Step Adjustment in the amount of \$69,171. Based on a review of the Company's books and records including updates to decrease the originally forecast activity for August and September 1994, and certain adjustments agreed to during the PUC Staff audit, the parties agreed to a Step Adjustment in the amount of \$59,486 (Attachment A).

Both Staff and the Company agree that this amount is just and reasonable.

III. COMPONENTS OF THE SETTLEMENT AGREEMENT

A. *Return and Related Income Taxes on Certain Non-Revenue Producing Investments*

The return and related income taxes on Northern's investment for the period October 1, 1993 through September 30, 1994 is shown on Attachment A (\$130,872). The amount of the step adjustment has been calculated using the actual capital expenditures for the above stated period adjusted as a result of the staff audit and the pre-tax rate of return of 13.19 percent and reflecting cost of service principles including the treatment of deferred tax reserve. Staff believes that this amount is appropriate.

B. *Annualized Depreciation Expense*

Page 596

Annualized depreciation expense for service investments and annualized depreciation expense for other than service investments is based on Northern's actual plant additions mentioned above and the depreciation rates included in the Settlement Agreement on permanent rates. Annualized depreciation expense for replacement services and other than replacement services is based on actual plant additions mentioned above and the depreciation rates of 3.14 percent and 2.77 percent respectively as included in the Settlement Agreement on the Step

Adjustment. The parties agree that the expense which results from the use of the 3.14 percent and 2.77 percent depreciation rates is fair and reasonable. These expenses are summarized on Attachment A, (\$30,234).

C. Adjustment for Domtar Net Revenues

The Step Adjustment has been reduced in accordance with a formula agreed upon as part of the settlement on permanent rates and reflects an amount equal to pro forma net revenues from Domtar calculated in accordance with Attachment B, (\$101,620). The parties agree that this amount is fair and reasonable.

IV. COMMISSION ANALYSIS

[1-3] As part of the settlement on the Company's permanent rates, the Staff did not include in rate base the amount of estimated additions during the period subsequent to the test year (i.e., October 1993 through September 1994). The Commission normally does not allow plant added after the end of the test year (i.e., March 31, 1991) unless it is an extraordinary event. However, in view of the comments by the PUC Gas Safety Engineer provided in DR 91-081 (see below), Staff recommended at the time of the permanent rate settlement that the Commission provide for a rate adjustment in the future to include such additions in a step adjustment. Staff indicated that at a set time interval after the permanent rate adjustment, the Commission could look at the plant additions. Article III of the Settlement Agreement on permanent rates summarized the criteria to be used in the calculation of Step Adjustments.

Based on a review by the PUC Gas Safety Engineer, Northern Utilities has undertaken a major capital project to ensure safe service to its customers. This capital project was undertaken because of a serious problem regarding leaks, the majority of which occurred on a bare steel system. Regarding the bare steel system, the PUC Gas Safety Engineer suggested that the Company approach the problem of corrosion and leaks in two phases. The first phase would schedule replacement of areas that required "immediate repair" and the second phase would address replacement of areas that did not pose "immediate" risk to safety. The Company agreed with the PUC Engineering Staff to accelerate its program to replace bare steel mains. The Company and the PUC Staff agreed that these replacements are required and both parties recognize that this results in significant dollars being expended on this category of capital expenditures.

Overall, the above described program is a sound and positive approach to correct the overall corrosion problem and provide the required safety to customers.

Based on the above and based on the audit and review of the Company's books and records, regarding the non-revenue producing investments and annualized depreciation expense, the Commission believes that the Step Adjustment amount of \$59,486 (Attachment A) is just and reasonable.

Based on the foregoing, it is hereby

ORDERED, that the settlement agreement be, and hereby is, approved; and it is

FURTHER ORDERED, that Northern Utilities file a revised tariff in compliance with this order; 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, 1994.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1994.

See Commission Files For Attachments

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 91-081, Order No. 20,546, 77 NH PUC 366, July 21, 1992.

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NH.PUC*11/01/94*[70669]*79 NH PUC 598*EnergyNorth Natural Gas, Inc.

[Go to End of 70669]

79 NH PUC 598

Re EnergyNorth Natural Gas, Inc.

DE 91-149

Order No. 21,400

New Hampshire Public Utilities Commission

November 1, 1994

ORDER adopting stipulation as to natural gas transportation services, inclusive of a firm transportation rate for a local distribution company's commercial heat and commercial general customers.

1. RATES, § 384

[N.H.] Natural gas rate design — Firm transportation service — For commercial heat and commercial general customers — Stipulation — Components — Use of marketer — Minimum monthly threshold. p. 598.

BY THE COMMISSION:

ORDER

[1] The New Hampshire Public Utilities Commission (Commission), by Report and Order

No. 20,950 (September 7, 1993), approved unbundled transportation of natural gas, both on a firm and interruptible basis. In July 1994, EnergyNorth Natural Gas, Inc. (ENGI) filed compliance tariff pages for interim firm transportation for industrial customers, which were approved in Order No. 21,313 (August 9, 1994).

In September 1994, ENGI was approached by a natural gas marketer interested in providing firm transportation service to commercial heat customers, who were not covered by the industrial customer tariffs. Discussions between ENGI, the marketer and Commission Staff (Staff) resulted in the following Stipulation regarding firm transportation service for ENGI's commercial heat and commercial general customers:

1. The minimum threshold for firm transportation service for any customer is 10,000 therms in any month during the most recent twelve months of the customer's usage; and
2. ENGI will file firm transportation tariffs for both commercial heat and commercial general customers no later than November 1, 1994, and will be effective November 1, 1994; and
3. Commercial transportation service shall commence no later than 60 days following receipt of all information required by ENGI; and
4. Other issues regarding the effect on gas supply planning of the timing of when heating load transportation customers are allowed to come on to the system will be presented to the Commission for its consideration at a later time. For full terms of the Stipulation, *see* Exhibit CH 3.

The Commission took testimony regarding the Stipulation on October 21, 1994. After consideration of the testimony and terms of the Stipulation, we will approve the Stipulation.

Our approval is based on a finding that the terms of the Stipulation do not deviate from the terms of previous orders in this case but clarify and expand upon issues that were not fully addressed in prior orders. The terms are reasonable and appear to meet legitimate needs of ENGI to provide service while ensuring the opportunity of commercial heat and general commercial customers to enter the firm transportation market.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation between ENGI and the Commission Staff regarding firm transportation service to commercial heat and commercial general customers is hereby

Page 598

approved.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 91-149, Order No. 21,313, 79 NH PUC 437, Aug. 9, 1994. [N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE

91-149, Order No. 20,950, 78 NH PUC 479, Sept. 7, 1993.

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NH.PUC*11/01/94*[70670]*79 NH PUC 599*EnergyNorth Natural Gas, Inc.

[Go to End of 70670]

79 NH PUC 599

Re EnergyNorth Natural Gas, Inc.

DR 94-230

Order No. 21,401

New Hampshire Public Utilities Commission

November 1, 1994

ORDER approving a charge of 5.92 cents per therm for a natural gas local distribution company's firm transportation cost of gas adjustment applicable in the winter period.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Factors affecting approval of charge — Cost-effective procurement practices — Minimization of supply costs. p. 600.

2. RATES, § 384

[N.H.] Gas rate design — Transportation service — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Factors affecting approval of charge — Cost-effective procurement practices — Minimization of supply costs. p. 600.

APPEARANCES: Jacqueline Lake Killgore, Esq. on behalf of EnergyNorth Natural Gas; Kenneth Traum on behalf of the Office of Consumer Advocate; and Robert J. Frank on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

EnergyNorth Natural Gas (ENGI) filed its proposed Cost of Gas Adjustment (CGA) for the 1994-95 winter period on September 26, 1994 and the following day filed a Motion for Protective Order and Confidential Treatment. ENGI's filing included the direct testimony of Carolyn J. Huber, ENGI's Manager of Regulatory Affairs and Budgets, and of Christopher P. Fleming, Vice President of Gas Supply/Corporate Development. ENGI's request for protective treatment was granted on October 3, 1994 (Order No. 21,376). ENGI thereafter filed unredacted

CGA filings, subject to the aforementioned protective order, along with revised tariff pages reflecting its CGA calculation. Further revised CGA filings and tariff pages were submitted on October 20, 1994. There were no requests for intervention filed in this matter, and a duly noticed final hearing was held on October 21, 1994.

II. POSITIONS OF ENGI, OCA AND STAFF

A. ENGI

ENGI requests a CGA rate for the 1994-95 Winter period of (\$.0592) per therm. Ms. Huber testified that the proposed CGA rate is the result of a prior period over-collection in the amount

Page 599

of \$1,011,593. The primary factor contributing to the over-collection was the colder than normal weather during the 1993-94 winter period, which accounted for 4,616,527 therm sales beyond that which was forecasted and resulted in \$2,139,266 in additional revenue. After deducting the cost of gas from this additional revenue, the net over-collection due to additional sales was \$896,913. ENGI's actual gas costs during this period were slightly lower than anticipated, resulting in a \$114,680 over-collection. The final factor that contributes to the total CGA credit are supplier refunds totalling \$2,869,434.

OCA did not offer testimony, but during the hearing clarified through cross-examination certain issues related to transportation costs, the risks associated with futures purchases, and the overall rate impact of the proposed CGA.

During cross-examination, Staff requested further explanation of recent Tennessee Gas refunds and the impact on the current CGA of the Gas Supply Realignment Charges established by the Federal Energy Regulatory Commission in Order No. 636. Upon cross-examination, Mr. Fleming also testified generally about ENGI's use of certain financial instruments to minimize the risks associated with price variance.

B. STAFF

Kenneth Yasuda and Robert Egan testified on behalf of Staff. Upon review of ENGI's revised filing, Staff concluded that (i) ENGI's gas purchasing policies are sound and reasonable, (ii) ENGI utilized its resources in a manner which minimized its gas costs during the prior period, and (iii) ENGI's proposed 1994-95 Winter CGA of (\$.0592) per therm is reasonable and should be approved.

Mr. Yasuda testified with regard to Staff's desire to expand the CGA filing deadline from 30 days to 45 days before the effective date of the CGA. He also recommended that the Commission require ENGI to submit a final reconciliation report within 90 days of the close of the CGA period. Mr. Yasuda noted that ENGI supported these recommendations.

Mr. Yasuda also noted that given the maturing natural gas futures market, it might be time for the Commission to evaluate the efficacy of various financial instruments in the context of a regulated market. He suggested that an in-house primer on the subject could be offered by he and Staff Economist, Scott Harold, in order to assist the Commission in developing policy guidelines. Within the context of this testimony, Mr. Yasuda also expressed Staff's belief that the

Commission should explore incentive ratemaking mechanisms so that both shareholders and ratepayers share the risks and returns associated with the use of financial instruments.

Mr. Egan testified that ENGI performed exceptionally well in this last period, and he commended ENGI for utilizing its resources to minimize its gas costs. According to Mr. Egan, ENGI's effectiveness in this area benefitted ratepayers.

III. COMMISSION ANALYSIS

[1, 2] After reviewing the revised filing and supporting testimony of ENGI and Staff, we find that ENGI has effectively utilized its available resources in a reasonable and cost-effective manner. Accordingly, we accept and approve ENGI's proposed Winter 1994-95 CGA rate of (\$0.0592) per therm.

We also approve and adopt Staff's recommendation to change certain CGA filing dates. In light of the extension of the CGA filing date, we recognize that ENGI may be required to submit an updated filing to more closely reflect market conditions.

Finally, with regard to Staff's recommendation to develop policies relative to the use of financial instruments and the potential for incentive ratemaking, we encourage Staff to explore these issues with the two New Hampshire local distribution companies and the OCA.

Based on the foregoing, it is hereby

ORDERED, that Seventeenth Revised Pages 1 and 2, superseding Sixteenth Revised Page 1, of the N.H.P.U.C. tariff of EnergyNorth Natural Gas, Inc., providing for a cost of gas adjustment of (\$0.0592) per therm for the period of November 1, 1994 through April 30,

Page 600

1995, is hereby approved; and it is

FURTHER ORDERED, that the over/under collection for the 1994-95 Winter CGA period shall 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 should the monthly reconciliation of known and projected gas costs deviate from the 10% trigger mechanism, ENGI shall file a revised CGA; and it is

FURTHER ORDERED, that all subsequent CGA filings shall be submitted to the Commission at least 45 days prior to the effective date of the CGA filing; and it is

FURTHER ORDERED, that all subsequent final CGA reconciliation reports shall be filed with the Commission within 90 days of the close of the CGA period.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 94-230, Order No. 21,376, 79 NH PUC 551, Oct. 4, 1994.

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NH.PUC*11/01/94*[70671]*79 NH PUC 601*EnergyNorth Natural Gas, Inc.

[Go to End of 70671]

79 NH PUC 601

Re EnergyNorth Natural Gas, Inc.

DR 94-213
Order No. 21,402

New Hampshire Public Utilities Commission

November 1, 1994

ORDER approving a rate adjustment for a natural gas local distribution company, to take into account elimination of the state franchise tax as to gas utilities but concomitant new liability for the state's business profits tax.

1. EXPENSES, § 112

[N.H.] Taxes — Elimination of state franchise tax — As applicable to gas utilities — But new liability for state business profits tax — Resulting rate adjustment — Natural gas local distribution company. p. 601.

2. RATES, § 147

[N.H.] Factors affecting reasonableness — Cost of service — Changes in tax liability — Elimination of state franchise tax — But new liability for state business profits tax — As applicable to local gas distribution utilities — Necessity of rate adjustment. p. 601.

APPEARANCES: McLane, Graf, Raulerson and Middleton by Ms. Jacqueline Lake Killgore, Esq. on behalf of Energy North Natural Gas, Inc., Kenneth E. Traum on behalf of the Office of the Consumer Advocate and Robert J. Frank, Esq. on behalf of the Staff of the Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1, 2] Effective on July 1, 1983, RSA 83-C replaced RSA 83-B in determining state tax liability for utilities. RSA 83-C repealed the 9% tax on income and replaced it with a 1% tax on gross receipts from the sale of gas or electricity pursuant to a franchise, or the "Franchise Tax".

The franchise tax was included as an add-on to base rates beginning July 1, 1983. At the same time, and pursuant to the same order, the Company's cost of service and therefore base rates were reduced to exclude the 9% income tax. These changes were made pursuant to NHPUC Order No. 16,524 in DR 83-205, dated July 8, 1983. The Commission found in that order that with regard to changes in state tax liability, an item which is an allowable expense in

Page 601

the cost of service to be recovered from ratepayers, "it is reasonable under the circumstances to allow a rate adjustment for the purpose of recovering the increased tax liability." The Company did not incur any New Hampshire Business Profits Tax (NHBPT) liability from 1983 through 1994 because the franchise tax served as a credit to offset the NHBPT.

The franchise tax was in effect until June 2, 1994 when RSA 83-C was amended to delete gas utilities from the definition of entities subject to the tax. The Company filed new tariffs for the purpose of removing any reference to the applicability of the franchise tax to the sale of gas. These revised tariff pages were approved pursuant to NHPUC Order No. 21,276 in DR 94-114, dated June 22, 1994. The franchise tax collected by the Company from January 1 to June 2, 1994 will again offset the NHBPT liability of the Company for the fiscal year ending September 30, 1994. (See Attachment 1 which provides a three year history 1991-1993 as well as an estimate for 1994.)

On September 9, 1994, the Company filed a petition (including revised tariff pages), that base rates be increased effective November 1, 1994 to include a revenue requirement of \$454,519 associated with the NHBPT liability. (See Attachment 2.) This estimate is based on 9 months actual and 3 months forecast, normalized for weather, and represents an average increase of approximately .6% over total utility revenues. The Company is proposing that the revenue requirement be collected in an equal manner over all rate classes.

On October 21, 1994, a hearing was held regarding the Company's proposed rate increase. At the hearing, the Company submitted testimony of Ms. Michelle Chicoine, Vice-President and Treasurer addressing the settlement agreement entered into by the parties.

II. OVERALL SETTLEMENT AGREEMENT

The parties have reached a settlement on the amount and recovery of the rate adjustment for NHBPT. (See Attachment 3). The Staff and the OCA accept the tariff filings made by the Company on September 9, 1994 to increase base rates, effective November 1, 1994, to include a revenue requirement of \$454,519 associated with the NHBPT. Staff believes that the settlement is fair and reasonable.

III. COMMISSION ANALYSIS

After review and consideration of the above, the Commission is satisfied that the granting of the petition will be for the public good.

Based on the foregoing, it is hereby

ORDERED, that the above rate adjustment is in the public interest and is therefore approved effective for service rendered on or after November 1, 1994.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1994.

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

Schedule A

Attachment 1

EnergyNorth Natural Gas, Inc.
Schedule of New Hampshire Business Profits Tax

Tax Year (Fiscal Year)	Adj. Gross Business Profits	NHBPT Rate	Business Franchise Profits Tax	Amount Tax	Amount Paid
1991	(3,783,268)	.08	0	626,713	626,713
1992	2,363,589	.08	189,087	721,613	721,613
1993	5,571,367	.075	417,853	782,393	782,393
1994*	6,090,693	.07	426,349	761,238	761,238**

*Estimate including weather normalization

**Through June 2, 1994

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

Schedule B

Attachment 2

ENERGYNORTH NATURAL GAS, INC.

New Hampshire Business Profits Tax Calculation
Projected 9/30/94

1	Net Income per Books Projected at 9/30/94	\$
	4,920,369	
2		
3	Add (Deduct)	
4	Federal Income Tax	
	2,266,440	
5	Business Enterprise Tax	
	41,676	
6		
7	Weather Adjustment-Margin before Tax	
	(1,189,882)	
8		
9	Projected Net Income Before Tax per Books	\$
	6,038,603	
10		
11	Effective New Hampshire Business Profits Tax Rate	
12	7.00%	
13		
14	Business Profits Tax	
	\$422,702	
15		
16		

17 Tax Effected for NH State Taxes (1 - .07)
93.00%
18
19 Required Increase
454,519

\$

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ATTACHMENT 3

Settlement Agreement for Rate Adjustment for Recovery of New Hampshire Business Profits Tax

General Provisions

1.0 This Settlement Agreement ("Agreement") is entered into this 20th day of October, 1994 between EnergyNorth Natural Gas, Inc. ("ENGI" or "Company"), the Staff ("Staff") of the New Hampshire Public Utilities Commission ("Commission") and the Office of the Consumer Advocate ("OCA"), (collectively, "the Parties and Staff"), for the purposes and subject to the terms and conditions set forth herein.

2.0 On September 9, 1994, ENGI filed a petition and tariffs proposing an increase in rates for the New Hampshire Business Profits Tax (NHBPT). This filing had been preceded by a series of meetings between Staff and the Company to address several issues related to the Company's filing, all of which were satisfactorily resolved.

3.0 The Company has not incurred any NHBPT liability since 1983 because the franchise tax served as a credit to the NHBPT. The franchise tax was in effect until June 2, 1994 when RSA 83-C was amended to delete gas utilities from the definition of entities subject to the tax. The Company filed new tariffs for the purpose of removing any reference to the applicability of the franchise tax and these revised tariff pages were approved pursuant to NHPUC Order No. 21,276 in DR 94-114, dated June 22, 1994.

4.0 The franchise tax collected by the Company from January 1 to June 2, 1994 will again offset the NHBPT liability of the Company for the fiscal year ending September 30, 1994.

Specific Terms of the Agreement

5.0 The Staff and the OCA accept the tariff filings made by the Company on September 9, 1994 to increase base rates, effective November 1, 1994, to include a revenue requirement of \$454,519 associated with the NHBPT liability.

6.0 The increase in rates will be effective for bills rendered on or after November 1, 1994. The revenue requirement associated with the NHBPT will be collected in an equal manner over all rate classes.

7.0 It is agreed that this Agreement shall not be deemed a precedent as to any matter of facts or law, nor shall it preclude any Party or Staff thereto from raising any issues in any future ratemaking proceeding.

8.0 It is agreed that this Agreement represents full agreement between the parties and staff hereto and that rejection by the Commission of any part of this Agreement constitutes rejection

of the whole.

9.0 In the event that the Commission does not approve any part of this Agreement, the entire Agreement shall be void and neither the Agreement nor any part hereof shall be offered or introduced as evidence or otherwise in this or any other proceeding.

IN WITNESS WHEREOF, the parties 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 its principal.

EnergyNorth Natural Gas, Inc.

By: Michelle L. Chicoine

Vice President & Treasurer

Staff of the New Hampshire

Public Utilities Commission

By: Eugene F. Sullivan, Jr.

Finance Director

Office of the Consumer Advocate

By: Kenneth E. Traum

Finance Director

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DF 94-114, Order No. 21,276, 79 NH PUC 377, June 22, 1994. [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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NH.PUC*11/01/94*[70672]*79 NH PUC 605*EnergyNorth Natural Gas, Inc.

[Go to End of 70672]

79 NH PUC 605

Re EnergyNorth Natural Gas, Inc.

DR 92-044

Order No. 21,403

New Hampshire Public Utilities Commission

November 1, 1994

ORDER approving a natural gas local distribution company's proposed pilot demand-side management plan, to be funded by a conservation surcharge of 0.22 cents per therm for residential customers and 0.02 cents per therm for commercial customers.

1. CONSERVATION, § 1

[N.H.] Demand-side management plan — Pilot program proposal — Natural gas local distribution company — Components for residential, commercial, and industrial customers — Funding via surcharge. p. 605.

2. GAS, § 7

[N.H.] Operation — Demand-side management planning — Pilot program proposal — Local distribution company — Components and funding mechanisms. p. 605.

3. RATES, § 260

[N.H.] Surcharges — Purpose — Funding of demand-side management pilot program — Natural gas local distribution company. p. 605.

BY THE COMMISSION:

ORDER

[1-3] On August 18, 1994, EnergyNorth Natural Gas, Inc. (ENGI) filed a proposed pilot demand-side management (DSM) program, pursuant to Order No. 20,706 which had approved the letter agreement between ENGI and the Staff of the Public Utilities Commission (Staff) in which ENGI had committed itself to develop a pilot DSM program. ENGI also filed revisions to its tariff pages for domestic heating, commercial heating and its conservation charge to implement rate surcharges of \$0.0022 per therm for residential customers and \$0.0002 per therm for commercial customers.

A hearing was held on October 21, 1994 during which ENGI described the proposed program. The program consists of components for residential, commercial and industrial customers. It will be offered for twelve months; however, cost recovery will be over a twenty-four month period. Staff and the OCA concurred in the proposed pilot and budget.

Based upon the testimony of ENGI and Staff, we find that the proposed pilot program is appropriate and in the public good, and further we find that the rate surcharges to residential and commercial classes are justified and reasonable.

Based on the foregoing, it is hereby

ORDERED, that the pilot Demand-side Management Pilot program agreed upon by Staff, OCA and ENGI and the associated rate surcharges are approved.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 92-044, Order No. 20,706, 77 NH PUC 802, Dec. 21, 1992.

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NH.PUC*11/01/94*[70673]*79 NH PUC 606*Bretton Woods Telephone Company

[Go to End of 70673]

79 NH PUC 606

Re Bretton Woods Telephone Company

DR 94-157

Order No. 21,404

New Hampshire Public Utilities Commission

November 1, 1994

ORDER approving a local exchange telephone carrier's proposed tariffs for the introduction of custom calling, call management, and voice mail services, and for the elimination of seasonal service rates, following favorable review by commission staff.

1. RATES, § 553

[N.H.] Telephone rate design — Special services — Custom calling, call management, and voice mail services — Necessity of tariffs — Factors — Use of central office switch for voice mail products — Submission of cost and pricing documentation. p. 606.

BY THE COMMISSION:

ORDER

[1] On July 26, 1994 Bretton Woods Telephone Company (BWT or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce Custom Calling, Call Management and Voice Mail Services, to delete its Season Service offering, and to make other minor text modifications to its Tariff No. 3. The proposed tariff pages were suspended by Order No. 21,329 issued August 24, 1994 to allow Staff to investigate the filing.

The Custom Calling Features which BWT proposes to introduce include Call Waiting with Cancel Call Waiting, Call Forwarding with various options, Three-Way Conference Calling, User Transfer Conference Calling, Speed Calling, Toll Denial options, 900 Blocking, Direct Access Service (Hot Line), Bi-Line (Teen Service) and Warm Line. The Call Management Features which BWT proposes to introduce include Automatic Call Back (repeat dialing), Caller ID, Caller ID Blocking, Call Trace, Selective Call Acceptance, Selective Call Forwarding, Selective Call Rejection, and Distinctive Ringing.

Although BWT provided no supporting information with its initial filing, the Company was very responsive to inquiries by Staff. Following conversations with Staff, BWT filed revised

tariff pages on August 31, 1994 and September 5, 1994.

Some telephone companies in New Hampshire offer voice mail service on a regulated but de-tariffed basis. Because, unlike these other telephone companies, BWT proposes to offer voice mail services provisioned by the central office switch, it is appropriate that BWT tariff its voice mail product.

The Automatic Recall feature of the Call Management Service allows a customer to return a call to the last incoming number. This feature was withdrawn from New England Telephone (NET) Company's filing in DR 91-105 (Phonesmart) due to privacy concerns. BWT has assured the Staff that the Company has obtained a software patch which will disable Automatic Recall if the calling customer's number is blocked. This will prevent the Automatic Recall from occurring and will protect the customer who has blocked his number from having his number revealed. Staff believes this adequately addresses safety and privacy concerns. The proposed revisions for Caller ID and Caller ID Blocking are consistent with the guidelines for those services established for NET in DR 91-105 except for the offering of Automatic Recall. Consequently, we believe the public should be afforded an opportunity to respond in support of, or in opposition to, Automatic Recall.

BWT proposes to delete its Season Service which requires customers who have basic exchange service in the months of July or August to pay a six month minimum exchange

Page 606

service charge. In addition, a Service Change Charge, including a Subsequent Order Charge, Record Change Charge, Central Office Work Charge and Maintenance of Service Charge are introduced.

Staff has remaining questions regarding the pricing of the Custom Calling Features Speed Calling 8 and Speed Calling 30. These concerns should be addressed and any pricing problems remedied without delay.

Based on the foregoing, it is hereby

ORDERED, that the following tariff pages of Bretton Woods Telephone Company are approved effective immediately:

Table of Contents

Third Revised Page 1

Index

Third Revised Page 1

First Revised Page 2

Definitions

First Revised Page 2

First Revised Page 3

First Revised Page 8

Part III, Section 1

First Revised Page 3

Part III, Section 4

First Revised Page 1

Part V, Section 2

First Revised Page 2 in lieu
of Original

Part VII, Section 2

Original Page 1
Original Page 2
Second Revised Page 3 in lieu
of Original
Original Page 4
Original Page 5
Original Page 6
First Revised Page 7 in lieu
of Original
Original Page 8
Second Revised Page 9 in lieu
of Original
First Revised Page 10 in lieu
of Original
Original Page 12
Original Page 13
Original Page 14;

and it is

FURTHER ORDERED *Nisi*, that the following pages, which pertain to Automatic Recall, are approved effective November 28, 1994 unless the Commission provides otherwise in a supplemental order issued prior to November 28, 1994:

Part VII, Section 2

Original Page 9a
First Revised Page 11 in lieu of Original;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin Rules Puc 203.01, BWTC cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the state of New Hampshire in which operations are proposed to be conducted, such publication to be no later than November 10, 1994 and be documented by affidavit filed with this office on or before November 28, 1994; and it is

FURTHER ORDERED, that BWTC send a copy of this Order *Nisi* to all individuals on the attached service list of NHPUC docket DR 91-105, Phonesmart, by first class U.S. mail, postmarked no later than November 10, 1994 and shall be documented by affidavit filed with the

Commission on or before November 28, 1994; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter with regard to the authorization of Automatic Recall no later than November 25, 1994; and it is

FURTHER ORDERED, that BWT work with Staff to address and resolve remaining pricing concerns; and it is

FURTHER ORDERED, that the above revisions to Bretton Woods Telephone Co., Inc. Tariff No. 3 be resubmitted as required by Puc 1601.05 (k); and it is

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FURTHER ORDERED, that this Order *Nisi* shall be effective as of November 30, 1994, unless the Commission, on its own motion, orders otherwise.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bretton Woods Teleph. Co., Inc., DR 94-157, Order No. 21,329, 79 NH PUC 462, Aug. 24, 1994.

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NH.PUC*11/02/94*[70674]*79 NH PUC 608*Metropolitan Fiber Systems

[Go to End of 70674]

79 NH PUC 608

Re Metropolitan Fiber Systems

DE 94-025

Order No. 21,405

New Hampshire Public Utilities Commission

November 2, 1994

ORDER accepting a settlement agreement that authorizes a telecommunications carrier to provide nonswitched, private line, intrastate intraLATA interexchange telephone service, where the service is found not to be tantamount to competitive local exchange service.

1. CERTIFICATES, § 123

[N.H.] Telecommunications services — Nonswitched, private line, intrastate intraLATA

interexchange service — Geographic limitations — No authority for competitive local exchange service — Settlement. p. 609.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Nonswitched, private line, intrastate intraLATA interexchange service — Geographic limitations — No local exchange competition — Settlement. p. 609.

3. SERVICE, § 433

[N.H.] Telecommunications — Nonswitched, private line, intrastate intraLATA interexchange service — Geographic limitations — No local exchange competition — Waiver of filing and reporting rules applicable to rate-regulated carriers — Settlement. p. 609.

APPEARANCES: Swidler & Berlin by Robert G. Berger, Esq. on behalf of Metropolitan Fiber Systems; Glass, Seigle & Liston by Robert Glass, Esq. on behalf of MCI Telecommunications; Devine, Millimet & Branch by Frederick J. Coolbroth, Esq. on behalf of Granite State Telephone, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Dunbarton Telephone Company, Bretton Woods Telephone Company, Hollis Telephone Company and Dixville Telephone Company; Victor D. DelVecchio, Esq. on behalf of New England Telephone and Telegraph Company, Inc.; McManimon & Scotland by Martin C. Rothfelder, Esq. on behalf of Union Telephone Company; Mark P. DeFalco on behalf of Meriden Telephone Company, Chichester Telephone Company, and Kearsarge Telephone Company; Mark Perkell, Esq. on behalf of Long Distance North; Office of the Consumer Advocate by James R. Anderson, Esq. on behalf of residential ratepayers; E. Barclay Jackson, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On February 16, 1994, Metropolitan Fiber Systems of New Hampshire, Inc. (MFS) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for a

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Certificate of Authority to Provide Telecommunications Service in New Hampshire for non-switched intrastate intraLATA interexchange private line telecommunications services. At the pre-hearing conference on April 21, 1994, the Commission granted timely motions to intervene filed by MCI Telecommunications Corporation, Chichester, Kearsarge, and Meriden Telephone Companies; New England Telephone Company (NYNEX), Granite State Telephone, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Inc., Dunbarton Telephone Company, Bretton Woods Telephone Company, Dixville Telephone Company (collectively GST *et al.*), and Union Telephone Company. In addition, the Commission granted the Business and Industry Association of New Hampshire's petition to reserve the right to

intervene late; MEDNET Services and Concord Hospital were granted limited intervenor status.

On July 7, 1994, GST *et al.* filed a motion to consolidate this docket with DE 94-070, a petition by MFS Intelenet of New Hampshire, Inc. for authority to offer intrastate resold long distance services. The motion to consolidate was filed in conjunction with a motion to suspend the Order *Nisi* issued by the Commission in 94-070 on June 14, 1994 (Order No. 21,270). By Order No. 21,298, issued before the Order *Nisi* became effective, the Commission retitled and re-worded the Order *Nisi*, removing the basis for the motion to suspend. On July 18, 1994 Staff filed an objection to the motion to consolidate. The Commission received no further objection to the Order *Nisi* and DE 94-070 was closed; the two cases were not consolidated.

NYNEX, GST *et al.*, Union, and Staff filed testimony on August 8, 1994.

By petition filed August 12, 1994, newly-formed Contoocook Valley Telephone Company, Inc. and Hollis Telephone Company, Inc. (hereinafter included in the appellation GST *et al.*) requested to intervene, averring that their participation was in the interest of justice and would not impair the orderly and prompt conduct of the proceeding. The Commission granted the petition on August 25, 1994.

On September 8, 1994, Long Distance North of New Hampshire, Inc. (LDN) filed a motion for late intervention. The Commission requested LDN seek concurrence from the other parties and represent that its participation would not impair the orderly and prompt conduct of the proceeding. LDN did not respond but appeared at the hearing on the merits on October 4, 1994, by mutual assent of all parties.

Informal settlement discussions began in early September and were formalized at a Settlement Conference held September 19, 1994. A Stipulation was reached on September 20, 1994, and presented for the Commission's consideration on October 4, 1994.

II. POSITION OF STAFF AND THE PARTIES

Neither Staff nor any of the parties objected to the MFS petition for operating authority *in toto*. All the parties sought to modify or clarify the MFS operation authority, however, in order to clearly define the extent of that authority and how it should be regulated.

The issues requiring clarification included the geographical limits of the MFS authority, the limitations on services authorized, the methods by which authority might be extended, the questions of whether MFS would contribute to the Local Rate Protection Mechanism (LRPM), whether authority would be for a trial period only, and whether all Commission rules would apply to MFS.

III. SETTLEMENT AGREEMENT

[1-3] The Settlement Agreement resolves all but one issue in this case. It was presented to the Commission as the product of lengthy negotiations by the parties and Staff. A summary of salient points follows. The one issue unresolved by the Settlement Agreement is whether all Commission rules will apply to MFS.

The Settlement Agreement specified that the authority granted to MFS is limited to dedicated non-switched intraLATA interexchange services; new or amended tariffs for non-switched services will be filed with the Commission; tariffs involving switched or intra-exchange services

require Commission

approval of expanded authority pursuant to RSA Chapter 374. Commission procedures for review and approval of tariffs and special contract filings shall be the same for both MFS and NYNEX.

The Settlement Agreement limits the authority to a specific geographic area. Expansion of the geographic area also requires Commission approval pursuant to RSA Chapter 374.

The Settlement Agreement specifies that the authority is not limited to a trial period. Nonetheless, for a two year period MFS will provide the Commission quarterly confidential reports about the services rendered, circuits leased, and interconnection charges paid so that the Commission can monitor effects, if any, on the telecommunications market.

The Settlement Agreement requires MFS to file an annual report with the Commission, to follow Generally Accepted Accounting Principles, to comply with all reporting requirements contained in RSA 374:13-19 and all filing or reporting requirements imposed by the Commission in this or subsequent orders. The Settlement Agreement notes, without comment, that MFS requested waivers from Chapter Puc 403.03(b), 406, 407 and 409 inclusive.

III. COMMISSION ANALYSIS

We have reviewed the record in this proceeding and conclude that the authority sought by MFS does not rise to the level of local telephone competition; it is an expansion of access options available to New Hampshire telecommunications users. We find that the Settlement Agreement conditions are reasonable and in the public good.

As to the waiver requested by MFS from compliance with particular rules, review of the rules in question determines that Chapters Puc 406 and 409 pertain to telecommunications companies for whom traditional rate of return regulation applies and not to IXCs, resellers, or MFS. We will grant a waiver from the requirements of these rules.

Chapter Puc 407 pertains to forms required of telephone utilities and addresses thirteen subjects. Of those thirteen, nine deal with financial reporting important to traditional rate of return regulation. We will grant a waiver from the requirements of these rules. The remaining four sections deal with customer relations. Because of our concern with customer service, we may require MFS to file these forms if it becomes necessary. In addition, we retain the right to require MFS to meet the obligations imposed under any of the rules we are waiving today in the event such imposition becomes necessary.

Chapter Puc 403.03(b) requires a telephone utility to give notice to its customers when it applies to the Commission for a general rate increase. This rule permits customers to communicate their concerns to the Commission before a decision is made. Because the Commission does not regulate MFS's rate and because there are no monopoly customers who are at risk of cross-subsidization, we will grant a waiver from the requirement of Chapter Puc 403.03(b).

Based on the foregoing, it is

ORDERED, that the Settlement Agreement described above is approved and subject to the conditions specified herein.

By order of the Public Utilities Commission of New Hampshire this second day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re MFS Intelenet of New Hampshire, Inc., DE 94-070, Order No. 21,270, 79 NH PUC 370, June 14, 1994. [N.H.] Re MFS Intelenet of New Hampshire, Inc., DE 94-070, Order No. 21,298, 79 NH PUC 408, July 13, 1994.

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NH.PUC*11/02/94*[70675]*79 NH PUC 611*Northern Utilities, Inc.

[Go to End of 70675]

79 NH PUC 611

Re Northern Utilities, Inc.

DR 94-227

Order No. 21,406

New Hampshire Public Utilities Commission

November 2, 1994

ORDER approving a charge of 19.47 cents per therm for a natural gas local distribution company's firm transportation cost of gas adjustment applicable in the winter period for its Salem Division.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Factors affecting approval of charge — Procurement practices and cost of supply — Elimination of state franchise tax effects. p. 611.

2. RATES, § 384

[N.H.] Gas rate design — Transportation service — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Factors affecting approval of charge — Procurement practices — Minimization of supply costs. p. 611.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of

Northern Utilities, Inc.; and Robert F. Egan, on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. *PROCEDURAL HISTORY*

On October 3, 1994, Northern Utilities, Inc., (Northern or the Company), a public utility engaged in the business of supplying gas in the state of New Hampshire, filed with this Commission Fifth Revised Page 33, superseding Fourth Revised Page 33, N.H.P.U.C., providing for the Winter 1994/1995 Cost of Gas Adjustment (CGA) effective November 1, 1994. The filing was accompanied by the pre-filed direct testimony of Elizabeth S. McDonough. The proposed CGA is a charge of \$0.1947 per therm, exclusive of the New Hampshire State Franchise Tax which was eliminated in the summer of 1994.

An Order of Notice was issued setting the date of the hearing for October 20, 1994 at 9:30 a.m. at the Commission's office in Concord, New Hampshire.

The topics covered in the Company's direct testimony included a description of the gas supplies and costs for the Salem Division.

II. *COMMISSION ANALYSIS*

[1, 2] Based upon the Staff review of the filing and the books and records of the Company, the Commission finds that the proposed CGA rate is just and reasonable and in the public interest. We will therefore issue an order approving the rate effective November 1, 1994.

Based on the foregoing, it is hereby

ORDERED, that Fifth Revised Page 33, superseding Fourth Revised Page 33, N.H.P.U.C. tariff of Northern Utilities, Inc. (Northern) — Salem Division, providing for a Cost of Gas Adjustment (CGA) charge of \$0.1947 per therm for the period November 1, 1994 through April 30, 1995 is hereby approved, said rate to become effective with all billings issued for service rendered on or after November 1, 1994; 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 should the

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monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, Northern shall file a revised Cost of Gas Adjustment.

By order of the Public Utilities Commission of New Hampshire this second day of November, 1994.

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NH.PUC*11/02/94*[70676]*79 NH PUC 612*Northern Utilities, Inc.

[Go to End of 70676]

79 NH PUC 612

Re Northern Utilities, Inc.

DR 94-226
Order No. 21,407

New Hampshire Public Utilities Commission

November 2, 1994

ORDER approving a charge of 0.31 cents per therm for a natural gas local distribution company's firm transportation cost of gas adjustment applicable in the winter period for its New Hampshire Division, given the company's sound procurement and storage practices and its single firm transportation customer. However, it is directed to develop more streamlined reconciliation procedures to assure proper allocation of interruptible sales margins. The commission also invites suggestions on the use of incentive rate making and the use of financial instruments.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Factors affecting approval of charge — Procurement, storage, and allocation practices — Reconciliation of interruptible sales margins — Single transportation customer. p. 616.

2. RATES, § 384

[N.H.] Gas rate design — Transportation service — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Factors affecting approval of charge — Procurement, storage, and allocation practices — Reconciliation of interruptible sales margins — Additional month of demand charges — Lack of limitation on winter/summer differentials. p. 616.

3. RATES, § 384

[N.H.] Gas rate design — Transportation service — Firm transportation cost of gas adjustment (CGA) — Winter-period CGA — Mandate to develop better procedures for the reconciliation of interruptible sales margins. p. 616.

4. RATES, § 384

[N.H.] Gas rate design — Transportation service — Firm transportation cost of gas adjustment — Proposals for incentive rate making — Use of financial instruments and swaps — Solicitation of comments. p. 616.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of Northern Utilities, Inc.; and Robert F. Egan, on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. *PROCEDURAL HISTORY*

On October 3, 1994, Northern Utilities, Inc., (Northern or the Company), a public utility engaged in the business of distributing and transporting natural gas in select cities and towns of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission), Ninth Revised Page 32, Sheet No. 1 and Fifth Revised Page 32, Sheet No. 2, superseding Eighth Revised Page 32, Sheet No. 1 and Fourth Revised Page 32, Sheet No. 2,

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respectively, N.H.P.U.C., which provides for a Winter 1994/1995 Cost of Gas Adjustment (CGA) effective November 1, 1994. The filing was accompanied by the pre-filed direct testimony and supporting attachments of Elizabeth S. McDonough and Thomas A. Sacco.

On October 20, 1994, Northern filed with the Commission, Tenth Revised Page 32, Sheet No. 1 and Sixth Revised Page 32, Sheet No. 2, superseding Ninth Revised Page 32, Sheet No. 1 and Fifth Revised Page 32, Sheet No. 2, respectively. Northern's updated 1994/1995 Winter CGA is a charge of \$0.0031 per therm, exclusive of the New Hampshire State Franchise Tax which was eliminated in the summer of 1994. This represents a decrease of \$0.0679 per therm over the 1993/1994 Winter CGA period per therm charge of \$0.0710.

II. *POSITIONS OF NORTHERN AND STAFF*

A. *NORTHERN*

In addition to Ms. McDonough and Mr. Sacco, two other Company witnesses testified at the duly noticed public hearing on October 20, 1994: Joseph A. Ferro, Manager of Pricing Services, and Antonio D. Aguiar, Director of Energy Resources.

Ms. McDonough's testimony detailed the proposed cost of gas adjustment calculations, addressing in particular the diverse causes of the slightly positive Winter CGA. These calculations reflect the higher seasonal base unit cost of gas due to the rate design of DR 91-081, the lower price of pipeline natural gas, the under/over reconciliation of collections, the decreased reliance on supplemental fuels for the upcoming heating season, the continued inclusion of an additional month of demand charges in this filing (resulting in a total of nine months of demand charges), refunds to firm sales customers from the Tennessee Pipeline Company, and certain additional charges related to FERC Order No. 636.

These latter FERC-related charges included (i) a rate design change from modified fixed variable to straight fixed variable which shifted demand charges forward and (ii) the incurrence by the Company of certain transition and gas supply realignment (GSR) costs. In its revised filing submitted on October 20, 1994, the Company agreed, after considerable discussions with the Commission Staff (Staff), to assess the GSR cost liabilities on just the firm sales customers;

in particular, the Company agreed that former firm sales customers who had switched to firm transportation service would be exempt from this transition charge. With respect to the anticipated duration of both the Tennessee refunds and the GSR costs, Ms. McDonough foresaw these continuing for several more years.

In commenting on the inclusion of an additional month of demand charges in this filing, Ms. McDonough explained that it was to more accurately reflect the cost of meeting the peak heating load. Unlike EnergyNorth Natural Gas, Inc., Northern does not have a rate case imposed limitation on the winter/summer differential in overall rates.

Ms. McDonough also explained in her oral testimony an interesting transaction uncovered by the Audit Staff. In an internal Company memorandum dated December 16, 1993, a mistake in the displacement of natural gas on the Granite State — Bay State — Northern integrated pipeline system by Northern during the month of November 1993 was identified and the subsequent solution to the problem was described. Ms. McDonough explained that November 1993 was the first month that Northern was operating under FERC Order No. 636 and that all of the bugs had not yet been worked out of the Company's nominating and scheduling procedures. She noted that once the particular operational problem was identified and resolved, it did not occur again in any of the subsequent winter months.

In his oral testimony, Mr. Ferro explained how the introduction of the various transportation services being offered by Northern influenced the present CGA filing. In particular, he noted that Northern currently has only one firm transportation customer. It is anticipated that this transportation customer, although quite large, will have only a negligible effect on the Winter CGA. Before converting to firm transportation service in October 1994, this customer

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recorded the largest annual firm sales volume on Northern's system. Mr. Ferro also noted that this firm transportation customer will incur daily imbalance penalties for the month of October. Through October 18th, this customer was out of balance a total of five days; during the same period, the Company remained in balance. Mr. Ferro further testified that Northern currently has no interruptible transportation customers.

During cross-examination, Staff questioned Mr. Ferro on Northern's new methodology for first calculating and then allocating the interruptible sales margins between Northern's New Hampshire and Maine divisions. Northern, acting for both divisions, adopted a new methodology in November 1993 in the wake of FERC Order No. 636. Monthly gas costs, including those for interruptible sales service, had to be recorded on an *estimated* basis since certain supplier invoices had not been received in time for the monthly closing of the Company's books. A true-up of all gas costs was made the following month when actual invoices were received from the various gas supply sources, with the allocation of the *total* true-up in gas costs being apportioned to the two divisions based on monthly *firm* sales send-out volumes (approximately 50 percent to each division). Staff questioned the allocation treatment of the portion of the true-up pertaining to interruptible gas costs.

Mr. Ferro agreed with Staff that prior to FERC Order No. 636, when Northern had a single rolled-in Granite State CD-2 bundled commodity rate, the interruptible gas costs, and hence, the

interruptible sales margins, were strictly allocated to the two divisions based on the proportion of the monthly *interruptible* sales send-out volumes associated with each division; in general, these interruptible proportions differ significantly from the roughly 50/50 divisional split associated with the firm sales send-out. Moreover, no reconciliation between estimated and actual interruptible gas costs, i.e., the calculation of interruptible gas cost true-ups, was necessary prior to the unbundling at the national level. Mr. Ferro argued that given the complexity of the current unbundled gas supply conditions, with its myriad invoices from a large number of suppliers, it would be administratively burdensome for the Company to provide a complete reconciliation of the monthly true-up pertaining to interruptible gas costs. In Mr. Ferro's opinion, the net benefit to New Hampshire's firm ratepayers of fine-tuning the interruptible gas cost reconciliation process would be negligible. Having said this, Mr. Ferro did agree to provide this information for the 1993/1994 Winter CGA period, following an oral data request from Staff at the hearing. The Company further agreed to meet with Staff over the next 90 days to review its findings and to examine the entire monthly accounting process of gas costs.

During cross-examination, Mr. Ferro also noted that given the increasing complexity of the CGA filings and the supporting auditing process, the Company was supportive of the Staff's pending recommendation to the Commission to (i) expand the Company filing deadline from 30 days before the effective date of the CGA to 45 days and (ii) to require the Company to submit a final CGA reconciliation report within 90 days of the close of the CGA period. Mr. Ferro also pointed out that the second item does not affect the current requirement of the Company to file monthly CGA reconciliation reports within 30 days of the close of each month.

Mr. Sacco's written and oral testimony focused on two major issues: (i) describing how Northern met the gas requirements of its customers during the 1993/1994 Winter season and (ii) explaining how Northern will meet these requirements for the upcoming heating season. In describing last year's activity, Mr. Sacco shed additional light on the workings of the Northern distribution system. In particular, Mr. Sacco highlighted how Northern was able to withstand one of the most severe winters in distant memory, mainly through the ability to procure additional volumes of liquid propane (LP) on a spot basis from Gas Supply Inc. and from the Sea-3 terminal in Newington, New Hampshire, and through the supply flexibility (no firm take or pay requirements imposed on Northern by Bay State) of supplemental fuels from Northern's affiliate, Bay State Gas Company (Bay State). According to Mr. Sacco's written testimony, almost \$800,000 in gas cost

savings can be attributed to the flexibility in the Bay State supply.

Underground storage also played a very important role last year in Northern's strategy to manage its winter heating load. As noted by Mr. Sacco in his written testimony, Northern utilized its underground storage capacity at a rate of 97 percent. Bay State flexibility also played an important role in underground storage. As clarified in Mr. Sacco's oral testimony, an internal Company memorandum dated April 12, 1994 indicated that Bay State was able to sell to Northern (at a competitive market price) a volume of 60,000 MMBtu of natural gas from its surplus storage inventory during the month of March. This transaction was undertaken because Northern's own storage inventory actually went into a negative position at the very end of last

winter.

With respect to how Northern will meet the gas requirements of its customers during the upcoming winter period, Mr. Sacco described in some detail the steps the Company had taken to secure a diverse and reliable yet economically efficient gas supply portfolio. In addition to fully utilizing its daily allocation of pipeline natural gas, other sources of supply include underground storage, LP, Bay State LNG, and a new source of supplemental supply from Gaz Metropolitan, Inc. (GMI). Like the Bay State supplemental supply, it is anticipated by Mr. Sacco that GMI will provide a high degree of flexibility.

In his oral testimony, Mr. Aguiar shared his thoughts on how the natural gas market has changed as a result of FERC Order No. 636. Local distribution companies (LDCs) must oversee their own natural gas supply portfolios as well as manage the capacity which brings the gas to their city gate. An integrated gas management system must be developed and put into place where price discovery activities take place along two distinct dimensions: gas commodity and pipeline capacity. Mr. Aguiar described how Northern had indeed established a comprehensive gas management system and had designated a "trading room" where price discovery can take place. In the course of searching out market prices, the optimal value of commodity gas and capacity release can be determined.

Mr. Aguiar also briefly discussed how Northern had made several financial swaps in the past winter season, the net result of which was a benefit to New Hampshire's firm ratepayers. Swaps, just one of a number of financial instruments available in the market place, are undertaken to separate price variability risks from operational risks. Mr. Aguiar explained that Northern has since suspended its financial swapping activity, pending (i) the development of an overall internal Company policy and (ii) the advancement of a position by the Commission on the treatment of gains and losses from the use of the various financial instruments. Mr. Aguiar indicated that Northern would be very interested in working with Staff in the next few months to develop a policy position acceptable to all parties.

B. Staff

James J. Cunningham, Jr., PUC Examiner, and Kenneth E. Yasuda, Sr., Utility Analyst, testified on behalf of Staff. Upon review of the Company filing, Staff generally concluded that (i) Northern's gas purchasing policies are sound and reasonable, (ii) the Company is utilizing its available resources in a manner which minimizes gas costs, and (iii) Northern's proposed 1994/1995 Winter CGA of \$0.0031 per therm is reasonable and should be approved.

In his oral testimony, Mr. Cunningham focused his comments on how the Company is currently calculating and allocating the interruptible sales margins between its New Hampshire and Maine divisions. In particular, he argued that by not identifying the interruptible portion of the gas cost true-ups, interruptible sales margins could not be accurately calculated. Furthermore, Mr. Cunningham contended that it is not correct to allocate interruptible sales margin true-ups on the basis of the *firm* MMBtu send-out volumes of each division.

As an example, if in one month, Northern's actual interruptible sales volumes were completely sold in New Hampshire, it is Staff's contention that the proper accounting of this situation is for the New Hampshire division to receive the entire interruptible sales margin

true-ups. However, under the Company's current practice, only roughly half of the true-ups from the interruptible sales margin calculation would be passed back to the New Hampshire division. Based on this potential inequity, Staff recommended that as a matter of "principle," Northern's interruptible sales margins should be recorded on the basis of actual costs (not estimates) and that they should be assigned to each division on the basis of its own discrete interruptible sales volumes.

Mr. Yasuda focused on three major areas in his oral testimony: (i) the role of technical sessions and pre-hearing conference calls in the CGA review process, (ii) the necessity of changing certain CGA filing requirements, and (iii) the role of financial instruments and alternative ratemaking mechanisms in a changing marketplace.

Speaking on behalf of Staff, Mr. Yasuda remarked that the joint technical session between the Company and Staff and the numerous conference calls made in this proceeding contributed greatly to the speedy and thorough review of the filing and he acknowledged the cooperation of the Company in that regard. Mr. Yasuda also commended the Company for its outstanding filing; it contained a tremendous amount of information without getting too detailed and helped to allow a more complete review to be made.

Given the increasing complexity of the CGA filings and the supporting auditing process, Mr. Yasuda recommended to the Commission that it expand the Company filing deadline from 30 days before the effective date of the CGA to 45 days and that the Commission require the Company to submit a final CGA reconciliation report within 90 days of the close of the CGA period. Mr. Yasuda noted that the Company was supportive of these recommendations.

Mr. Yasuda also noted that given the maturing of the natural gas futures market, it might be time for the Commission to evaluate the effectiveness of the various financial instruments (FIs) in the context of a regulated market. At the same time, Mr. Yasuda felt that the Commission should explore the use of the various alternative ratemaking mechanisms. Incentive ratemaking is inextricably linked to FIs; clearly a balance must be struck between shareholders and ratepayers on the sharing of the risks and returns that are generated by FIs. A primer on incentive ratemaking thus appears to be a prerequisite before any Commission policy on the use of FIs can be established.

Mr. Yasuda also recommended that Staff meet with the Company, EnergyNorth Natural Gas, Inc. (EnergyNorth), and the Office of Consumer Advocate (OCA) to forge a policy which is acceptable to everyone. He then recommended that a docket be opened and that the results of these technical sessions be presented to the Commission for its review and approval. Mr. Yasuda felt that proceeding along these lines would streamline the entire development process. He remarked that a similar strategy was pursued in developing the Commission's current policy statement on natural gas vehicles.

III. COMMISSION ANALYSIS

[1-4] The Commission finds that Northern has utilized its available resources in a manner which minimizes its natural gas costs. In particular, we find the gas supply procurement process outlined by the Company reasonable and cost effective. We also find the proposed Winter CGA rate of \$0.0031 per therm to be just and reasonable and in the public interest. Nevertheless, we

would expect the Company to make a mid-course correction should changes in spot market gas prices result in gas costs markedly different from those projected.

With respect to the Company's new method of calculating and allocating the true-ups of interruptible sales margins, we concur with Staff that the proposed reconciliation fails to fairly allocate the interruptible sales margins between Northern's two divisions. We are also sympathetic with Northern's contention that a complete reconciliation of the margins may prove administratively burdensome. We therefore order the Company to work with Staff to determine exactly how burdensome the complete reconciliation is and to develop a more streamlined reconciliation procedure if necessary. Any adjustments to interruptible sales margins, including interest, will be included in

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the 1994/1995 Winter CGA reconciliation analysis as a prior period adjustment.

With regard to Staff's recommendation to change certain CGA filing dates, a recommendation supported by the Company, we approve these changes. Given the extension of the filing date, we recognize that the Company may be required to submit an updated filing to more closely reflect market conditions.

Lastly, regarding Staff's recommendation that the Commission develop an incentive ratemaking policy regarding the use of FIs, we certainly welcome and encourage the Staff to work with the two New Hampshire LDCs and the OCA to explore the various complex issues involved and to generate any policy guidelines. We look forward to reviewing the results of this collaboration.

Based on the foregoing, it is hereby

ORDERED, that Tenth Revised Page 32, Sheet No. 1 and Sixth Revised Page 32, Sheet No. 2, superseding Ninth Revised Page 32, Sheet No. 1 and Fifth Revised Page 32, Sheet No. 2, respectively, N.H.P.U.C. tariff of Northern Utilities, Inc. (Northern) - New Hampshire Division, providing for a cost of gas adjustment (CGA) of \$0.0031 per therm for the period of November 1, 1994 through April 30, 1995, is approved by this Order, said rate to become effective with all billings issued for service rendered on or after November 1, 1994; 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 should the monthly reconciliation of known and projected gas costs deviate from the 10% trigger mechanism, Northern shall file a revised CGA; and it is

FURTHER ORDERED, that all subsequent CGA filings be submitted to the Commission at least 45 days before the effective date of the CGA filing; and it is

FURTHER ORDERED, that all subsequent final CGA reconciliation reports be filed with the Commission within 90 days of the close of the CGA period; and it is

FURTHER ORDERED, that Northern review with Staff the mechanics of identifying the discrete interruptible gas costs for the 1993/1994 Winter CGA Period. Any adjustments to

interruptible sales margins, including interest, shall be included in the final 1994/1995 Winter CGA reconciliation analysis as a prior period adjustment. Northern and Staff will determine how administratively burdensome the complete reconciliation of interruptible gas costs and margins is and will report back to the Commission during the 1995 Summer CGA hearings; and it is

FURTHER ORDERED, that Staff meet with Northern, EnergyNorth, and the OCA to discuss the use of FIs and alternative ratemaking mechanisms and to report back to the Commission during the 1995 Summer CGA hearings the results of these discussions.

By order of the Public Utilities Commission of New Hampshire this second day of November, 1994.

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NH.PUC*11/02/94*[70677]*79 NH PUC 617*New England Telephone Company

[Go to End of 70677]

79 NH PUC 617

Re New England Telephone Company

DR 94-108
Order No. 21,408

New Hampshire Public Utilities Commission

November 2, 1994

ORDER authorizing a local exchange telephone carrier to revise its service terms for its "SUPERPATH" digital service, to (1) introduce clear channel capability, (2) introduce more installment payment plan options, (3) allow longer-term payment plans, and (4) reduce certain rate plan charges and restructure others.

1. RATES, § 553

[N.H.] Telephone rate design — "SUPERPATH" digital service — Changes in service options — Introduction of clear channel

Page 617

capability — Introduction of more payment plan options. p. 618.

2. SERVICE, § 433

[N.H.] Telephone — "SUPERPATH" digital service — Changes in service options — Introduction of clear channel capability — Introduction of more payment plan options — Retention of existing service maintenance warranty — Rejection of service provisioning warranty. p. 618.

BY THE COMMISSION:

ORDER

[1, 2] On May 24, 1994 New England Telephone Company (NET or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to modify its SUPERPATH 1.544 Mbps digital service tariff. The proposed tariff pages were suspended by Order No. 21,272 issued June 22, 1994 so that Staff could investigate the filing including the accompanying revenue and cost information.

In its petition, NET proposes to introduce DS1 to Digital C.O. multiplexing, introduce Clear Channel Capability, introduce an Intra Central Office Distribution Channel, restructure rates, to eliminate the Flexible Rate Pricing Plan and Replace it with Variable Term Payment Plans, to reduce the S&E charges by 50% for 1.544 Mbps circuits purchased under a Variable Term Payment Plan, to introduce rates and regulations that allow the S&E charges to be paid over an Optional Payment Period, to introduce a Service Provisioning Warranty, to introduce a Service Maintenance Warranty, and to grandfather the Served Direct option.

Based on a review of NET's tariff filing and supporting materials, the proposed rate restructuring appears to be more reflective of NET's reported incremental costs. NET's proposal to eliminate the Served Direct option is based on the lack of demand for the service: currently, there are no customers receiving this service.

NET also proposes to introduce a Service Provisioning Warranty. Under the Service Provisioning Warranty, if NET is responsible for failing to meet its confirmed installation due date, the applicable nonrecurring charges for the Local Distribution Channel, Intra Central Office Distribution Channel, Interoffice Channel, and Central Office Multiplexing feature will be credited on the customer's bill. In general, the Commission views incentives which are designed to improve the level of service quality positively. Staff notes that Service Warranties, such as proposed here, serve as tools to increase customer loyalty, an important issue in an increasingly competitive environment; however, such warranties should be sponsored by shareholders not by ratepayers. Service Maintenance Warranties should be treated in a similar manner. Current Puc rules make allowances for refunds or credits for service interruptions.

Based on the materials filed by NET in support of this petition, Staff recommended the Served Direct option be eliminated and removed from the compliance tariffs, that the tariffing of the Service Provisioning Warranty be denied, and that the Service Maintenance Warranty be maintained as in the current tariff. Upon review of the petition and the Staff recommendation, the Commission finds the proposed tariff revisions, subject to the modifications recommended by Staff, to be in the public good.

Based on the foregoing, it is hereby

ORDERED, that the proposed revisions to NHPUC No. 75 are approved effective immediately;

Part C - Section 2

Second Revision of Page 1

Third Revision of Page 4
Second Revision of Page 5
Original Page 6
Original Pages 8 through 11
Elimination of Price List Page

and it is

FURTHER ORDERED, that NET revise

Page 618

the following tariff pages to reflect deletion of the Served Direct option, removal of all sections pertaining to the Service Provisioning Warranty, and restoration of the Allowance for Interruptions language without the additional Maintenance Warranty:

Part C - Section 2

Third Revision of Table of Contents
Page 1
Second Revision of Page 2
First Revision of Page 2.1
Third Revision of Page 3
Original Page 3.1
Original Page 7

and it is

FURTHER ORDERED, that the above tariff pages as modified shall be effective as of the date of this Order; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this second day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Telephone Co., DR 94-108, Order No. 21,272, 79 NH PUC 374, June 22, 1994.

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NH.PUC*11/02/94*[70678]*79 NH PUC 619*NYNEX

[Go to End of 70678]

Re NYNEX

DR 94-240
Order No. 21,409

New Hampshire Public Utilities Commission

November 2, 1994

ORDER suspending a local exchange telephone carrier's proposed tariff revisions with respect to a 50% rate discount for employees, to allow commission staff adequate time for investigating the filing.

1. DISCRIMINATION, § 55

[N.H.] Rates — Concessions to employees — Proposed rate discounts — Suspension of proposed tariff terms — To allow for proper investigatory period — Local exchange telephone carrier. p. 619.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed tariff terms — For proposed employee discounts — To allow for effective investigation — Local exchange telephone carrier. p. 619.

BY THE COMMISSION:

ORDER

[1, 2] On October 7, 1994, NYNEX filed with the New Hampshire Public Utilities Commission (Commission) a petition to revise and modify its tariff to correctly identify the Contoocook Valley, Northland and Hollis Telephone Companies with their Associated Exchanges and to modify the Employee Telephone Service tariff to reflect recent additions of services available at Concession Service Rates.

The majority of the proposed tariff changes reflect administrative changes necessary as a result of changes in ownership of the former independent telephone companies owned by GTE. However, the proposed changes to the Employee Telephone Service tariff are not administrative in nature. NYNEX is proposing to expand the services offered at 50% concession to active employees having thirty or more years of Bell system service, employees retired under the employee benefit plan, employees declared eligible because of

Page 619

job requirements and active and retired directors of the Company.

NYNEX's filing contained no information regarding the expected financial impact of expanding the Employee Telephone Service offering. Staff has provided the Company with data

requests, and requires additional time to investigate this aspect of the filing.

Based on the foregoing, it is hereby

ORDERED, that the following pages of NYNEX Tariff NHPUC No. 75 are approved for effect as filed:

Part A - Section 5

Second Revision of Page 12

Second Revision of Page 15

Second Revision of Page 17

Third Revision of Page 28

Section 9

Fifth Revision of Page 17

Fifth Revision of Page 19

Fifth Revision of Page 21

Fourth Revision of Page 22

Fourth Revision of Page 26

Fourth Revision of Page 27

Fourth Revision of Page 29

Fifth Revision of Page 32

Fourth Revision of Page 34

Fourth Revision of Page 35

Fourth Revision of Page 36

Fourth Revision of Page 38

Fourth Revision of Page 39

Fourth Revision of Page 42

Fourth Revision of Page 43

Section 9

Fourth Revision of Page 46

Seventh Revision of Page 49

First Revision of Page 49.6

First Revision of Page 49.9

Fifth Revision of Page 52

Fifth Revision of Page 54

Fifth Revision of Page 56

Fourth Revision of Page 57

Fifth Revision of Page 59

Fourth Revision of Page 60

Fourth Revision of Page 61

Fourth Revision of Page 62

Fourth Revision of Page 63

Fifth Revision of Page 66

First Revision of Page 66.3

First Revision of Page 66.4

Part D - Section 1
First Revision of Page 1

and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k); and it is

FURTHER ORDERED, that the following tariff page of NET Tariff NHPUC No. 75

Part A - Section 5- Fourth Revision of Page 42

is suspended pending further investigation; and it is

FURTHER ORDERED, that in the future NYNEX file unrelated substantive tariff changes separately from administrative revisions.

By order of the Public Utilities Commission of New Hampshire this second day of November, 1994.

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NH.PUC*11/02/94*[70679]*79 NH PUC 620*ATC New Hampshire, Inc.

[Go to End of 70679]

79 NH PUC 620

Re ATC New Hampshire, Inc.

DR 94-238

Order No. 21,410

New Hampshire Public Utilities Commission

November 2, 1994

ORDER authorizing an interexchange telephone carrier to introduce prepaid calling card service as well as inbound residential "800" service and a special high-volume inbound/outbound "800" service.

1. SERVICE, § 468

[N.H.] Telephone — Toll service — Prepaid calling card service — Residential inbound

Page 620

"800" service — High-volume inbound/outbound "800" service. p. 621.

BY THE COMMISSION:

ORDER

[1] On October 5, 1994, ATC New Hampshire, Inc. (ATC) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking authority to introduce Home Advantage, Homebound 800, Performance 4000 and Prepaid Card services for effect November 4, 1994.

Home Advantage is a residential outbound, direct dial toll service. Homebound 800 is a residential inbound service that uses the customer's exchange line to terminate 800 calls. Performance 4000 is a high volume inbound and outbound switched and dedicated service offered for single or multi-location customers. Prepaid Card service is a debit card which ATC sells to customers willing to purchase a minimum of 10,000 minutes.

The proposed changes expand the choice of telephone services to New Hampshire customers thereby fostering competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following tariff pages are approved for effect as filed for ATC's New Hampshire PUC Tariff No. 1:

- 8th Revised Page 1.1
- Original Page 1.2
- 4th Revised Page 3
- 2nd Revised Page 3.1
- 1st Revised Page 27
- Original Page 28.1
- Original Page 28.2
- 1st Revised Page 31.1
- 1st Revised Page 31.1A
- 1st Revised Page 31.1B
- Original Page 31.2
- Original Page 31.2A
- Original Page 31.2B
- Original Page 31.2C
- Original Page 34.1
- Original Page 37.5
- 1st Revised Page 40.2D
- 2nd Revised Page 40.3
- Original Page 40.3A
- Original Page 40.3B
- Original Page 40.3C
- Original Page 40.3D
- Original Page 40.3E
- 2nd Revised Page 40.4
- 1st Revised Page 41
- 1st Revised Page 42

1st Revised Page 43
2nd Revised Page 44;

and it is

FURTHER ORDERED, that ATC file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this second day of November, 1994.

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NH.PUC*11/03/94*[70682]*79 NH PUC 621*Keene Gas Corporation

[Go to End of 70682]

79 NH PUC 621

Re Keene Gas Corporation

DR 94-231

Order No. 21,413

New Hampshire Public Utilities Commission

November 3, 1994

ORDER approving a charge of 11.38 cents per therm for a natural gas local distribution company's 1994/95 winter cost of gas adjustment.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost of gas adjustment (CGA) — Winter-period CGA —

Page 621

Factors affecting approval of charge — Prior undercollections — Lost and reacquired commercial accounts — Minimization of supply costs. p. 622.

APPEARANCES: John F. DiBernardo, Assistant General Manager, for Keene Gas Corporation; Richard B. Deres, PUC Examiner, and Robert F. Egan, Utility Analyst, for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. *PROCEDURAL HISTORY*

[1] On September 30, 1994, Keene Gas Corporation, (Keene Gas 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 1994/1995 Winter Cost of Gas Adjustment (CGA), effective November 1, 1994. The filing requests a CGA rate of \$0.1138 per therm which is an increase from the CGA rate of \$0.0315 approved by the Commission for the 1993/1994 Winter period.

A duly noticed public hearing was held at the Commission's office in Concord, New Hampshire on October 21, 1994.

II. POSITIONS OF KEENE GAS AND STAFF

Company witness John F. DiBernardo, Assistant General Manager, presented the proposed new CGA tariff and answered a number of questions by Staff regarding the derivation of the numbers, as well as the projections about the forthcoming Winter period. With regard to the over \$0.08 per therm increase difference between last Winter's CGA and this Winter's proposed adjustment, Mr. DiBernardo remarked that this was due primarily to a large under-collection during the prior period and partly to an estimated \$0.02 increase in propane costs. He answered questions regarding a contract with CNG Transmission Corporation, a contract which was somewhat different from the type that Keene Gas has entered into in the past in that neither the quantity nor the actual price was firmly set. He explained that this contract secured Keene Gas a position as an established customer of CNG Transmission Corporation, so that in the event that product scarcity were to develop during this winter period, Keene Gas would be in a more favorable position than other companies without contracts seeking scarce supplies in the spot market. Mr. DiBernardo stated that Company President Harry B. Sheldon, Jr., the individual in charge of product procurement, felt that gas prices may yet come down several cents. If that happens, Mr. Sheldon may still enter into a firm contract to cover the second half of the winter period.

Approximately two years ago the Company lost its largest commercial customer resulting in reduced projections for the following year. However, projections have increased over last year as the Company had successfully acquired a number of commercial accounts: three restaurants, one retail establishment, and a large building conversion. In addition to these new customers, last year's slightly colder winter also was taken into account.

As requested by Commissioner Ellsworth during the last Summer's CGA hearing, the Company filed a report summarizing the number of leaks by category for the past four years. From this report it appears that no correlation seems to exist between the number of leaks and the amount of unaccounted for gas experienced by the Company.

In comparison to another similarly sized propane company in New Hampshire, Keene Gas has continued to both improve and maintain its distribution system. The Keene Gas distribution system is approximately 28 miles in length overall, 74% of which is cast iron pipe, with service replacements and some lines now being converted to plastic.

III. COMMISSION ANALYSIS

We find that the projected costs, sales, and

adjustments to the CGA filing are consistent with those approved by the Commission in past CGAs. The Commission finds that Keene Gas Corporation's proposed CGA of \$.1138 per therm is just and reasonable and in the public good and therefore accepts such as filed.

Based upon the foregoing, it is hereby

ORDERED, that the 17th Revised Page 26, Superseding the 16th Revised Page 26 of Keene Gas Corporation Tariff, NHPUC No. 1 - Gas, providing for a Cost of Gas Adjustment of \$0.1138 per therm for the period November 1, 1994 through April 30, 1995 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, 1994,; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs activate the 10 percent trigger mechanism, Keene Gas shall file a revised Cost of Gas Adjustment.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1994.

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NH.PUC*11/03/94*[70683]*79 NH PUC 623*Granite State Electric Company

[Go to End of 70683]

79 NH PUC 623

Re Granite State Electric Company

DE 93-155

Order No. 21,414

159 PUR4th 100

New Hampshire Public Utilities Commission

November 3, 1994

ORDER approving revised contracts for the purchase by an electric utility of renewable resource-generated power, with two of the contracts being priced in excess of avoided costs.

The contracts, which were executed following a "Green" request for proposals, involve seven renewable resource qualifying facilities, the utility, and the utility's other retail affiliates in the New England Electric System (NEES). The contracts are subject to a memorandum of understanding (MOU) executed by the NEES affiliates and approved by the regulatory commissions in the three states in which the NEES affiliates operate. The MOU specifies that the contracts shall be rendered null and void if any one of the states objects to the contracts.

The contract revisions are designed to address concerns posed by the Rhode Island Public Service Commission. Accordingly, the revised contracts contain provisions for a "Rhode Island offset payment" that will reduce the cost to Narragansett Electric Company ratepayers to avoided

costs.

For an earlier decision in this docket, see Order No. 21,145, 79 NH PUC 137, *supra*.

1. ELECTRICITY, § 4

[N.H.] Integrated resource planning — Resource acquisitions — Renewable resource contracts — Pricing — Avoided-cost standard — Premium above avoided costs — Regional approval process — "Rhode Island offset payment." p. 624.

2. COGENERATION, § 17

[N.H.] Contracts — Between electric utility power pool affiliates and renewable resource-generated power projects — Regional approval process. p. 624.

3. COGENERATION, § 25

[N.H.] Rates — Purchases of renewable resource-generated power — Pricing terms — Avoided-cost standard — Premium above avoided costs — Regional approval process — "Rhode Island offset payment." p. 624.

BY THE COMMISSION:

Page 623

ORDER

[1-3] On August 26, 1993, Granite State Electric Company (Granite State) petitioned for approval of seven renewable resource contracts among and between Granite State and its other retail affiliates in the New England Electric System (Companies), and seven qualifying facilities.

1(55) The proposed contracts were executed following a request for proposals (Green RFP) by NEES's generation affiliate New England Power Company (NEP) to developers of renewable resource technologies. The filing was also submitted to the Rhode Island Public Utilities Commission (RIPUC) and the Massachusetts Department of Public Utilities (MDPU), and is subject to the Memorandum of Understanding (MOU) executed among the NEES affiliated companies and approved by the Commissions in each of the three states in which the NEES Retail Companies operate (in New Hampshire on September 9, 1993 by Order No. 20,958).

The MOU specifies that the projects be treated as Significant New Supply Side Commitments and, as such, are subject to the clause "if ... any State Commission ... objects to the Significant New Supply Side Commitment or any of its terms, then the [Commitment] shall be rendered null and void, and NEP and all NEES Retail Companies shall be precluded from going forward" *Memorandum of Understanding*, Section III.B.

On February 28, 1994 the New Hampshire Public Utilities Commission (NHPUC) approved the seven contracts in Order No. 21,145. On June 6, 1994 Granite State informed the

Commission that on March 29, 1994 the RIPUC had issued an order rejecting all seven contracts, with a written order issued May 13, 1994. The rehearing period for the RIPUC order expired on June 12, 1994. The rejection by the RIPUC rendered the original contracts null and void under the MOU.

On September 29, 1994 Granite State submitted revised contracts designed to accommodate the concerns expressed by the RIPUC while remaining consistent with the NHPUC's previous order. The revised contracts, while substantially comparable to the original contracts, contain new pricing terms. The seven contracts range in price from approximately 3.5 to 5.2 cents per kWh in 1994 dollars versus the original range of 4.4 to 6.0 cents per kWh in 1993 dollars.

This improved pricing reflects the new avoided costs of the Companies (filed in their 1994 Integrated Least Cost Resource Plan) that are lower than the avoided costs used in the original filing. In addition, of the five contracts conditionally approved by the NHPUC in Order 21,145, only two are currently priced at premium above avoided costs. Hence, the 5% premium for Granite State under the conditionally approved contracts is reduced to about \$27,000 (after refund payments by the Shirley and Barre projects of \$55,703 and \$41,184, respectively) as compared to \$62,000 originally.

Other general notable changes in the revised contracts include a requirement that the projects file with the Federal Energy Regulatory Commission (FERC) for Qualifying Facility (QF) status; a requirement that the projects not change such status once granted by FERC without the Companies' consent; changes in the Commencement Date of Operation for the facilities to about two years from the original dates; and the addition of a Rhode Island Offset Payment that will reduce the cost to Narragansett ratepayers to avoided costs.

Project-specific modifications include a change in the definition of the Commencement Date of Operation in the Shirley and Barre contracts to include a requirement that the Seller pay Granite State an amount to reduce the cost to 105% of avoided costs; a change in the name of the wind project from U.S. Windpower to KENETECH Windpower to reflect a change in corporate names; a modification in the KENETECH project's options to three 25 MW options from one 40 or 60 MW option; a change in the allowed engine for the Plainville project to meet Massachusetts air permit requirements; an increase in the Nashua project's capacity from 1.5 to 2.0 MW to allow for more efficient engines; and the elimination of the East Bridgewater, MA and Halifax, MA options from the Randolph project's contract.

The Commission finds that the revised contracts are consistent with the Commissions original order in this docket, and are just and

Page 624

reasonable. The Commission will, therefore, approve the revised contracts.

The Commission further finds that the public should be offered an opportunity to respond in support of, or in opposition to this order.

Based on the foregoing; it is hereby

ORDERED *NISI*, that the proposed revised contracts are just and reasonable and are hereby approved; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rule PUC 1601.05(j), Granite State shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than November 14, 1994 to be documented by affidavit filed with this office on or before December 2, 1994; and it is

FURTHER ORDERED, that all persons interested in responding to this order 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 29, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective December 5, 1994, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1994.

FOOTNOTES

¹For a complete procedural history, please see Report and Order No. 21,145.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DE 93-141, Order No. 20,958, 78 NH PUC 502, Sept. 9, 1993. [N.H.] Re Granite State Electric Co., DE 93-155, Order No. 21,145, 79 NH PUC 137, Feb. 28, 1994.

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NH.PUC*11/03/94*[70684]*79 NH PUC 625*Public Service Company of New Hampshire

[Go to End of 70684]

79 NH PUC 625

Re Public Service Company of New Hampshire

DR 94-172

Order No. 21,415

New Hampshire Public Utilities Commission

November 3, 1994

ORDER denying a petition to consider issues relating to "light loading" dispatch in the course of an electric utility's current fuel and purchased power adjustment clause proceeding. The commission explains that such an issue could bear on renegotiation of long-term rates payable to small power producers, a topic the commission is legislatively forbidden from addressing prior to December 1, 1994.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Scope of proceeding — Issues *not* to be addressed — "Light loading" dispatch — Factors — Legislative proscription on addressing matters bearing on small power producer rates. p. 625.

2. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices and efficiency — "Light loading" dispatch — Improper topic for fuel and purchased power adjustment clause rate proceeding. p. 625.

BY THE COMMISSION:

ORDER

[1, 2] On October 20, 1994, the Office of the Consumer Advocate (OCA) and the Business and Industry Association of New

Page 625

Hampshire (BIA) jointly filed in the above-captioned matter a "Motion To Require Public Service Company of New Hampshire To `Dispatch' Small Power Production Facilities During Periods of Light Loading". The joint motion essentially requests that the Commission revisit the long-term rate orders under which Public Service Company of New Hampshire (PSNH) purchases power from small power producers (SPPs) and to order that PSNH comply with the terms and conditions of the rate orders during periods of "light loading".

Contemporaneously with its above-referenced filing, the BIA petitioned the Commission for late intervention as a full party in this proceeding. Subsequently, motions to intervene and objections to the joint motion were filed on behalf of the following: Bio-Energy Corporation; Bridgewater Power Company, L.P.; Hemphill Power and Light Company; Pinetree Power, Inc.; Pinetree Power-Tamworth, Inc.; Whitefield Power and Light Company; Wheelabrator Concord Company, L.P.; Concord Regional Solid Waste/Resource Recovery Cooperative; and Granite State Hydropower Association. With the exception of the BIA, all of the aforementioned entities requested intervention for the sole purpose of objecting to the joint motion.

On October 31, 1994, PSNH filed an "Answer" which neither admitted nor denied the allegations contained in the joint motion. Instead, PSNH urged the Commission to open a separate proceeding to consider the issues raised in the joint motion so as not to delay or interrupt the schedule of this Fuel and Purchased Power Adjustment Clause (FPPAC) proceeding.

After reviewing the joint motion and the responses thereto, we find that a substantive evaluation of the issues raised in the joint motion is inappropriate at this time. At the outset we wish to note that none of the Commission's preliminary orders in this FPPAC proceeding have included the issues raised in the joint motion. Given that FPPAC will be heard during the week of November 7, 1994, we believe that it is too late in these proceedings to consider the issues raised by the OCA and the BIA.

Moreover, we believe that a consideration of the joint motion at this time would violate the

provisions of Laws of 1994, Chapter 362, Section 14. That law bars the Commission from taking any action or undertaking any proceeding prior to December 1, 1994, affecting SPPs on any issues bearing on or related to the renegotiations or the long-term rate orders. Since the joint motion requests an order enforcing the terms of the long-term rate orders, any proceeding undertaken pursuant to the motion would necessarily affect the SPPs in a manner that bears on and directly relates to their long term rate orders. Thus, under the above-referenced law, we cannot at this time take any action to address the issues presented in the joint motion.

We will, therefore, deny the joint motion without prejudice. In the event that the OCA and/or the BIA refile the motion after December 1, 1994, we will open a docket at that time to consider the "light loading" dispatch issue separately from the instant FPPAC proceeding. We note that while the joint motion seeks an order requiring PSNH to comply with the terms and conditions of the long term rate orders during periods of "light loading", the motion contains no allegations that PSNH is in violation of the rate orders. In the event that the motion is refiled, we would expect that it be supplemented to include factual allegations in support of the relief requested.

We will also deny all of the above-mentioned motions to intervene in the instant FPPAC docket given that the basis for intervention has been eliminated by virtue of this order.

Based on the foregoing, it is hereby

ORDERED, that the joint motion of the Office of the Consumer Advocate and the Business and Industry Association is denied without prejudice; and it is

FURTHER ORDERED, that the motions to intervene filed by Bio-Energy Corporation, Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Whitefield Power and Light Company, Wheelabrator Concord Company, L.P., Concord Regional Solid Waste/Resource Recovery Cooperative, and Granite State Hydropower Association are denied.

Page 626

By order of the Public Utilities Commission of New Hampshire this third day of November, 1994.

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NH.PUC*11/03/94*[70685]*79 NH PUC 627*Norstan Network Services of New Hampshire, Inc.

[Go to End of 70685]

79 NH PUC 627

Re Norstan Network Services of New Hampshire, Inc.

DR 94-236

Order No. 21,416

New Hampshire Public Utilities Commission

November 3, 1994

ORDER authorizing certain administrative changes in an interexchange telephone carrier's tariffs, to (1) increase the surcharge on calling card calls, (2) signify that the carrier's "Classic" and "Optima" products are registered trademarks, and (3) allow certain short-term promotional offerings on only seven days' notice.

1. SERVICE, § 468

[N.H.] Telephone — Toll service — Interexchange carrier — Terms of service — Administrative tariff changes — Surcharge on calling card calls — Status of "Classic" and "Optima" products as registered trademarks — Short-term promotional offerings on short notice. p. 627.

BY THE COMMISSION:

ORDER

[1] On October 4, 1994, Norstan Network Services of New Hampshire, Inc. (Norstan) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking authority to include Registered Marks on the Optima One, Classic One, Optima 800 and Classic 800 products, increase the Optima Card surcharge, introduce Promotional Offerings on seven days notice, and add language regarding general subscriber liability.

Including Registered Marks on the Optima One, Classic One, Optima 800 and Classic 800 products, is an administrative revision to the tariff. The proposed tariff will increase the surcharge for Optima Card calls from 25 cents to 50 cents.

Notice to the Commission regarding promotional offerings that are available only for a limited time will specify rates, terms, conditions and time intervals applicable to each promotional offering seven days prior to the start of the promotion. The proposed Promotional Offerings tariff expands Norstan's flexibility in offering promotions to stimulate existing customer usage, attract new customers, win back former customers or increase awareness of Norstan services.

The language added regarding general subscriber liability for collection fees and expenses incurred by Norstan assigns liability to the customer for payment of all fees and expenses reasonably incurred, including attorney's fees, when Norstan incurs these costs in collection or attempting to collect any charges owed to Norstan.

In addition, language is added that in the event suit is brought or an attorney is retained by Norstan to enforce the terms of the Tariff, Norstan will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection with the suit.

The public should be offered an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing, it is hereby

ORDERED *NISI*, that the following tariff pages are approved for Norstan, New Hampshire
Tariff PUC No. 2:

- 2nd Revised Page 1
- 1st Revised Page 5
- 1st Revised Page 6
- 1st Revised Page 18
- 1st Revised Page 30

Page 627

- 1st Revised Page 39
- 1st Revised Page 40
- 1st Revised Page 43
- 1st Revised Page 44
- 1st Revised Page 45
- 1st Revised Page 46
- 1st Revised Page 47
- 2nd Revised Page 48
- 2nd Revised Page 49
- 1st Revised Page 50
- 1st Revised Page 51
- 1st Revised Page 52
- 1st Revised Page 53;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Norstan cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are proposed to be conducted, such publication to be no later than Nov. 14, 1994 and is to be documented by affidavit filed with this office on or before Dec. 2, 1994; and it is

FURTHER 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 Nov. 29, 1994; and it is

FURTHER ORDERED, that Norstan file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective Dec. 5, 1994 unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1994.

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NH.PUC*11/07/94*[70686]*79 NH PUC 628*Thomas A. Behrens v. Public Service Company of New Hampshire

[Go to End of 70686]

79 NH PUC 628

Thomas A. Behrens
v.
Public Service Company of New Hampshire

DC 94-247
Order No. 21,417

New Hampshire Public Utilities Commission

November 7, 1994

ORDER approving a special contract between an electric utility and a recreational lodge for the provision of radio-controlled load management services. The lodge had not qualified for the service under the utility's existing tariffs and had complained, stating that it was likely to change to propane for its heating and cooling needs absent a special agreement. Because the agreement would retain load, cover costs, and provide the customer with proper conservation/price signals, it is deemed reasonable.

1. RATES, § 322

[N.H.] Electric rate design — Load factors — Special contract for radio-controlled load management — Considerations affecting approval — Customer's alternative fuel capability — Desire to retain load — Recovery of costs. p. 628.

2. CONSERVATION, § 1

[N.H.] Load management programs — Electric utility — Special contract arrangements for radio-controlled service. p. 628.

BY THE COMMISSION:

ORDER

[1, 2] On September 28, 1994, Thomas A.

Page 628

Behrens of Sunapee Lake Lodge (Sunapee) filed with the New Hampshire Public Utilities Commission (Commission) a complaint against Public Service Company of New Hampshire (PSNH). The complaint alleged that PSNH had improperly denied Sunapee's request for service under PSNH's Radio-Controlled Option (HEATSMART) of Load Controlled Service Rate LCS. Following a conference among the Commission Staff, Sunapee and PSNH, the Commission noticed a hearing for October 24, 1994 to resolve the dispute between PSNH and Sunapee. At

the hearing, PSNH offered a solution to be embodied in a special contract that was acceptable to both parties. The Commission approved the resolution of the complaint from the bench.

On October 31, 1994, pursuant to RSA 378:18, PSNH filed Special Contract No. NHPUC-100 (Contract), between PSNH and Sunapee effective November 15, 1994, or the date upon which the Agreement is approved by the Commission, whichever is later. The Contract enables Sunapee to receive firm electric service for certain water heating and space conditioning requirements at rates equal to those contained under the HEATSMART option plus a premium of three mills per kilowatt-hour during the twenty year term of the Agreement. Sunapee agrees that it will not generate electricity for its own internal use (other than for emergency supply) nor receive electricity from any supplier other than PSNH during the term of the Contract.

In the absence of the Contract, Sunapee would install propane package terminal air conditioning (PTAC) units and would utilize propane for its pool water heating and space conditioning requirements. The rates in the Contract make electric PTAC units a more attractive alternative for Sunapee, and as a result Sunapee will add new electric load, the revenue from which benefits PSNH's other ratepayers.

We find that the Contract embodies the rates, terms and conditions of the resolution to Sunapee's complaint as was presented and approved at the October 24, 1994 hearing.

Based on the foregoing, it is hereby

ORDERED, *Nisi*, that Special Contract NHPUC-100 is approved as filed effective November 15, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, PSNH notify all persons desiring to be heard by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than November 9, 1994 and documented by affidavit filed with this office on or before November 14, 1994; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than November 14, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective November 15, 1994, 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 November, 1994.

=====

NH.PUC*11/08/94*[70690]*79 NH PUC 629*Attestation of Commission Signatures and Records

[Go to End of 70690]

79 NH PUC 629

Re Attestation of Commission Signatures and Records

DE 94-267

Order No. 21,421

New Hampshire Public Utilities Commission

November 8, 1994

ORDER recognizing changes in certain staff position titles, and therefore amending the process by which the Executive Director attests to commissioner signatures and true copies of orders, by including certain legal secretaries, word processors, and management analysts among the persons that can assist the Executive Director in the attestation function.

1. COMMISSIONS, § 48

[N.H.] Investigation and action — Through officers or agents — Attestation of commissioner signatures and true copies of

Page 629

record — Executive Director duties as to attestation — Designation of others to assist Executive Director in attestations. p. 630.

BY THE COMMISSION:

ORDER

[1] One of the duties of the Executive Director and Secretary (Executive Director) of the New Hampshire Public Utilities Commission (Commission) is to attest the signatures of the Commissioners and of Commission records as being true copies. To expedite the attestation process when the Executive Director is unavailable, and to permit the Commission staff who copy orders that require petitioners to publish (generally orders of notice and *Nisi* orders) to attest that they are sending the petitioner a true copy of the order in the Commission files, the Commission has authorized certain Commission positions to assist the Executive Director in the attestation of Commission signed and records. Order No. 20,564 in DE 92-147 (August 5, 1992). Since that order, position titles have changed and additional personnel in the office of the Director have assumed responsibilities pertaining to the issuance of orders.

Based on the foregoing, it is hereby

ORDERED, that the Legal Secretary IV and Legal Secretary III in the office of the Commissioners and the Legal Secretary II, Word Processor I (Position # 18229) and Management Analyst in the office of the Director, and the General Counsel are hereby authorized to assist the Executive Director and Secretary as assistant secretaries to attest Commission signatures and to attest Commission records as being true copies.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1994.

=====

NH.PUC*11/08/94*[70691]*79 NH PUC 630*AT&T Communications of New Hampshire, Inc.

[Go to End of 70691]

79 NH PUC 630

Re AT&T Communications of New Hampshire, Inc.

DR 94-244

Order No. 21,422

New Hampshire Public Utilities Commission

November 8, 1994

ORDER authorizing an interexchange telephone carrier to introduce busy line verification/interrupt connect service, which would allow a customer to complete a call at operator-assisted rates rather than hang up and redial a call at direct-dialed rates after an interrupted party has agreed to take the call.

1. RATES, § 553

[N.H.] Telephone rate design — Special services — Busy line verification/interrupt connect service — Completion of call via operator assistance — Busy line interrupt surcharge — Interexchange carrier. p. 630.

BY THE COMMISSION:

ORDER

[1] On October 13, 1994, AT&T Communications of New Hampshire, Inc., (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Busy Line Verification/Interrupt Connect Option and AT&T Prison Collect with Controls Service, for effect November 13, 1994.

Busy Line Verification/Interrupt (BLVI) Connect Option allows a customer who has used BLVI to complete the call at Operator Handled rates, rather than hanging up and redialing the number, when the interrupted party agrees to take the call.

The proposed service addition will expand the choice of telephone services and foster

Page 630

competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition.

AT&T Prison Collect with Controls Service is still under review by the Commission Staff.

Based on the foregoing, it is hereby

ORDERED, that the following pages of AT&T's NHPUC Tariff No. 4 are approved for effect as filed:

Section 1

3rd Revised Page 32

Section 2

2nd Revised Page 13

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1994.

=====

NH.PUC*11/08/94*[70692]*79 NH PUC 631*AT&T Communications of New Hampshire, Inc.

[Go to End of 70692]

79 NH PUC 631

Re AT&T Communications of New Hampshire, Inc.

DR 94-239

Order No. 21,423

New Hampshire Public Utilities Commission

November 8, 1994

ORDER authorizing an interexchange telephone carrier to extend to business subscribers a directory assistance/call completion service already available to residential customers. The "DIRECTory LINK" service allows a caller to have a call completed via an operator after obtaining a number from Directory Assistance without having to hang up and dial the number separately.

1. RATES, § 553

[N.H.] Telephone rate design — Special services — Directory assistance/call completion service — Completion of call via operator — Elimination of need to dial separately after obtaining number from Directory Assistance — Availability to both business and residential customers — Interexchange carrier. p. 631.

BY THE COMMISSION:

ORDER

[1] On October 10, 1994, AT&T Communications of New Hampshire, Inc., (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce AT&T DIRECTory LINK Service to business customers and the Direct Dial Option, for effect November 11, 1994.

AT&T DIRECTory LINK permits a customer to complete a call to the called station telephone number received from Directory Assistance (DA) without hanging up and originating a separate call. This service is currently available to residential customers. This filing proposes to offer DIRECTory LINK to business customers.

The Direct Dial Option deletes the restriction that DIRECTory LINK must be accessed using a calling card or operator assistance.

The proposed service additions will expand the choice of telephone services and foster competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition.

Based on the foregoing, it is hereby

ORDERED, that the following pages of AT&T's NHPUC Tariff No. 1 are approved for effect as filed:

Table of Contents
Original Page 22

Section 20
Original Pages 1 through 3;

Page 631

and it is

FURTHER ORDERED, that the following pages of AT&T's NHPUC Tariff No. 4 are approved for effect as filed:

Section 4
2nd Revised Page 2
1st Revised Page 3;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1994.

=====

NH.PUC*11/09/94*[70693]*79 NH PUC 632*Mid-Com Communications, Inc.

[Go to End of 70693]

79 NH PUC 632

Re Mid-Com Communications, Inc.

DE 94-169

Order No. 21,424

New Hampshire Public Utilities Commission

November 9, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 632.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 632.

BY THE COMMISSION:

ORDER

[1, 2] On August 4, 1994, Mid-Com Communications, Inc., (MCC) a Washington corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

MCC has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993, to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing; it is hereby

ORDERED, *NISI*, that MCC is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. MCC shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, MCC shall notify the Commission of the change.
5. MCC is exempted from NH Admin.

Page 632

Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. MCC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. MCC shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. MCC shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.
9. MCC shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.
10. MCC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by MCC pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.
12. During the Trial Period, within 60 days following the end of each calendar quarter MCC

shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow MCC to operate outside of the conditions set

Page 633

forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that MCC shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than Nov. 21, 1994, and an affidavit proving publication shall be filed with the Commission on or before Dec. 7, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. MCC shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received

as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that MCC shall file a compliance tariff with the Commission before Nov. 23, 1994, in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 9, 1994, 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 ninth day of November, 1994.

Notice of Conditional Approval of
MID-COM COMMUNICATIONS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 4, 1994, Mid-Com Communications, Inc., (MCC), a Washington corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,424, issued in Docket No. DE 94-169, the Commission granted MCC conditional approval to operate as of December 9, 1994, subject to the right of the public and interested parties to comment on MCC or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on MCC's petition to do business in the State should submit written comments no later than December 6, 1994, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*11/09/94*[70694]*79 NH PUC 634*Universal Network Services of New Hampshire, Inc.

[Go to End of 70694]

79 NH PUC 634

Re Universal Network Services of New Hampshire, Inc.

DE 94-129
Order No. 21,425

New Hampshire Public Utilities Commission

November 9, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 635.

Page 634

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 635.

BY THE COMMISSION:

ORDER

[1, 2] On June 3, 1994, Universal Network Services of New Hampshire, Inc. (UNS-NH), a Nevada corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

UNS-NH has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993, to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing; it is hereby

ORDERED, *MSI*, that UNS-NH is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following

conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. UNS-NH shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, UNS-NH shall notify the Commission of the change.
5. UNS-NH is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. UNS-NH shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. UNS-NH shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. UNS-NH shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.
9. UNS-NH shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.
10. UNS-NH shall compensate the appropriate Local Exchange Company for all originating and terminating access used by UNS-NH pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.
12. During the Trial Period, within 60 days following the end of each calendar quarter UNS-NH shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

Page 635

- a. For each intrastate toll service offered:
 - (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
 - (2) intrastate minutes of use;
 - (3) intrastate revenue;

- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow UNS-NH to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that UNS-NH shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than Nov. 21, 1994, and an affidavit proving publication shall be filed with the Commission on or before Dec. 7, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. UNS-NH shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that UNS-NH shall file a compliance tariff with the Commission before November 23, 1994, in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 9, 1994, 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 ninth day of November, 1994.

Notice of Conditional Approval of

UNIVERSAL NETWORK SERVICES OF NEW HAMPSHIRE, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 10, 1994, Universal Network Services of New Hampshire, Inc. (UNS-NH), a Nevada corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a

Page 636

telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,425, issued in Docket No. DE 94-129, the Commission granted UNS-NH conditional approval to operate as of December 9, 1994, subject to the right of the public and interested parties to comment on UNS-NH or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on UNS-NH's petition to do business in the State should submit written comments no later than December 6, 1994, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*11/14/94*[70695]*79 NH PUC 637*New England Telephone Company

[Go to End of 70695]

79 NH PUC 637

Re New England Telephone Company

DR 94-108
Order No. 21,426

New Hampshire Public Utilities Commission

November 14, 1994

ORDER authorizing a local exchange telephone carrier to revise its service terms for its "SUPERPATH" digital service, to introduce service provisioning warranties (SPWs), although the same had been specifically rejected by Order No. 21,408 (79 NH PUC 617, supra). The commission finds that additional cost support data submitted by the carrier showed that SUPERPATH rates are sufficient to allow recovery of SPW costs.

1. SERVICE, § 433

[N.H.] Telephone — "SUPERPATH" digital service — Changes in service options — Retention of existing service maintenance warranty — Introduction of service provisioning warranty — Cost recovery factors. p. 638.

BY THE COMMISSION:

ORDER

On May 24, 1994 New England Telephone Company (NET or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to modify its SUPERPATH 1.544 Mbps digital service tariff. The proposed tariff pages were suspended by Order No. 21,272 issued June 22, 1994 so that Staff could investigate the filing including the accompanying revenue and cost information.

In its petition, NET proposed to: introduce DS1 to Digital C.O. multiplexing; introduce Clear Channel Capability; introduce an Intra Central Office Distribution Channel; restructure rates; eliminate the Flexible Rate Pricing Plan and Replace it with Variable Term Payment Plans; reduce the Service & Equipment (S&E) charges by 50% for 1.544 Mbps circuits purchased under a Variable Term Payment Plan; introduce rates and regulations that allow the Service & Equipment charges to be paid over an Optional Payment Period; introduce a Service Provisioning Warranty; introduce a Service Maintenance Warranty; and grandfather the Served Direct option.

Order Number 21,408 was issued November 2, 1994 and approved NET's proposed restructuring of SUPERPATH rates, eliminated the Served Direct Option and denied

Page 637

the proposed Service Provisioning Warranty and revisions to the Service Maintenance Warranty. At the time, Commission Staff expressed concerns that the costs associated with the proposed service warranties would not be covered by the service specific revenues and that the Company would seek to recover the difference from other ratepayers. The Commission believes the rates for services should recover all their relevant costs.

[1] Since Order 21,408 was issued, NET provided additional information in support of the proposed service warranties and discussed with Staff the forecast revenue effects associated with these warranties. Based on a review of these additional materials and the information provided

by NET, Staff believes the Service Provisioning Warranty and the Service Maintenance Warranty should be approved subject to a requirement that NET track and report to the Commission annually, the number of and expense associated with refunds or credits to customer bills resulting from the Provisioning Warranty and the number of and expense associated with refunds or credits to customer bills resulting from the Maintenance Warranty. In addition, should the Commission find that the costs of the warranties are not fully recovered by the SUPERPATH rates, the difference should be absorbed by NET shareholders and not ratepayers.

Upon review of the petition, the additional information provided by NET, and the Staff recommendation, the Commission finds the proposed tariff revisions to be in the public good.

Based on the foregoing, it is hereby

ORDERED, that the proposed revisions to NHPUC No. 75 are approved effective immediately;

Part C-Section 2
Third Revision of Table of Contents
Page 1
First Revision of Page 2.1
Third Revision of Page 3
Original Page 3.1

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of the date of this Order; and it is

FURTHER ORDERED, that NET track and report annually on or before March 31 of each year to the New Hampshire Public Utilities Commission, the number of new Superpath customers, the associated annual recurring revenues and the associated annual revenues from S&E charges; and it is

FURTHER ORDERED, that NET track and report annually on or before March 31 of each year to the New Hampshire Public Utilities Commission, the number of and expense associated with refunds or credits to customer bills resulting from the Provisioning Warranty and the number of and expense associated with refunds or credits to customer bills resulting from the Maintenance Warranty; and it is

FURTHER ORDERED, that NET's shareholders will absorb any deficiency between the rates charged and the costs incurred as a result of credits or refunds made in relation to the Provisioning Warranty and the Maintenance Warranty; and it is

FURTHER ORDERED, that the above revisions to NHPUC No. 75 be resubmitted as required by Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Telephone Co., DR 94-108, Order No. 21,272, 79 NH PUC 374, June 22, 1994. [N.H.] Re New England Telephone Co., DR 94-108, Order No. 21,408, 79 NH PUC 617, Nov. 2, 1994.

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NH.PUC*11/14/94*[70696]*79 NH PUC 639*AT&T Communications of New Hampshire, Inc.

[Go to End of 70696]

79 NH PUC 639

Re AT&T Communications of New Hampshire, Inc.

DR 94-244
Order No. 21,427

New Hampshire Public Utilities Commission

November 14, 1994

ORDER authorizing an interexchange telephone carrier to provide coinless, automated, collect-only service in correctional institutions, at rates capped at those of the state's dominant local exchange carrier, NYNEX, for similar services.

1. RATES, § 565

[N.H.] Telephone rate design — Pay station service — In correctional institutions — Coinless, automated, collect-only service — Rate cap — Based on rates of the state's dominant local exchange carrier. p. 639.

BY THE COMMISSION:

ORDER

[1] On October 13, 1994, AT&T Communications of New Hampshire, Inc., (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to introduce Busy Line Verification/Interrupt Connect Option and AT&T Prison Collect with Controls Service, for effect November 13, 1994.

Order No. 21,433 (November 8, 1994) approved Busy Line Verification/Interrupt (BLVI) Connect Option.

AT&T Prison Collect with Controls Service permits inmates to place collect calls over the AT&T network from authorized telephone numbers in a prison administration controlled environment. One or more of eight types of controls may be selected at the discretion of the prison administration.

In docket DC 88-90, the Commission addressed concerns of friends and family members of inmates in New Hampshire correctional institutions about coinless collect surcharges paid to receive calls from inmates. As a result, the Commission approved a stipulation agreement that limited the surcharge on such calls to \$1.05. See *Re New England Telephone and Telegraph Company, Inc.*, Order No. 19,386, 74 NHPUC 137 (1989).

Similarly, in docket DE 94-079 the Commission authorized Tele-Matic to provide coinless collect service on prison phones when Tele-Matic agreed to use New England Telephone Company's (NYNEX) rates as a price cap for such services. See Order No. 21,256 (June 7, 1994).

Since docket DC 88-90, the Commission has approved competition in the toll market and thus allowed other carriers to provide toll service. While different toll rates may be appropriate in a competitive environment where customers may choose which rates they pay based on the carrier of choice, inmates do not have a choice. Toll rates charged to an inmate, with no choice of carrier, may not be just and reasonable since the Commission does not regulate the price of competitive toll services. However, the Commission regulates the price of New England Telephone's (NYNEX) toll rates and operator surcharges and finds the rates just and reasonable. Consequently, we will require that rates charged from coinless collect phones in prisons be no higher than the authorized NYNEX rates for similar service.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that the following pages of AT&T's NHPUC Tariff No. 4 are approved if the rates are revised to meet the conditions outlined above:

Section 2

Original Pages 27 and 28;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, AT&T shall cause an attested copy of this Order *Nisi* to be

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published once in a newspaper having general statewide circulation, such publication to be no later than November 28, 1994 and to be documented by affidavit filed with this office on or before December 12, 1994; and it is

FURTHER 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 12, 1994; and it is

FURTHER ORDERED, that A&T shall file a compliance tariff with the Commission or before November 28, 1994 in accordance with N.H. Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 14, 1994, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of

November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Corporate Telemanagement Group of New Hampshire, Inc., DR 94-249, Order No. 21,433, 79 NH PUC 646, Nov. 18, 1994. [N.H.] Re Tele-Matic of New Hampshire Corp., DE 94-079, Order No. 21,256, 79 NH PUC 327, June 7, 1994.

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NH.PUC*11/14/94*[70697]*79 NH PUC 640*Access Transmission Services, Inc.

[Go to End of 70697]

79 NH PUC 640

Re Access Transmission Services, Inc.

DE 94-151

Order No. 21,428

New Hampshire Public Utilities Commission

November 14, 1994

ORDER granting a telecommunications carrier interim authority to provide private line services to Digital Equipment Corporation pending completion of a proceeding addressing the carrier's application for a certificate to provide nonswitched, private line, intrastate intraLATA interexchange telephone service on a permanent basis.

1. CERTIFICATES, § 123

[N.H.] Telecommunications service — Temporary interim authority — For service to single customer — Nonswitched private line service — Intrastate intraLATA interexchange service — Pending outcome of certificate proceeding for permanent authority. p. 641.

APPEARANCES: Robert Glass, Esq., on behalf of Access Transmission Services, Inc.; Devine, Millimet & Branch by Frederick J. Coolbroth, Esq., on behalf of Granite State Telephone, Inc., Merrimack County Telephone Company, Contoocook Valley Telephone, Inc., Dunbarton Telephone Company, Inc., Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company; McManimon & Scotland by Martin C. Rothfelder, Esq., on behalf of Union Telephone Company; Victor D. DelVecchio, Esq., on behalf of New England Telephone; Mark R. Perkell, Esq., on behalf of Long Distance North of New Hampshire, Inc., Mark DeFalco, Esq., on behalf of Chichester Telephone Company, Kearsarge Telephone Company, and Meriden Telephone Company; and E.

Barclay Jackson, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.
BY THE COMMISSION:

ORDER

On July 20, 1994, Access Transmission Services, Inc. (ATS) filed a Petition for

Page 640

Permission and Approval to Provide Non-switched Intrastate IntraLATA Private Line Telecommunications Services in New Hampshire. The New Hampshire Public Utilities Commission (Commission) issued an Order of Notice setting a prehearing conference for September 23, 1994, to address matters of intervention and the scope of the proceeding.

At the September 23, 1994 prehearing conference, the Commission approved an agreed upon procedural schedule and granted requests for intervention filed by Granite State Telephone, Inc., Merrimack County Telephone Company, Contoocook Valley Telephone, Inc., Dunbarton Telephone Company, Inc., Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Bretton Woods Telephone Company, Inc., Dixville Telephone Company, Union Telephone Company, New England Telephone, Long Distance North of New Hampshire, Inc., Chichester Telephone Company, Kearsarge Telephone Company, and Meriden Telephone Company.

After oral argument, the Commission issued an order establishing the scope of the proceeding to be limited to issues of ATS' provision of non-switched intrastate intraLATA private line telecommunications services in NET's service area, in addition to the standard review of a petition pursuant to RSA 374. *See* Order No. 21,380 (October 10, 1994).

On November 4, 1994, ATS submitted a Motion For Interim Authority to Provide Private Line Telecommunications Services to Digital Equipment Corporation (Motion). All parties and Staff assented to the Motion. Under the terms of the Motion, ATS would operate private line telecommunications to Digital Equipment Corporation (DEC) on an interim basis during the pendency of this docket.

ATS stated in its Motion that by operating the high capacity, point to point, non-switched private line formerly owned by DEC, it would be providing transport services that are "overwhelmingly interstate in nature" but to the extent that some intrastate private lines are involved, ATS would provide service under interim authority while full discovery continues in ATS' petition. Further, ATS stated it would amend its prefiled testimony to remove any reference to intrastate private carriage and will submit a special contract pursuant to RSA 378:18 for service to DEC.

[1] We have reviewed ATS' Motion and understand it to provide no more than interim authority to serve DEC with private line service until the completion of this case. Because this interim authority is without prejudice to the issues involved in the rest of this case, and given the agreement among all parties and Staff to this interim approval, we find it to be in the public interest and will grant the Motion.

Based on the foregoing, it is hereby

ORDERED, that ATS' Motion For Interim Authority to Provide Private Line

Telecommunications Services to Digital Equipment Corporation is hereby GRANTED and it is FURTHER ORDERED, that ATS amend its testimony in accordance with its Motion; and it is

FURTHER ORDERED, that ATS file for Commission consideration a special contract, pursuant to RSA 378:18, to provide private line telecommunications services to DEC.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Access Transmission Services, Inc., DE 94-151, Order No. 21,380, 79 NH PUC 557, Oct. 10, 1994.

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NH.PUC*11/14/94*[70698]*79 NH PUC 642*Claremont Gas Corporation

[Go to End of 70698]

79 NH PUC 642

Re Claremont Gas Corporation

DE 94-056

Order No. 21,429

New Hampshire Public Utilities Commission

November 14, 1994

ORDER granting protective treatment of a commercial liability policy of a natural gas local distribution company, which was required to be submitted to the commission in the course of the company's petition for authority to abandon service.

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Commercial liability policy — As submitted in proceeding to abandon service — Local gas distribution company. p. 642.

BY THE COMMISSION:

ORDER

[1] This order addresses a Motion For Protective Order which Claremont Gas Corporation (Claremont) filed on November 2, 1994. Claremont seeks protective treatment before furnishing

Staff with a copy of its commercial liability policy, stating that the policy contains confidential commercial information which is exempt from the public disclosure requirements of N.H. RSA Chapter 91-A. We believe that protective treatment is justified and that the public good does not require disclosure of the terms of Claremont's liability policy except to the extent necessary to satisfy our order which approved the Settlement Agreement in this matter (Order No. 21,309).

Based on the foregoing; it is hereby

ORDERED, that Claremont's motion is GRANTED, and the document for which Claremont seeks protection shall be maintained according to Commission procedures for confidential materials and it shall not be published or otherwise disclosed to anyone other than the Commission Staff; and it is

FURTHER ORDERED, that this order is subject to the ongoing rights of the Commission to reconsider this issue should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Corp., DE 94-056, Order No. 21,309, 79 NH PUC 426, Aug. 5, 1994.

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NH.PUC*11/15/94*[70699]*79 NH PUC 642*AT&T Communications of New Hampshire, Inc.

[Go to End of 70699]

79 NH PUC 642

Re AT&T Communications of New Hampshire, Inc.

DE 94-245

Order No. 21,430

New Hampshire Public Utilities Commission

November 15, 1994

ORDER authorizing an interexchange telephone carrier to eliminate its "800 Plan E" service, since no intrastate customers had subscribed to the plan and since new interstate customers were no longer being accepted into the plan either.

1. SERVICE, § 216

[N.H.] Abandonment — Necessity of authorization — Abandonment of single service option — Interexchange telephone carrier — Withdrawal of "800 Plan E" service — Factors — Lack of intrastate subscribers — Closing of plan to new interstate subscribers as well. p. 643.

BY THE COMMISSION:

ORDER

[1] On October 18, 1994, AT&T Communications of New Hampshire, Inc., (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to withdraw its AT&T 800 Plan E service, for effect November 17, 1994.

There are no intrastate 800 Plan E customers in New Hampshire and therefore, withdrawal of this service will have no impact on New Hampshire intrastate customers. AT&T is no longer going to offer this service to new interstate customers and has grandfathered existing interstate customers as of September 26, 1994.

The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competitive entry and competition in the New Hampshire intrastate toll market, while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of AT&T's NHPUC Tariff No. 1 are approved for effect as filed:

Table of Contents

2nd Revised Page 11

Section 9

1st Revised Pages 1 through 4

3rd Revised Page 3;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1994.

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NH.PUC*11/15/94*[70700]*79 NH PUC 643*LCI International of New Hampshire, Inc.

[Go to End of 70700]

79 NH PUC 643

Re LCI International of New Hampshire, Inc.

DR 94-246

Order No. 21,431
New Hampshire Public Utilities Commission
November 15, 1994

ORDER authorizing an interexchange telephone carrier to introduce an installation charge for enhanced "800" services and to make other textual changes in its operator, international debit card, and enhanced "800" services.

1. RATES, § 309

[N.H.] Installation and connection charges — Telephone toll service — Enhanced "800" services — New customers only. p. 643.

2. SERVICE, § 468

[N.H.] Telephone — Toll service — Textual changes in tariffs — International debit card service — Operator services — Enhanced "800" services. p. 643.

BY THE COMMISSION:

ORDER

[1, 2] On October 18, 1994, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International of New Hampshire, Inc. (LCI) for authority to make several revisions to its NHPUC Tariff No. 1.

The revisions include textual changes to LCI's International Debit Card; Operator Services; Enhanced 800 Features; Use of Service; and Responsibility of 800 Service Customers. In addition, LCI is adding a promotion for

Page 643

WorldCard Plus Calling Card which offers a one cent per minute usage rate for the first 100 minutes of use on the calling card through December 31, 1995.

LCI is adding an installation charge and a per option change charge for Enhanced 800 Features. The installation charge will affect new customers only. Finally, LCI is revising the rate structure for LCI International Debit Card. Currently, no customers subscribe to this service, so no existing customers will be affected.

The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competitive entry and competition in the New Hampshire intrastate toll market, while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of LCI's NHPUC Tariff No. 1 are approved for effect as filed:

Check Sheet

5th Revised Page 1

Section 2

1st Revised Page 8

1st Revised Page 14

1st Revised Page 17

Section 3

1st Revised Page 1

1st Revised Page 4

Section 4

2nd Revised Page 10

1st Revised Page 20

1st Revised Page 21;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1994.

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NH.PUC*11/18/94*[70701]*79 NH PUC 644*Public Service Company of New Hampshire

[Go to End of 70701]

79 NH PUC 644

Re Public Service Company of New Hampshire

DE 94-080

Order No. 21,432

New Hampshire Public Utilities Commission

November 18, 1994

ORDER granting limited intervenor status to EnerDev, Inc., in an electric utility's integrated least-cost resource planning proceeding. The intervenor is found to have raised some serious factual issues, and the fact that it is a competitor of the utility is seen as no bar to its status as an intervenor. However, given the untimeliness of its petition to intervene, its actual participation is limited.

1. PARTIES, § 18

[N.H.] Intervenors — Factors affecting status — Raising of factual issues — Competitor of

petitioner — Impact of untimely petition to intervene — Limits on participation — Integrated least-cost resource planning proceeding. p. 644.

BY THE COMMISSION:

ORDER

[1] This order addresses a late request for intervention filed by EnerDev, Inc. (EnerDev) on November 3, 1994. EnerDev is a New Hampshire corporation whose stated purpose is to develop "the concept of an integrated energy system" by constructing a natural gas transmission line from the Iroquois Pipeline to Nashua, New Hampshire with gas-fired cogeneration plants "acting as anchor loads for the pipeline." *Motion to Intervene*, para. 1. PSNH objects to EnerDev's request for intervention primarily on

Page 644

the grounds that it is untimely and procedurally burdensome. EnerDev filed a Response to PSNH's objection requesting access to the unredacted Continued Unit Operation (CUO) study which PSNH utilized to evaluate compliance strategies for the Merrimack 2 generating plant.

We believe that EnerDev has alleged sufficient facts which justify limited involvement during the remainder of this proceeding. EnerDev has raised factual issues which potentially implicate the least cost principles which guide the outcome of this proceeding. EnerDev has alleged certain facts which, if substantiated, bear directly on specific issues which will be addressed within this proceeding. The fact that EnerDev is a potential competitor of PSNH constitutes no basis for denying intervention which is limited to those issues designated in EnerDev's Motion.

Nonetheless, the untimeliness of EnerDev's request does warrant limitations which ensure procedural fairness to PSNH. Certain other limitations are justified so that EnerDev's involvement will not further delay this proceeding. Accordingly, we will permit EnerDev to participate in this proceeding, but within the following parameters:

- (a) EnerDev will not be permitted to introduce any testimony or evidence which is outside of the record established by the Staff and current parties of record;
- (b) EnerDev will be allowed to cross-examine witnesses during the final hearing only with regard to matters which are (i) within the scope of such witness' direct testimony and (ii) relevant to the least cost issues raised in EnerDev's Motion;
- (c) EnerDev will not be permitted access to documents and information which have been granted confidential treatment in Order No. 21,353

1(56) ;

(d) In the event that we elect to hear testimony during the final hearing which relates to, or discusses, information subject to protective treatment, we reserve the right to close the hearing and to take other reasonable measures so that the confidentiality of such information is

maintained;

(e) EnerDev shall have no right to independently conduct discovery prior to the final hearings now scheduled for December 19, 1994 at 11:00 A.M. and December 20, 1994 at 9:00 A.M.; however, EnerDev will be permitted to communicate with the Commission Staff in order to discuss potential data requests which Staff may, in its sole discretion, forward to PSNH on a rolling basis prior to the final hearing.

In sum, we believe that limited intervention under the foregoing conditions will permit EnerDev to participate in the final hearing without impairing the orderly and prompt conduct of this proceeding.

Based on the foregoing; it is hereby

ORDERED, that EnerDev, Inc., is authorized to participate in this proceeding under the terms and conditions set forth in this Order;

FURTHER ORDERED, that Staff is authorized to meet with EnerDev representatives for the purpose of developing data requests pertaining to the issues raised in EnerDev's Motion to Intervene.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1994.

FOOTNOTES

¹EnerDev alleges that much of the information it seeks "is readily available to EnerDev through normal commercial contacts". Based upon this assertion and the potential for delay, we decline to reconsider our September 19, 1994 order which affords protective treatment to the unredacted CUO study (Order No. 21,353).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 94-080, Order No. 21,353, 79 NH PUC 496, Sept. 19, 1994.

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NH.PUC*11/18/94*[70702]*79 NH PUC 646*Corporate Telemanagement Group of New Hampshire, Inc.

[Go to End of 70702]

79 NH PUC 646

Re Corporate Telemanagement Group of New Hampshire, Inc.

DR 94-249

Order No. 21,433

New Hampshire Public Utilities Commission

November 18, 1994

ORDER authorizing an interexchange telephone carrier to introduce a prepaid debit calling card product and to effectuate certain short-term promotional offerings on only seven days' notice.

1. SERVICE, § 468

[N.H.] Telephone — Toll services — Introduction of new options — Prepaid debit calling card service. p. 646.

2. RATES, § 243

[N.H.] Schedules and procedure — Notice and publication — Short-term promotional offerings — Seven days' notice — Interexchange telephone carrier. p. 646.

BY THE COMMISSION:

ORDER

[1, 2] On October 21, 1994, the New Hampshire Public Utilities Commission (Commission) received a petition from Corporate Telemanagement Group of New Hampshire, Inc. (CTG) for authority to introduce its CTG Card and language that would allow promotional offerings on seven days notice.

The CTG Card is a debit card which allows a customer to pay a fixed amount in advance for long distance calling and is debited each time the card is used.

Proposed language to allow promotional offerings on seven days notice includes a provision that CTG will notify the Commission seven days prior to the start of the promotion of the rates, terms, conditions and time intervals applicable to each promotional offering. The proposed Promotional Offerings tariff expands CTG's flexibility in offering promotions to stimulate existing customer usage, attract new customers, win back former customers or increase awareness of CTG services.

The proposed changes expand the choice of telephone services and foster competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of CTG's NHPUC Tariff No. 1 are approved for effect as filed:

7th Revised Page 1

4th Revised Page 4

Original Pages 41 through 44;

and it is

FURTHER ORDERED, that CTG file properly annotated tariff pages in compliance with

this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1994.

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NH.PUC*11/18/94*[70703]*79 NH PUC 646*WilTel Inc.

[Go to End of 70703]

79 NH PUC 646

Re WilTel Inc.

DR 94-254

Order No. 21,434

New Hampshire Public Utilities Commission

November 18, 1994

ORDER approving an interexchange telephone carrier's proposal to introduce "WilMAX" switched data service and enhanced travel calling card services (such as speed dialing, message store and forward, and voice mail), and to add prime hour rates to certain services.

Page 646

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special calling plans — New enhanced service features — Addition of prime hour rates. p. 647.

2. SERVICE, § 468

[N.H.] Telephone — Toll service — Special "WilMAX" package plans — Introduction of "WilMAX" switched data service — Introduction of enhanced travel calling card features — Speed dialing, message store and forward, and voice mail options. p. 647.

BY THE COMMISSION:

ORDER

[1, 2] On October 26, 1994, the New Hampshire Public Utilities Commission received a petition from WilTel Inc. (WilTel) for authority to introduce WilMAX Switched Data Service, WilMAX Enhanced Travel Card Service, WilMAX Enhanced 800 Service, CustomOne CustomCard Service, add prime hour rates, and rename and make changes to CustomOne Travel Card Service for effect November 29, 1994.

WilMAX Switched Data Service is a dial-up service for transmitting data at speeds of 56 kilobits per second (Kbps) and 64 Kbps and is designed for applications that require intermittent high speed transmission or switched capability by providing end-to-end digital transmission.

WilMAX Enhanced Travel Card Service is a calling card which offers features such as speed dialing, # reorigination, conference calling, variable credit limits, message store and forward and access to audiotext.

WilMAX Enhanced 800 Service is an inbound 800 service which includes options for rerouting overflow traffic.

CustomOne CustomCard Service is a calling card with features similar to the WilMAX Enhanced Travel Card but also has voice mail as an optional feature.

The Prime Hour rate period is from 8:00 a.m. to but not including 5:00 p.m. Monday through Sunday. The Non-Prime rate period is from 5:00 p.m. to but not including 8:00 a.m. Monday through Sunday. Each specific service identifies rates and which rate periods apply. The Prime Hour rate period does not apply to every service.

CustomOne Travel Card Service is being renamed as Voice Card. The surcharge has been removed and # reorigination has been added which allows a customer to dial additional numbers without reentering the authorization code.

The proposed changes expand the choice of telephone services and foster competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of WilTel's NHPUC Tariff No. 2 are approved for effect as filed:

- 8th Revised Page 1
- 4th Revised Page 7
- 1st Revised Page 45
- Original Page 63.1.1
- Original Page 63.1.2
- Original Page 63.1.3
- 3rd Revised Page 63.2
- 1st Revised Page 63.2.1
- 2nd Revised Page 63.2.2
- 3rd Revised Page 63.5
- Original Page 63.5.1
- Original Page 63.5.2
- 2nd Revised Page 63.6
- 3rd Revised Page 63.7
- Original Page 63.7.1
- Original Page 63.7.2
- Original Page 63.7.3;

and it is

FURTHER ORDERED, that WiTel file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of

Page 647

November, 1994.

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NH.PUC*11/23/94*[70705]*79 NH PUC 648*New Hampshire Electric Cooperative, Inc.

[Go to End of 70705]

79 NH PUC 648

Re New Hampshire Electric Cooperative, Inc.

DR 94-258 et al.

Order No. 21,436

New Hampshire Public Utilities Commission

November 23, 1994

ORDER approving an electric cooperative's proposed special service contracts with four ski resorts, which contracts provide for discounted rates for interruptible service as well as revision of the cooperative's two-block demand charge structure.

1. RATES, § 333

[N.H.] Electric rate design — Industrial customer — Ski resorts with self-generation capabilities — Special contract rates — Discounted rates for interruptible service — Revision of two-block demand charge structure — Factors — Load retention. p. 648.

BY THE COMMISSION:

ORDER

[1] The Petitioner, New Hampshire Electric Cooperative, Inc. (NHEC) filed testimony and exhibits on November 1, 1994, supporting special contract service agreements with four of its major member ski areas - Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, Inc. and Waterville Company, Inc. NHEC believes that the ski areas, which purchase approximately 24 million kilowatt-hours (kWhs) per year from NHEC, absent these special contracts would likely generate their own power. In order to retain the load of the four ski areas,

NHEC entered into discussions with PSNH concerning possible changes to its wholesale power arrangement. The special contracts NHEC is proposing, which commence with Commission approval and end on December 31, 2003, emanate directly from the changes to NHEC's wholesale power arrangement with PSNH.

Specifically, the special contracts between NHEC and its member ski areas are based on an Interruptible Power Supply Service Agreement (Interruptible Service Agreement) filed by Public Service Company of New Hampshire (PSNH) with the Federal Energy Regulatory Commission (FERC) on August 1, 1994. Concurrent with that filing, PSNH also filed with FERC an amendment to Public Service Company of New Hampshire's (PSNH) Partial Requirements Resale Service Agreement (Partial Requirements Agreement) with NHEC. On August 30, 1994, PSNH filed an amendment to the Interruptible Service Agreement as well as modifications to the amendment of the Partial Requirements Agreement. FERC accepted PSNH's amendments to its partial requirements agreement and closed both dockets, ER 94-1512-0000 and ER 94-1513-0000, on October 18, 1994.

The special contracts include a two-block monthly demand charge. The first block is based on the Monthly Base Demand, measured in kilo-volt amperes (kVA), as specified in the contract for each month. The Monthly Base Demand levels are the maximum demands measured on-peak for each ski area for the twelve month period ending February 1994. The second demand block is for all load measured in kVA greater than the Monthly Base Demand. The Monthly Base Demand charge is \$4.14 per kVA. Upon Commission approval and until January 1, 1995, the initial Monthly Incremental Demand Charge is \$0.00 per kVA. After January 1, 1995, the Monthly Incremental Demand Charge rises to \$0.72 per kVA. The Monthly Energy Charge is \$0.065 per kWh initially as long as \$0.065 is greater than the sum of PSNH's 1) Fuel and Purchased Power Adjustment Clause (FPPAC) BA, 2) FPPAC rate and 3) the Nuclear Decommissioning Charge as defined in PSNH's wholesale tariff. NHEC

Page 648

proposes to make interruptible only the demand amounts specified in the special contract that are greater than one-half of the maximum on-peak Monthly Base Demand (the Threshold Demand).

NHEC expects that the special contracts on average will reduce the average price per kWh to the ski areas by approximately 21% from the rates charged in NHEC's tariff. During the first year, the ski areas' average price is expected to be \$0.08 per kWh, which is slightly higher than NHEC estimates the cost of self-generation would be for the ski areas. NHEC believes that approval of these special contracts will benefit all NHEC customers and requests that they be approved in time for the ski areas to begin making snow during the next billing cycle beginning November 22, 1994. Alternatively, NHEC seeks temporary approval pending final Commission review.

The Commission recognizes that these filings have benefits to NHEC and its members, the ski areas and PSNH. And though we recognize the complexities involved in preparing these special contracts, the lateness of this filing shall not preclude the Commission from undertaking a thorough analysis of the issues. We will therefore approve the special contracts for a period of

one-year effective November 23, 1994 pending further Commission review.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NHEC's special contracts with Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, Inc. and Waterville Company, Inc. are granted for a period of one year pending Commission review; and it is

FURTHER ORDERED, that a pre-hearing be held, pursuant to N.H. Admin. Rules Puc 203.05, before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on January 5 at 2:00 p.m.; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 1601.05, the Petitioner shall cause an attested copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than December 1, 1994 and to be documented by affidavit filed with this office on or before December 9, 1994; and it is

FURTHER 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 20, 1994; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 23, 1994, 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 November, 1994.

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NH.PUC*11/29/94*[70706]*79 NH PUC 649*Connecticut Valley Electric Company, Inc.

[Go to End of 70706]

79 NH PUC 649

Re Connecticut Valley Electric Company, Inc.

DF 94-251

Order No. 21,437

New Hampshire Public Utilities Commission

November 29, 1994

ORDER increasing an electric utility's short-term debt financing authority from \$1 million to \$1.25 million.

1. SECURITY ISSUES, § 98

[N.H.] Short-term debt financing — Increase in limit — Factors — Costs associated with moving to a seasonally differentiated rate structure — Expected reductions in income — Increase in temporary working capital requirements — Electric utility. p. 649.

BY THE COMMISSION:

ORDER

[1] On October 26, 1994, Connecticut Valley Electric Company, Inc. ("CVEC" or the

Page 649

"Company") a wholly owned subsidiary of Central Vermont Public Service Corporation, filed a petition, in accordance with RSA 369:7 and PUC Rule 312.01, seeking to obtain Commission approval of short-term financing up to \$1.25 million which is in excess of 10% of its net assets. In support of its petition, the Company submitted on October 26, 1994 the Direct Testimony and Exhibits of Jonathan W. Booraem, Treasurer. The Commission's current approval, granted in Order No. 21,128 in Docket No. DF 94-011, for \$1.0 million expires on February 28, 1995.

The Company states that two factors are driving its need for the renewal of short-term lines of credit in excess of 10% of the net utility plant. First, Connecticut Valley's customer base is expanding and as it does, its temporary working capital requirements are increasing. Second, the seasonal rates in the Connecticut Valley service territory will tend to produce a revenue flow whereby, toward the end of a calendar year or early in the next calendar year, short-term borrowings will peak.

The Company further states that it anticipates a reduction in its 1994 net income and, hence, it has increased its short-term borrowing needs from \$1.0 million to \$1.25 million to compensate.

The Company notes that the maturity date for the initial financing of \$1.25 million is May 31, 1995, and renewals are planned to occur on a yearly basis thereafter. Also, the Company notes that the applicable interest rate is a variable rate equal to the New York Prime Rate of Interest as published in the Wall Street Journal, or similar publication, less one-quarter of one percent (0.25%), such interest to be calculated on the basis of a 360 day year.

The Commission has reviewed the Company's filing and the Staff recommendation and finds that the Company's request to increase its short term financing up to \$1.25 million is in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the \$1.25 million short-term debt level is approved and will remain in effect until May 31, 1996; and it is

FURTHER ORDERED, that the Connecticut Valley Electric 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 note; and it is

FURTHER ORDERED, that this authorization shall be effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DF 94-011, Order No. 21,128, 79 NH PUC 76, Feb. 14, 1994.

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NH.PUC*11/29/94*[70707]*79 NH PUC 650*New England Telephone and Telegraph Company

[Go to End of 70707]

79 NH PUC 650

Re New England Telephone and Telegraph Company

DR 94-276

Order No. 21,438

New Hampshire Public Utilities Commission

November 29, 1994

ORDER granting protective treatment of a local exchange telephone carrier's proposed special service contract with an industrial customer, Lockheed Sanders, Inc., for the provision of Centrex service.

1. RATES, § 571

[N.H.] Telephone rate design — Switching and Centrex service — Industrial customer — Special contract rates — Protective treatment. p. 651.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of proposed special service

Page 650

contract — For the provision of Centrex telephone service. p. 651.

BY THE COMMISSION:

ORDER

[1, 2] New England Telephone and Telegraph (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract, pursuant to RSA 378:18, with Lockheed Sanders Incorporated for provision of digital Centrex service. The special contract was accompanied by a Motion for Proprietary Treatment (Motion).

In its Motion, NYNEX states that the information over which protection is sought contains customer specific and competitively sensitive material.

We believe the financial and customer specific information contained within the Staff's request falls within the standards for exemption from public disclosure under RSA 91- A:5,IV, the Right to Know Law. For that reason, we will grant NYNEX's request for protective order.

Based on the foregoing, it is hereby

ORDERED, NYNEX's Motion for Proprietary Treatment is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1994.

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NH.PUC*11/29/94*[70708]*79 NH PUC 651*Paul E. Zimmerman

[Go to End of 70708]

79 NH PUC 651

Re Paul E. Zimmerman

DE 94-209

Order No. 21,439

New Hampshire Public Utilities Commission

November 29, 1994

ORDER granting protective treatment to customer records submitted by a telephone carrier in the course of a proceeding examining whether an individual should be declared a public utility due to his provision of unauthorized intrastate telecommunications services to tenants through a public branch exchange system.

1. PUBLIC UTILITIES, § 33

[N.H.] Regulatory status — Factors — Ownership, operation, or management of utility plant — Used in conveying telephonic messages — Status as individual notwithstanding — Customer records as evidence — Protective treatment. p. 651.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of customer records — Used as evidence of individual's unauthorized provision of telecommunications service. p. 651.

BY THE COMMISSION:

ORDER

[1, 2] The New Hampshire Public Utilities Commission (Commission) issued an Order of Notice to Paul E. Zimmerman regarding his provision of telephone service to certain tenants of his property in Wolfeboro, New Hampshire. The Commission Staff (Staff) requested billing information held by New England Telephone and Telegraph (NYNEX) regarding the service it provides to Mr. Zimmerman, to be produced either by Mr. Zimmerman or by NYNEX. Mr. Zimmerman, through counsel, consented to production of the information directly from NYNEX.

NYNEX produced the information requested to the Staff, accompanied by a Motion for Proprietary Treatment of Customer Records on November 18, 1994. Mr. Zimmerman, the Office of Consumer Advocate and the Staff consented to the request. There are no other full intervenors to the case.

Page 651

Given that the parties and Staff consent to NYNEX's motion, we see no need to wait the full ten days before ruling, particularly in light of the upcoming hearing in this matter set for December 2, 1994. We believe the customer specific information contained within the Staff's request is within the standards for exemption from public disclosure under RSA 91- A:5,IV, the Right to Know Law. For that reason, we will grant NYNEX's request for protective order.

Based on the foregoing, it is hereby

ORDERED, NYNEX's Motion for Proprietary Treatment of Customer Records is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1994.

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NH.PUC*11/29/94*[70709]*79 NH PUC 652*Pittsfield Aqueduct Company

[Go to End of 70709]

79 NH PUC 652

Re Pittsfield Aqueduct Company

DE 94-268

Order No. 21,440

New Hampshire Public Utilities Commission

November 29, 1994

ORDER extending until December 2, 1994, the deadline for a water utility's submission of data responses with regard to its compliance with a schedule for financing, designing, and constructing a new treatment facility.

1. PROCEDURE, § 39

[N.H.] Time limits — For submission of data responses — Extension of deadline — Factors — Hospitalization of company president — Water utility — Data responses relating to construction schedule for treatment facility. p. 652.

BY THE COMMISSION:

ORDER

[1] By letter (Secretarial Letter) dated November 7, 1994, the New Hampshire Public Utilities Commission (Commission) through its Executive Director and Secretary, informed Pittsfield Aqueduct Company (Pittsfield) that it expected a response from Pittsfield to the series of five letters sent between October 11, 1993 and October 3, 1994 by the Commission Engineering Department. The letters from Engineering had requested specific information regarding the status of Pittsfield's efforts to implement its compliance agreement with the Department of Environmental Services. In that agreement, Pittsfield had committed itself to meet certain deadlines regarding the financing, design and construction of a treatment facility that would bring its system into compliance with the Surface Water Treatment Rule.

The Secretarial Letter required Pittsfield to submit by November 18, 1994 some portion of the responses, accompanied by a commitment to a date certain no later than December 2, 1994 for submission of the remainder of the information. By letter dated November 16, 1994 (filed November 18, 1994), Cedric H. Dustin, Jr., President of Pittsfield, requested an extension based on his hospitalization and consequent late receipt of the October 3, 1994 letter from Engineering and the Secretarial Letter. He committed to provide all requested data by December 2, 1994.

Based on the foregoing, it is hereby

ORDERED, that the deadline for the submission of all data in response to Staff's letters of inquiry is December 2, 1994.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1994.

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NH.PUC*11/29/94*[70710]*79 NH PUC 653*Tilton-Northfield Aqueduct Company, Inc.

[Go to End of 70710]

79 NH PUC 653

Re Tilton-Northfield Aqueduct Company, Inc.

DF 94-264

Order No. 21,441

New Hampshire Public Utilities Commission

November 29, 1994

ORDER authorizing a water utility to issue notes in an amount up to \$65,000 in order to finance construction of a water treatment facility and/or new wells.

1. SECURITY ISSUES, § 58

[N.H.] Issuance of notes — Purposes — Financing of construction projects — Treatment facility or new wells — Water utility. p. 653.

BY THE COMMISSION:

ORDER

[1] The Petitioner, Tilton-Northfield Aqueduct Company, Inc. is requesting authorization to issue \$65,000 in securities in the form of a Note (the Note). The Note is a term loan that will have an interest rate calculated using the Wall Street Journal Prime Rate plus 175 basis points. The interest will be paid monthly. The entire Note will ultimately be rolled into and become part of the total future financing package along with the two prior financings (DF 94-122, Order No. 21,290 and DF 94-218 Order No. 21,371). The total purpose of the loan package is to construct a water treatment facility and/or wells. The Note granted by the Bank of New Hampshire will carry cross default and cross collateralization provisions.

The sum of \$65,000 will be required to complete an additional assessment of the most suitable location with two, eight-inch test wells and engineering as proposed by D.L. Maher Company. The test wells will be developed in the Tilton-Northfield area for the purpose of site evaluation in order to insure compliance with the Safe Drinking Water Act.

Preliminary two and a half inch wells were to be completed in November 1994. Prior funds (authorized in DF 94-122, Order No. 21,290 and DF 94-218 Order No. 21,371) were used to develop these wells to find the best location and for engineering and water testing.

Tilton-Northfield Aqueduct Company, Inc. will be able to explore new water sources necessary for compliance with federal and state requirements in a manner best suited to the needs of the system. Tilton-Northfield Aqueduct Company, Inc. states that it is necessary to advance the schedule for testing and construction as much as possible to insure timely compliance and to take maximum advantage of the construction season. We find that the purposes to which the proceeds are to be applied and the rates, terms and conditions of the Note are consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that Tilton-Northfield Aqueduct Company, Inc. is granted authorization to issue notes in the amount of \$65,000; and it is

FURTHER ORDERED, that Tilton-Northfield Aqueduct Company, Inc. shall file with this Commission, on January 1 and July 1 of each year, a detailed statement duly sworn to by its Treasurer, showing the disposition of the proceeds of this financing, until there is a full

accounting of the whole of said proceeds.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Tilton Northfield Aqueduct Co., Inc., DF 94-122, Order No. 21,290, 79 NH PUC 399, July 5, 1994. [N.H.] Re Tilton Northfield Aqueduct Co., Inc., DF 94-218, Order No. 21,371, 79 NH PUC 547, Oct. 3, 1994.

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NH.PUC*11/30/94*[70711]*79 NH PUC 654*Portland Pipeline Corporation

[Go to End of 70711]

79 NH PUC 654

Re Portland Pipeline Corporation

DE 94-186

Order No. 21,442

New Hampshire Public Utilities Commission

November 30, 1994

ORDER authorizing an extension in the early termination date of a natural gas pipeline lease executed between Portland Pipeline Corporation and Granite State Gas Transmission, Inc. The lease as originally approved set a termination date of March 31, 1999, which Portland could change to an earlier date, something it elected to do, as of March 31, 1996. The lease extension at issue herein allows the pipeline to extend that early termination date to March 31, 1997, instead.

1. GAS, § 10

[N.H.] Leases — Of natural gas pipeline facilities — Long-term lease agreement — Early termination provisions — Extension of already exercised early termination option. p. 654.

2. LEASES, § 1

[N.H.] Contract terms — Long-term lease agreement — Early termination provisions — Extension of already exercised early termination option — Lease of natural gas pipeline facilities. p. 654.

3. LEASES, § 7

[N.H.] Commission jurisdiction — As to amendment — As to extension of early termination

options — Lease of natural gas pipeline facilities — No federal preemption. p. 654.

BY THE COMMISSION:

ORDER

[1-3] The Petitioner, Portland Pipeline Corporation (Portland), on August 18, 1994, filed a petition requesting that the Commission either (1) find that its jurisdiction is pre-empted by federal law and, that it, therefore, has no jurisdiction over the Lease Agreement (Lease) and any of the amendments, or, if the Commission should conclude that its jurisdiction is not federally pre-empted, (2) to approve the proposed amendment to the Lease to extend the termination date of the Lease by one year and to adjust the amount of the Lease payments accordingly.

Because we do not believe that we are pre-empted by federal law, we will address the merits of the petition.

Under the Lease Agreement, dated November 23, 1987, Portland is leasing its 18-inch pipeline to Granite State Gas Transmission, Inc. (Granite State). The Lease was authorized by the Federal Energy Regulatory Commission (FERC) and by Order No. 18,773 (72 NH PUC 326, 1987) of the New Hampshire Public Utilities Commission (Commission or NHPUC) dated July 20, 1987.

The Lease was to terminate on March 31, 1999, unless it was terminated sooner pursuant to another lease provision under which Portland, among other things, was granted the option to terminate the Lease on March 31, 1996, 1997 or 1998 by giving timely prior written notice to Granite State. In October 1993 Portland exercised its option and gave notice of termination of the Lease to take effect as of March 31, 1996. On January 13, 1994 Portland and Granite State executed an agreement, for consideration, to amend the Lease to extend the March 31, 1996 termination date by one year to March 31, 1997. The proposed Amendment was submitted by Granite State to FERC for approval.

We find that the extension of the Lease by one year is in the public interest. By extending the Lease, we ensure that New Hampshire customers will continue to be served with a reliable supply of Canadian natural gas while Granite State considers other long term options.

Page 654

Based upon the foregoing, it is hereby

ORDERED, that Portland Pipeline Corporation is granted authorization to extend the Lease Agreement by one year, from March 31, 1996 to March 31, 1997.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 1994.

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NH.PUC*11/30/94*[70712]*79 NH PUC 655*MLDA, Inc., dba Member's Long Distance Advantage

[Go to End of 70712]

79 NH PUC 655

Re MLDA, Inc., dba Member's Long Distance Advantage

Additional applicant: Trans National Communications, Inc. of New Hampshire

DE 94-265

Order No. 21,443

New Hampshire Public Utilities Commission

November 30, 1994

ORDER taking note of an interexchange telephone carrier's change in corporate name, from MLDA, Inc., to Trans National Communications, Inc. of New Hampshire, although the "doing business as" name would be unchanged (Member's Long Distance Advantage).

1. CORPORATIONS, § 1

[N.H.] Corporate name — Change in name — Interexchange telephone carrier — Retention of "doing business as" name. p. 655.

BY THE COMMISSION:

ORDER

[1] On November 1, 1994, the New Hampshire Public Utilities Commission (Commission) received the late filed, joint petition of Trans National Communications, Inc., of New Hampshire (TNC-NH) [formerly known as MLDA, Inc. (MLDA)] and Trans National Communications, Inc. The petition seeks approval of the executed corporate name change of the New Hampshire telecommunications utility from MLDA, Inc. to Trans National Communications, Inc. of New Hampshire. MLDA was "doing business as" Member's Long Distance Advantage. Trans National Communications, Inc. proposes to also "do business as" Member's Long Distance Advantage.

MLDA was granted authority to conduct business as a telecommunications utility in New Hampshire in DE 92-007, pursuant to Order No. 20,756, issued on February 9, 1993. MLDA filed an amendment to its articles of incorporation and on April 11, 1994, the Secretary of State issued a Certificate of Amendment whereby MLDA is "Now known as" Trans National Communications, Inc. of New Hampshire.

On November 1, 1994, TNC-NH filed its proposed tariff which properly reflects the corporate name change. On November 4, 1994, TNC-NH filed minor amendments. The November 1, 1994 petition seeking approval to change the name of a New Hampshire Utility ought to have been filed prior to the actual change of name. However, based on the representations of TNC-NH that the delay was an oversight and was expeditiously corrected in

good faith, Staff recommends no further sanctions at this time.

TNC-NH proposes to adopt the same rates, services, terms and conditions, as contained in the MLDA tariff. The name change will not otherwise change the previously evidenced technical, financial and managerial competence.

Based on the foregoing, it is hereby

ORDERED, that TNC-NH is authorized to provide intrastate telecommunications services, specifically excluding local exchange services, for the service territory for the entire State of New Hampshire; and it is

FURTHER ORDERED, TNC-NH is subject to the requirements and benefits of the authority granted to MLDA under Order No. 20,756 (2/9/93), as subsequently modified by

Page 655

Order No. 21,319 (8/10/94), specifically including reporting requirements and administrative rule waivers previously granted to MLDA; and it is

FURTHER ORDERED, that the following pages are approved, Trans National Communications, Inc. of New Hampshire, NHPUC Tariff No. 1:

Title page - Original

Page 1 - Page 46 - Original;

and it is

FURTHER ORDERED, that TNC-NH file a compliance tariff within 20 days of the effective date of this order in accordance with NH Admin. Rules, Puc PART 1600.

By Order of the New Hampshire Public Utilities Commission this thirtieth day of November, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Long Distance North of New Hampshire, DE 87-249, Order No. 21,319, 79 NH PUC 442, Aug. 10, 1994. [N.H.] Re MLDA, Inc. (Members Long Distance Advantage), DE 92-007, Order No. 20,756, 78 NH PUC 94, Feb. 9, 1993.

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NH.PUC*11/30/94*[70713]*79 NH PUC 656*Trans National Communications, Inc. of New Hampshire dba Member's Long Distance Advantage

[Go to End of 70713]

79 NH PUC 656

Re Trans National Communications, Inc. of New Hampshire dba Member's Long Distance Advantage

DR 94-270
Order No. 21,444

New Hampshire Public Utilities Commission

November 30, 1994

ORDER authorizing an interexchange telephone carrier to change certain operator assistance and business "800" plan charges and to introduce a travel calling card service.

1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Operator assistance — Business "800" package plans — Changes in charges — Interexchange carrier. p. 656.

2. SERVICE, § 468

[N.H.] Telephone — Toll service — Introduction of new travel calling card service. p. 656.

BY THE COMMISSION:

ORDER

[1, 2] On November 9, 1994, the New Hampshire Public Utilities Commission received a petition from Trans National Communications, Inc. of New Hampshire (TNC-NH) for authority to change Operator Assistance, Business Advantage 800, and Business Advantage Operator Assistance Charges, and to introduce Travel Advantage Calling Card Service for effect December 10, 1994.

The Travel Advantage Calling Card Service features the customer's business telephone number plus a 4-digit PIN (personal identification number), no per-call surcharge for domestic calls, retroactive volume discount, 6-second call timing, plus additional service features and options.

The proposed changes expand the choice of telephone services and foster competitive entry and competition in New Hampshire while allowing the Commission to analyze the effects of competition, which is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of TNC-NH's NHPUC Tariff No. 1 are approved for effect as filed:

Page 656

1st Revised Page No. 1
1st Revised Page No. 2
1st Revised Page No. 13
1st Revised Page No. 14

1st Revised Page No. 15
1st Revised Page No. 16
1st Revised Page No. 17
1st Revised Page No. 18
1st Revised Page No. 19
1st Revised Page No. 20
1st Revised Page No. 21
1st Revised Page No. 22
1st Revised Page No. 23
1st Revised Page No. 24
1st Revised Page No. 25
1st Revised Page No. 26
1st Revised Page No. 27
1st Revised Page No. 28
1st Revised Page No. 29
1st Revised Page No. 30
Original Page No. 31
Original Page No. 32
Original Page No. 33;

and it is

FURTHER ORDERED, that TNC-NH file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 1994.

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NH.PUC*11/30/94*[70714]*79 NH PUC 657*RCI Long Distance, Inc.

[Go to End of 70714]

79 NH PUC 657

Re RCI Long Distance, Inc.

DE 94-171

Order No. 21,445

New Hampshire Public Utilities Commission

November 30, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 657.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 657.

BY THE COMMISSION:

ORDER

[1, 2] On August 8, 1994, RCI Long Distance, Inc. (RCI), a Delaware corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

RCI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993, to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based on the foregoing; it is hereby

ORDERED, *NISI*, that RCI is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following

Page 657

conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. RCI shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, RCI shall notify the Commission of the change.

5. RCI is exempted from NH Admin. Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. RCI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. RCI shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

8. RCI shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.

9. RCI shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

10. RCI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by RCI pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

11. New service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter RCI shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g.(4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

Page 658

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- (1) for non-800 services, originating outbound minutes of use;
 - (2) for 800 services, terminating inbound minutes of use;
 - (3) average call duration;
 - (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow RCI to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that RCI shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than December 9, 1994, and an affidavit proving publication shall be filed with the Commission on or before December 28, 1994; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. RCI shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that RCI shall file a compliance tariff with the Commission before December 15, 1994, in accordance with NH Admin. Rules, Puc PART 1600; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 30, 1994, 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 thirtieth day of November, 1994.

Notice of Conditional Approval of
RCI LONG DISTANCE, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 8, 1994, RCI Long Distance, Inc., (RCI), a Delaware corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,445, issued in Docket No. DE 94-171, the Commission granted RCI conditional approval to operate as of December 30, 1994, subject to the right of the public and interested parties to comment on RCI or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on RCI's petition to do business in the State should submit written comments no later than December 28, 1994, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*12/01/94*[70715]*79 NH PUC 660*Public Service Company of New Hampshire

[Go to End of 70715]

79 NH PUC 660

Re Public Service Company of New Hampshire

DR 94-172
Order No. 21,446

New Hampshire Public Utilities Commission

December 1, 1994

ORDER authorizing an electric utility to continue in effect its existing fuel and purchased power adjustment clause rate of 0.335 cents per kilowatt-hour.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Continuation of existing rate — Factors — Stipulation — Extension of Seabrook-related refueling costs over an 18-month period. p. 660.

BY THE COMMISSION:

ORDER

[1] On September 15, 1994, Public Service Company of New Hampshire (PSNH) filed testimony and exhibits supporting its proposal to keep the current Fuel and Purchased Power Adjustment Clause (FPPAC) rate of \$0.00335 per Kwh in effect for the next FPPAC period, December 1, 1994 through May 31, 1995. Staff and the Office of Consumer Advocate (OCA) filed testimony on November 2, 1994. Rebuttal testimony was filed by PSNH on November 7, 1994, the first day hearings commenced.

At the hearing on November 7, Staff and OCA requested and were granted additional time to file data requests relating to PSNH's rebuttal testimony. Based on the request for additional time, the remainder of the hearing was postponed until November 18, 1994. At the November 18 hearing, PSNH described a document entitled "Stipulation and Recommendation Regarding FPPAC Rate Level" (Stipulation) which was signed by all Parties and Staff and filed with the Commission on November 15, 1994. The Stipulation, *inter alia*, recommends approval of the current rate effective December 1, 1994 pending a final Commission order and that the Stipulation be approved as part of the Commission's final decision.¹⁽⁵⁷⁾

No participant to this proceeding has indicated that the issues being briefed will have any material effect on the proposed FPPAC rate. Based upon the current record and our prior decisions in Order No. 21,168 and Order No. 21,246 to extend the effects of the Seabrook re-fueling outage over 18 months, we find that keeping the FPPAC rate at its current level for the next FPPAC period to be just and reasonable.

Based upon the foregoing, it is hereby

ORDERED, that the current Fuel and Purchased Power Adjustment Clause (FPPAC) rate of \$0.00335 per Kwh remain in effect for the next FPPAC period, December 1, 1994 through May 31, 1995; and it is

FURTHER ORDERED, that PSNH file compliance tariff pages in accordance with Commission rules by December 9, 1994; and it is

FURTHER ORDERED, that, Exhibit 14, the short-term rates paid to Qualifying Facilities, is approved as filed.

By order of the Public Utilities Commission of New Hampshire this first day of December, 1994.

FOOTNOTES

¹The two issues to be briefed are the proper capacity factor assumption used in calculating replacement power costs and whether PSNH should be allowed to implement its coal inventory experimental program. The issues to be deferred into the next FPPAC period are: extraordinary measures; the extension of the Third Refueling Outage at Seabrook due to reactor cooling pump cap screws; the Connecticut Yankee outage beginning July 11, 1994; and the Maine Yankee outage beginning July 16, 1994. The Stipulation, Exhibit 31, will be described more fully in the Commission's final Report and Order.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-149, Order No. 21,168, 79 NH PUC 170, Mar. 22, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 94-018, Order No. 21,246, 79 NH PUC 301, May 31, 1994.

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NH.PUC*12/05/94*[70716]*79 NH PUC 661*Nuclear Emergency Planning

[Go to End of 70716]

79 NH PUC 661

Re Nuclear Emergency Planning

DE 94-283

Order No. 21,447

New Hampshire Public Utilities Commission

December 5, 1994

ORDER, pursuant to petition by the state's Office of Emergency Management, assessing North Atlantic Energy Service Corporation \$1.263 million for the estimated costs of maintaining the state's radiological emergency response plan for the Seabrook nuclear power plant.

1. COMMISSIONS, § 58

[N.H.] Fees and assessments against utilities — For the development and maintenance of a nuclear emergency response plan — In conjunction with the state's Office of Emergency Management — Assessment specific to the Seabrook nuclear plant. p. 661.

2. ATOMIC ENERGY

[N.H.] Necessity of nuclear emergency response plan — Supervision by the state's Office of Emergency Management — Costs of developing and maintaining plan — Assessments on utilities — Assessment specific to the Seabrook nuclear plant. p. 661.

BY THE COMMISSION:

ORDER

[1, 2] The New Hampshire Office of Emergency Management (NHOEM) submitted a request on October 31, 1994 requesting that the Chairman of the New Hampshire Public Utilities Commission (NHPUC) assess North Atlantic Energy Service Corporation (North Atlantic) for the estimated costs to maintain the NHRERP for Seabrook Station Nuclear Power Plant. The

request addresses the estimated annual costs associated with personnel, training, associated expenses and equipment expenses incurred by local municipalities, state agencies and outside support agencies which have responsibilities with respect to the Seabrook Station NHRERP.

The estimated financial support requested is \$1,263,355 for the State Fiscal Year 1995. The total requested assessment consists of two parts: (1) \$1,263,355 for State agency and outside support agency costs; and (2) the direct provision of certain equipment and/or services in support of the NHRERP.

The breakdown of the items to be assessed in this order are as follows:

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

10 Personnel-Permanent	\$	346,000
20 Current Expense	\$	45,000
28 Rent	\$	25,000
30 Equipment	\$	18,000
40 Indirect Cost	\$	26,210
46 Consultants	\$	48,960
49 DPHS	\$	230,000
50 Personnel-Temporary/Overtime	\$	126,144
60 Fringe Benefits	\$	120,812
70 In State Travel	\$	15,000
80 Out of State Travel	\$	3,500
91 Rockingham County	\$	46,825
94 Local Support	\$	142,904
96 State Agencies	\$	31,000
97 Other Support Agencies	\$	38,000
TOTAL ASSESSMENT		\$1,263,355
		=====

The NHOEM requests that payments of the above assessment be made in monthly installments. The NHOEM also requests that it

Page 661

be allowed to adjust monthly cash draws based on previous monthly expenditures in order to minimize excess funds at the end of the fiscal year.

The NHOEM requests that North Atlantic be assessed for the following direct support of the maintenance of the NHRERP. References to the NHRERP are noted for each item.

A) Maintenance of a contract for the provision of emergency worker thermoluminescent dosimeters and emergency worker dosimetry evaluation service. (NHRERP, Volume 1, Section 2.7.)

B) Maintenance and upkeep of reception/decontamination center equipment and support vehicles. (NHRERP, Volume 1, Section 2.1.)

C) Maintenance and upkeep of state transportation staging area support equipment. (NHRERP, Volume 1, Section 2.4.)

D) Maintenance and upkeep of the New Hampshire Incident Field Office facilities, Joint Telephone Information Center, and Media Center in Newington, NH. (NHRERP, Volume 1, Sections 2.3 & 2.4.)

E) Maintenance and upkeep of the alert and notification system for the Seabrook Station EPZ (sirens and tone alert radios). (NHRERP, Volume 1, Section 2.1.)

F) Maintenance and upkeep of the equipment and supplies for State of New Hampshire field monitoring teams. (NHRERP, Volume 1, Section 2.5.)

G) Provision of instructors and controllers to support training, drill and exercise requirements. (NHRERP, Volume 1, Section 3.3.)

H) Production and distribution of emergency public information. (NHRERP, Volume 1, Section 2.3.)

I) Maintenance and upkeep of specified equipment and supplies required by the NHRERP for local emergency operations centers. (NHRERP, Volume 1, Section 2.4.)

J) Direct procurement and distribution of equipment to support local Emergency Management activities. The equipment or services will be procured or provided by North Atlantic Energy Service Corporation to support the municipalities. Services or equipment will be provided no later than March 31, 1995.

RSA 107-B sets forth the Commission's jurisdiction over the assessment of these costs. It provides in pertinent part as follows:

107-B:1 Nuclear Emergency Response Plan.

I. The director of emergency management shall, in cooperation with affected local units of government, initiate and carry out a nuclear emergency response plan as specified in the licensing regulations of each nuclear electrical generating plant. The chairman of the public utilities commission shall assess a fee from the utility, as necessary, to pay for the cost of preparing the plan and providing the equipment and materials to implement it.

107-B:3 Assessment.

I. The cost of preparing, maintaining, and operating the nuclear planning and response program shall be assessed against each utility which has applied for a license to operate or is licensed to operate a nuclear generating facility which affects municipalities under RSA 107-B:1, II, in such proportions as the chairman of the public utilities commission determines to be fair and equitable.

The NHOEM submits, and the supporting schedules support, that the above stated costs will provide the resources and personnel required by the various State agencies and outside agencies.

Pursuant to RSA 107-B:1, I have reviewed the NHOEM's request and supporting data. I find that the budget costs contained therein relate to preparing the plan and providing equipment and materials necessary to implement it. I also find that the direct assessment of equipment and/or services is related to preparing the NHRERP and providing equipment and/or services necessary to implement it. I, therefore, approve the assessment of \$1,263,355 for Fiscal Year 1994 and the direct provision of equipment and/or services as

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specified above.

The NHOEM proposed billing mechanism is reasonable. Accordingly, NHOEM is authorized to require that NAEC payments of this assessment be drawn on anticipated monthly expenditures and, further, NHOEM is authorized to adjust monthly cash draws based on previous monthly expenditures.

Based upon the foregoing, it is hereby

ORDERED, that I certify that: 1) \$1,263,355 for Fiscal Year 1995 for estimated annual costs associated with personnel, training, current expenses and equipment incurred by State agencies and outside support agencies plus the incorporation of local administration and training costs; and 2) the direct provision of equipment and/or services as specified in Attachment 1 of the request be assessed against North Atlantic Energy Service Corporation pursuant to RSA 107-B; and it is

FURTHER ORDERED, that the New Hampshire Office of Emergency Management be authorized to require North Atlantic Energy Service Corporation to make payments against the total financial assessment of \$1,263,355 on a monthly basis; and it is

FURTHER ORDERED, that the payments of this assessment by North Atlantic Energy Service Corporation be drawn on anticipated monthly expenditures; and it is

FURTHER ORDERED, that the New Hampshire Office of Emergency Management is authorized to adjust monthly cash draws based on previous monthly expenditures; and it is

FURTHER ORDERED, that the year end balance for Fiscal Year 1994 be applied as a credit to reduce the total financial assessment; and it is

FURTHER ORDERED, that the New Hampshire Office of Emergency Management provide the Treasurer of the State of New Hampshire with the amount of each monthly installment by the 15th day of the previous month (with an information copy to be provided to the Chairman of the New Hampshire Public Utilities Commission) so that the Treasurer may then bill NAEC in accordance with the New Hampshire Office of Emergency Management statement; and it is

FURTHER ORDERED, that North Atlantic Energy Service Corporation make payment on or before the end of the same month.

By order of the Chairman of the Public Utilities Commission of New Hampshire this fifth day of December, 1994.

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NH.PUC*12/05/94*[70717]*79 NH PUC 663*Public Service Company of New Hampshire

[Go to End of 70717]

79 NH PUC 663

Re Public Service Company of New Hampshire

DR 94-279
Order No. 21,448

New Hampshire Public Utilities Commission

December 5, 1994

ORDER approving an electric utility's proposed special service contract with a ski resort, King Ridge Inc. of New London, which contract provides for discounted rates for a 10-year period in order to retain the customer's load. It mirrors special contracts with eight other ski resorts approved earlier in Order No. 21,384 (79 NH PUC 562), supra.

1. RATES, § 333

[N.H.] Electric rate design — Industrial customer — Ski resort with self-generation capability — Special contract rates — Discounted demand charges — Factors — Load retention. p. 663.

BY THE COMMISSION:

ORDER

[1] On November 22, 1994, Public Service Company of New Hampshire (PSNH) filed in conformance with the Commission's Rules and Regulations eight signed original and eight

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conformed copies of Special Contract No. NHPUC-97-9 between PSNH and King Ridge Inc. of New London, New Hampshire (King Ridge) effective December 7, 1994 or upon Commission approval. PSNH requests that the Commission consider this agreement in an expeditious manner in order to allow King Ridge to begin making snow in time for the Holiday season.

Special Contract No. NHPUC-97-9 contains identical terms and conditions as the eight agreements filed on August 25, 1994 by PSNH with its other ski areas. At the time of that filing, PSNH indicated King Ridge was not ready to enter into a long term agreement with PSNH. The special contracts with the other eight were approved by the Commission on October 13, 1994. Order No. 21,384.

As PSNH states, our review indicates this filing poses no changes to the contract provisions other than to reflect the particular load characteristics of King Ridge. Special Contract No. NHPUC 97-9 contains benefits to PSNH and its other customers as discussed in Order No. 21,384. Our review of this filing, coupled with our previous decision and Staff's recommendation, supports our finding that Special Contract NHPUC No. 97-9 is in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract No. NHPUC 97-9 between Public Service Company of New Hampshire and King Ridge Inc. is approved; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the

life of Special Contract No. NHPUC 97-9, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rates afforded King Ridge by our approval today of this special contract.

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-193, Order No. 21,384, 79 NH PUC 562, Oct. 13, 1994.

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NH.PUC*12/05/94*[70718]*79 NH PUC 664*Bodwell Waste Services Corporation

[Go to End of 70718]

79 NH PUC 664

Re Bodwell Waste Services Corporation

DE 94-166
Order No. 21,449

New Hampshire Public Utilities Commission

December 5, 1994

ORDER authorizing the transfer of a sewer disposal service, where its parent real estate development company had likewise been sold and transferred. The transaction involves the sale of Hampshire Meadows Development Corporation to Hampshire Ventures, Inc., with the former's stock ownership in the sewer system being assigned to the latter's president, Robert LaMontagne.

1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Transfer of sewer utility stock — Grounds for approval — Sale and transfer of utility's parent land development company — Assignment of stock to president of new owner — Status quo on services and operations. p. 665.

APPEARANCES: Wadleigh, Starr, Peters, Dunn and Chiesa by Charles F. Cleary, Esq., on behalf of Bodwell Waste Services Corporation, Hampshire Meadows Development Corporation and Robert S. Lamontagne; Robert J. Frank, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

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ORDER

[1] On August 1, 1994, Bodwell Waste Services Corporation (Bodwell), Bodwell's sole shareholder Hampshire Meadows Development Corporation (Hampshire Meadows), and Robert S. LaMontagne filed a Joint Petition for Authorization to Transfer Franchise of Sewer Disposal Facility and To Expand Service Area. A duly noticed prehearing conference was held on October 19, 1994. By Order No. 21,412, the Commission granted the requests for intervention by the City of Manchester and the East Meadow Condominium Association. It also approved the procedural schedules proposed by the parties, which entailed separate schedules of hearing dates to consider separately the stock transfer and the franchise expansion.

The hearing on the merits for the stock transfer was held November 18, 1994. The City of Manchester, the Office of the Consumer Advocate and the East Meadow Condominium Association were not present.

Bodwell presented the testimony of Robert S. LaMontagne who explained the proposed stock transfer and discussed his managerial, financial and technical competence to operate the Bodwell system. Staff did not present a witness but cross-examined Mr. LaMontagne and in a closing statement recommended approval of the transfer as being in the public interest.

Bodwell received a franchise to operate the existing sewer utility to service up to 485 residential customers at the Bodwell Road site in Manchester. Hampshire Meadows has already conveyed its ownership interest in the affected residential developments to Hampshire Ventures, Inc. (Hampshire Ventures). Lamontagne is the President of Hampshire Ventures. Hampshire Meadows has agreed to assign its stock in Bodwell to Robert LaMontagne, individually, subject to Commission's approval. The stated purchase price for the stock is \$5,000 per annum payable after 90% of the houses to be built in Megan's Meadow and Rosecliffe subdivisions have been constructed, connected to the sewer utility, and sold.

Mr. LaMontagne testified that for the past 18 years he has been President of LaMontagne Builders, the company that is responsible for the remainder of the proposed development of the Bodwell Road property. LaMontagne Builders has developed more than 10 residential subdivisions and condominium developments under the direct supervision of Mr. LaMontagne. Upon the retirement of the former owner, Mr. LaMontagne assumed the responsibility for the Bodwell franchise, brought the billing up to date, inspected and repaired the equipment and responded to queries by customers.

Hampshire Ventures, through Bodwell, has retained the services of Water Industries of Alton, New Hampshire to service and maintain the sewage disposal system. Water Industries installed the original system, has operated the Bodwell system for four months without problems and operates other water and sewer systems. Water Industries is available to provide service 24 hours a day, and at the request of Staff, Mr. LaMontagne agreed to provide customers with a 24-hour-a-day/7-day-a-week telephone number for their use in case of emergency.

Mr. LaMontagne testified that the current revenue is sufficient to cover operating and

maintenance expenses. According to Mr. LaMontagne, he has the financial strength to operate the system for the foreseeable future. Any shortfalls in revenue can be financed by Hampshire Ventures. Mr. LaMontagne's staff includes a Certified Public Accountant who will be available to address issues at Bodwell.

Based upon the foregoing, it is hereby

ORDERED, that the transfer of the Bodwell Waste Services Corporation stock from Hampshire Meadows Development Corporation to Robert S. LaMontagne is approved; and it is

FURTHER ORDERED, that a copy of the final Purchase and Sales Agreement, amended as recommended by Staff, be filed as an exhibit in this docket.

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 1994.

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NH.PUC*12/05/94*[70719]*79 NH PUC 666*One Call Communications, Inc., dba OPTICOM

[Go to End of 70719]

79 NH PUC 666

Re One Call Communications, Inc., dba OPTICOM

DR 94-271

Order No. 21,450

New Hampshire Public Utilities Commission

December 5, 1994

ORDER approving an interexchange telephone carrier's proposed textual changes to explain the difference between "0-" and "0+" calls, but rejecting as noncost-based the carrier's proposal for a property surcharge applicable to certain customer-owned, coin-operated telephones.

1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Operator-assisted calling — Difference between "0-" and "0+" calls — Waiver of operator charges for emergency "0-" calls — Interexchange carrier. p. 667.

2. RATES, § 260

[N.H.] Surcharges — Proposal by interexchange telephone carrier — For property surcharge on customer-owned, coin-operated telephones — Factors affecting rejection — Charge not cost-based — Charge out of line with other carriers' charges. p. 667.

BY THE COMMISSION:

ORDER

The Petitioner, One Call Communications, Inc. d/b/a OPTICOM, filed on November 9, 1994, to make textual changes to clarify that "0-" dialing is also included with "0+" dialing in its operator services offering, to clarify the handling of "0-" emergency calls, to introduce a property surcharge, and to make textual changes.

Calls originated by simply dialing "0" or "00" are typically routed to the local-exchange or presubscribed Inter-exchange Carrier (IXC) operator, respectively. These calls are referred to as "zero minus" calls. In certain circumstances, either or both of the above calls may instead be routed by Customer Premises Equipment to an IXC or to an operator services bureau. After the customer dials "0" or "00," an operator comes on the line and assists the caller in completing the call. Some carriers offer both traditional "live" operators and electronic, automated operator attendants. Typically live operator service is more expensive than automated operator service, and both types of operator-handled calls are charged at relatively high rates.

The Petitioner seeks to clarify that emergency calls received at OPTICOM's operator services bureau will be routed to the appropriate emergency service provider at no charge to the end user. Several textual changes clarify payment and billing specifics, and clarify that Operator Services are available to OPTICOM's presubscribed customers and through public payphones or customer provided stations.

The Petitioner also seeks to introduce a "property surcharge" on some of the Coin-Operated Customer Owned Telephone (COCOT) phones which utilize his services. The proposed charge is \$3.00 and would be levied in addition to all other applicable charges set forth in OPTICOM's Tariff No. 1, section V.12. For example, the \$3.00 property surcharge could be combined with a person-to-person charge of \$4.38, an operator dialed surcharge of \$1.00, and the base toll rate of approximately \$.29 per minute. The effective rate for a one-minute call as described above, therefore, would be \$8.67.

Staff investigated whether there was a cost basis supporting the property surcharge and whether the \$3.00 surcharge was just and reasonable. The Petitioner responded that it incurred essentially no cost for the surcharge, but passed the charge along to the aggregator for the use of its equipment. The Petitioner also confirmed Staff's understanding that the property surcharge would be in addition to OPTICOM's other tariffed charges producing

Page 666

an effective one-minute rate of approximately \$8.67, which it didn't attempt to justify as just and reasonable. Staff investigated how a consumer would become aware of the existence of, and the level of, the property surcharge, so that they would be making an informed decision. The Petitioner responded that to learn of the surcharge, the consumer would have to dial "0" or "00" and ask the operator for the property surcharge rates. Given the lack of cost support, the excessive nature of the charge and the inability for a consumer to know of the charge without taking unreasonable measures, Staff recommended denial of the property surcharge request.

[1, 2] As a result of our review of the filing and the Staff recommendation, we will approve OPTICOM's clarification of its "O-" service. However, we will deny its petition to introduce a

property surcharge as contrary to the public good. The rate does not appear to be reasonable: it is not supported on a cost basis and is far out of line with charges imposed by other carriers. Further, it places a high burden on the traveling public to take extraordinary precautions to detect or avoid this unusual charge.

Based upon the foregoing, it is hereby

ORDERED, that OPTICOM's filing to introduce a property surcharge is denied; and it is

FURTHER ORDERED, that the request to amend the following tariff page to OPTICOM's NH PUC Tariff No. 1 is denied:

Sheet No. 60 - 1st Revised;

and it is

ORDERED, that OPTICOM's filing to clarify "0-" operator services, to clarify the handling of emergency calls, and to make textual changes is approved; and it is

FURTHER ORDERED, that the following tariff pages to OPTICOM's NH PUC Tariff No. 1 are approved as filed:

Sheet No. 2.1 - 1st Revised

Sheet No. 41.1 - Original

Sheet No. 42 - 1st Revised

Sheet No. 43 - 1st Revised

Sheet No. 44 - 1st Revised

Sheet No. 50 - 1st Revised;

and it is

FURTHER ORDERED, that the following tariff pages to OPTICOM's NH PUC Tariff No. 1 are approved, upon amendment to reflect the above approval and denial:

Sheet No. 2 - 1st Revised

Sheet No. 2.2 - 1st Revised;

and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before December 19, 1994, in accordance with NH Admin Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 1994.

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NH.PUC*12/05/94*[70720]*79 NH PUC 667*Pennichuck Water Works, Inc.

[Go to End of 70720]

79 NH PUC 667

Re Pennichuck Water Works, Inc.

DR 92-220, DR 94-262
Order No. 21,451

New Hampshire Public Utilities Commission

December 5, 1994

ORDER granting a water utility a second step rate increase of 3.48% and authorizing it to increase its service fees for initiation of service and returned checks.

1. RATES, § 596

[N.H.] Water rate design — Step increases — Factors affecting approval of second step increase — Plant additions and related taxes — Meter installations and main replacements — Internal funding of Financial Accounting Standard No. 106 obligations. p. 668.

2. RATES, § 604

[N.H.] Water rate design — Service

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charges — Fees for initiation of service and returned checks — Increase in fees — Impact on separate step rate increase proceeding. p. 668.

APPEARANCES: Gallagher, Callahan & Gartrell by John B. Pendleton, Esq. for Pennichuck Water Works, Inc; Ransmeier & Spellman by Dom D'Ambruso for Anheuser Busch; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1, 2] On January 15, 1993, Pennichuck Water Works, Inc., (Pennichuck, Company) petitioned the New Hampshire Public Utilities for an increase in permanent rates of \$1,960,535 or an increase of 24.3%, (Docket DR 92-220). On March 29, 1993, the Commission granted the Company a temporary rate increase of \$454,868 or 5.65%.

Subsequently Pennichuck and the Staff resolved all issues involved in Docket 92-220, with the exception of an appropriate cost of common equity. Hearings were held in late August and early September, 1993, which concluded with a Settlement Agreement and Stipulation which set the cost of common equity at 9.71% and the overall rate of return of 8.81%. Included in the Settlement Agreement and Stipulation was a step rate increase which took effect on the same date as the order on permanent rates, November 2, 1993. Certain itemized additions to plant in service completed between the end of the test year, September 30, 1992 and August 1, 1993 were allowed into the rate base computation for the overall revenue requirement. In addition, the

Settlement Agreement and Stipulation contained provisions for a second step adjustment.

In the Settlement Agreement and Stipulation, the items that would be included in the second step adjustment were described as follows:

Rate Base Adjustments:

Additions to Plant:

- 1) Improvements to the former Amherst Village District.
- 2) An interconnection between Bon Terrain and the Nashua core systems.
- 3) Meters and related improvements to the former Amherst Village District which the Company was contractually obligated to complete by early 1994.
- 4) Relocation of mains required by the New Hampshire Department of Transportation.
- 5) All Non-Revenue producing capital investments exceeding a cost of \$50,000.

Other Rate Base Adjustments:

- 1) One-half year accumulated depreciation.
- 2) Deferred Income Taxes generated by Additions to Water Plant in Service.

Related Expense Adjustments:

- 1) A full year's depreciation expense.
- 2) Property taxes applicable to Plant Additions.
- 3) Property taxes assessed by the town of Amherst for the so-called Milford line (if such taxes are billed to the Company prior to October 1, 1994, and were not included in the first step).
- 4) Salary and wage increases effective January 1, 1994, and February 16, 1994, respectively.

The rate base additions and other related rate base adjustments, and the expense adjustments were to have been in place by October 1, 1994. The effective date of this second step would be for service rendered on or after December 1, 1994, and would be applied to the same customer classes as those specified in Order No. 21,026.

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The Company initially filed its information for the second step adjustment on November 9, 1994, with a requested revenue increase of 3.76%. An additional item was included in the second step proposal that was not provided for in the original Settlement Agreement and Stipulation. This item was a credit (deduction) from Pennichuck's Rate Base additions in the amount of \$68,552 for the internal funding of the Company's FAS #106 costs. The requirement to deduct the amount of Pennichuck's internally funded FAS #106 costs came about as a result of the Settlement Agreement and Stipulation signed by the Company on March 24, 1993, which was included in Commission Order No. 20,806, dated April 5, 1993, entitled "DA 92-199, FAS 106 Other Post-Retirement Benefits".

In addition to the second step filing, Pennichuck submitted revisions to its tariff on October 11. On October 31, 1994, the Company submitted documentation for the revisions, which if approved, would increase certain fees it collects for the provision of certain services. A separate docket, DR 94-262, was opened for this purpose. The fees to be increased were (i) initiation of service, (ii) service charges, and (iii) returned check fees. The Company has estimated that these fee revisions would generate an additional \$34,830 of revenue for the Company. This increase in fees has been appropriately reflected in the proforma operating adjustments in the second step.

Between the Company's initial filing and November 22, 1994, the date of the filing of the Settlement Agreement with the Commission, Commission Staff, the attorney for Anheuser Busch, and the Company made revisions to the Company's original filing. As a result of these revisions, the submitted Settlement Agreement and the Testimony of Bonalyn J. Hartley reflected an additional revenue requirement of \$337,766 or an overall increase in rates of 3.48%. This increase raised the total water revenue requirement to \$10,054,060.

II. POSITIONS OF THE PARTIES AND STAFF

A. SETTLEMENT AGREEMENT

The Revenue Requirement for the second step adjustment can be summarized as follows:

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

REVENUE REQUIREMENT SECOND STEP ADJUSTMENT EFFECTIVE (SERVICE RENDERED) DECEMBER 1, 1994	
Increase in Rate Base	\$1,590,094
Rate of Return	8.81%
<hr/>	
Additional Net Operating Income Required	140,087
Additional Operating Expenses	67,234
<hr/>	
Revenue Deficiency	207,321
Tax Factor	61.38%
<hr/>	
Total Additional Revenue Requirement	337,766
Total Proformed Water Revenues	9,716,294
Total Revenue Increase in Percent	3.48%

The net increase to Rate Base can be summarized as follows:

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

NET INCREASE IN RATE BASE SECOND STEP ADJUSTMENT EFFECTIVE (SERVICE RENDERED) DECEMBER 1, 1994	
Total Additions to Plant in Service	\$1,728,988
Deduct Related Items:	
One-half Year Accumulated Depreciation and Amortization	(28,348)
Internally Funded FAS #106 Costs	(68,552)
Deferred Income Taxes	(41,994)
<hr/>	

Net Additions to Rate Base \$1,590,094

The net increase to Operating Expenses can be summarized as follows:

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

NET INCREASE IN OPERATING EXPENSES	
SECOND STEP ADJUSTMENT	
<i>EFFECTIVE (SERVICE RENDERED)</i>	
<i>DECEMBER 1, 1994</i>	
Revenues/Expense Reductions:	
Revenues from Pending Tariff	
Revisions	\$(34,830)
CAT Engine Electric Cost Savings	(15,300)
Full year's Depreciation and Amortization Expense	56,696
Related Property Taxes on Additions	58,182
Wage Adjustments and FAS 106 Costs	99,244
Total Increase in Operating Expenses	\$163,992
Deduct: Tax Benefits:	
Tax Benefit @ 38.62%	(63,334)
Tax Benefit from Interest Cost Associated with Rate Base Additions	(33,424)
Net Additional Operating Expenses	67,234

B. IMPLEMENTATION OF THE RATE INCREASE TO THE AFFECTED CUSTOMER CLASSES

The collection of the additional revenues resulting from this second step adjustment will be accomplished by increasing Pennichuck's permanent rates as ordered by the Commission in the first step, for the three customer classes as specified in Order No. 21,026.

The Company filed its revised tariff pages to be effective for service rendered on or after December 1, 1994, incorporating the 3.48% overall revenue increase. When the increase is applied to the three classes of customers subject to the increase, it results in a rate increase of 4.41% for each customer class. These revised tariff pages have been reviewed, and Staff recommends that they be approved as filed.

III. COMMISSION ANALYSIS

Based on a review of the information submitted by Pennichuck on November 22, 1994, we find that the requested water revenue increase of \$337,766, or 3.48%, conforms to the guidelines for the second step increase which were contained in the Commission Order No. 21,026. We, therefore, find this second step increase to be in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement entered into by Staff, Pennichuck Water Works, Inc., and Anheuser Busch regarding the second step adjustment is approved; and it is

FURTHER ORDERED, that in accordance with the Settlement Agreement and this Order, Pennichuck Water Works, Inc., shall be allowed to collect additional revenues of \$337,766, a 3.48% overall increase in revenues; and it is

FURTHER ORDERED, that NHPUC NO. 4 WATER, PENNICHUCK WATER WORKS, INC:

22nd Revised Page No. 21
25th Revised Page No. 22
11th Revised Page No. 22A

Be and hereby rejected; and it is

FURTHER ORDERED that NHPUC NO. 4 WATER, PENNICHUCK WATER WORKS, INC:

23rd Revised Page No. 21
26th Revised Page No. 22
12th Revised Page No. 22A

Are hereby approved for effect on service rendered on or after December 1, 1994; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc., submission of revisions to its Miscellaneous service fees on October 31, 1994, are hereby approved for effect on or after December 1, 1994; and it is

FURTHER ORDERED that Pennichuck submit a revised tariff page annotated with this Commission order number listing the service fee charges effective December 1, 1994.

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Pennichuck Water Works, Inc., DR 92-220, Order No. 21,026, 78 NH PUC 621, Nov. 2, 1993.

Page 670

[N.H.] Re Report and Order Addressing FAS 106 Accounting for Post-retirement Benefits Other Than Pensions, DA 92-199, Order No. 20,806, 78 NH PUC 211, Apr. 5, 1993.

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NH.PUC*12/06/94*[70721]*79 NH PUC 671*WilTel of New Hampshire, Inc.

[Go to End of 70721]

79 NH PUC 671

Re WilTel of New Hampshire, Inc.

Additional applicants: WilTel, Inc.; ATC of New Hampshire, Inc.; LDDS Communications, Inc.

DE 94-202

Order No. 21,452

New Hampshire Public Utilities Commission

December 6, 1994

ORDER approving transfers in operating authority among several telecommunications carriers, such that the authorities of interexchange telephone carriers WilTel of New Hampshire, Inc., and ATC of New Hampshire, Inc., are transferred to their corporate parents, WilTel, Inc., and LDDS Communications, Inc., respectively. The commission also authorizes a subsequent transfer of control from WilTel, Inc., to LDDS Communications, Inc.

1. CONSOLIDATION, MERGER, AND SALE, § 24.1

[N.H.] Grounds for approval — Multi-layer transfers of operating authority — Integration of operating subsidiaries and parent companies — Elimination of domestic incorporation requirements — Interexchange telephone carriers. p. 672.

BY THE COMMISSION:

ORDER

On August 29, 1994, the New Hampshire Public Utilities Commission (Commission) received the joint petition of The Williams Companies, Inc. (Williams), WTG Holdings, Inc. (WTG Holdings), Williams Telecommunications Group, Inc. (WTG), WilTel, Inc. (WilTel), WilTel of New Hampshire, Inc. (WilTel NH), ATC of New Hampshire, Inc. (ATC NH) and LDDS Communications, Inc., (LDDS), referred to collectively as the "Applicant." The Applicant seeks Commission approval: (1) to transfer the authority granted to two New Hampshire Telecommunications Utilities, WilTel NH and ATC NH, to their parent corporations, WilTel and LDDS respectively, (2) to transfer the control of WilTel to LDDS, (3) for the participation by LDDS and WilTel in a new Credit Facility Agreement, and (4) to increase the number of authorized shares of LDDS common stock.

Williams, a Delaware corporation, is the "corporate great-grandparent" of WilTel. WilTel NH is a New Hampshire corporation and is a wholly-owned subsidiary of WilTel. WilTel is a Delaware corporation and is a wholly-owned subsidiary of WTG. WTG is a wholly-owned subsidiary of WTG Holdings, which is in turn, wholly owned by Williams.

Williams is engaged through its subsidiaries in the transmission of natural gas, petroleum products and telecommunications. WilTel owns and operates a nationwide digital and fiber optic network spanning over 11,000 route miles, the nation's fourth largest network. With 1993 revenues exceeding \$900 million, WilTel is the fifth largest interexchange carrier.

WilTel NH is a New Hampshire corporation formed to comply with the domestic incorporation requirements of RSA 374:22 in effect at the time of WilTel NH's petition to conduct business as a telecommunications utility in New Hampshire. WilTel NH received such authority in Docket DE 91-165 through Order No, 20,632, issued October 13, 1992.

LDDS is a publicly held Georgia corporation, with principal offices in Jackson, Mississippi. With revenues exceeding \$1.5 billion, LDDS currently is the nation's fourth largest

interexchange carrier.

ATC NH is a New Hampshire corporation formed to comply with the domestic incorporation requirements of RSA 374:22 in effect at the time of WilTel NH's petition to conduct business as a telecommunications utility in New Hampshire. ATC NH received such authority in Docket DE 92-133 through Order No. 20,575, issued August 18, 1992. ATC NH is a wholly-owned subsidiary of Advanced Telecommunications (ATC) which is, in turn, a wholly-owned subsidiary of LDDS. In Docket DF 93-104 through Order No. 20,937, issued August 17, 1993, LDDS received approval to merge with Metromedia Communications Corp. and Resurgens Communications Group, Inc.

[1] The Applicant has petitioned essentially for Commission approval of four items, as described below. Our analysis follows.

(1) The Applicant seeks approval to transfer the authority, along with the administrative rule waivers previously granted, from the two New Hampshire utilities, WilTel NH and ATC NH, to their parent corporations, WilTel and LDDS, respectively. WilTel and LDDS are each properly registered with the New Hampshire Secretary of State, and each has filed a Certificate of Authority.

LDDS and WilTel have effectively been providing telecommunications services in New Hampshire through their special purpose subsidiaries, ATC NH and WilTel NH. The Applicant attests all management, administration, network functions, billing, customer service, sales, marketing and similar corporate activities are provided under contract by LDDS and WilTel, the corporate parents of ATC NH and WilTel NH, respectively. LDDS and WilTel have evidenced technical, managerial and financial competence. Once approval is granted, the Applicant anticipates that ATC NH and WilTel NH will be dissolved, leaving LDDS and WilTel as the certificated entities in New Hampshire.

The Commission, in Order No. 20,937, and in Order No. 20,632 respectively, granted, ATC NH and WilTel NH, limited waivers of the following NH Administrative Rules, Puc 406.03—Accounting Rules; 407.02-407.13—Forms Required for All Telephone Utilities; and 409 Uniform System of Accounts (USOA). The Applicant requests that waiver of the same Administrative Rules be given to LDDS and WilTel.

(2) The Applicant seeks approval to transfer control of WilTel to LDDS. The transfer is part of a larger transaction whereby WilTel, WilTel NH (having been absorbed by WilTel), and WTG will become wholly-owned subsidiaries of LDDS. WTG holding will remain a subsidiary of Williams.

The Applicant attests it intends, at least initially, that WilTel will be operated separately from LDDS's other subsidiaries. Customers will continue to be able to purchase the same services from WilTel that they currently receive under the same tariff rates, terms and conditions. WilTel will adopt and operate under the tariff of WilTel NH, and LDDS will adopt and operate under the tariff of ATC NH, upon Commission approval.

(3) The Applicant seeks approval for the participation by LDDS and WilTel in a new Credit

Facility Agreement, or that the Commission waive application of any requirement that its approval be obtained.

The Applicant stated in its petition that the purpose of the Credit Facility is to finance the acquisition of the stock of WilTel, refinance existing indebtedness, finance capital expenditures and to provide working capital for LDDS including permitted standby letters of credit and acquisitions. The Applicant further states that the Credit Facility will be managed by Nations Bank of Texas, N.A, and up to six banks will participate in the arrangement.

(4) The Applicant seeks approval to increase the number of authorized shares of LDDS common stock to 500,000,000 shares and preferred stock to 50,000,000 shares, or that the Commission waive application of any requirement that its approval be obtained.

The Applicant asserted in its petition that the additional shares would provide flexibility in issuing shares as needed for various corporate purposes, which could include: 1) issuance in connection with future acquisitions; 2) the payment of stock dividends or issuance pursuant to stock splits; 3) issuance in connection with an offering to raise capital; and 4) issuance

Page 672

of common stock upon exercise of options granted under various stock option plans.

By memo dated November 30, 1994, Staff stated it had no objection to the participation by LDDS and WilTel in a new Credit Facility Agreement nor its request for authority to issue additional shares of common and preferred stock. Staff stated that a detailed review and analysis of the Application had not been performed because LDDS and WilTel, are foreign corporations pursuant to RSA 374:25 and operate in a competitive interexchange resale carrier market for whom traditional rate of return regulation does not apply. Because there are no monopoly customers at risk of cross-subsidization, the failure of an interexchange resale carrier as a result of inappropriate financing arrangements will be the burden of the company's stockholders and will not harm the public interest. Staff recommended that the Commission not imply a guarantee of the securities by the state.

Staff further noted that pursuant to RSA 369:8 *Foreign Business* the Applicant is not subject to the provisions of RSA 369:1-7. The Commission therefore, waives application of any requirement that approval be obtained for the participation by LDDS and WilTel in a new Credit Facility Agreement and the issuance of authorized shares of LDDS common stock and preferred stock.

Based upon the foregoing, it is hereby

ORDERED, that the authority granted to WilTel NH to provide intrastate telecommunications services, specifically excluding local exchange services, for the service territory for the entire State of New Hampshire is transferred to WilTel; and it is

FURTHER ORDERED, that the authority granted to ATC NH to provide intrastate telecommunications services, specifically excluding local exchange services, for the service territory for the entire State of New Hampshire is transferred to LDDS; and it is

FURTHER ORDERED, that WilTel file, within two weeks from the issuance date of this

order, a compliance tariff title page containing the following declaration: "WilTel, Inc. wholly absorbs and will continue to operate under the tariff of WilTel of New Hampshire, Inc. as of December 6, 1994"; and it is

FURTHER ORDERED, that LDDS file, within two weeks from the issuance date of this order, a compliance tariff title page containing the following declaration: "LDDS Communications, Inc. wholly absorbs and will continue to operate under the tariff of ATC of New Hampshire, Inc. as of December 6, 1994"; and it is

FURTHER ORDERED, that the transfer of control of WilTel to LDDS is approved; and it is

FURTHER ORDERED, that limited waivers of the following NH Administrative Rules, Puc 406.03—Accounting Rules; 407.02-407.13 — Forms Required for All Telephone Utilities; and 409 Uniform System of Accounts (USOA) is approved; and it is

FURTHER ORDERED, that WilTel file a compliance tariff in accordance with NH Administrative Rules, Puc PART 1600; and it is

FURTHER ORDERED, that LDDS file a compliance tariff in accordance with NH Administrative Rules, Puc PART 1600.

By order of the Public Utilities Commission of New Hampshire this sixth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re ATC New Hampshire, Inc., DE 92-133, Order No. 20,575, 77 NH PUC 431, Aug. 18, 1992. [N.H.] Re LDDS Communications, Inc. d/b/a ATC New Hampshire, Inc., DF 93-104, Order No. 20,937, 78 NH PUC 445, Aug. 17, 1993. [N.H.] Re WilTel of New Hampshire, Inc., DE 91-165, Order No. 20,632, 77 NH PUC 649, Oct. 13, 1992.

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NH.PUC*12/06/94*[70722]*79 NH PUC 674*Bedford Three Corners Waste Corporation

[Go to End of 70722]

79 NH PUC 674

Re Bedford Three Corners Waste Corporation

DE 94-138

Order No. 21,453

New Hampshire Public Utilities Commission

December 6, 1994

ORDER authorizing a division of a land development company to operate as a sewage disposal system, where it had demonstrated requisite managerial, financial, and technical abilities.

1. CERTIFICATES, § 125

[N.H.] Sewage disposal service — As part of land development operations — Factors affecting grant — Adequacy of proposed sewer pipe, septic tank, and pumping plant — Managerial, financial, and technical capabilities. p. 674.

APPEARANCES: Wadleigh, Starr, Peters, Dunn and Chiesa by Charles F. Cleary, Esq., on behalf of Bedford Three Corners Waste Corporation; Robert J. Frank, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

[1] On July 11, 1994, Bedford Three Corners Waste Corporation (Bedford) filed a Petition for Authorization to Operate a Sewage Disposal Facility (Petition) in Bedford, New Hampshire. Prefiled testimony was filed by Robert S. LaMontagne on behalf of Bedford on October 12, 1994. A procedural schedule was adopted following the prehearing conference on October 19, 1994. There were no intervenors.

A hearing on the merits was held on November 18, 1994. Bedford presented the testimony of Robert S. LaMontagne who discussed his managerial, financial and technical competence to operate the Bedford system. Staff did not present a witness but cross-examined Mr. LaMontagne and in a closing statement recommended approval of the authorization as being in the public interest. The Office of the Consumer Advocate did not appear.

Mr. LaMontagne testified that he is the President of Bedford Three Corners Corp., which owns approximately 78 residential building lots at Pulpit Road, Bedford New Hampshire. He has a degree in Business Management from New Hampshire College and for the past 18 years has been President of LaMontagne Builders, the company that is responsible for the substantial development of the Pulpit Road property. LaMontagne Builders employs approximately 65 persons at the present time and has developed more than 10 residential subdivisions and condominium developments under the direct supervision of Mr. LaMontagne. Bedford intends to retain control of the sewage disposal system to ensure that it is properly maintained for the foreseeable future. Mr. LaMontagne's staff also includes a Certified Public Accountant who will be available to address financial and accounting issues at Bedford.

Through LaMontagne Builders and affiliated companies, Mr. LaMontagne testified that he has the financial strength to operate the system for the foreseeable future. Any shortfalls in revenue due to repairs or maintenance costs can and will be financed by LaMontagne Builders.

LaMontagne Builders is constructing the system, which consists of individual septic tanks and pumps outside each dwelling and connected sewer pipes running to five common leach fields, each serving a limited number of dwellings. The Bedford Planning Board approved the subdivision, including the community septic design, at its meeting on June 6, 1994. Exhibit 2. Mr. LaMontagne testified that the staff of his affiliated companies are building the system, are familiar with it and will be available to support it at any time. Bedford has further contracted

with Dave's Septic Service, Inc.

Page 674

of Bedford, which is experienced in the operation and maintenance of such systems, for the day to day maintenance and repair of the septic tanks, pumps and alarm systems.

Each septic tank has an alarm system which rings in the respective dwelling to notify the homeowner in case of a pump failure. At the request of Staff, Mr. LaMontagne agreed to provide customers with a 24-hour-a-day/seven-day-a-week telephone number for their use in case of emergency.

Bedford intends to file a rate case pursuant to RSA 378 in the near future. According to the Petition, a written explanation of the utility and the required monthly charges for utility service will be forwarded to all prospective home buyers, prior to their execution of a Purchase and Sale Agreement. Mr. LaMontagne agreed to provide Staff with updated deeds that delineate certain easements necessary for operation of the system.

Bedford also noted that it intended to change its name to Bedford Waste Services Corporation and would file the change with the Commission as soon as the paperwork was completed with the Secretary of State.

We have reviewed the record and find that Bedford has made a sufficient showing that it possesses the managerial, financial and technical competence to own and operate a sewage disposal facility at the Bedford Three Corners subdivision, and that it is in the public interest to grant Bedford's request for authorization to operate the above-described facility.

Based upon the foregoing, it is hereby

ORDERED, that Bedford Three Corners Waste Corporation is authorized to operate a sewage disposal facility at the Bedford Three Corners subdivision on Pulpit Road in Bedford New Hampshire; and it is

FURTHER ORDERED, that Bedford file with the Commission its updated deeds by December 31, 1994; and it is

FURTHER ORDERED, that Staff submit the map of the proposed franchise area provided by the company in data request Set #1, Data Request #19 as late-filed Exhibit 3.

By order of the Public Utilities Commission of New Hampshire this sixth day of December, 1994.

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NH.PUC*12/12/94*[70723]*79 NH PUC 675*Public Service Company of New Hampshire

[Go to End of 70723]

79 NH PUC 675

Re Public Service Company of New Hampshire

DR 94-293
Order No. 21,454

New Hampshire Public Utilities Commission

December 12, 1994

ORDER granting protective treatment of customer usage data and specific terms contained in an electric utility's proposed special contract service agreement with an industrial customer, Polyvac, Inc., but denying protective treatment of the actual rate included therein.

1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Proposed special contract rates — Customer-specific usage data — Confidentiality — But disclosure of the special rate itself. p. 675.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of proposed special rate contract terms — Of customer-specific usage data relied upon — Factors affecting grant of confidentiality — Competitive disadvantage to both customer and utility if disclosed — No protective treatment of actual contract rate itself — Electric utility. p. 675.

BY THE COMMISSION:

ORDER

[1, 2] On December 6, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission a request for approval of a special contract, Special

Page 675

Contract no. NHPUC-101, between PSNH and Polyvac, Inc. (Polyvac) for its manufacturing facility located in Manchester, New Hampshire. Included in the filing were redacted materials, including Testimony and a Technical Statement (hereinafter the Supporting Materials) and a redacted copy of the Special Contract.

Concurrent with PSNH's filing of redacted materials, PSNH requested protective treatment under RSA 91-A:5,IV for certain customer specific information contained in the Special Contract as well as the Supporting Materials).

In its motion, PSNH states that the Special Contract and Supporting Materials contain information concerning Polyvac's operating costs, contractual arrangements, electric usage and alternatives and other competitively sensitive data, disclosure of which would result in substantial harm to Polyvac by providing its competitors with a view of Polyvac's cost structure and marketing strategies. PSNH also states that public disclosure of the Supporting Materials

could also harm PSNH and its customers by discouraging other businesses from working with PSNH to expand or locate in New Hampshire.

The information identified above is a necessary part of the filing, and important for Staff to review in evaluating the proposed Special contract. The Commission recognizes the importance of Staff having the opportunity to review fully the materials which support a special contract, in order to responsibly carry out its duties, as well as the sensitivity of companies to having financial data made available to its competitors. We find that this request to protect the customer specific financial data identified by PSNH fits within the exemptions to disclosure of financial information under the Right to Know Law, RSA 91-A:5,IV.

PSNH also requested protective treatment over the discounted rate in the Special Contract itself, which it has not previously requested in Special Contracts. Attachment 1 to the Special Contract contains specific price terms, and PSNH has requested that only a redacted copy of the Special Contract, which omits Attachment 1, be made available to the public. PSNH proposes that the OCA and Staff, however, have access to all unredacted materials but be bound by confidentiality in discovery, testimony and other dissemination. In support of protecting the discounted rate requested for Polyvac, PSNH states that these terms are also subject to the exemptions from disclosure for confidential, commercial and financial information pursuant to RSA 91-A:5,IV. In support of this claim, PSNH argues that the price terms are competitively sensitive and, as with similar requests for protection filed by NYNEX, the rates themselves should be protected. PSNH asserts that future negotiations with its customers will be harmed because customers will be aware of specific pricing terms and will demand the same or better rates as given another customer. Finally, PSNH argues that the new Commission rules regarding confidential treatment, which allow for protection of "pricing and incremental cost information for competitive services ..." authorize the protection sought in its motion.

OCA takes no position on the motion. The position of the Commission Staff (Staff), as described in PSNH's motion, is as follows:

The Staff does not object to the motion unless another party requests a copy of the protected material. When and if such a request is received, the Staff believes PSNH will then have to demonstrate why the information should be afforded protection, and will assess PSNH's response and develop a position at that time.

We do not agree with PSNH that the rate requested for Polyvac should be protected. Unlike the protection we have afforded NYNEX in special contracts, PSNH is not a competitive provider of electric service. NYNEX, as a result of our authorization of competition in the provision of intrastate toll in Docket DE 90-002, must now actively compete with over 45 entities in provision of intrastate toll service. While PSNH is understandably concerned about the availability of alternative sources of supply for some customers and the development of an increasingly competitive electric utility industry in some other parts of the country, it is not accurate to say that PSNH presently faces competition in provision of retail electric service. So long as it continues to be a monopoly provider of

retail electric service within its franchise, we do not believe protection of a discounted rate is

appropriate. We will deny, therefore, the request that Attachment 1 be removed from the Special Contract or that any pricing term contained in the Supporting Materials be redacted.

Based upon the foregoing, it is hereby

ORDERED, that the Motion for Protective Treatment is GRANTED IN PART, to the extent that it requests protection of customer specific information contained in the Special Contract, and Supporting Materials; and it is

FURTHER ORDERED, that the Motion for Protective Treatment is DENIED IN PART, to the extent that it requests protection of Attachment 1 to the Special Contract itself and/or the discounted rate requested for Polyvac; and it is

FURTHER ORDERED, that PSNH submit newly redacted copies of the Special Contract, Testimony and Technical Statement which do not remove references to the discounted rate requested for Polyvac; and it is

FURTHER ORDERED, that this order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff or any party or member of the public, to reconsider this order in light of the standards of RSA 91-A.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1994.

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NH.PUC*12/12/94*[70724]*79 NH PUC 677*Bachelor Mountain Estates, Inc.

[Go to End of 70724]

79 NH PUC 677

Re Bachelor Mountain Estates, Inc.

DF 94-072

Order No. 21,455

New Hampshire Public Utilities Commission

December 12, 1994

ORDER authorizing a real estate development corporation to divest itself of its water service system, and thus to create a stand-alone water utility. The transaction is ordered accomplished through first a transfer to the principal shareholder, Charles Mobilia, and thence a second transfer to Lakeview Water Company, Inc.

1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Grounds for approval — Divestiture of water system from land development company — Separation of utility and nonutility activities — Ease in regulation and accounting — Two-step transfer process. p. 677.

BY THE COMMISSION:

ORDER

[1] On April 18, 1994 Bachelor Mountain Estates, Inc., ("Bachelor Mountain" or the "Company"), a public water utility providing service to customers in limited portions of the Towns of Alton and Gilford, New Hampshire, filed with the New Hampshire Public Utilities Commission (the "Commission") a petition for approval of a transfer of its water distribution system assets into a new corporation. The purpose of the transfer is to separate the water utility assets from the other businesses conducted by Bachelor Mountain unrelated to the provision of water service.

The Commission granted Bachelor Mountain its franchise and authorization to charge rates for water service in Order No. 20,662, issued November 9, 1992, in docket DE 91-194. Order No. 20,662 authorized the Company to charge a temporary rate of \$57.83 per customer per quarter. A filing for a permanent rate in that docket was made December 1, 1994.

The Company has indicated in its communication with Commission Staff that Bachelor Mountain was originally established as a land sales corporation to develop the real estate in a subdivision also known as Bachelor Mountain. The Company and Staff both agree that it is in

Page 677

the public good to separate the water system assets from the original corporation as it will create an entity devoted solely to the provision of water service and will prevent confusion with respect to its activities as a regulated utility. The transfer will also eliminate the cost and time involved in separating water service activities from any other business activities that Bachelor Mountain may conduct.

The Staff has conducted an investigation into the proposed transfer, which revealed a number of facts. Bachelor Mountain will first transfer the system assets, including the franchise and rate order, to Charles Mobilia, a current principal of Bachelor Mountain Estates, Inc. Mr. Mobilia will then transfer those same assets to Lakeview Water Company, Inc. (Lakeview). Mr. Mobilia will be the President and sole stockholder of Lakeview. Lakeview is a New Hampshire corporation having received a Certificate of Incorporation from the New Hampshire Secretary of State's office on January 18, 1994.

Bachelor Mountain has further indicated to Staff that copies of the transfer documents will be forwarded to the Commission upon their execution.

The Company has also indicated that the licensed operator of the water system in the Bachelor Mountain subdivision will remain Mr. Frank Holland of Village Pump and Irrigation, as it has been since April of 1994, and that the overall operation and maintenance of the water system will remain unaffected by the proposed transfer of assets.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the transfer of water system assets from Bachelor Mountain Estates,

Inc., to Charles Mobilia, and then Lakeview Water Company, Inc. is in the public good and is, therefore, approved pursuant to 374:30; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Bachelor Mountain Estates, Inc. cause an attested copy of this Order *Nisi* to be published in a newspaper having general circulation in that portion of the State of New Hampshire in which operations are conducted, such publication to be no later than December 22, 1994 and is to be documented by affidavit filed with this office on or before January 6, 1995; and it is

FURTHER ORDERED, that the Company serve a copy of this Order *Nisi* on each of its customers in hand or by first class mail no later than December 22, 1994; 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 6, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 11, 1995, unless a request for a hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bachelor Mountain Estates, Inc., DE 91-194, Order No. 20,662, 77 NH PUC 694, Nov. 9, 1992.

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NH.PUC*12/12/94*[70725]*79 NH PUC 678*Bachelor Mountain Estates, Inc./Lakeview Water Company, Inc.

[Go to End of 70725]

79 NH PUC 678

Re Bachelor Mountain Estates, Inc./Lakeview Water Company, Inc.

DR 91-194
Order No. 21,456

New Hampshire Public Utilities Commission

December 12, 1994

ORDER suspending a water utility's proposed tariff revisions, which reflected a requested rate increase of 203.1%.

1. PROCEDURE, § 42

[N.H.] Suspension — Of proposed tariff terms — For substantial rate increase — Water utility. p. 679.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed tariff terms — For substantial rate increase — To allow for adequate investigatory period — Water utility. p. 679.

BY THE COMMISSION:

ORDER

[1, 2] On December 1, 1994, Lakeview Water Co., Inc. (Lakeview) filed with the New Hampshire Public Utilities Commission (Commission) proposed permanent rate schedules and supporting documentation which, if approved, would result in a 203.1% increase over its present annual revenues affecting those customers served in Lakeview's Alton/Gilford Service Area. Customers have previously identified the water utility by the name Bachelor Mountain Estates, Inc. but on order of the Commission, the utility filed a petition on April 18, 1994 to separate the water utility assets from the other businesses unrelated to provision of water service. The Commission approved that petition on December 12, 1994.

A thorough investigation and hearing is necessary prior to rendering a decision regarding this petition. Therefore, it is hereby

ORDERED, that Lakeview Water Company, Inc. NHPUC 1 Water Tariff is hereby suspended; and it is

FURTHER ORDERED, that a prehearing conference be held, pursuant to N.H. Admin. Rules Puc 203.05, before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on January 12, 1995 at 10:00 a.m.; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Lakeview notify all persons desiring to be heard at this hearing by publishing an attested copy of this Order of Notice no later than December 29, 1994 in a newspaper of general circulation in that portion of the state in which operations are conducted, said publication shall be documented by affidavit filed with the Commission on or before January 12, 1995; and it is

FURTHER ORDERED, that Lakeview serve a summary of its proposed rate change and a copy of this Order of Notice in accordance with N.H. Admin. Rules, Puc 1601.05 (j), on current and known prospective customers and the Town Clerks in Alton and Gilford by first class U.S. Mail, postmarked no later than December 29, 1994; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to Lakeview and the Office of the Consumer Advocate on or before January 9, 1995.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1994.

Any individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the PUC ADA Coordinator, at the New Hampshire Public Utilities Commission, 8 Old Suncook Road, Concord, New Hampshire 03301-5185; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Preferably, notification of the need for assistance should be made one week before the hearing.

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NH.PUC*12/12/94*[70726]*79 NH PUC 680*New England Power Company

[Go to End of 70726]

79 NH PUC 680

Re New England Power Company

DE 94-136

Order No. 21,457

New Hampshire Public Utilities Commission

December 12, 1994

ORDER authorizing an electric utility to construct, operate, maintain, and reconstruct if necessary certain existing aerial distribution lines crossing Whittier Pond and Deer Meadow Pond, which lines had remained inadvertently unlicensed.

1. ELECTRICITY, § 6

[N.H.] Wires and cables — Distribution lines — Construction and reconstruction of aerial lines — Crossing of public waters — Inadvertently unlicensed existing lines. p. 680.

BY THE COMMISSION:

ORDER

[1] On June 27, 1994, New England Power Company (NEPCo) filed with the New Hampshire Public Utilities Commission (Commission) a petition under RSA 371:17 for the initial licensing of two existing aerial electric transmission lines over and across certain public waters in the State of New Hampshire. Subsequently on September 21, 1994, and October 17, 1994, NEPCo filed supplemental documentation to clarify its request.

In order to meet the requirements of service to the public, NEPCo must maintain electric transmission lines over and across those certain public waters, which lines are an integral part of its electrical system. The definition of "public waters" contained in the limited purposes of RSA

371:17 includes "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe." The Commission prescribes these subject crossings to be over and across public waters.

In order to discharge its obligations to the public to provide safe electric service, NEPCo has reviewed all of its installations of lines across public waters. This review has disclosed instances where crossings have not been licensed. The location, construction and design of the crossings NEPCo is seeking to license are specifically identified in the petition.

The crossings of circuits A201 and B202, as identified in Plan E-11025, span the Whittier Pond in Hopkinton, New Hampshire, and the crossing of these same circuits, as identified in Plan E-11026, span the Deer Meadow Pond in Webster, New Hampshire, and the crossings of these same circuits, as identified in Plan E-11027, also span the Smith River in Alexandria and Hill, New Hampshire.

NEPCo stated that the crossings as depicted on Plan E-11025, and Plan E-11027 are in compliance with the requirements of the 1993 National Electrical Safety Code. Upon review of the filed documentation, Staff has verified that these clearances meet the requirements of the 1993 National Electrical Safety Code.

NEPCo also stated that the crossings as depicted on Plan E-11026 are not in compliance with the requirements of the 1993 National Electrical Safety Code. NEPCo stated that these crossings would be raised by December 1, 1994, by adding extensions at the bases of some of the steel tower structures thus meeting the requirements of the 1993 National Electrical Safety Code. Upon review of the filed documentation, Staff has verified that these raised clearances will meet the requirements of the 1993 National Electrical Safety Code.

The following tables summarize information regarding these crossings:

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

*New England Power Company Petition Information
Presently Meet Clearance Requirements*

<i>Petition Plan Id.</i>	<i>Town</i>	<i>Line Number</i>	<i>Voltage</i>	<i>Structure From To</i>	
<i>E-11025</i>	<i>Hopkinton</i>	<i>A201</i>	<i>230 kV</i>	<i>724</i>	<i>725</i>
		<i>B202</i>	<i>230 kV</i>	<i>731</i>	<i>732</i>
<i>E-11027</i>	<i>Alexandria, Hill</i>	<i>A201</i>	<i>230 kV</i>	<i>484-1</i>	<i>485</i>
		<i>B202</i>	<i>230 kV</i>	<i>490-1</i>	<i>491</i>

*New England Power Company Petition Information
Do Not Presently Meet Clearance Requirements
But Will Meet Clearance Requirements After Towers Raised*

<i>Petition Plan Id.</i>	<i>Town</i>	<i>Line Number</i>	<i>Voltage</i>	<i>Structure From To</i>	
<i>E-11026</i>	<i>Webster</i>	<i>A201</i>	<i>230 kV</i>	<i>657</i>	<i>658</i>
		<i>B202</i>	<i>230 kV</i>	<i>664</i>	<i>665</i>

The Commission finds such crossings necessary for NEPCo to meet its obligations to serve customers within its authorized franchise area, thus being in the public good.

The public should be offered the opportunity to respond in support of or in opposition to said petition.

Based on the foregoing, it is hereby

ORDERED *NISI*, that authority be, and hereby is granted, pursuant to RSA 371:17 *et seq.*, to NEPCo, to construct, maintain, and operate transmission lines over and across public waters of the State of New Hampshire at the locations described in this order, effective January 11, 1995 unless the Commission otherwise directs prior to the proposed effective date; and it is

FURTHER ORDERED, that if the reconstruction of transmission lines A201 and B202 across Deer Meadow Pond in Webster, New Hampshire, is not complete by the close of business on December 30, 1994, NEPCo so notify the Commission and refile its petition for the subject crossing; and it is

FURTHER ORDERED, that all reconstruction hereafter performed conform to the requirements of the National Electrical Safety Code and all other applicable safety standards in existence at that time; and it is

FURTHER 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 6, 1995; and it is

FURTHER ORDERED, that NEPCo effect said notification by: (1) causing an attested copy of this order to be published no later than December 22, 1994, once in a newspaper having general circulation in the areas where the crossings are located and is to be documented by affidavit filed with this office on or before January 6, 1995; and (2) providing, pursuant to RSA 541-A:22, a copy of this order to the Hopkinton, Webster, Alexandria, and Hill, New Hampshire Town Clerks, by First Class U.S. mail, postmarked on or before December 22, 1994.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1994.

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NH.PUC*12/13/94*[70727]*79 NH PUC 682*Connecticut Valley Electric Company, Inc.

[Go to End of 70727]

79 NH PUC 682

Re Connecticut Valley Electric Company, Inc.

DR 94-237

Order No. 21,458

New Hampshire Public Utilities Commission

December 13, 1994

ORDER adopting a procedural schedule for an electric utility's 1995 conservation and load management (C&LM) programs, and allowing a C&LM program adjustment rate to go into effect as of the beginning of the year rather than wait for final resolution of the proceeding. Although the 1995 C&LM rate will be higher than that for 1994, ratepayers will suffer no adverse impact, as the utility's fuel adjustment clause is expected to be negative and thus serve as an offset to higher C&LM rates.

1. CONSERVATION, § 1

[N.H.] Conservation and load management (C&LM) programs — Electric utility — Procedural schedule — Implementation date of C&LM adjustment rate — Offsets from negative fuel adjustment clause rate. p. 682.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 34

[N.H.] Conservation and load management (C&LM) program adjustment — Electric utility — Increase in C&LM adjustment rate — Implementation date of increased C&LM rate — Offsets from negative fuel adjustment clause rate. p. 682.

BY THE COMMISSION:

ORDER

Connecticut Valley Electric Company (CVEC) on October 17, 1994, filed with the New Hampshire Public Utilities Commission (Commission) its 1995 Conservation and Load Management (C&LM) program. At the duly noticed prehearing conference on December 7, 1994, there were no requests for intervention and the proposed procedural schedule delineated in the order of notice was agreed to by CVEC, Office of Consumer Advocate (OCA) and Commission Staff (Staff). The proposed procedural schedule is as follows:

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

Data Requests by the	
Parties and Staff	Dec. 15, 1994
Company Data Responses	Dec. 30, 1994
Technical Session	Jan. 9, 1995
Testimony by the	
Parties and Staff	Jan. 25, 1995
Company Data Requests of	
the Parties and Staff	Feb. 3, 1995
Data Responses by the	
Parties and Staff	Feb. 16, 1995
Settlement Conference	Feb. 22, 1995
Hearing on the Merits	Mar. 9, 1995

[1, 2] Also at the prehearing conference, CVEC argued in favor of the Motion for Approval of Implementation of Revised C&LMPA Rates as of January 1, 1995, filed December 6, 1994. CVEC is requesting that the 1995 C&LM programs be implemented as of January 1, 1995 at newly proposed 1995 C&LMPA percentages, pending full review and final order of the

Commission. Based on recent months' program data, the revised residential C&LMPA is .01% higher than what CVEC originally filed in October, 1994 and the revised commercial and industrial (C&I) C&LMPA percentage is .71% lower. The impact of the revised C&LMPAs is lessened by implementation of the percentages on January 1, 1995 rather than waiting until a final Commission order which will likely be in the Spring of 1995, as the amount of the undercollection would grow through the first quarter of 1995. The result is a proposed residential C&LMPA of 1.68% and a C&I C&LMPA of 3.22%, which are both higher than their respective 1994 C&LMPAs. Upon final order, any adjustment

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for change in programs or the C&LMPAs would be made, including any reconciliations.

CVEC noted (revised by letter dated December 15, 1994) that it anticipated a negative Fuel Adjustment Clause as of January 1, 1995 so that although the C&LMPA percentages would increase over 1994 levels, residential and C&I ratepayers would see net decreases in rates of approximately 2.2% and 2.5% respectively.

We have reviewed the request of CVEC and find it a reasonable mechanism by which 1995 C&LM programs can go into effect at the start of the year, pending full review and final Commission order. The proposed procedural schedule also appears reasonable.

Based upon the foregoing, it is hereby

ORDERED, the proposed procedural schedule is adopted; and it is

FURTHER ORDERED, that the 1995 C&LM programs shall be implemented January 1, 1995 at the newly proposed 1995 C&LM Percentage Adjustment, subject to reconciliation, pending full review and final Commission order in this docket.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1994.

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NH.PUC*12/13/94*[70729]*79 NH PUC 683*Public Service Company of New Hampshire

[Go to End of 70729]

79 NH PUC 683

Re Public Service Company of New Hampshire

DR 94-252

Order No. 21,460

New Hampshire Public Utilities Commission

December 13, 1994

ORDER granting protective treatment of an electric utility's proposed special contract service agreement with an industrial customer, Freudenberg-NOK General Partnership.

1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Proposed special contract rates — Customer-specific usage data — Protective treatment. p. 683.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of proposed special rate contract — Of customer-specific usage data relied upon — Factors affecting grant of confidentiality — Competitive disadvantage to both customer and utility if disclosed — Electric utility. p. 683.

BY THE COMMISSION:

ORDER

[1, 2] On October 27, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a request for approval of a special contract, Special Contract No. NHPUC-98, between PSNH and Freudenberg-NOK General Partnership Seals Division, for its manufacturing facility located in Bristol, New Hampshire. Included in the filing were redacted materials, including Testimony, a Technical Statement and the Special Contract.

Concurrent with PSNH's filing of redacted materials, PSNH requested protective treatment under RSA 91-A:5 IV for certain customer specific information contained in the Testimony, Technical Statement and Special Contract (Technical Statement and Supporting Materials).

In its motion PSNH states that the Technical Statement and Supporting Materials contain information concerning Freudenberg-NOK's operating costs, contractual arrangements, electric usage and alternatives and other competitively sensitive data, disclosure of which would result in substantial harm to Freudenberg-NOK by providing its competitors with a view of Freudenberg-NOK's cost structure and

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marketing strategies. PSNH also states that public disclosure of the Technical Statement and Supporting Materials could also harm PSNH and its customers by discouraging other businesses from working with PSNH to expand or locate in New Hampshire.

The information identified above is a necessary part of the filing, and important for Staff to review in evaluating the proposed special contract. The Commission recognizes the importance of Staff having the opportunity to review fully the materials which support a proposed special contract, in order to responsibly carry out its duties.

Based on the foregoing, it is hereby

ORDERED, that the Motion for Protective Order be, and hereby is, granted to allow Staff review of the Special Contract and Supporting Materials; and it is

FURTHER ORDERED, that this order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff or any party or member of the public, to reconsider this order in light of the standards of RSA 91-A.

By order of the New Hampshire Public Utilities Commission this thirteenth day of December, 1994.

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NH.PUC*12/13/94*[70730]*79 NH PUC 684*Public Service Company of New Hampshire

[Go to End of 70730]

79 NH PUC 684

Re Public Service Company of New Hampshire

DR 94-255

Order No. 21,461

New Hampshire Public Utilities Commission

December 13, 1994

ORDER granting protective treatment of customer usage data and specific terms contained in an electric utility's proposed special contract service agreement with an industrial customer, Anheuser-Busch, Inc.

1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Proposed special contract rates — Customer-specific usage data — Confidentiality — Competitive disadvantage to both utility and customer if disclosed. p. 684.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of proposed special rate contract terms — Of customer-specific usage data relied upon — Factors affecting grant of confidentiality — Competitive disadvantage to both customer and utility if disclosed — Electric utility. p. 684.

BY THE COMMISSION:

ORDER

[1, 2] On October 31, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a request for approval of a special contract, Special Contract No. NHPUC-99, between PSNH and Anheuser-Busch, Inc. (Anheuser-Busch) for its manufacturing facility located in Merrimack, New Hampshire.

Included in the filing were redacted materials, including Testimony, a Technical Statement and the Special Contract.

Concurrent with PSNH's filing of redacted materials, PSNH requested protective treatment under RSA 91-A:5 IV for certain customer specific information contained in the Testimony, Technical Statement and Special Contract (Technical Statement and Supporting Materials).

In its motion PSNH states that the Technical Statement and Supporting Materials contain information concerning operating costs, contractual arrangements, electric usage and alternatives and other competitively sensitive data, disclosure of which would result in substantial harm to Anheuser-Busch by providing its

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competitors with a view of Anheuser-Busch's cost structure and marketing strategies. PSNH also states that public disclosure of the Technical Statement and Supporting Materials could also harm PSNH and its customers by discouraging other businesses from working with PSNH to expand or locate in New Hampshire.

The information identified above is a necessary part of the filing, and important for Staff to review in evaluating the proposed special contract. The Commission recognizes the importance of Staff having the opportunity to review fully the materials which support a proposed special contract, in order to responsibly carry out its duties.

Based on the foregoing, it is hereby

ORDERED, that the Motion for Protective Order be, and hereby is, granted to allow Staff review of the Special Contract and Supporting Materials; and it is

FURTHER ORDERED, that this order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff or any party or member of the public, to reconsider this order in light of the standards of RSA 91-A.

By order of the New Hampshire Public Utilities Commission this thirteenth day of December, 1994.

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NH.PUC*12/14/94*[70731]*79 NH PUC 685*Northern Utilities, Inc.

[Go to End of 70731]

79 NH PUC 685

Re Northern Utilities, Inc.

DR 94-211

Order No. 21,462

New Hampshire Public Utilities Commission

December 14, 1994

ORDER approving a rate adjustment for a natural gas local distribution company, to take into account elimination of the state franchise tax as to gas utilities but concomitant new liability for the state's business profits tax.

1. EXPENSES, § 112

[N.H.] Taxes — Elimination of state franchise tax — As applicable to gas utilities — But new liability for state business profits tax — Resulting rate adjustment — Natural gas local distribution company. p. 685.

2. RATES, § 147

[N.H.] Factors affecting reasonableness — Cost of service — Changes in tax liability — Elimination of state franchise tax — But new liability for state business profits tax — As applicable to local gas distribution utilities — Necessity of rate adjustment. p. 685.

APPEARANCES: Richard P. Cencini, on behalf of Northern Utilities, Inc., Kenneth E. Traum on behalf of the Office of the Consumer Advocate and Eugene F. Sullivan, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

REPORT

I. PROCEDURAL HISTORY

[1, 2] Effective on July 1, 1983, RSA 83-C replaced RSA 83-B in determining state tax liability for utilities. RSA 83-C repealed the 9% tax on income and replaced it with a 1% tax on gross receipts from the sale of gas or electricity pursuant to a franchise, or the "Franchise Tax".

The franchise tax was included as an add-on to base rates beginning July 1, 1983. At the same time, and pursuant to the same order, the Company's cost of service and therefore base rates were reduced to exclude the 9% income tax. These changes were made pursuant to NHPUC Order No. 16,524 in DR 83-205, dated July 8, 1983. The Commission found in that order that with regard to changes in state tax liability, an item which is an allowable expense in the cost of service to be recovered from

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ratepayers, "it is reasonable under the circumstances to allow a rate adjustment for the purpose of recovering the increased tax liability." The Company did not incur any New Hampshire Business Profits Tax (NHBPT) liability from 1983 through 1994 because the franchise tax served as a credit to offset any NHBPT liability.

The franchise tax was in effect until June 2, 1994 when RSA 83-C was amended to delete gas utilities from the definition of entities subject to the franchise tax. The Company filed new tariffs for the purpose of removing any reference to the applicability of the franchise tax to the

sale of gas thereby reducing rates. These revised tariff pages were approved pursuant to NHPUC Order No. 21,275 in DR 94-211, dated June 22, 1994.

On September 9, 1994, the Company filed a petition (including revised tariff pages), that base rates be increased effective for bills rendered on or after January 1, 1995 to include a revenue requirement of \$259,000 associated with the NHBPT liability. This estimate is based on 7 months actual and 5 months forecast data, normalized for weather, and represents an average increase of approximately .85% over present utility revenues. The Company is proposing that the revenue requirement be collected in compliance with the Report of Proposed Rate Changes submitted in this docket to the Commission by the Company on September 22, 1994. The result is approximately equal percentage adjustments for the residential and non-residential classes.

On November 30, 1994, a hearing was held regarding the Company's proposed rate increase. At the hearing, the Company witness, Richard P. Cencini addressed the settlement agreement entered into by the parties and Staff.

II. POSITIONS OF THE PARTIES AND STAFF

The parties and Staff have reached a settlement on the amount and recovery of the rate adjustment for NHBPT. The Staff and the OCA accept the tariff filings made by the Company on September 9, 1994 to increase base rates, effective for bills rendered on or after January 1, 1995 to include a revenue requirement of \$259,000 associated with the NHBPT. The parties and Staff believe that the settlement is fair and reasonable.

III. COMMISSION ANALYSIS

After review and consideration of the above, the Commission is satisfied that the granting of the petition will be for the public good. The increase for the NHBPT of \$259,000 compares to a franchise tax of approximately \$350,000 which would have been collected under the prior statute.

Based upon the foregoing, it is hereby

ORDERED, that the above rate adjustment is in the public interest and is therefore approved effective for bills rendered on or after January 1, 1995.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of December, 1994.

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. [N.H.] Re Northern Utilities, Inc., DF 94-115, Order No. 21,275, 79 NH PUC 376, June 22, 1994.

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NH.PUC*12/14/94*[70732]*79 NH PUC 687*LCI International of New Hampshire, Inc.

[Go to End of 70732]

79 NH PUC 687

Re LCI International of New Hampshire, Inc.

Additional applicant: LCI International Telecom Corporation

DE 94-290

Order No. 21,463

New Hampshire Public Utilities Commission

December 14, 1994

ORDER approving a transfer in operating authority between two interexchange telephone carriers, such that the authority of LCI International of New Hampshire, Inc., is transferred to a sister affiliate, LCI International Telecom Corporation.

1. CONSOLIDATION, MERGER, AND SALE, § 24.1

[N.H.] Transfer of operating authority between affiliates — Factors affecting approval — Integration of operating subsidiaries — Elimination of domestic incorporation requirements — Interexchange telephone carriers. p. 687.

2. CERTIFICATES, § 137

[N.H.] Transfers — Between affiliates — Factors affecting approval — Integration of operating subsidiaries — Elimination of domestic incorporation requirements — Interexchange telephone carriers. p. 687.

BY THE COMMISSION:

ORDER

[1, 2] On December 5, 1994, the Commission received the joint petition of LCI International of New Hampshire, Inc., a New Hampshire corporation (LCI-NH), and LCI International Telecom Corp., a Delaware corporation (LCI-TC), requesting the Commission transfer to LCI-TC the Authority and Administrative Rules waivers held by LCI-NH. LCI-NH received its authority in Order No. 20,963, dated September 13, 1993, in Docket DE 93-085, and subsequently amended by, among others, (Clarifying) Order No. 21,319 dated August 10, 1994, in Docket DE 93-085.

The petition is filed in response to the passage of Laws of 1994, Chapter 193, Section 4 amending the domestic incorporation requirements in NH RSA 374:22. LCI-TC certified that it will comply with all rules and regulations established by the Commission. Both LCI-NH and LCI-TC are wholly-owned subsidiaries of LCI International Management Services, Inc. (LCIM). LCIM is a wholly-owned subsidiary of LCI International, Inc.

LCI-NH and LCI-TC utilize the same technical and managerial staffs. LCI-TC has filed a

copy of its Certificate of Authority from the New Hampshire Secretary of State. LCI-TC has evidenced its financial fitness to assume the operations of LCI-NH. The proposed tariff of LCI-TC is identical (with the exception of the name of the carrier and the designation of all pages as "original") to the current tariff of LCI-NH.

Based on the foregoing, it is hereby

ORDERED, that the Authority to Conduct Business as a Telecommunications Utility in the State of New Hampshire granted to LCI-NH in Order No. 20,963, dated September 13, 1993, in Docket DE 93-085, and subsequently amended by, among others, (Clarifying) Order No. 21,319, dated August 10, 1994, in Docket DE 93-085 is hereby assigned to LCI-TC which is thereby authorized to provide intrastate telecommunications services, specifically excluding local exchange services, for the service territory of the entire State of New Hampshire; and it is

FURTHER ORDERED, that LCI-TC will comply with the terms of Order No. 20,963, subsequently clarified in Order No. 21,319, and all rules, regulations and orders of the Commission and shall assume all obligations of LCI-NH; and it is

FURTHER ORDERED, that the proposed tariff of LCI International Telecom Corp. NH

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P.U.C. No. 1 is approved as filed; and it is

FURTHER ORDERED, that LCI-TC file a compliance tariff, pursuant to NH Admin. Rule 1601.04, within twenty days of the issuance of this order; and it is

FURTHER ORDERED, that this Order will be effective December 30, 1994, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re LCI International of New Hampshire, Inc., DE 93-085, Order No. 20,963, 78 NH PUC 512, Sept. 13, 1993. [N.H.] Re Long Distance North of New Hampshire Inc., DE 87-249, Order No. 21,319, 79 NH PUC 442, Aug. 10, 1994.

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NH.PUC*12/19/94*[70733]*79 NH PUC 688*Public Service Company of New Hampshire

[Go to End of 70733]

79 NH PUC 688

Re Public Service Company of New Hampshire

DR 93-247

Order No. 21,464

New Hampshire Public Utilities Commission

December 19, 1994

ORDER disapproving an electric utility's interpretation of its radio-controlled load management service tariffs, where the utility had insisted that the load control rate was available only to those space-heating customers with a wood- or coal-fired backup source of heat during periods of interruption. The commission notes that the tariff itself specifies only that a customer have a nonelectric backup source of heat, and so the utility should not have excluded customers with oil, propane, liquified natural gas, or any other source of heat.

1. RATES, § 322

[N.H.] Electric rate design — Load factors — Space-heating customers — Load control services — Eligibility — Customer's alternative fuel capability for backup source of heat — Backup fuels not limited to wood or coal. p. 691.

2. SERVICE, § 320

[N.H.] Electric — Load control programs — For space-heating customers — Factors affecting eligibility — Alternate fuel capability for backup source of heat — Any nonelectric backup heat source. p. 691.

APPEARANCES: Catherine E. Shively, Esq., for Public Service Company of New Hampshire; Thomas A. Behrens, appearing pro se; and Eugene F. Sullivan III, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 7, 1993 Public Service Company of New Hampshire ("PSNH" or the "Company") submitted certain tariff pages to the New Hampshire Public Utilities Commission ("Commission") in accordance with RSA 378:3 revising its Load Controlled Service Rate ("Rate LCS")¹⁽⁵⁸⁾. The revised tariff pages were suspended for Commission investigation on January 6, 1994. RSA 378:6 (Supp. 1993)

Subsequently, the Commission Staff and the Office of the Consumer Advocate (OCA) conducted discovery into the proposed modifications to Rate LCS.

On March 24, 1994 the Commission held a duly noticed hearing at which the Company presented the testimony of Stephen R. Hall, Rate and Regulatory Services Manager. No other testimony was proffered by any party or Staff in support or opposition to the proposed

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revisions to Rate LCS.

On April 19, 1994 the Commission issued Report and Order No. 21,191 approving the proposed revisions to Rate LCS pursuant to RSA 378:6 (Supp. 1993). On April 20, 1994 PSNH filed revised Rate LCS in compliance with Report and Order No. 21,191 with an effective date of April 19, 1994 under the signature of Gary A. Long, Vice President, Customer Service and Economic Development.

As a result of a customer complaint between PSNH and Thomas A. Behrens of Sunapee Lake Lodge, the Commission opened docket DC 94-247. A hearing on the complaint was held at the Commission on October 24, 1994. At the hearing, the Commission heard testimony from Mr. Behrens and Mr. Long. The central issue at the hearing was whether Mr. Behrens was eligible for Rate LCS based on PSNH's interpretation of its tariff. Mr. Behrens essentially argued that his proposal to build a motel with electric space heating units and a propane powered generator for backup electricity qualified for Rate LCS.

During the hearing, PSNH made clear that although it did not question Mr. Behrens' description of the events leading to the hearing, it did not believe Mr. Behrens was eligible for Rate LCS.²⁽⁵⁹⁾ Staff objected to PSNH's interpretation of Rate LCS. The disagreement over the eligibility criteria of the tariff led the Commission to direct PSNH and Staff to file Memoranda of Law concerning whether PSNH is interpreting its tariff correctly, in light of the Commission's decision approving changes to the rate as specified in Order No. 21,191. On November 16, 1994, PSNH and Staff filed Memoranda of Law.

II. POSITIONS OF THE PARTIES AND STAFF

A. PSNH

PSNH believes that it is interpreting the availability section of Rate LCS in a manner consistent with the Commission's purpose, intent and policy in its approval of the rate as determined in Order No. 21,191. PSNH states that the proposed revisions to Rate LCS were clearly targeted toward marketing and load retention and that the Commission explicitly recognized those purposes. PSNH cites such support on page 5 of Order No. 21,191, noting that the Commission was "pleased to see a program that seeks to meet at least three important policy goals in one service: conservation and load management (by reducing demand during peak periods), load retention for PSNH (by keeping customers on the system who might otherwise have converted to another source of heat) and savings to customers (as demonstrated by the one year payback for the program)."

PSNH believes the tariff language of Rate LCS and its interpretation of that language has been consistent with the clear goals of the program: marketing and load retention. PSNH interprets these goals to mean that the rate is designed to obtain new or regain lost electric space heating sales and to retain existing electric space heating sales. A three-pronged test is needed to meet eligibility criteria for the rate according to PSNH's Memorandum. The customer must have (1) controlled conventional electric space heating, (2) an electric thermal storage system or a non-electric space heating source, and (3) the non-electric heating source available for use as backup. PSNH believes each prong, in its own way, supports the marketing and load retention purposes of Rate LCS. PSNH cites a number of examples that have been proposed by customers

relating to what constitutes a bona fide non-electric heating source available during Company interruptions. Many were considered by PSNH, but others could not have been anticipated in PSNH's opinion. Thus, PSNH decided to apply the three-pronged approach.

PSNH, because of the experience it has gained in administering and implementing Rate LCS, proposes to amend the availability wording to be more specific on eligibility. PSNH's proposal, with the changes underlined, states the rate is

also available for controlled conventional electric space heating under the radio controlled [option] when a *dynamic* electric thermal storage system is available for use as

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backup during times when service is interrupted by the Company. *Service under the Radio-Controlled Option may be made available in conjunction with Company approved non-electric heating sources which backup conventional electric space heating systems and which do not significantly displace conventional electric space heating during periods when electric service is not interrupted by the Company or which are otherwise likely to result in increased electric sales. Generation owned by the customer does not qualify as a backup heating source.*

B. Staff

Staff's concern about PSNH's interpretation of its tariff, which Staff considers unsupportable and arbitrary, emanates from a number of inquiries and complaints to the Commission's Customer Assistance Department. As a result of the phone calls and complaints, as well as Staff attendance at a PSNH "Heatsmart" seminar, Staff became aware that PSNH, through its Rate Bulletin, would not allow customers onto Rate LCS unless the source of heat used as a back-up was either a wood or coal stove.

Staff's Memorandum emphasizes Staff's concern with the legality of the means, or process, used by PSNH to meet its program objectives. By process, Staff refers to the application and interpretation of the tariff. Citing *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980), Staff argues that the tariff has both the force and effect of law. According to Staff's Memorandum, PSNH's tariff, whether under a statutory or contractual legal construction should be interpreted according to its plain and ordinary meaning. Staff cites *Appeal of Cremin*, 131 N.H. 480 (1989) and *Commercial Union Assurance Cos. v. Town of Derry*, 118 N.H. 469 (1978). Thus, Staff believes PSNH's actions set a dangerous precedent unsupportable by either statutory or contractual law. The Commission, in Staff's opinion, should inform the Company that its interpretation of the tariff is erroneous and arbitrary, and that it must apply the tariff in accordance with its plain meaning until it is modified.

Staff further requests that the Commission require the Company to contact all of those individuals that have, in its opinion, been wrongfully denied access to Rate LCS or that have inquired about the Rate to correct any possible misinformation that may have been provided to them. Furthermore, given the "Heatsmart" seminars PSNH has held for its employees and electrical contractors, Staff believes all contractors in New Hampshire should also be contacted to correct the misinformation provided to them by the Company.

III. COMMISSION ANALYSIS

We agree with Staff that the issue before us is whether Rate LCS as written and filed by PSNH and approved by this Commission is being properly interpreted. The "Heatsmart" program has received much attention since it was filed by PSNH and subsequently approved by this Commission. Some customer confusion is to be expected as new or revised programs are implemented. We believe that PSNH is entitled and expected to make the initial and often difficult decisions concerning what is or is not within the parameters set forth in the tariff.

When numerous and legitimate questions arise concerning the most fundamental aspect of the tariff, eligibility, we must evaluate whether PSNH is incorrectly interpreting its tariff in a manner that restricts eligibility as outlined in its Rate Bulletin to those customers with "space heating stoves, boilers and furnaces fueled by wood, coal, or other fuel approved by the Company."

As Staff points out in its Memorandum, in the *Appeal of Pennichuck Water Works*, the New Hampshire Supreme Court held that "tariffs or rate schedules required to be filed with the PUC (RSA 378:1, :3, :5, :6, :7, :27, and :28), do not simply define the terms of the contractual relationship between a utility and its customers [;] [t]hey have the force and effect of law and bind both the utility and its customers. (citations omitted)" *Pennichuck Water Works*, 120 N.H. at 566.

In reliance upon this conclusion, the Court in *Pennichuck* went on to apply the prohibition on retrospective laws contained in Part I,

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Article 23 of the New Hampshire Constitution to rate schedules or tariffs filed with the Commission. *Id.*, at 566-567.

There is no dispute, therefore, that the Rate LCS tariff or rate schedule is not only a contract between PSNH and its customers, it also has the effect of law. Thus, it is appropriate to apply the principles of contractual interpretation and statutory construction contained in common law when interpreting this tariff. *See*, N.H. CONST. Part I, Art. 15; U.S. CONST. amend. XIV, §1.

[1, 2] Our analysis of the awtariff reveals that the only prerequisite for access to Rate LCS is the availability of "a non-electric heating source" for backup during periods of interruption. The words of the tariff are clear and unambiguous. Thus, the tariff should be applied in accordance with its plain meaning, that is, all backup heating sources whether fueled by coal, wood, oil, liquified natural gas, liquified propane gas, or any other source of fuel that is non-electric, legal, and reliably available to supplement electric heat during periods of peak electric demand should be allowed to back up the electric heating sources set forth in the tariff

³⁽⁶⁰⁾. PSNH should not be allowed unilateral determination of what constitutes an acceptable heating source.

In further support of Staff's position, the Commission notes that the Company had every opportunity to set forth its position relative to wood and coal stoves in its testimony in support of

Rate LCS, and on Original Page 40 of its tariff wherein it sets out certain "Limitations on Availability". In this section PSNH only limits access to Rate LCS where "distribution capacity does not exist" in sufficient quantity to supply the customer, or where the Company has insufficient "personnel and/or other resources necessary to provide service".

Furthermore, in that section of the Rate LCS tariff addressing thermal storage space and water heating units PSNH does in fact limit the "specifications", "type, size and electrical characteristics" of units that qualify for the reduced LCS rate.

Applying the principles of *ejusdem generis* (the listing of specific items implies the exclusion of others) one is led to the conclusion that PSNH contemplated certain limitations on Rate LCS, as it admits in its Memorandum, but that wood and coal fired backup was not one of the exclusions contemplated.

Having found in favor of Staff's interpretation of the plain language of the tariff, we are now faced with corrective action that balances the needs of the customers who believe this is an attractive rate, with the assurance that PSNH is not financially harmed by implementation of Rate LCS. We will not allow PSNH, despite its best intentions, to decide the type or number of heating sources to be utilized by their customers. Well informed customers and markets best serve that function. We are concerned, however, that PSNH would not under certain circumstances recover its up front costs as the program now is structured. We believe that the answer to PSNH's concerns can be addressed through adjustments to the current tariff, such as up front payments for the metering costs associated with certain backup heating sources. We do not accept PSNH's proposed tariff changes, but we do encourage PSNH, OCA and Staff to resolve the definitional and operational problems that now face PSNH and its customers.

Based upon the foregoing, it is hereby

ORDERED, that Rate LCS remain in effect as is; and it is

FURTHER ORDERED, that PSNH, OCA and Staff, after conferring, file with the Commission on or before January 3, 1995, language that is acceptable to both and meets the concerns we set forth in our report.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1994.

FOOTNOTES

¹The Load Controlled Service Rate addresses a number of services including hot water heating, thermal storage heating, certain "grandfathered" hot water heating programs, and radio-controlled non-thermal storage heating. This memorandum addresses only the latter service and PSNH's determination of those customers which qualify for the reduced rate under this service offering.

²During the hearing PSNH agreed to offer Mr. Behrens a special contract that would provide him with benefits similar to those he would have received under Rate LCS. Mr. Behrens agreed in principle to

the offer and on October 31, 1994, PSNH filed Special Contract No. NHPUC-100. On November 11, 1994, the Commission approved Special Contract No. NHPUC-100 effective November 15, 1994 (Order *Nisi* 21,417).

³The non-electric source of power is a measure to ensure customer safety during periods of forced interruptions.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Behrens v. Public Service Co. of New Hampshire, DC 94-247, Order No. 21,417, 79 NH PUC 628, Nov. 7, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-247, Order No. 21,191, 79 NH PUC 220, Apr. 19, 1994.

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NH.PUC*12/19/94*[70734]*79 NH PUC 692*Southern New Hampshire Water Company, Inc.

[Go to End of 70734]

79 NH PUC 692

Re Southern New Hampshire Water Company, Inc.

DE 94-302

Order No. 21,465

New Hampshire Public Utilities Commission

December 19, 1994

ORDER taking note of a water utility's change in corporate name, from Southern New Hampshire Water Company, Inc., to Consumers New Hampshire Water Company, Inc..

1. CORPORATIONS, § 1

[N.H.] Corporate name — Change in name — Water utility — To better reflect parent company's name. p. 692.

BY THE COMMISSION:

ORDER

[1] On December 14, 1994, Southern New Hampshire Water Company, Inc. (Company) informed the New Hampshire Public Utilities Commission (Commission) that the Company's sole shareholder, Consumers Water Company, had changed the Company's corporate name to Consumers New Hampshire Water Company, Inc. The Company submitted as supportive documentation the following:

1. Action by Consent in Lieu of Meeting of the Board of Directors (November 18, 1994)
2. Shareholder Action by Consent and Without Meeting (November 18, 1994)
3. Articles of Amendment to the Articles of Incorporation (December 1, 1994)

The Company requested that the Commission approve the change in corporate name, if the Commission believed that such an order were required.

We have reviewed the documentation and will approve the change in corporate name. However, we will require the Company to inform its customers of the change to mitigate any customer concern regarding changes in customer service or relations.

Based upon the foregoing, it is hereby

ORDERED, that the change in corporate name from Southern New Hampshire Water Company, Inc. to Consumers New Hampshire Water Company is approved; and it is

FURTHER ORDERED, that the Company inform its customers by first class mail of the name change, including an explanation of the significance, if any, of the name change for customer service and customer relations; and it is

FURTHER ORDERED, that the Company re-file its tariff to reflect the change in corporate name within fourteen days.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1994.

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NH.PUC*12/19/94*[70735]*79 NH PUC 693*Granite State Electric Company

[Go to End of 70735]

79 NH PUC 693

Re Granite State Electric Company

DF 92-219

Order No. 21,466

New Hampshire Public Utilities Commission

December 19, 1994

ORDER extending the deadline by one year to December 31, 1995, for an electric utility's previously approved issuance of long-term securities.

1. SECURITY ISSUES, § 94

[N.H.] Long-term securities — Deadline for issuance — Extension of deadline — Electric utility. p. 693.

BY THE COMMISSION:

ORDER

[1] On November 7, 1994, Granite State Electric Company (the "Company") filed a petition for extension of its authority to issue and sell long-term securities. By Order No. 20,741, dated February 4, 1993, the Company was granted authority to issue, on or before December 31, 1994, on or more long-term notes in a principal amount not exceeding \$10 Million.

Under the authority of Order No. 20,741, and Supplemental Order No. 20,818 and No. 20,948, the Company issued a \$5 Million, 30-year, 7.37% note on November 4, 1993. The Company requests an extension of its existing authority and proposes to issue, on or before December 31, 1995, one or more notes in a principal amount not exceeding the remaining \$5 Million. As stated in Order No. 20,741, the notes will not be issued until the Commission reviews the terms and conditions of the financing to determine whether the financing is appropriate and in the public good.

In addition, the Company is seeking approval of the maximum interest rate from 10% to 11%.

Based on the review of the filing and in light of recent developments in the financial markets, we find that the petition is in the public good and should be approved.

Based upon the foregoing, it is hereby

ORDERED, that the authority to issue and sell one or more notes in an aggregate principal amount not to exceed the remaining \$5 Million, at an interest not to exceed 11%, is extended through December 31, 1995; and it is

FURTHER ORDERED, that the provisions for Commission approval contained in Order No. 20,741 are extended to this approval; 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 note until the entire proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DF 92-219, Order No. 20,741, 78 NH PUC 67, Feb. 4, 1993. [N.H.] Re Granite State Electric Co., DF 92-219, Order No. 20,818, 78 NH PUC 230, Apr. 19, 1993. [N.H.] Re Granite State Electric Co., DF 92-219, Order No. 20,948, 78 NH PUC 477, Aug. 30, 1993.

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NH.PUC*12/20/94*[70736]*79 NH PUC 694*New England Power Company

[Go to End of 70736]

79 NH PUC 694

Re New England Power Company

DF 91-221

Order No. 21,467

New Hampshire Public Utilities Commission

December 20, 1994

ORDER extending the deadline by two years to December 31, 1996, for an electric utility's previously approved issuance of bonds and interest rate swap agreements.

1. SECURITY ISSUES, § 95

[N.H.] Issuance of bonds — Interest rate swaps — Deadline for issuance — Extension of deadline — Electric utility. p. 694.

BY THE COMMISSION:

ORDER

[1] On November 7, 1994, New England Power requested an extension, as permitted in Order No. 20,441, of its existing authority, from December 31, 1994 to December 31, 1996, to issue the remaining General and Refunding Bonds and interest rate swap agreements.

An affidavit of John G. Cochrane, Assistant Treasurer, explained that \$100 million of authority for the issuance of General and Refunding Bonds remains through December 31, 1994. Additionally, New England Power was granted the authority to enter into interest rate swap agreements in an amount not exceeding \$617 million, through December 31, 1994.

The Company executed a \$90 Million one year fixed to floating tax-exempt swap, which ended on June 30, 1994.

We have reviewed the terms of the extension, our prior orders and the Staff recommendation and find that the extension is in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the authority to extend the authority of Order No. 20,441 and Order No. 20,592 through December 31, 1996 is granted, said extension to be consistent with all the terms of the previous orders.

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 note until the entire proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Power Co., DF 91-221, Order No. 20,441, 77 NH PUC 165, Apr. 14, 1992. [N.H.] Re New England Power Co., DF 91-221, Order No. 20,592, 77 NH PUC 525, Sept. 9, 1992.

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NH.PUC*12/20/94*[70737]*79 NH PUC 694*Granite State Electric Company

[Go to End of 70737]

79 NH PUC 694

Re Granite State Electric Company

DR 94-235

Order No. 21,468

New Hampshire Public Utilities Commission

December 20, 1994

ORDER adopting a procedural schedule for addressing an electric utility's 1995 conservation and load management (C&LM) program proposals, but allowing the C&LM programs to go into effect as of the beginning of the year rather than wait for final resolution of the proceeding, although the associated C&LM rate will continue to reflect 1994 C&LM factors for

Page 694

the interim.

1. CONSERVATION, § 1

[N.H.] Conservation and load management (C&LM) programs — Electric utility — Procedural schedule — Implementation date for new C&LM programs — Continuation of previous year's C&LM adjustment rate. p. 695.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 34

[N.H.] Conservation and load management (C&LM) program adjustment — Electric utility — Continuation of previous year's C&LM adjustment rate — But immediate implementation of new C&LM programs. p. 695.

BY THE COMMISSION:

ORDER

[1, 2] Granite State Electric Company (Granite State) on October 3, 1994, filed with the New Hampshire Public Utilities Commission (Commission) its 1995 Conservation and Load Management (C&LM) program. At the duly noticed prehearing conference on December 1, 1994, Conservation Law Foundation (CLF) sought full intervention without objection. There were no other requests for intervention. The proposed procedural schedule delineated in the order of notice was agreed to by Granite State, CLF, Office of Consumer Advocate (OCA) and Commission Staff (Staff) as acceptable. The proposed procedural schedule is as follows:

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

Data Requests by Parties and Staff	Dec. 8, 1994
Company Data Responses	Dec. 23, 1994
Technical Session	Jan. 4, 1995
Testimony of Parties and Staff	Jan. 19, 1995
Company Data Requests of Parties and Staff	Jan. 27, 1995
Data Responses by Parties, Staff	Feb. 9, 1995
Settlement Conference	Feb. 17, 1995
Hearing on the Merits	Mar. 7, 1995

Also at the prehearing conference, the parties and Staff presented an Interim Settlement by which Granite State's 1995 C&LM programs would go into effect January 1, 1995, with the proposed 1995 C&LM factor put into the rates at that time, pending full review of the 1995 filing. If after full review and final order of the Commission there were changes to the 1995 programs or the factor, those changes would be effective July 1, 1995. This was described by the signatories to the Interim Settlement as a way to provide Granite State greater stability and certainty in its marketing of the 1995 programs.

The Commission deliberated this issue at its December 5, 1994 meeting, approving much of the Interim Settlement but rejecting the provisions that would protect Granite State against loss if the programs were to change after full review. In the week after this announcement, Granite State developed a new proposal, which it submitted on December 14, 1994. The other parties and Staff concurred in the new proposal.

Granite State now proposes to implement its 1995 C&LM programs January 1, 1995 but continue to apply the 1994 C&LM factor which is lower than what is proposed for 1995, pending final review and approval of the 1995 programs and C&LM factor. If the Commission should order changes in programs, however, Granite State would implement the changes as of July 1, 1995 in order to provide greater certainty and predictability for customers in its marketing efforts. If the result of a final order would be a reduction in the amount of the factor, Granite State would collect less in the remainder of the year, so that it would not overcollect for the amount which is ultimately ordered by the Commission.

We have reviewed the newly filed proposal and find it to be a creative resolution of our concerns that Granite State might be protected against loss to a degree greater than we thought appropriate. The new proposal brings the 1995 programs in effect quickly, pending full review of the details of the programs without unduly protecting Granite State against loss. We appreciate the efforts of Granite State, CLF, OCA, and the Staff in reaching this result. We will approve the newly filed proposal for implementation of the 1995 C&LM programs.

We also find that CLF meets the standards for full intervention and find the proposed procedural schedule to be reasonable.

Based upon the foregoing, it is hereby

ORDERED, that CLF's request for full intervenor party status is granted; and it is

FURTHER ORDERED, that the proposed procedural schedule is approved; and it is

FURTHER ORDERED, that Granite State shall implement its 1995 C&LM programs as of January 1, 1995 but continue to apply the 1994 C&LM factor in its rates, both subject to modification after full review and final order of this Commission.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1994.

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NH.PUC*12/20/94*[70738]*79 NH PUC 696*Connecticut Valley Electric Company

[Go to End of 70738]

79 NH PUC 696

Re Connecticut Valley Electric Company

DR 94-280

Order No. 21,469

New Hampshire Public Utilities Commission

December 20, 1994

ORDER authorizing an electric utility to decrease both its fuel adjustment clause and purchased power adjustment clause rates, each to a level of 0.11 cents per kilowatt-hour.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Decrease in adjustment rate factor — Considerations — Reductions in prior-period adjustments coupled with higher sales — Electric utility. p. 698.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Decrease in adjustment rate factor — Considerations — Fewer projected purchases from alternative power providers — Reductions in prior-period adjustments coupled with higher sales — Electric utility. p. 698.

APPEARANCES: Kenneth Picton, Esq., for Connecticut Valley Electric Company; James J. Cunningham, Jr. and Thomas C. Frantz for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 28, 1994, Connecticut Valley Electric Company (CVEC or the Company) filed tariff changes to its Fuel Adjustment Clause (FAC), Purchased Power Cost Adjustment (PPCA), and the rate CVEC pays to small power producers under Rate E, Short-Term Power Rates, effective for the period January, 1995 through December, 1995. Supporting testimony and exhibits were included in the Company's filing. On December 6, 1994, CVEC filed an additional attachment and two documents which were inadvertently omitted from its filing.

The New Hampshire Public Utilities Commission (Commission) held a duly noticed public hearing at its offices in Concord on

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December 14, 1994 to review the FAC, PPCA and Short-Term avoided energy and capacity costs filed by the Connecticut Valley Electric Company. At the hearing, the Commission heard testimony from four CVEC witnesses: Robert J. Amelang addressed the derivation of the 1995 CVEC Short-Term Energy Purchase Rate E; Peter D. Lena summarized changes to his testimony and attachments pertaining to the 1995 sales forecast and 1994 variances from forecast; Charles A. Watts addressed the derivation of the 1995 monthly RS-2 energy charges and purchased capacity costs for use in the calculation of the 1995 FAC and the 1995 PPCA respectively. He also testified to the 1995 CVPS Transmission by Others (TBO) forecast. C.J. Frankiewicz addressed the calculation of the FAC and PPCA. In addition, he summarized changes to his testimony and attachments pertaining to the true-up of 1993 RS-2 capacity costs for 1993 and one adjustment to 1994 Kwh sales.

II. POSITIONS OF THE PARTIES AND STAFF

A. CVEC

CVEC proposes an FAC of \$0.0011 per Kwh. This represents a \$0.0027 per kWh decrease from the current FAC of \$0.0038. The decrease in the FAC is based primarily on a \$425,554 reduction in the prior period adjustments, coupled with higher kWh sales in 1995 versus 1994. Partially offsetting these adjustments are three other factors. First, monthly RS-2 energy costs are higher in 1995 than in 1994. Second, fewer purchases from the New Hampshire/Vermont

Solid Waste Project (NH/VT SWP) are forecast. However, because these purchases will be made at higher prices in 1995 than in 1994 due to contract price escalation, the result is a forecast of higher NH/VT SWP costs in 1995 than in 1994. Third, purchasers from SPP's other than NH/VT SWP are slightly higher in 1995 than in 1994.

CVEC initially proposed a PPCA of \$0.006 for kWh. However, errors were subsequently discovered that resulted in a proposed 1995 PPCA of \$0.0011 per kWh. This represents a decrease of \$0.0001 per kWh from the previous 1994 PPCA rate of \$0.0012 per kWh. The decrease in the PPCA is based primarily on reduced prior period adjustments (\$79,943) coupled with higher kWh and kW sales in 1995 than in 1994. Higher kWh and kW sales causes an increase in base revenues which results in a lower PPCA. The combined effect of the changes of the FAC and PPCA is \$1.40 decrease on a typical residential monthly bill.

Finally CVEC proposes the following short-term energy rates which it pays under Rate E of its tariff:

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

1995 January through April	\$0.0227 per kWh
1995 May through October	\$0.0210 per kWh
1995 November through December	\$0.0189 per kWh

The base capacity rate is \$0.00 per kW-month which is the same as the 1994 rate due to the continued soft capacity market within NEPOOL. The energy rate is lower due to lower fossil fuel and opportunity purchase costs. The total impact is a 4.5% reduction in cost to CVEC for purchases from Small Power Producers under the 1995 Rate E relative to the 1994 Rate E. The Purchased Rate in 1995 is calculated in the same manner as the 1994 Purchase Rate.

B. Staff

Staff questioned Company witnesses on a number of items: the provisions of the CVPS agreement with Hydro Quebec pertaining to the sellback arrangements; interconnection service fees; status of the CVEC action at FERC against the operator of the NH/VT SWP (no more information about the outcome of the FERC case is currently available); emission control costs pertaining to Merrimack II and corrections to the PPCA rate calculation. Company witnesses satisfactorily responded to all of Staff's questions and agreed to provide additional detailed information including record requests, as required.

Regarding corrections to the PPCA rate calculation, at Staff's request, the Company corrected two errors. First, the Company corrected

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an error in kWh sales for December 1994 and second, the Company corrected an error in its true-up of 1993 RS-2 capacity costs.

Based on the above, Staff recommends that the revised PPCA of \$0.0011, the FAC of \$0.0011 and short-term energy rates CVEC pays under Rate E are appropriate.

III. COMMISSION ANALYSIS

[1, 2] The issue before the Commission is whether to approve an FAC rate of \$0.0011, a

revised PPCA rate of \$0.0011 and short-term energy rates CVEC pays under Rate E of its tariff. Based on the record in this case, the Commission finds these rates to be just and reasonable.

Regarding the CVEC action at FERC against the operator of the NH/VT SWP, the Company indicates there is no additional information beyond what had already been filed in Docket DR 93-227. The Commission will defer its decision regarding CVEC's request to recover legal fees and related costs incurred pursuant to Commission Order No. 21,000 in Docket DR 93-196 until such time as more information about the outcome of the FERC case is available.

Based upon the foregoing, it is hereby

ORDERED, that the Fuel Adjustment Clause factor for Connecticut Valley Electric Company (CVEC) for the period January 1995 through December 1995, shall be \$0.0011 per kWh; and it is

FURTHER ORDERED, that the Purchased Power Adjustment Clause for 1995 for the period January 1995 through December 1995 shall be \$0.0011 per kWh; and it is

FURTHER ORDERED, that the short-term capacity and energy rates paid to Qualifying Facilities shall be as follows:

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

1995 January-April	\$0.0227 per kWh
1995 May-October	\$0.0210 per kWh
1995 November-December	\$0.0189 per kWh;

and it is

FURTHER ORDERED, that CVEC file tariff pages in compliance with this Order no later than 15 days from the issuance date of this Order; and it is

FURTHER ORDERED, that CVEC file with the Commission a standard contract to comply with Order No. 19,052.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., DR 86-72, Order No. 19,052, 73 NH PUC 117, Apr. 7, 1988. [N.H.] Re Connecticut Valley Electric Co., DR 93-196, Order No. 21,000, 78 NH PUC 579, Oct. 18, 1993.

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NH.PUC*12/20/94*[70739]*79 NH PUC 698*Access Transmission Services, Inc.

[Go to End of 70739]

Re Access Transmission Services, Inc.

DE 94-151

Order No. 21,470

New Hampshire Public Utilities Commission

December 20, 1994

ORDER accepting a settlement agreement that authorizes a telecommunications carrier to provide nonswitched, private line, intrastate intraLATA telephone service, on both an interexchange and intraexchange basis, where the service is found not to be tantamount to competitive local exchange service. The settlement serves as an extension of the private line service authority the carrier had been granted on an interim basis for one customer alone in Order No. 21,428 (79 NH PUC 640), supra.

The commission also notes the carrier's change in corporate name from Access Transmission Services, Inc., to MCI Metro.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications services — Nonswitched, private line, intrastate intraLATA service — Both interexchange and intraexchange service — Geographic limitations — No authority for competitive basic local exchange service — Settlement. p. 700.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications — Nonswitched, private line, intrastate intraLATA service — Both interexchange and intraexchange service — Geographic limitations — No basic local exchange competition — Settlement. p. 700.

3. SERVICE, § 433

[N.H.] Telecommunications — Nonswitched, private line, intrastate intraLATA service — Both interexchange and intraexchange service — Geographic limitations — No basic local exchange competition — Settlement. p. 700.

APPEARANCES: Robert C. Glass, Esq., on behalf of Access Transmission Services, Inc./MCI Metro; Devine, Millimet and Branch by Frederick J. Coolbroth, Esq., on behalf of Granite State Telephone, Inc., Merrimack County Telephone Company, Contoocook Valley Telephone, Inc., Dunbarton Telephone Company, Inc., Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company; Martin C. Rothfelder, Esq., on behalf of Union Telephone Company; Victor D. Del Vecchio, Esq., on behalf of New England Telephone; Mark R. Perkell, Esq., on behalf of Long Distance North of New Hampshire; Mark DeFalco, on behalf of Chichester, Kearsarge, and Meriden

Telephone Companies; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On July 20, 1994, Access Transmission Services, Inc. (ATS), filed with the New Hampshire Public Utilities Commission (Commission) a petition for permission and approval to provide non-switched intrastate intraLATA (both intraexchange and interexchange) private line telecommunications services in New Hampshire. Motions to intervene were filed by Granite State Telephone, Inc. (Granite State), Merrimack County Telephone Company (Merrimack), Contoocook Valley Telephone, Inc. (Contoocook), Dunbarton Telephone Company, Inc. (Dunbarton), Wilton Telephone Company, Inc. (Wilton), Hollis Telephone Company, Inc. (Hollis), Bretton Woods Telephone Company, Inc. (Bretton Woods), Dixville Telephone Company (Dixville), Union Telephone Company (Union), New England Telephone (NET), Long Distance North of New Hampshire (LDN), Chichester Telephone Company (Chichester), Kearsarge Telephone Company (Kearsarge), and Meriden Telephone Company (Meriden).

On August 25, 1994, the Commission issued an Order of Notice setting a prehearing conference for September 23, 1994 to address matters of intervention and the scope of the proceeding. As a result of the duly noticed prehearing conference, the proposed procedural schedule was approved and all requests to intervene were granted in Order No. 21,380 (October 10, 1994).

On November 2, 1994, ATS filed an Assented-To Motion for Interim Authority to Provide Private Line Telecommunications Services To Digital Equipment Corporation. The Commission granted ATS' motion in Order No. 21,428 (November 14, 1994).

In December, 1994 ATS informed the Parties and Staff that its corporate name was changing to MCI Metro and asked that this file reflect the new name. After discovery, the Parties and Staff reached a settlement of issues, which was presented to the Commission on December 12, 1994.

II. SETTLEMENT AGREEMENT

Page 699

The Agreement Relating to MCI Metro/Access Transmission Services, Inc. (Agreement) is closely modeled on that approved by the Commission in Docket DR 94-025, Metropolitan Fiber Systems (MFS) in Order No. 21,405 (November 2, 1994). The key points of the Agreement are as follows:

The authority granted to MCI Metro is limited to dedicated non-switched intraLATA services, both intraexchange and interexchange. MFS by contrast only sought approval for non-switched intraLATA interexchange services. Should MCI Metro wish to provide switched services, it must petition the Commission for approval, pursuant to RSA Chapter 374. Commission procedures for review and approval of tariffs and special contract filings shall be the same for both MCI Metro and NYNEX.

The Agreement limits the authority to a specific geographic area, paralleling NYNEX's local franchise territory. Expansion of the geographic area also requires Commission approval pursuant to RSA Chapter 374.

The Agreement specifies that the authority is not limited to a trial period. Nonetheless, for a two year period MCI Metro will provide the Commission quarterly confidential reports about the services rendered, circuits leased, dark fiber pairs leased or exchanged and interconnection charges paid so that the Commission can monitor effects, if any, on the telecommunications market.

The Agreement requires MCI Metro to file an annual report with the Commission, to follow Generally Accepted Accounting Principles, to comply with all reporting requirements contained in RSA 374:13-19 and all filing or reporting requirements imposed by the Commission in this or subsequent orders. The Agreement notes, without comment, that MCI Metro requests waivers from N.H. Admin. Rules, Puc 403.03(b) and all of 406, 407 and 409 inclusive.

Although not contained in the Agreement, the Staff stressed at the December 12, 1994 hearing the obligation of MCI Metro to serve the public, including those who would be served by an expansion of the MCI Metro network, and the requirement that its pricing be just and reasonable and non-discriminatory. MCI Metro affirmed its commitment to serve the public and price accordingly.

III. COMMISSION ANALYSIS

[1-3] We have reviewed the record in this proceeding and conclude that the authority sought by MCI Metro does not rise to the level of local telephone competition as it is limited to a non-switched service. Rather, we see it as an expansion of access options available to New Hampshire telecommunications users and welcome the increasing array of providers entering the State.

We find that the conditions set forth in the Agreement are reasonable and in the public good. MCI Metro clearly recognizes its need to seek further Commission approval if it chooses to expand its operations (in terms of geographic area or type of service). MCI Metro also recognizes the importance of just and reasonable rates and non-discriminatory pricing and the Commission's responsibility to monitor its operations, albeit to a far more limited degree than in traditional rate of return regulation. We will approve the Agreement in its entirety.

Based upon the foregoing, it is hereby

ORDERED, that the Agreement reached between MCI Metro and the Parties and Staff is approved; and it is

FURTHER ORDERED, that MCI Metro shall submit compliance tariffs within ten days of this order.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Access Transmission Services, Inc., DR 94-151, Order No. 21,380, 79 NH PUC 557, Oct. 10, 1994. [N.H.] Re Access Transmission Services, Inc., DR 94-151, Order No. 21,428, 79 NH PUC 640, Nov. 14, 1994. [N.H.] Re Metropolitan Fiber Systems, DE 94-025, Order No. 21,405, 79 NH PUC 608, Nov. 2, 1994.

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NH.PUC*12/20/94*[70740]*79 NH PUC 701*NOSVA, Limited Partnership

[Go to End of 70740]

79 NH PUC 701

Re NOSVA, Limited Partnership

DE 94-208

Order No. 21,471

New Hampshire Public Utilities Commission

December 20, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 701.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 701.

BY THE COMMISSION:

ORDER

[1, 2] On September 12, 1994, NOSVA, Limited Partnership (NOSVA), a Maryland Limited Partnership, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

NOSVA has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period

(October 1, 1993 to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that NOSVA is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. NOSVA shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, NOSVA shall notify the Commission of the change.
5. NOSVA is exempted from NH Admin Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. NOSVA shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. NOSVA shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. NOSVA shall be subject to all statutes and administrative rules including those related

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to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.

9. NOSVA shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.

10. NOSVA shall compensate the appropriate Local Exchange Company for all originating and terminating access used by NOSVA pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

11. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.

12. During the Trial Period, within 60 days following the end of each calendar quarter NOSVA shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g. (4) below.

a. For each intrastate toll service offered:

- (1) number of subscribers in NH who have intrastate usage annually on July 1, 1993, 1994 and 1995; otherwise monthly reports will identify total subscribers;
- (2) intrastate minutes of use;
- (3) intrastate revenue;
- (4) type of access arrangement used;
- (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;
- (6) whether the service is residential or business or both. Item a.(6) is not confidential.

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow NOSVA to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that NOSVA shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than December 30, 1994, and an affidavit proving publication shall be filed with the Commission on or before January 16, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. NOSVA shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that NOSVA shall

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file a compliance tariff with Commission on or before January 3, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective January 19, 1995, 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 twentieth day of December, 1994.

Notice of Conditional Approval of
NOSVA, LIMITED PARTNERSHIP

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On September 12, 1994, NOSVA, Limited Partnership (NOSVA), a Maryland Limited Partnership, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,471, issued in Docket No. DE 94-208, the Commission granted NOSVA conditional approval to operate as of January 19, 1995, subject to the right of the public and interested parties to comment on NOSVA or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on NOSVA's petition to do business in the State should submit written comments no later than January 16, 1995, to:

Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*12/20/94*[70741]*79 NH PUC 703*US Wats, Inc.

[Go to End of 70741]

79 NH PUC 703

Re US Wats, Inc.

DE 94-248

Order No. 21,472

New Hampshire Public Utilities Commission

December 20, 1994

ORDER granting an interexchange telephone carrier interim authority to offer intrastate long-distance services.

1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange authority. p. 703.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition. p. 703.

BY THE COMMISSION:

ORDER

[1, 2] On September 20, 1994, US Wats, Inc (USWATS), a New Hampshire corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

Page 703

USWATS has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority for intrastate competition in the telecommunications industry will allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993 to September 30, 1995) described in Commission Report and Order No. 20,916 (August 2, 1993).

The public good is served by permitting interim competition by telecommunications companies. The public should be provided an opportunity to respond in support of, or in opposition to this petition.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that USWATS is granted interim authority to offer as a telecommunications public utility intraLATA toll service, specifically excluding local exchange service, for the

service territory of the entire State of New Hampshire, subject to the following conditions:

1. The services shall be offered by approved tariffs.
2. The services shall be offered on an interim basis, that is, until completion of the Trial Period.
3. USWATS shall file tariffs for new services and changes in approved services (other than rate changes), with effective dates of no less than 30 days after the date the tariffs are filed with the Commission.
4. Within one business day of offering an approved service to the public at a rate different from its rates on file with the Commission, USWATS shall notify the Commission of the change.
5. USWATS is exempted from NH Admin Rules, Puc 406.03 Accounting Records; Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.
6. USWATS shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. USWATS shall file with the Commission each calendar year an Annual Report consisting of a Balance Sheet and Statement of Operations, and an Information Sheet containing the names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.
8. USWATS shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service, disconnections, deposits and billing, except those specifically waived herein.
9. USWATS shall be subject to all reporting requirements contained in RSA 374:13-19 and any filing or reporting requirements imposed by the Commission in this or subsequent orders.
10. USWATS shall compensate the appropriate Local Exchange Company for all originating and terminating access used by USWATS pursuant to NET Tariff N.H.P.U.C. 78, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
11. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates.
12. During the Trial Period, within 60 days following the end of each calendar quarter USWATS shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g. (4) below.
 - a. For each intrastate toll service offered:
 - (1) number of subscribers in NH who have intrastate usage annually on July 1, 1994, 1994 and 1995; otherwise monthly reports will identify total subscribers;
 - (2) intrastate minutes of use;
 - (3) intrastate revenue;
 - (4) type of access arrangement used;
 - (5) for services that use different access arrangements (e.g. SDN) the percentage of use relative to each type of access arrangement will be provided annually on July 1, 1993, 1994 and 1995;

(6) whether the service is residential or business or both. Item a.(6) is not confidential.

Page 704

b. On an aggregate basis, intrastate minutes and access charges actually paid to each LEC.

c. The intrastate conversation minutes of use originated, reported separately by service, for switched access arrangements, and for special access arrangements.

d. The number of interstate and intrastate special access arrangements stated by channel capacity.

e. The intrastate conversation minutes of use terminated, reported separately by service, for switched access arrangements, and for special access arrangements.

f. As a percentage of total intrastate conversation minutes of use, the amount of intrastate traffic that was both originated and terminated over switched access.

g. For each interstate service offered which originates in New Hampshire or, for 800 service which terminates in New Hampshire:

- (1) for non-800 services, originating outbound minutes of use;
- (2) for 800 services, terminating inbound minutes of use;
- (3) average call duration;
- (4) type of access arrangement used. Item g.(4) is not confidential.

h. Percentage Interstate Use (PIU) reports preceding the quarter for which the PIU is applied (with a copy to the appropriate LEC); and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow USWATS to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that USWATS shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a newspaper having general statewide circulation. Said publication shall occur no later than December 30, 1994, and an affidavit proving publication shall be filed with the Commission on or before January 16, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. USWATS shall pay all assessments levied upon it by the Commission based on the amount of gross revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that USWATS shall file a compliance tariff with Commission on or before January 3, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective January 19, 1995, 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 twentieth day of December, 1994.

Notice of Conditional Approval of
US WATS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On September 20 1994, US WATS, Inc. (USWATS), a New Hampshire corporation, filed with the New Hampshire Public Utilities Commission (Commission) a petition to do business as a telecommunications public utility in the State of New Hampshire, specifically to provide intrastate long distance telecommunications services.

In Order No. 21,472, issued in Docket No. DE 94-248, the Commission granted USWATS conditional approval to operate as of January 19, 1995, subject to the right of the public and interested parties to comment on USWATS or its operations before the Order becomes final.

For copies of the petition or Commission order granting conditional approval, please contact the Commission's Executive Director and Secretary at (603) 271-2431, or as noted below. Anyone interested in commenting on USWATS's petition to do business in the State should submit written comments no later than January 16, 1995, to:

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Dr. Sarah P. Voll
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-5185

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC*12/21/94*[70742]*79 NH PUC 706*Ashland Electric Department

[Go to End of 70742]

79 NH PUC 706

Re Ashland Electric Department

DE 94-005

Order No. 21,473

159 PUR4th 152

New Hampshire Public Utilities Commission

December 21, 1994

ORDER finding that a municipal electric utility must obtain authorization from the commission

before extending service to an area located within its corporate limits but now served by a regulated public utility.

The commission denies a request by the town for a declaratory ruling that commission authorization is not required before the town can proceed with an extension of its electric distribution facilities within its corporate limits to a territory within the franchise area of New Hampshire Electric Cooperative, Inc.

The commission declines for the present to address the issue of whether the grant of a service territory to a public utility confers authority to that utility to provide service that is exclusive as to a municipal electric department within the corporate limits of the municipality. It finds that the issue involves a determination of what is in the public good and cannot be resolved in the abstract.

A dissenting commissioner argues that the town needs no permission from the commission to extend its facilities within its municipal boundaries, and cannot be denied the right to extend to an area within the municipality even if that area is being served by a regulated public utility.

1. STATUTES, § 11

[N.H.] Construction — Giving effect to entire statute — Avoidance of unjust, unreasonable, or absurd results. p. 710.

2. MUNICIPAL PLANTS, § 9

[N.H.] Commission jurisdiction — As to electric service extensions — Extension within municipal limits — In area already served by regulated utility — Necessity of commission authorization. p. 710.

3. MONOPOLY AND COMPETITION, § 8

[N.H.] Commission jurisdiction — As to electric service extensions — Expansion of municipal electric service territory. p. 710.

4. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Electric service extensions — Expansion of municipal electric service territory — Within municipal limits — But in area already served by regulated utility — Necessity of commission approval. p. 710.

5. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service extensions — Expansion of municipal electric service territory — Within municipal limits — But in area already served by regulated utility — Necessity of commission approval. p. 710.

6. SERVICE, § 203

[N.H.] Extensions — Municipal electric service — Within municipal limits — But in

area already served by regulated utility — Necessity of commission authorization. p. 710.

7. MUNICIPAL PLANTS, § 9

[N.H.] Commission jurisdiction — Municipal electric service extensions — Within municipal limits — In area already served by regulated utility — No commission preapproval necessary — Autonomy of municipal utility within corporate limits — Dissenting opinion. p. 712.

8. MONOPOLY AND COMPETITION, § 8

[N.H.] Commission jurisdiction — Electric service extensions — Expansion of municipal electric service territory — Autonomy of municipal utility within corporate limits — Despite area already served by regulated utility — Dissenting opinion. p. 712.

9. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Electric service extensions — Expansion of municipal electric service territory — Within corporate limits — But in territory served by regulated utility — Autonomy of municipal utility — Dissenting opinion. p. 712.

10. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service extensions — Expansion of municipal electric service territory — Within corporate limits — But in area served by regulated utility — Autonomy of municipal utility — Dissenting opinion. p. 712.

11. STATUTES, § 11

[N.H.] Construction — Giving effect to entire statute — Avoidance of unjust, unreasonable, or absurd results — Dissenting opinion. p. 712.

12. SERVICE, § 203

[N.H.] Extensions — Municipal electric service — Within municipal limits — But in area already served by regulated utility — No commission authorization necessary — Dissent. p. 712.

APPEARANCES: McLane, Graf, Raulerson and Middleton by Richard A. Samuels, Esq. and Deborah F. Morazzi, Esq. for Town of Ashland; Broderick and Dean by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; James G. Bruen Jr., Esq. for Rural Electric Administration; David J. Saggau, Esq. for Granite State Electric Company; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Office of Consumer Advocate by James R. Anderson, Esq. for residential ratepayers; Amy L. Ignatius, Esq. for New Hampshire Public Utilities Commission

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 4, 1994, the Town of Ashland Electric Department in Ashland, New Hampshire

(Ashland) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Declaratory Rulings on Whether PUC Authorization is Needed by Ashland Electric for Expansion of its Service Within Town Limits and Whether a Public Utility's Franchise is Exclusive as to a Municipal Electric Department (Petition). Ashland, which serves the major portion of the Town, seeks to expand service to provide an alternative for some citizens in the North Ashland Road area now served by the New Hampshire Electric Cooperative, Inc. (NHEC) pursuant to a Commission granted franchise.

The Commission, before acting, asked that the Town indicate by Town vote whether it supported extension of its electrical distribution system as proposed. On March 16, 1994, Ashland notified the Commission that at the Town Meeting held on March 12, 1994, the voters authorized the town to expand its electric service to include the North Ashland Road area.

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Ashland also made clear that the vote was not taken pursuant to RSA 38:5 but was done in response to the inquiry of the Commission.

The Commission called for filing of memoranda of law on the legal issues raised in Ashland's Petition regarding the exclusivity of a franchise as it relates to expansion of a municipal utility within the boundaries of the municipality and the process, if any, by which Ashland should follow in expanding its service territory within the Town. The Commission made the Rural Electrification Administration (REA) a mandatory party in order to provide the REA with an opportunity to comment on Ashland's Petition. The REA has provided low interest loans to NHEC and holds security interests in NHEC's property, pursuant to the Rural Electrification Act, 7 U.S.C. § 901 *et seq.* The Commission also encouraged any other affected party to file comments. Memoranda were filed by Ashland, NHEC and REA on May 18, 1994.

On April 25, 1994, Granite State Electric Company sought full intervention, which was granted without objection. Public Service Company of New Hampshire, on June 10, 1994, sought limited intervention, which too was granted without objection. Neither utility, however, took a position in the case. On June 17, 1994, the Commission heard oral argument from Ashland and NHEC regarding the legal questions posed by the Petition.

II. FACTS OF ASHLAND'S INTENTION TO EXPAND

Based upon the filings made by Ashland and NHEC, the pertinent facts of the Ashland expansion into the NHEC service territory are as follows:

Ashland is a municipal electric utility operating at least since 1917. It serves portions of the Town. NHEC, an electric cooperative, serves other portions of the Town pursuant to its franchise authority granted by the Commission in 1979. *See* 64 NH PUC 149 (1979).

NHEC serves customers in the northwest section of the Town of Ashland along North Ashland Road. These customers are served off a NHEC transmission line which terminates in other NHEC service territories. Ashland determined it wished to serve those residents now served by NHEC and on March 23, 1993, the Ashland Board of Selectmen notified NHEC that a vote had been taken under RSA 38:6 approving Ashland's acquisition of NHEC's North Ashland Road plant. NHEC's response to that notice was a refusal to sell its plant. Thereafter, Ashland

stated its desire not to take the lines by eminent domain (as authorized by RSA 38:10) but to construct new facilities to provide the residents of that area a choice of electric utility providers. Ashland's Petition for Declaratory Ruling regarding legal issues raised by Ashland's proposal followed.

III. POSITIONS OF ASHLAND, NHEC AND REA

The proper interpretation of RSA 38:3 was debated at length during oral argument. RSA 38:3 reads in its entirety as follows:

38:3 Acquisition of Plants. Any municipality may take, purchase, lease, or otherwise acquire and maintain and operate in accordance with the provisions of this chapter, one or more suitable plants for the manufacture and distribution of gas, electricity, or water for municipal use and for the use of its inhabitants and others and for such other purposes as may be permitted, *authorized, or directed by the commission*; and for these purposes may purchase and hold in fee simple or otherwise any real or personal estate and any rights therein, including water rights; and may do all other things necessary for carrying into effect the purposes of this chapter; and may excavate and dig conduits and ditches in any highway or other land or place, and erect poles, place wires, and lay pipes for the transmission and distribution of electricity, water, and gas, in such places as may be deemed necessary and proper; and may change, enlarge, and extend the same from time to time when the municipality shall deem necessary, and maintain the same, having due regard for the safety and welfare of its citizens and security of the public travel. [emphasis added].

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The arguments advanced by Ashland, NHEC and REA were fully set forth in the memoranda of law and letter filed, as well as the transcript of oral argument. The following is a summary of the positions advanced.

A. Ashland Electric Company

Ashland argues that as a municipal utility it need not seek Commission approval for expansion of its existing plant, even if it infringes on the territory of NHEC. As Ashland interprets RSA 38:3, a municipal utility must seek Commission approval only when it seeks to "take, purchase, lease or otherwise acquire" new plant or plants when it is not already providing utility service. Ashland essentially argues that because Commission authorization is not expressly mentioned in the last portion of RSA 38:3 (relating to enlargements and extensions), any expansion of existing operations, regardless of the magnitude of the expansion, is beyond the Commission's jurisdiction.

According to Ashland, all of the municipal utility's actions listed in RSA 38:3 after the words "as may be permitted, authorized, or directed by the Commission" (i.e. "erect poles, place wires, and lay pipes for the transmission and distribution of electricity, water and gas, in such places as may be deemed necessary and proper", ... "enlarge, and extend the same from time to time when the municipality shall deem necessary") may be done without Commission involvement. Ashland asserts, that because construction of parallel utility lines in the North Ashland Road area falls within the provisions of RSA 38:3 which authorize a municipality to "enlarge, and extend

the same from time to time when the municipality shall deem necessary", no prior Commission approval is necessary for that construction.

Ashland argues that NHEC's franchise cannot be considered exclusive as it relates to a municipal utility which seeks to expand within its corporate limits. While Ashland concedes NHEC has a right to operate within Ashland's corporate limits, it argues that Ashland has a right to compete with NHEC within its corporate limits. Ashland distinguished this situation from that posed by a debate over exclusivity between two utilities.

B. NHEC

NHEC argued that RSA Chapter 38 applies to a municipality seeking to expand into NHEC's territory and cannot be read so narrowly as Ashland proposes. As NHEC reads RSA 38:3, all of the activities described within the section are subject to the Commission's approval. In addition, according to NHEC, the phrase "acquire ... one or more suitable plants for the manufacture or distribution of gas or electricity ..." should be interpreted to include acquisition by construction of new distribution plant and that sections of Chapter 38 regarding Commission review of construction by a municipality would apply to the North Ashland Road construction.

NHEC asserts that the question of the exclusivity of franchises should not, and need not, be addressed as part of this case. NHEC argues that the factual circumstances and "unique history" of individual utilities and franchises may vary significantly, making a generalized pronouncement regarding exclusivity inappropriate.

C. REA

REA asserts that NHEC's franchise is exclusive, even as it relates to a municipal utility. Further it argues that to allow Ashland to expand into NHEC's territory will jeopardize NHEC's ability to meet its debt obligations and will make REA less willing to lend to utilities in New Hampshire in the future.

IV. COMMISSION ANALYSIS

We have reviewed the memoranda of law, transcripts and exhibits introduced at the hearing and spent much time considering this issue. Although resolution of this case requires us to apply principles of statutory construction, we must also recognize two very significant and sometimes conflicting policy considerations at play in this case: 1) the Commission's extremely limited role in the regulation and operations of a municipal utility and 2) the

Page 709

Commission's broader role in ensuring that a public utility has the opportunity to operate efficiently within its service area.

While municipalities hold considerable power, they do not operate completely unfettered. It is well settled that a municipality may exercise only those powers which the legislature has explicitly granted. *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907), *Lavallee v. Britt*, 118 N.H. 131 (1978). In fact, our Supreme Court has on many occasions found the actions of municipalities to exceed their legislative grant of authority. *See, e.g., City of Claremont v. Craigie*, 135 N.H. 528 (1992) (proposed changes to city charter to require voter approval of

budgets would violate state law requirement that vests budget approval in city council); *Dugas v. Town of Conway*, 125 N.H. 175 (1984) (town's zoning regulation was invalid as it resulted in an unconstitutional taking of property rights); *Seabrook Citizens for Defense of Home Rule v. Yankee Greyhound Racing, Inc.*, 123 N.H. 103 (1983) (town's efforts to prohibit Sunday dog racing violated statute authorizing Sunday races); *Public Service Co. v. Town of Hampton*, 120 N.H. 68 (1980) (towns could not require underground transmission lines, given the statute vesting the permitting authority in the site evaluation committee, the Commission and other state agencies).

Looking then to the specific authority granted municipal utilities, we find in RSA 38:3 explicit authorization for certain actions by a municipal utility, including placing poles and wires, however, we find no express authority for a municipality to construct electric plant within a franchised utility's service area without Commission authorization.

[1] It is a well established principle of statutory construction that one must read statutes so as to avoid an unjust, unreasonable or absurd result. *U.S. v. Ferryman*, 897 F. 2d 584 (1st Cir. 1990), reh. denied, cert. denied, 480 S. Ct. 830 (1990). We find Ashland's reading of RSA 38:3 leads to such a result and, therefore, is not tenable.

We believe the appropriate reading of RSA 38:3 is to read it within the context of the entire chapter, rather than by isolating clauses or individual provisions. *N.H. Div. of Human Services ex rel. Hahn v. Hahn*, 133 N.H. 776 (1990) (court must examine statute as a whole, and not simply examine isolated words and phrases therein), *FDIC v. Caia*, 830 F. Supp. 60 (1st Cir. 1993) (court must look at statutory language and then construe statute as a whole, in manner consistent with plain meaning).

NH RSA Chapter 38 delineates a comprehensive process by which a municipal utility may acquire or establish plant for the manufacture and distribution of electricity. That process first requires that the municipal utility obtain approval from the town's voters. RSA 38:5. Next, the public utility operating within the municipality must be given the opportunity to sell that portion of its plant and property within the municipality which is suitable for use by the municipal utility. RSA 38:6. If the public utility fails to reply to the notice or refuses to sell its plant, then the municipality may construct its own plant or may take the private plant and property by condemnation. RSA 38:10. However, such construction or condemnation can occur only after the Commission's determination that it is in the public interest to do so. *Id.*

The foregoing process is consistent with the public policy which disfavors the construction of redundant or parallel utility lines because they are uneconomic and therefore not in the public interest. By requiring municipal utilities seeking expansion to first approach their local public utility to purchase existing facilities, the risk of redundant construction is greatly reduced. Under the scheme outlined in RSA 38, redundant construction can only occur as a last resort after attempts at acquisition through sale by the public utility have failed. We believe this interpretation of the statute is not only consistent with applicable provisions of statutory construction but is also sound public policy.

Ashland apparently believes that if it chooses, it could bypass all of the provisions of Chapter 38 by simply refusing to begin the expansion process with an offer to purchase. So long as the municipal utility is expanding some existing plant, according to Ashland, it need not seek

Commission approval or meet any of the other terms contained within Chapter 38.

[2-6] We do not believe this is a sound

Page 710

reading of Chapter 38. While we grant the statute is not as clear as one might wish, it is illogical to conclude that the legislature would articulate a highly detailed process (which includes Commission approval) for a municipal utility to follow in acquiring and establishing plant while at the same time allowing the municipal utility complete exemption from our oversight in instances where it seeks to expand by constructing new plant in a public utility's service area. Our dilemma is similar to that of the Supreme Court in *Public Service Co. v. Town of Hampton, supra*. As the Court stated in Hampton, "[w]e regard it as inconceivable that the legislature, after setting up elaborate procedures and requiring consideration of every imaginable interest, intended to leave the regulation of transmission lines siting to the whim of individual towns." 120 N.H. at 71. We must construe RSA Chapter 38 in keeping with what we believe to be the statute's purpose. See *Quality Carpets, Inc. v. Carter*, 133 N.H. 887 (1991) (court will construe statutes so as to effectuate their evident purpose).

Under Ashland's reading of the statute, a municipal utility that now serves a small portion of a town within an area already served by a public utility could "expand" that plant (by constructing redundant electrical lines) to the point of competing with, and completely displacing the public utility serving the rest of the town. The Commission, according to Ashland, would be powerless over any aspect of this expansion, regardless of the effect on the ratepayers and shareholders of the public utility.

We do not believe we can or should abdicate our responsibilities to those utilities which we regulate as Ashland urges. RSA 374:3 authorizes the Commission to exercise "general supervision of all public utilities and the plants owned, operated or controlled by the same so far as necessary to carry into effect the provisions of this title." Our supervisory role surely includes oversight on the development of other utility providers, even municipal providers, and we must be concerned about the rate impacts and threats to the stability and efficiency of the public utility in these instances. We might find, after notice and hearing, that such expansion as Ashland envisions is in the public interest. We cannot accept, however, Ashland's argument that such expansion should occur without some Commission analysis of the effects of that expansion.

In addition, another statute should be mentioned, though it does not resolve the threshold question. RSA 364:1 requires the Commission, if requested in writing by the selectmen, 50 or more qualified voters or one quarter of the town's voters, to issue an advisory report regarding the municipal's plan. A hearing to determine whether there is a public need for construction or purchase of the plant must be held by the Commission (RSA 364:2) and the report of the Commission must be read to the town voters. This hearing is not a substitute for the hearing under RSA 38:10 and is not mandatory on the part of the municipal utility, unless requested by the Selectmen or requisite number of voters. There has been no such request in this case.

We have considered the comments of the REA, that to allow Ashland to build parallel lines will jeopardize the ability of NHEC to meet its debt obligations. We regret that REA did not provide more detailed analysis of its views concerning the relationship between municipal

utilities and federally supported electric cooperatives. The REA makes low interest loans to electric cooperatives pursuant to the Rural Electrification Act, 7 U.S.C. § 901 *et seq.* Property of the cooperative is generally mortgaged to REA in exchange for the loans which, we understand, is the case with NHEC.

There are numerous cases finding a municipality cannot condemn federally supported utility property as to do so would frustrate a federal purpose and in some cases violate federal standards for loans to cooperatives. *See e.g. City of Morgan City v. South Louisiana Electric Cooperative Ass'n*, 1994 WL 460005 (5th Cir. LA), *Public Util. Dist. No. 1 of Franklin County v. Big Bend Electrical Cooperative, Inc.*, 618 F. 2d 601 (9th Cir. 1980), *Public Util. Dist. No. 1 of Pend Oreille Co. v. United States*, 417 F. 2d 200 (9th Cir. 1969) (all prohibiting condemnation of REA financed electric cooperative property), *City of Madison v. Bear Creek Water Assn, Inc.*, 816 F. 2d 1057 (5th Cir. 987) (prohibiting attempt to condemn Farmers Home

Page 711

Administration supported water utility property). Because the case before us does not involve condemnation, these decisions are not dispositive, but they provide further guidance that the powers of municipalities are not absolute and municipalities may be limited when other purposes would be frustrated by their actions.

We conclude that Ashland must work through the process delineated in RSA Chapter 38 to obtain authorization for purchase, condemnation or, as appears likely given the negotiations thus far, construction of alternate plant. Moreover, because Ashland started the acquisition process in 1993 under Chapter 38, it cannot now argue that Chapter 38 does not apply to Ashland's expansion plans. In addition, as stated previously, if requested by the requisite number of voters, the Commission must conduct an inquiry into Ashland's plan and have its report read to the voters pursuant to RSA 364:1 through 3.

We will not address the second question raised by the Petition, regarding the exclusivity of an electric franchise, as we do not believe it can be answered in the abstract. Issues of exclusivity and competition involve a determination of what is in the public good, and any analysis of the public good depends on the facts and circumstances of the interested parties. The exclusivity of electric franchises is likely to be a significant issue to be addressed in the hearing under RSA 38:10 and, if requested, the hearing under 364:2.

Finally, we must caution readers of this Order that our determination herein addresses the relationship between a municipal electric utility and a non-municipal electric utility. We have not been asked to determine the relationship between two electric utilities and do not intend by this Order to make any rulings regarding one electric utility entering the service territory of another.

Based upon the foregoing, it is hereby

ORDERED, that Ashland must utilize the procedures of RSA Chapter 38 before extending its distribution facilities within the corporate limits of the Town which are also within the franchise area of NHEC; and it is

FURTHER ORDERED, that Ashland's request for a declaratory ruling that it may proceed with the extension of its distribution facilities within the corporate limits of the Town and that

Commission authorization is not needed is DENIED; and it is

FURTHER ORDERED, that Ashland's request for a declaratory ruling that the grant of a service territory to a public utility does not confer authority to that utility to provide service that is exclusive as to a municipal electric department operating within its corporate limits is DENIED WITHOUT PREJUDICE.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of December, 1994.

DISSENTING OPINION BY
COMMISSIONER ELLSWORTH

[7-12] I cannot concur with my colleagues regarding the authority of the Commission over municipal utilities. They interpret greater authority over municipal utilities than the language of RSA 38 describes. Their interpretation expands the role of the Commission beyond that which the statutes provide. I, therefore, dissent.

Ashland needs no permission from this Commission to extend its facilities within its municipal boundaries, and cannot be denied the right to extend into an area within the municipality even if that area is being served by a regulated public utility. Whatever exclusivity a public utility may have vis-a-vis another public utility regarding its franchise cannot, in my view, be interpreted to prohibit a municipal utility from serving residents within its municipality when those residents request municipal service, even if that means duplicating the poles and wires which serve them.

Ashland intends to extend its distribution system to serve additional customers on North Ashland Road. I find no provision in RSA Chapter 38 which requires them to seek approval of the Commission for expansion of their existing municipal plant. I am aware of no Commission ruling or decision of the New Hampshire Supreme Court which prevents a municipality from serving within its boundaries or which limits, within those boundaries, the

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areas it may serve. The same authority which allows it to operate within the municipality allows it to expand into an area of that municipality even when that area is presently served by a public utility, so long as it does not attempt to take public utility property by eminent domain in the process.

My colleagues interpret Chapter 38:3 to require a municipal utility to negotiate with a public utility whenever it seeks to extend poles and wires into an area served by that public utility, and to come before the Commission for approval. By contrast, I read Chapter 38:3 to compel the municipality to come before the Commission only in those instances where it seeks to take existing public utility property by eminent domain.

Chapter 38:3 requires Commission approval when the municipality seeks to take, purchase, lease or otherwise acquire plants. Clearly Ashland is not seeking to take, purchase or lease NHEC's property. To interpret that Ashland is *acquiring* property by building new facilities, as do my colleagues, is an interpretation that I do not share. Among the Webster's Third New International Dictionary definitions of "acquire" is the common sense use of the term, "come into

possession of ...". The Random House Dictionary of the English Language defines "acquire" as "to come into possession of" and "to get as one's own: to acquire property." Here, Ashland is "acquiring" nothing.

Ashland intends to expand its plant within its municipal boundaries by building new lines. It is illogical to refer to such construction as "purchasing, leasing or acquiring".¹⁽⁶¹⁾ The statutory provision contained within RSA 38:3 that the "... municipality may ... erect poles, place wires ... for the transmission and distribution of electricity ... *and may change, enlarge, and extend the same from time to time ...*" allows Ashland to proceed in its construction without further consideration of this Commission (emphasis added).

Chapter 38:5 is equally inapplicable. It provides that any town may "acquire or establish such a plant" after approval by 2/3 of the town's voters present. Its reference to "such a plant" goes to the "plant" defined in RSA 38:3 which, as I have stated, does not include Ashland's extension of existing plant. The section, therefore, does not apply. I grant, however, that the language of RSA 38:5 creates some confusion by its use of the word "establish", suggesting that when a municipal utility wants to establish new plant by means of extension, it must subject itself to the voting requirements of RSA 38:5. While I do not believe that the extension of existing plant constitutes the acquiring or establishing of such plant, the record indicates that the town has taken a vote to extend its facilities, whether or not such a vote was necessary. If the word "establish" commits the town to comply with this section, then, Ashland has met that requirement.

RSA 38:6 requires a municipality to provide notice to the utility of its interest in purchasing the utility's plant. Ashland complied with this section by notifying NHEC on March 13, 1993 of the town's vote to offer to acquire its assets. RSA 38:7 defines the consequences if the public utility declines an offer to purchase. The municipality is free at this point either to proceed with an eminent domain action or to build its own distribution lines. If it chooses to take the property by eminent domain, it must continue to proceed under this section. If it chooses to construct its own lines, it may do so without further reference to RSA Chapter 38, and without further Commission involvement.

My colleagues find the provisions of RSA 38:10 regarding construction and condemnation of new plant to put Ashland's proposal squarely within the mandate of the statute, thus requiring Commission approval. While I concede that this section refers to "construction" of utility plant, I believe it anticipates a far more significant construction plan than the simple extension of an existing distribution line. Therefore, I find section 10 inapplicable to Ashland's proposal.

While there is much discussion in my colleagues' decision regarding the application of RSA Chapter 364 mandating Commission review of municipal utility expansion in certain circumstances, the discussion is not relevant to the instant case. Unless there is a request by either 50 voters or 1/4 of voters for this Commission to evaluate a municipal's acquisition or construction plans, then the statutory provisions of Chapter 364 are inapplicable. Even if we had

been so requested under Chapter 364, and we were not, it is interesting to note that our findings would not even then be mandatory, and the municipality could proceed even if we were to conclude that its proposal was not sound. I find it illogical that the legislature would invest in

the Commission the authority my colleagues read into Chapter 38 (requiring Commission approval of a municipal utility's plans to expand) while also enacting legislation which makes our findings on the very same issue non-binding.

While sections of RSA Chapter 38 have been amended from time to time, section 10, so heavily relied upon in the majority decision, was enacted in 1935 and remains unchanged to this day. By contrast, RSA Chapter 364 was enacted in 1949 and has never been amended. To the extent the two statutes are in conflict, the later enacted provisions of RSA Chapter 364 should govern. In any event, no vote pursuant to RSA Chapter 364 was ever requested or taken by Ashland, and no request for Commission findings was ever made.

The majority opinion is based in part on the Commissioners' interpretation of their responsibility to protect the financial stability of an existing public utility. While I agree that such protection is one of our obligations, I believe our role in overseeing public utilities is limited when the need for protection is occasioned by a municipal utility. RSA 362:2 provides a clear exemption for municipal utilities from Commission regulation, and provides no protection for a public utility when its interests are adversely affected by a municipal utility's actions.

The majority decision also expresses concern about the potential rate implications of stranded investment to public utilities' ratepayers if municipal utilities are allowed such expansion without Commission approval. I agree that we have a responsibility to public utilities and their ratepayers, and I agree that a risk of stranded investment could cause adverse rate impacts on a public utility's remaining customers if they were denied access to substantial portions of their rate base. But, I believe that we must stand aside in cases involving municipal utilities. In the instant case, there is no significant potential for harm to NHEC's ratepayers. Even if all of NHEC's customers on North Ashland Road were to switch to Ashland's service, the NHEC facilities would not be stranded. These customers are now served by a line whose primary purpose is to provide electricity to another segment of NHEC's system, not to serve only that area in which customers are located. All of NHEC's facilities along North Ashland Road will continue to be used for the rest of NHEC's operations and, therefore, will not be considered stranded investment.

In fact, in contrast to the potential result of a Chapter 38 taking by eminent domain, NHEC will continue to have the opportunity to serve its existing customers and any new customers within its franchise if, after the duplicate facilities are installed, those customers wish to receive service from NHEC. NHEC is being denied nothing except the exclusive assurance that those customers will remain captive.

I envision undue and unjust harm to Ashland's residents if we deny them an opportunity to choose between electric service from their existing municipal provider or from the regulated public utility. There is increasing nationwide acceptance of competitive alternatives in the provision of retail electric service. Denying an existing municipal utility the right to expand within its boundaries, when that expansion is at the request of its own municipal residents, is contrary to the regulatory goal of promoting competitive alternatives.

Finally, my decision today rests on a notion of fairness, in addition to the statutory analysis presented above. When NHEC was granted a franchise to serve the Town of Ashland, it was done with the knowledge that a municipal utility was already providing service to a portion of

the Town. The two providers have shared the right to serve the residents of the Town of Ashland for years. I cannot today interpret NHEC's right to serve as being any greater than the right of the municipality to serve its own customers, particularly given NHEC's knowledge from the start that it provided service in an area already served, in part, by the municipal utility.

In conclusion, Ashland is not engaged in

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the type of activity which would trigger the Chapter 38 requirements of notice and hearing before the Commission. Extension of existing municipal utility plant within the municipality's boundaries, even into the territory of a regulated utility, does not require the approval of the Commission. Ashland is free, in my opinion, to extend its distribution facilities within its corporate limits without the authorization of the Commission.

Dated: December 21, 1994

Bruce B. Ellsworth
Commissioner

FOOTNOTES

¹I admit that the opening language in RSA 38:3 (the "... municipality may ... maintain and operate ... plants for the ... distribution of ... electricity ... as may be permitted, authorized, or directed by the commission ...") may suggest that the Commission must have initially approved Ashland's engaging in business, but in fact the Commission's historical records do not indicate that it has approved initial franchises to municipal utilities. This, however, has not been advanced as a reason why Ashland should not continue to operate as a municipal utility and, therefore, the interpretation of this section need not be pursued here.

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NH.PUC*12/22/94*[70743]*79 NH PUC 715*Beaver Village Realty Trust

[Go to End of 70743]

79 NH PUC 715

Re Beaver Village Realty Trust

DE 92-226

Order No. 21,474

New Hampshire Public Utilities Commission

December 22, 1994

ORDER changing the status of Consumers New Hampshire Water Company as receiver of a small water utility to that of an agent of commission staff, who is now acting as receiver. Additionally, hearings are set to consider formal abandonment of the system, or, as an alternative, formation of a homeowners' association charged with overseeing water operations.

1. RECEIVERS, § 1

[N.H.] Appointment as receiver — Change in receiver's status — To that of agent for another receiver — Factors affecting such change — Prolonged period of receivership — Pending proceeding to resolve issues of ownership and operation — Water utility. p. 716.

2. SERVICE, § 239

[N.H.] Abandonment — Efforts to avoid abandonment — Receivership — Impact of prolonged period of receivership — Greater potential for abandonment — Formation of homeowners' association as alternative — Water utility. p. 716.

BY THE COMMISSION:

ORDER

On March 25, 1993 the New Hampshire Public Utilities Commission (Commission) appointed a receiver for the Beaver Village Realty Trust Water System (water system) located in the Porcupine Park subdivision of the Town of Salem by Report and Order No. 20,795. Four subsequent orders detail the later history of the docket. The last order, Order No. 21,337 issued August 31, 1994, extended receivership of the system to Southern New Hampshire Water Company, Inc. (now known as Consumers New Hampshire Water Company, Inc. and referred to herein as "Consumers") until November 30, 1994. It is also noteworthy that four hearings and several meetings with homeowners have occurred in the docket to date.

The following three events have precipitated this order:

1. Efforts, primarily by the New Hampshire Department of Environmental

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Services (NHDES) and the Attorney General's Office, with the cooperation of Commission Staff (Staff) and Consumers, culminated in a Superior Court order against the developer, William Dickey, on October 7, 1994. The order specified six deadlines leading to the construction of a tie-in to the Salem municipal system or other improvements to bring the existing system into compliance with NHDES standards, with construction to be completed by July 15, 1995. The order also required nine escrow payments by Mr. Dickey. Two deadlines and two escrow payment dates have passed with no response from Mr. Dickey, indicating that pursuit of Mr. Dickey regarding any realistic involvement in resolution of the system's deficiencies may prove fruitless.

2. Consumers, acting at the request of NHDES and in its capacity as receiver for the Commission, issued a boil water order on November 7, 1994 following several instances of bacterial contamination in the system. Lifting of the order is conditional on installation of a chlorination facility or a new supply source such as a Salem tie-in.

3. As noted above, Consumers' receivership of the system expired on November 30, 1994,

leaving no party currently responsible for operation of the system. Further, Consumers has expressed a desire to not continue its receivership responsibilities in the system.

[1, 2] Given the deficiencies of the system, the diminishing prospects of a long term solution, and the loss of over a third of the customer base to individual wells, we must consider the possibility of the permanent abandonment of the community water system. Consumers has indicated a willingness to continue its involvement in the system by acting as the agent of Commission Staff to carry out the duties of receivership during this transition period. Consumers' offer is contingent on the meeting of certain conditions, one of which is receipt of a \$450 per month fee. We laud Consumers' willingness to assist and to act in the best interests of the water system's users even though they are not Consumers' customers.

We are not ruling out other options such as formation of a homeowners association to take over the system. We will, however, schedule an evening public hearing in Salem at which all parties will have an opportunity to be heard, and any alternative proposals regarding the future of the system may be presented.

Finally, we will hold the monthly water system fee to \$10 per customer per month for the time being, anticipating this to be sufficient to cover the minimum remaining costs under receivership. We will increase the monthly customer charge if it proves insufficient to meet those costs. We note that RSA 374:47-a, the receivership statute, requires that "Any costs incurred by the commission, its staff or appointed receiver under this section shall be the responsibility of the utility [i.e., Beaver Village Realty Trust] or its customers." We expect and direct all customers to pay what is rightfully owed for service received. It is our expressed intent to now apply every legal enforcement action available to the State of New Hampshire against all non-paying customers for the duration of the Staff's operation of the system, through its agent, Consumers.

Based on the foregoing, it is hereby

ORDERED, that a hearing be held at 7:00 PM on January 5, 1995 at the Kelley Library, 234 Main Street, Salem, New Hampshire to show cause why the community water system should not be immediately and permanently shut down; and it is

FURTHER ORDERED, that Staff is directed, with Consumers as Staff's agent, to carry out the duties of a receiver, on an interim basis until the system has been abandoned or an alternative solution has been reached which will bring the system into compliance with all applicable state and federal standards, but in no case shall Consumers' responsibilities relative to the system continue beyond June 30, 1995; and it is

FURTHER ORDERED, that Consumers' involvement shall be subject to the same terms and conditions contained in Order No. 21,048, including entitlement to \$10 per customer per month, except that Consumers shall be acting as the agent of Staff; and it is

FURTHER ORDERED, that the Executive Director and Secretary of the Commission immediately mail a copy of this order to each customer of the water system via certified mail.

By order of the Public Utilities

Commission of New Hampshire this twenty-second day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 20,795, 78 NH PUC 169, Mar. 25, 1993. [N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 21,337, 79 NH PUC 471, Aug. 31, 1994.

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NH.PUC*12/22/94*[70744]*79 NH PUC 717*Lakes Region Water Company, Inc.

[Go to End of 70744]

79 NH PUC 717

Re Lakes Region Water Company, Inc.

DE 94-187

Order No. 21,475

New Hampshire Public Utilities Commission

December 22, 1994

ORDER authorizing a retail water utility, Lakes Region Water Company, Inc., to acquire and operate the water system of a small real estate development, Brake Hill Acres.

1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Transfer of small water utility — Grounds for approval — Need for system improvements in small utility — Financial, managerial, and technical abilities of acquiring company — Improvements in cash flow through change to quarterly billings. p. 717.

APPEARANCES: Thomas Mason for Lakes Region Water Company, Inc.; and Robert J. Frank for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On August 22, 1994 Lakes Region Water Co., Inc. (Lakes Region) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to purchase the Brake Hill Acres Water System and associated franchise rights in a limited area of Gilford, New Hampshire, pursuant to RSA 374:22 and 26.

Brake Hill Acres is a water system serving 32 customers. It is currently owned by Mrs. P. Pearl York. It has never been regulated by the Commission, but Staff of the Commission have been working with Mrs. York for some time to bring the water system into compliance with applicable statutes. Mrs. York's desire to sell the system, rather than undertake proceedings before the Commission, led to the establishment of docket DE 93-136, a petition to purchase the system by Mr. P. LaBonte. Mr. LaBonte has been providing the maintenance and supervision of the system for a number of years. Mr. LaBonte subsequently abandoned his efforts to purchase the system, and the Commission closed the docket. On August 22, 1994 the instant docket was opened.

[1] A hearing on the petition was held before Commissioner Ellsworth on November 22, 1994. At that hearing, Mr. Mason represented that his company, Lakes Region Water Company, Inc., has the managerial, technical and financial ability to operate this water system, since Lakes Region currently owns and operates ten regulated water systems in New Hampshire. Mr. Mason indicated that the system was in need of some improvements, and that it did not pass its recent lead and copper tests. Mr. Mason's estimates of the necessary system improvements are contained in Exhibit 1 introduced at the hearing and the data responses of the Company to data requests submitted by Staff. Mr. Mason also anticipated the installation of customer meters in the system within one to two years.

The purchase price of the system is to be \$5,048 as shown on Exhibit 2 introduced at the

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hearing. Mr. Mason testified that the current annual rate to Brake Hill customers was \$160 billed semi-annually; he requested permission to change the billing frequency to quarterly while retaining the current annual rate until the next rate case for Lakes Region. He indicated that he anticipated that the Company would be filing a rate case within the next one to two years.

A letter has been received from the Gilford Selectmen indicating they have no opposition to the acquisition of the Brake Hill system by Lakes Region. Mr. Mason has also provided a copy of a letter which will be distributed to Brake Hill customers, providing them with notice of the purchase, information on the Company, and contact information for service or billing issues.

Staff did not present witnesses at the hearing. However, Staff's attorney, Mr. Robert Frank, indicated that the Staff supported the petition and is satisfied that Lakes Region has the ability to own and operate the system in accordance with applicable requirements.

Based upon the foregoing, it is hereby

ORDERED, that the petition of Lakes Region Water Company, Inc. to purchase the Brake Hill Acres Water System is approved; and it is

FURTHER ORDERED, that Lakes Region is authorized to operate within the service territory outlined on a map included in Exhibit 1, in accordance with RSA 374:22 and 374:26; and it is

FURTHER ORDERED, that the Company's request to convert to quarterly billing in arrears is approved effective as of the date of the purchase of the system.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 1994.

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NH.PUC*12/23/94*[70745]*79 NH PUC 718*Connecticut Valley Electric Company, Inc.

[Go to End of 70745]

79 NH PUC 718

Re Connecticut Valley Electric Company, Inc.

DF 94-275

Order No. 21,476

New Hampshire Public Utilities Commission

December 23, 1994

ORDER authorizing an electric utility to enter into a five-year bank loan agreement for \$2.5 million, in order to pay off debt owed its parent company. The interest rate on the new loan may not exceed that of the current loan with the parent company.

1. SECURITY ISSUES, § 57

[N.H.] Bank loan agreement — Purposes — Repayment of loan to parent company — Limits on interest rate — Electric utility. p. 718.

BY THE COMMISSION:

ORDER

[1] On November 18, 1994, Connecticut Valley Electric Company (the "Company") filed a petition for approval of long term financing in the principal amount of \$2.5 Million. The proceeds of the financing will be used to repay the outstanding note to its parent, Central Vermont Public Service Corporation. The Company asserts that the interest rate for the proposed financing will be lower than the 9.5% interest rate on the current note.

The Company is planning to choose a five year maturity option in order to assure the availability of financing for as long a period as the First NH Bank is willing to provide. The bank proposed several options from which the Company proposed to select the prime, adjusted annually, which at the present time is 8.5%. The

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Company will use a one year prime rate lock option, which has been approved by the Board of Directors provided that the prime rate does not exceed 9%. The Company projects annual

interest rate savings would amount to \$25,000.

The terms of the loan agreement call for a negative pledge by the Company that it will not transfer, pledge, or suffer to exist any mortgage or other encumbrance or lien of any kind upon any of the real or personal property, except for certain circumstances for which reserves must be provided, encumbrances which do not exceed \$100,000, or certain insurance transactions which are discharged within 60 days.

The Company proposed approval of several options that were provided by the First NH Bank. Two of the options would be at rates which were the same as the present note from the parent (9.5%), or higher; 10.5% for the five year option. The Company states that it would only choose an option that is lower than its present note. The option that they are selecting would provide for the choice annually of prime, with an option to renew for a five year period. No penalty would be paid if the option is not renewed during the five year period.

After investigation of this filing, the Commission is concerned with the projections of net income contained in the filing. The Company has stated to the Finance Director that later projections for net income are better than included in the documentation presented to the First NH Bank. We are also concerned that the present trend of the prime rate is upward and that the Company's financing could result in higher interest costs. We will expect the Company to seek financing options which result in rates that are no higher than the present note with its parent. The current rate at which the note would be issued is 8.5%, which would reduce interest costs for the Company and reduce the overall cost of capital.

Based upon the foregoing, it is hereby

ORDERED, that Connecticut Valley Electric Company is hereby authorized to enter into a long term loan agreement for a period of five years with the First NH Bank at the prime, adjusted annually option; and it is

FURTHER ORDERED, the Connecticut Valley Electric Company will provide the Commission with a copy of its loan agreement when it is initially finalized; and it is

FURTHER ORDERED, that the interest rate shall not exceed 9.5% during the five year loan period unless the Company requests further approval of this Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 1994.

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NH.PUC*12/28/94*[70746]*79 NH PUC 719*Union Telephone Company

[Go to End of 70746]

79 NH PUC 719

Re Union Telephone Company

DR 94-281
Order No. 21,477

New Hampshire Public Utilities Commission

December 28, 1994

ORDER authorizing a local exchange telephone carrier to introduce custom local area signaling services, including Caller ID, Caller ID-related blocking options, call trace, call forwarding, repeat dialing, and selective call acceptance services.

1. RATES, § 553

[N.H.] Telephone rate design — Special services — Introduction of custom local area signaling services — Caller ID and associated blocking services — Call trace and forwarding features — Repeat dialing and selective call acceptance options — Local exchange carrier. p. 720.

2. SERVICE, § 449

[N.H.] Telephone — Local exchange carrier — Custom local area signaling services — Caller ID and associated blocking services — Call trace and forwarding features — Repeat dialing and selective call acceptance options. p. 720.

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BY THE COMMISSION:

ORDER

[1, 2] On November 28, 1994, Union Telephone Company (UTC or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce Call Control Services, correct some clerical items, move and re-format Dual-Mate Service within the tariff, re-word a section to improve clarity and to lengthen the demonstration period for Custom Calling Services for effect January 1, 1995.

The Call Control Services which UTC proposes to introduce are Custom Local Areas Signalling Services (CLASS) which utilize the Signalling System 7 network. The services which UTC proposes to introduce include Warm Line, Repeat Dialing, Automatic Recall, Caller ID, Caller ID Blocking, Call Trace, Selective Call Acceptance, Selective Call Forwarding, Selective Call Rejection and Priority Ringing.

Following conversations with Staff, the Company revised several of its proposed tariff pages to further clarify several of the service descriptions, rates and regulations and submitted the revised pages to the Commission on December 16, 1994. The Automatic Recall feature of the Call Control Services allows a customer to return a call to the last incoming number. This feature was withdrawn from New England Telephone (NET) Company's filing in DR 91-105 (Phonesmart) due to privacy concerns. As with the recent review of Bretton Woods Telephone Company's request to provide an Automatic Recall service, Staff has been assured that the Company has obtained a software patch which will disable Automatic Recall if the calling

customer's number is blocked. This will prevent the Automatic Recall from occurring and will protect the customer who has blocked his number from having his number revealed. Staff believes this adequately addresses safety and privacy concerns. The proposed revisions for Caller ID and Caller ID Blocking are consistent with the guidelines for those services established for NET in DR 91-105 except for the offering of Automatic Recall. Consequently, we believe the public should be afforded an opportunity to respond in support of, or in opposition to, Automatic Recall.

In addition, Staff expressed concern that the Company have appropriate operational procedures in place to provide the Call Trace service.

We find this filing to be in the public good and approve it subject to the limitations expressed in our order below.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Union Telephone Company are approved, effective as filed:

Table of Contents, Page 2,

Sixth Revision

Check Sheet, Page 1

Check Sheet, Page 2

Index, Page 2, Fifth Revision

Index, Page 3, Tenth Revision

Part III - General, Section 3,

Page 1, First Revision

General, Section 3A, Page 3, Original

General, Section 3A, Page 4, Original

General, Section 3A, Page 5, Original

General, Section 3A, Page 7, Original

General, Section 3A, Page 8, Original

General, Section 3A, Page 9, Original

General, Section 5, Page 1,

Fourth Revision

General, Section 5, Page 2,

Fifth Revision

General, Section 5, Page 3,

Fourth Revision

and it is

FURTHER ORDERED, that the following pages are approved with the exception of the language and rates pertaining to the Automatic Recall feature:

Part III - General, Section 3A,

Page 6, Original

General, Section 3A, Page 10, Original

General, Section 3A, Page 11, Original

and it is;

FURTHER ORDERED, that within 60 days of the date of this Order, Union Telephone

Page 720

Company file written procedures with the Commission describing the details of how calls are traced and automatically reported to the Call Annoyance Department, and the subsequent steps that the staff of the Annoyance Call Department will take; and it is

FURTHER ORDERED *NISI*, that the language and rates on the following pages, which pertain to the Automatic Recall Service, are approved effective January 27, 1995 unless the Commission provides otherwise in a supplemental order issued prior to that date:

Part III - General, Section 3A,
Page 6, Original

General, Section 3A, Page 10, Original
General, Section 3A, Page 11, Original

and it is

FURTHER ORDERED, that pursuant to N.H. Admin Rules Puc 203.01, UTC cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the state of New Hampshire in which operations are proposed to be conducted, such publication to be no later than January 11, 1995 and be documented by affidavit filed with this office on or before January 27, 1995; and it is

FURTHER ORDERED, that UTC send a copy of this Order *Nisi* to all individuals on the attached service list of NHPUC docket DR 91-105, Phonesmart, by first class U.S. mail, postmarked no later than January 11, 1995 and shall be documented by affidavit with the Commission on or before January 27, 1995; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter with regard to the authorization of Automatic Recall no later than January 24, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective as of January 27, 1995, unless the Commission, on its own motion, orders otherwise.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1994.

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DISCOVERY FILINGS,
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BE SENT TO THE FOLLOWING STAFF

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NH.PUC*12/30/94*[70747]*79 NH PUC 722*Granite State Electric Company

[Go to End of 70747]

79 NH PUC 722

Re Granite State Electric Company

DE 94-314

Order No. 21,478

New Hampshire Public Utilities Commission

December 30, 1994

ORDER certifying that an electric utility's conservation programs meet the requirements of the Clean Air Act Amendments of 1990, so as to qualify the utility for allowances under the Environmental Protection Agency's acid rain program. Specifically, the utility is found to have a viable least-cost planning schedule and successful conservation measures, and to have made use of renewable energy resources and cost-effective demand-side management programs.

1. CONSERVATION, § 1

[N.H.] Conservation programs — Electric utility — Compliance with Clean Air Act Amendments — Eligibility for federal acid rain program allowances — Factors — Successful least-cost planning and demand-side management projects — Use of renewable energy resources. p. 723.

Page 722

2. ELECTRICITY, § 4

[N.H.] Operation and practices — Conservation programs — Compliance with Clean Air Act Amendments — Certification for federal acid rain program allowances. p. 723.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1, 2] On December 28, 1994, Granite State Electric Company (Granite State) filed with the New Hampshire Public Utilities Commission (Commission) a request that the Commission certify certain aspects of Granite State's application to the Environmental Protection Agency (EPA) to receive allowances known as the Energy Conservation and Renewable Energy Reserve under the EPA's Acid Rain Program. These allowances are awarded pursuant to subpart F of Title IV of the Clean Air Act Amendments of 1990 (CAAA).

The CAAA requires that each utility's application for allowances contain certification from the appropriate regulatory authority (which in this case is the Commission) that the utility meets certain sulphur dioxide emissions standards through both demand side conservation programs and the use of renewable energy resources. 40 CFR 73.82(a)(4), (5), (6) and (7). The

requirements under each of the pertinent sections and the Commission's analysis of Granite State's compliance with those requirements are addressed below.

II. CERTIFICATION STANDARDS

A. *Section (4) Requirements*

40 CFR 73.82(a)(4) requires Commission certification that Granite State is subject to a least cost planning process that a) provides for public participation, b) evaluates the full range of resources to meet future demand at the lowest cost, c) treats demand-side and supply-side resources on an integrated basis, d) considers diversity, reliability and dispatch ability and other risk factors, and e) is being implemented to the maximum extent possible.

The requirements of Section (4) regarding Granite State's participation in a least cost planning process is met by our recent investigation into Granite State's least cost planning process in Docket DE 92-079. That investigation meets the requirements of Section (4) of the regulations. We approved Granite State's least cost planning process in Order No. 20,789 (March 9, 1992).

B. *Section (5) Requirements*

40 CFR 73.82(a)(5) requires Commission certification that Granite State's energy conservation measures and renewable energy generated are consistent with the least cost planning process.

The requirements of Section (5) regarding Granite State's energy conservation measures and renewable energy generated is met in part by our investigation into Granite State's Conservation and Load Management (C&LM) program in Docket DR 92-161. In that docket we approved energy conservation measures to be implemented in a manner consistent with Granite State's currently effective least cost plan. The rest of the Section (5) conditions are met by our approval of the least cost planning process which includes a review of all of Granite State's energy resources, including renewable energy.

C. *Section (6) Requirements*

40 CFR 73.82(a)(6) requires Commission certification that Granite State's least cost planning process has been approved by the applicable regulatory authority and that the planning process meets the requirements of Section (4) of the regulations.

As stated above, the requirements of Section (6) have been met by our approval of Granite State's least cost planning process. *See In Re Granite State Electric Company*, DE 92-079,

Page 723

Order No. 20,789 (March 9, 1992). In this order, we reviewed and approved Granite State's least cost plan, which satisfied the Section (4) requirements.

D. *Section (7) Requirements*

40 CFR 73.82(a)(7) only pertains to utilities which are not subject to our jurisdiction. Because Granite State is clearly within our jurisdiction, Section (7) is not applicable and we need take no action.

E. Other C&LM and Renewable Resources

In addition, Granite State seeks Commission certification that any additional C&LM measures or renewable resources not listed in Appendix A of 40 CFR Part 73, for which Granite State is seeking allowance credit, meet certain standards. Most of Granite State's C&LM programs are listed in Appendix A. There are, however, some C&LM measures not listed in Appendix A for which Granite State seeks certification.

Under the CAAA, the measure must be a cost-effective demand-side measure consistent with least cost planning process. 40 CFR 73.81(a)(2)(i). All measures approved in DR 92-161, Granite State's C&LM docket, meet this standard.

The measure must also increase the efficiency of a customer's use of electricity without increasing the use of fuels other than qualified renewable energy, industrial waste heat or industrial waste gases. 40 CFR 73.81(a)(2)(i). Our approval of C&LM measures is designed to be fuel neutral and to reduce energy consumption. We did not approve measures which would increase the use of other fuels.

Finally, the measure must be implemented pursuant to an approved C&LM program which meets the requirements of 40 CFR 73.82(a)(4). *See* 40 CFR 73.81 (a)(2)(ii). As previously stated, this condition is met by our approval of Granite State's C&LM programs. *In Re Granite State Electric Company*, DR 92-161, Order No. 20,798 (March 25, 1993).

Granite State is not seeking certification of any renewable energy resource not listed in Appendix A. Therefore, we need take no action regarding other renewable energy resources.

III. CONCLUSION

We find Granite State to have met the requirements of 40 CFR 73.82(a)(4), (5), (6) and (7) and, therefore, will certify that Granite State is in compliance with those sections of the CAAA regarding demand side conservation programs and the use of renewable energy resources.

Based upon the foregoing, it is hereby

ORDERED, that the Commission certifies that Granite State Electric Company meets the requirements of the Clean Air Act Amendments of 1990, 40 CFR 73.82(a)(4), (5), (6) and (7) regarding demand side conservation programs and the use of renewable energy resources.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DE 92-079, Order No. 20,789, 78 NH PUC 134, Mar. 9, 1993. [N.H.] Re Granite State Electric Co., DR 92-161, Order No. 20,798, 78 NH PUC 181, Mar. 25, 1993.

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NH.PUC*12/30/94*[70748]*79 NH PUC 725*Granite State Electric Company

[Go to End of 70748]

79 NH PUC 725

Re Granite State Electric Company

DR 94-286
Order No. 21,479

New Hampshire Public Utilities Commission

December 30, 1994

ORDER directing an electric utility to continue in effect its existing purchased power cost adjustment rate (a credit of 0.177 cents per kilowatt-hour), where the utility's requested change was based on a proposed settlement agreement which may or may not actually be approved by the Federal Energy Regulatory Commission. However, new fuel adjustment clause and oil cost adjustment clause factors are authorized.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Continuation of existing credit rate — Factors — Proposed but as yet unapproved power cost settlement agreement — Electric utility. p. 728.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost and oil cost adjustment factors — Prior-approved settlement agreements — Electric utility. p. 728.

APPEARANCES: Steven E. Thomas, Esq. on behalf of Granite State Electric Company; Eugene F. Sullivan, Jr., Thomas C. Frantz and James Cunningham, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 1, 1994 Granite State Electric Company (GSEC or the Company) filed tariff pages, testimony and schedules supporting changes to its fuel adjustment clause (FAC), oil cost adjustment (OCA), and power purchase rates for qualifying facilities (QFs) which was docketed as DR 94-286. On December 9, 1994, the Company filed tariff pages, testimony and schedules supporting changes to its Purchase Power Cost Adjustment (PPCA) to reflect New England Power Company's (NEP) W-95(S) filing made on December 7, 1994 with the Federal Energy Regulatory Commission (FERC). On December 16, 1994 GSEC filed a revised FAC to correct the March and April, 1995 production dispatch of Maine Yankee. The changes in GSEC's PPCA,

FAC and the rates it pays QFs are effective for bills rendered for meters read for the period January 1, 1995 through June 30, 1995. OCA is effective for bills rendered for meters read for the period January 1, 1995 through April 30, 1995.

On December 21, 1994, the New Hampshire Public Utilities Commission (Commission) held a duly noticed public hearing at its offices in Concord to review the PPCA, FAC, OCA and QF rates filed by Granite State Electric Company.

II. POSITIONS OF THE PARTIES AND STAFF

A. GSEC

GSEC proposes a PPCA credit of \$0.00204 per kwh effective January 1, 1995 through June 30, 1995. This credit includes the proposed W-95(S) PPCA credit of \$0.00030 per kwh and the reconciling adjustment credit of \$0.00174 per kwh approved by the Commission in Docket DR 94-104 to refund previous overcollections by GSEC of PPCA expense through February 1994. The reconciling adjustment expires on June 30, 1995. Thus, the proposed

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total PPCA credit factor that will be in place for the six month period ending June 30, 1995 is a credit of \$0.00204 per kwh.

The Company proposes an FAC factor of \$0.00712 per kwh, an OCA factor of \$0.00129 per kwh, and the following short-term avoided capacity and energy rates for QFs:

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

Energy Rates	<i>On-Peak</i>	<i>Off-Peak</i>	<i>Average</i>
Subtransmission Distribution	\$0.02771	\$0.02173	\$0.02447
Primary Distribution	\$0.02976	\$0.02280	\$0.02599
Secondary Distribution	\$0.03081	\$0.02334	\$0.02677
Capacity Rate	<i>Capacity Payment</i>		
Subtransmission	\$1.46 per kw-month		
Primary Distribution	\$1.60 per kw-month		
Secondary Distribution	\$1.67 per kw-month		

At the December 21, 1994 hearing, GSEC presented witnesses in support of its proposed rates. Ms. Colleen M. Gardner, Senior Rate Analyst, supported her testimony on the proposed FAC, OCA and purchased power rates for QFs. Mr. Jeffrey W. VanSant, Vice President and Director for Fuel Supply for New England Power, supported his testimony on fuel price projections. Mr. Alan M. Campbell, Financial Analyst, supported his testimony on the proposed PPCA under NEP's proposed Rate W-95(S).

Ms. Gardner testified that the OCA factor would increase \$0.00013 per kwh to \$0.00129 per kwh from the current \$0.00116 per kwh rate as GSEC continued to amortize its allocable share of the parent Company's abandoned investment in the oil industry. The OCA amortization is estimated to be complete approximately midway through May of 1995. Effective with bills

rendered for meters read on or after May 1, 1995, an OCA factor will no longer be charged to Granite State customers and a final reconciliation of its actual revenues to expenses will be included in its PPCA filing for the second half of 1995.

Ms. Gardner also testified that the FAC factor would increase \$0.00085 per kwh to \$0.00712 per kwh from the current factor of \$0.00627 per kwh based on New England Power's projection of fuel costs over the next six months. In support of the proposed fuel costs charged to GSEC, the Company offered the testimony of Mr. VanSant. Mr. VanSant testified to New England Power Company's projected fuel costs over the next six months, and the basis for those projections. Mr. VanSant expects stable coal prices and downward trending natural gas and residual oil prices over the first six months of 1995.

The value of capacity used to determine Granite State's QF capacity payments is \$17 per kw-year. This rate is the estimated short-term market value of capacity calculated on the basis of sales of capacity recently consummated by NEP.

Mr. Campbell testified that the PPCA factor would be reduced by \$0.00027 per kwh to a credit of \$0.00204 per kwh from the current credit of \$0.00177 per kwh. Mr. Campbell's testimony supported the Company's adjustment to its PPCA to reflect the change in purchased power expenses under NEP's proposed Rate W-95(S) including GSEC's updated costs associated with Hydro-Quebec credit based on NEP's proposed Rate W-95(S) filing. NEP's proposed W-95(S) rate and the W-95(S) settlement agreement were filed with the Federal Energy Regulatory Commission (FERC) on December 7, 1994. Mr. Campbell testified that, under the terms of the proposed W-95(S) settlement agreement, NEP's base rates shall be designed to collect the same annual revenue level collected by the combination of NEP's

Page 726

current base rate (designated W-92(S)), the Seabrook Surcharge and the Oil Conservation Adjustment (OCA) Surcharge. Although the roll-in of the OCA and Seabrook surcharges into base rates does not affect NEP's overall revenues, it changes how they are collected. Under the proposed settlement, these surcharges will be rolled into NEP's base rates, and thus NEP will continue to collect these revenues even though the surcharges would have otherwise expired.

Mr. Campbell explained that the roll-in of the Seabrook and OCA surcharges by NEP into its base rates are achieved in two different ways. First, the Seabrook surcharge is already treated as purchased power expense recovered in GSEC's current base rates and through the PPCA. Thus, the roll-in of the Seabrook I surcharge into NEP's base rates does not give rise to a need for a PPCA change by GSEC. The only effect of this component of the settlement is to avoid the need for a PPCA reduction when the Seabrook surcharge would otherwise terminate.

In contrast, the roll-in of the OCA surcharge does give rise to a PPCA change because OCA expenses are now being recovered separately in both NEP's and GSEC's rates. Starting on the effective date of the settlement, NEP will cease to bill any costs through its OCA provision and will instead implement an increase in its base rates. Under the belief that FERC will issue an order that approves the W-95(S) rates effective on January 1, 1995, GSEC proposes to phase out the OCA and phase in the PPCA for usage on January 1, 1995. The Company indicated that all revenues collected through the OCA surcharge subsequent to January 1, 1995 will be refunded

through the PPCA reconciliation. The Company will notify the Commission within 48 hours of FERC action on the W-95(S) rates and file a final OCA reconciliation with GSEC's next PPCA reconciliation.

B. Staff

Staff questioned Company witnesses on a number of items: estimated versus actual fuel costs, the \$150,000 diversion settlement, the underlying documentation supporting the sales forecast used in the fuel clause, the underlying documentation supporting the Company's QF capacity payments of \$17 per kw-year, the explanation supporting the NEP proposed W-95(S) settlement provisions filed at FERC including the treatment of the cessation of OCA and Seabrook I surcharges, the details on the termination of OCA surcharges including the details of how the Company will reconcile 1995 OCA expenses versus revenues collected from the OCA surcharge, and details pertaining to the calculation of the New Hampshire Industrial Finance Authority credits.

Staff is concerned about the impact on GSEC's PPCA in the event that the NEP filing of the W-95(S) settlement agreement is not approved by FERC. The Company's proposed PPCA is not based on the currently approved W-92(S) rate but on the new filed W-95(S) rate. Staff believes that it is possible that FERC will not approve the new filed rate W-95(S), in which case GSEC should continue to use the existing W-92(S) PPCA. Staff recommends that the existing PPCA credit of \$0.00177, which includes the reconciling adjustment of credit \$0.00174 per kwh, approved by the Commission in Docket DR 94-104, be continued until such time as FERC approves the new W-95(S) settlement agreement at which time GSEC should submit a revised filing to the Commission reflecting the impact of FERC approval.

Staff is also concerned about the timing of the cessation of the OCA surcharges and the timing of the roll-in of OCA costs into base rates. NEP's filing of the W-95(S) settlement agreement with FERC is based on the roll-in of NEP's 1995 OCA costs into base rates effective January 1, 1995. Staff believes that it is possible that FERC will not approve the settlement agreement, in which case GSEC should continue to bill costs to GSEC through its OCA provision until the date that FERC approves the W-95(S) settlement agreement. Staff recommends that GSEC's proposed OCA Surcharge of \$0.00129 for bills rendered for meters read for the period January 1, 1995 through April 30, 1995 be approved. In the event that FERC approves the W-95(S) settlement agreement, GSEC should submit a revised filing to the

Page 727

Commission reflecting the OCA, as well as base rate, impact of the FERC approval.

Based on the above, Staff recommends that the Commission approve the current W-92(S) PPCA credit \$0.00177 per kwh, the FAC of \$0.00712 per kwh, and the rates paid to QFs all rates to be effective for bills rendered for meters read on or after January 1, 1995 through June 30, 1995 time period. The OCA of \$0.00129 would be effective for bills rendered for meters read on or after January 1, 1995 through April 30, 1995 time period. The combined changes in the PPCA, OCA and FAC factors will result in an increase of \$.50 per month for a residential customer using 500 kwh's per month.

III. COMMISSION ANALYSIS

Subtransmission	\$1.46 per kw-month
Primary Distribution	\$1.60 per kw-month
Secondary Distribution	\$1.67 per kw-month; and it is

FURTHER ORDERED, that Granite State Electric Company file tariff pages in compliance with this Order no later than 15 days from the issuance date of this Order; and it is

FURTHER ORDERED, in the event that FERC approves NEP's W-95(S) filing, that GSEC submit an updated filing of its PPCA rates reflecting the FERC approval.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1994.

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NH.PUC*12/30/94*[70749]*79 NH PUC 729*New Hampshire Electric Cooperative, Inc.

[Go to End of 70749]

79 NH PUC 729

Re New Hampshire Electric Cooperative, Inc.

DR 94-285

Order No. 21,480

New Hampshire Public Utilities Commission

December 30, 1994

ORDER approving an electric cooperative's proposed power cost adjustment rate of 0.963 cents per kilowatt-hour, implemented on a meters-read basis rather than on a services-rendered basis. A short-term energy rate payable to small power producers also is approved.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Power cost adjustment clause rate — Premised on wholesale electric supplier rates — Implementation on meters-read rather than services-rendered basis — Electric cooperative. p. 731.

2. COGENERATION, § 28

[N.H.] Rates — Short-term energy rates — Payable to small power producers — Premised on wholesale electric supplier rates — Electric cooperative. p. 731.

APPEARANCES: Broderick and Dean by Mark W. Dean, Esquire, for New Hampshire Electric Cooperative, Inc.; Thomas C. Frantz and Eugene F. Sullivan, Jr. for the New Hampshire Public Utilities Commission Staff.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 1, 1994 New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) tariff changes to its Power Cost Adjustment (PCA) for effect January 1, 1995 through June 30, 1995. Supporting testimony and exhibits were included in NHEC's filing.

On December 7, 1994 NHEC corrected an omission in its initial filing and submitted the rate NHEC pays to small power producers also effective January 1, 1995 through June 30,

Page 729

1995. The short term rates proposed are those wholesale rates of each of the four utilities from which NHEC purchases power.

At a duly noticed hearing on December 20, 1994, NHEC Manager of Rates and Finance Teresa Muzzey testified regarding the proposed adjustments.

II. POSITIONS OF THE PARTIES AND STAFF

A. NHEC

NHEC proposes a PCA of \$0.00963 per kWh. This represents an increase of \$0.00652 per kWh from the current PCA of \$0.00311. The increase in the PCA is based primarily on an increase in the cost of power purchased from Public Service Company of New Hampshire (PSNH) which in turn is due in part to the recovery of costs incurred by PSNH in its recent refueling outage. NHEC forecasts a 2.2% increase in sales for 1995. Costs and revenues due to NHEC's ski area special contracts, recently approved on an interim basis pending full investigation, are excluded from the calculations.

The increases identified in the December 1, 1994 filing were based on the permanent rates then in effect for NHEC. Since the filing, however, the Commission has approved rate increases of 1.51% over base rates, or .07% over temporary rates already in effect. DR 93-124. Based on the newly approved rates, the PCA would result in a standard residential monthly 500 kWh bill of \$70.59. (Exhibit 5)

Finally, NHEC proposes short-term energy rates which it pays to qualifying facilities which are consistent with the wholesale rate approved by the Federal Energy Regulatory Commission (FERC) for each of the four utilities from which NHEC purchases power. The detailed listing of short term rates is contained in Exhibit 6.

The base capacity rate is \$0.00 per kW-month, in accordance with the Stipulation reached in DE 92-149 (Exhibit 6).

NHEC requested that the increase be implemented on a bills rendered basis, as the computer system makes it difficult to comply with a "meters read" implementation date as was ordered in the July 1, 1994 PCA. Ms. Muzzey testified that the system was being worked on to accommodate a meters read rate change but as yet was not able to do so without considerable effort.

B. Staff

Staff questioned Ms. Muzzey regarding NHEC's forecast methods, calculations regarding ski area costs and revenues and an analysis of its current undercollection. At Staff's request, NHEC submitted details of its forecasting (Exhibit 2) and its undercollections (Exhibit 3). It also explored in greater detail than Ms. Muzzey was able to provide issues regarding NHEC's payment of avoided costs to qualifying facilities, and NHEC agreed to provide greater detail in its next PCA filing on this issue.

Staff questioned Ms. Muzzey regarding certain PSNH wholesale proceedings at the FERC that impact on NHEC's rates, and encouraged NHEC to pursue those cases in which PSNH's wholesale terms are addressed, particularly its wholesale FPPAC proceeding. Staff pointed out that if the Commission were to disallow \$2 million of PSNH's retail FPPAC costs, that disallowance would not appear in the wholesale FPPAC at the FERC but would have to be separately ordered. NHEC's "share" of a \$2 million disallowance would be approximately \$160,000.

Staff also expressed a concern about the magnitude of the PCA increase and stated it hoped that continued efforts at developing a more cost effective demand side management program would assist in keeping rates from rising further.

Finally, Staff urged the Commission to require NHEC to implement this PCA on a "meters read" basis as was done in the July 1, 1994 PCA, rather than on a "bills rendered" basis.

Based on the testimony, Staff recommended that the PCA of \$0.00963 per kWh and the short term energy rates NHEC proposes in Exhibit 6 be approved.

III. COMMISSION ANALYSIS

Page 730

[1, 2] We have reviewed the recommendations of the Hearings Examiner who presided in this case and find the adjustments proposed, resulting in a PCA of \$0.00963 per kWh, to be necessary given NHEC's projections and to be just and reasonable. We also find the short term energy rate NHEC proposes to pay small power producers, based on the wholesale rates of NHEC's suppliers, to be just and reasonable. We will, therefore, approve NHEC's requested adjustments.

We have considered the requests of NHEC and Staff regarding the method of implementing these changes and believe it is appropriate to continue with a meters read basis for implementation, as we ordered in NHEC's July 1994 PCA. The norm in most utilities (other than very small water companies) is to implement changes on a service rendered basis, where technically feasible. Requiring NHEC to implement the changes on a meters read basis is less onerous than requiring implementation on a service rendered basis, yet is consistent with our efforts in recent cases to move those utilities still operating on a bills rendered basis to something which better reflects consumers' response to rate changes.

Finally, we note for the record, though it was not developed at the hearing, that the savings approved in PSNH's settlements with five hydropower small power producers and two

woodburning small power producers in dockets DR 94-002 and DR 93-179 respectively, have been included in PSNH's wholesale FPPAC rate and, therefore, a portion of those savings have been passed on to NHEC's ratepayers. We encourage NHEC to pursue remedies at the FERC which it feels will result in further savings to its ratepayers.

Based upon the foregoing, it is hereby

ORDERED, that the Power Cost Adjustment for NHEC for the period January 1, 1995 through June 30, 1995 shall be \$0.00963 per kWh, effective on all meters read on or after January 1, 1995; and it is

FURTHER ORDERED, that the short-term capacity and energy rates paid to qualifying facilities shall be as delineated in Exhibit 6; and it is

FURTHER ORDERED, that NHEC shall file tariff pages in compliance with this order no later than 15 days from the issuance date of the order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1994.

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NH.PUC*12/30/94*[70750]*79 NH PUC 731*Concord Electric Company

[Go to End of 70750]

79 NH PUC 731

Re Concord Electric Company

DR 94-288

Order No. 21,481

Re Exeter and Hampton Electric Company

DR 94-289

Order No. 21,481

New Hampshire Public Utilities Commission

December 30, 1994

ORDER approving proposed fuel adjustment clause (FAC) and purchased power adjustment clause (PPAC) rates of two affiliated electric utilities, with FAC credits of 0.476 cents per kilowatt-hour (kwh) and 0.523 cents per kwh for Concord and Exeter, respectively, and a PPAC charge of 0.049 cents per kwh for Concord and a PPAC credit of 0.113 cents per kwh for Exeter.

1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Charges versus credits — Factors — Semi-annual updates on actual versus projected costs — Affiliated electric utilities. p. 733.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Credits — Factors — Semi-annual updates —

Page 731

Matching revenues with costs — Affiliated electric utilities. p. 733.

APPEARANCES: Leboeuf, Lamb, Leiby & MacRae by Scott J. Mueller, Esquire for Concord Electric Company and Exeter & Hampton Electric Company; Mary Jean Newell, Edwin P. LeBel and Thomas C. Frantz for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 2, 1994, UNITIL Service Corporation filed, on behalf of Concord Electric Company (Concord) and Exeter & Hampton Electric Company (Exeter & Hampton) (collectively the Companies), revised Fuel Adjustment Clause (FAC) rates and Purchased Power Adjustment Clause (PPAC) rates for the periods January through June, 1995 and January through December, 1995. Using the six month period, Concord requested a FAC credit of \$0.00460 per kwh and a PPAC credit of \$0.00008 per kwh. Exeter & Hampton requested a FAC credit of \$0.00514 per kwh and a PPAC credit of \$0.00161 per kwh.

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.]

<i>Energy Rates</i>	
On Peak	3.12 cents per kwh
Off Peak	2.55 cents per kwh
All Hours	2.72 cents per kwh

Capacity Rate \$0.00 per kw-year

As a result of a record request, the Companies on December 23, 1994 filed Exhibit 6, which included revised rates. The record request sought new FAC and PPAC rates that would be adjusted for November 1994 data.

The New Hampshire Public Utilities Commission (the Commission) held a duly noticed hearing at its office in Concord on December 15, 1994 to review the Fuel Adjustment Clauses and Purchased Power Adjustment Clauses and the short-term power purchase rate filings of the Companies. Concord and Exeter & Hampton presented two witnesses: Karen M. Asbury and David W. Lavoie. Ms. Asbury and Mr. Lavoie both had submitted pre-filed testimony and exhibits.

II. POSITIONS OF THE PARTIES AND STAFF

A. Concord and Exeter & Hampton

In the instant filing, the Companies are again requesting a change in the PPAC and FAC rates based on incorporating twelve months of forecasted data into the clauses and moving the respective rates from a six month effective period to a twelve month effective period starting January 1, 1995. The calculations of the FAC rates and PPAC rates would remain essentially the same except for the change to a twelve month effective period and the incorporation of additional months of forecasted data.

Mr. Lavoie testified on the derivation of UNITIL Power Corp's (UPC) wholesale rates and the calculation of UPC's short- term avoided costs. His pre-filed testimony indicated that UPC's wholesale rates, effective January 1, 1995 would be as follows:

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

Demand	\$13.70 per kw-month
Base Energy	\$0.01870 per kwh
Fuel Charge	\$0.02058 per kwh

Ms. Asbury and Mr. Lavoie stated at the hearing that based upon November, 1994 actual data, which had just been received, UPC would be revising its wholesale billing rate.

On December 23, 1994, the Companies filed Exhibit 6, a record request, which contains updated cost information reflecting, *inter alia*,

Page 732

November 1994 actual data. Exhibit 6 also includes an updated wholesale cost forecast for January 1995 through June 1995. The updated wholesale cost forecast changes the Demand charge to \$13.79 per kw, the Base Energy charge to \$0.01884 per kwh and the Fuel Charge to \$0.02038 per kwh. The revised PPAC and FAC rates, based on an annual adjustment clause but using the updated data in Exhibit 6, are as follows: for Concord the PPAC would be \$0.00230 per kwh and the FAC rate would be a credit of \$0.00583 per kwh; for Exeter & Hampton the PPAC would be \$0.00176 and the FAC would be a credit of \$0.00602 per kwh. Also on December 23, 1994, the Companies submitted the response to a record request regarding the large over collection. The January - June 1995 FAC rate for Concord would be a credit of \$0.00476 per kwh and for Exeter & Hampton it would be a credit of \$0.00523 per kwh. The PPAC rate for Concord would be \$0.00049 per kwh and for Exeter & Hampton it would be a credit of \$0.00113 per kwh.

Mr. Lavoie testified that by using the annual FAC and PPAC the customer would have a clear signal of its rate for the coming year, thereby making planning easier. Based on this reason and the desire to reduce fluctuations in rates due to changes in the basic ratio of costs and sales, the Companies are proposing twelve month clauses effective January 1, 1995.

Ms. Asbury testified that the Company was proposing the adjustment clauses be based on a twelve month forecast. She advised that the Companies would continue the semi-annual filings for complete review by this Commission. Ms. Asbury stated that the 5% trigger mechanism would remain in place. The filing for the last half of the year would be to make any adjustments

necessary to the forecast figures.

B. Staff

Staff did not present testimony, but queried the Companies' witnesses on a number of issues among which were the methods of forecasting, the large overcollection, the signals the customers were receiving and matching revenues with costs. The Companies indicated that they were confident with their forecasts but claimed the semi-annual rate filing would allow for the rates to be adjusted for any variances.

The under or over collection would also be taken care of with the semi-annual filing. Staff recommended the continuation of the present six month clauses for the same reasons cited in DR 93-235 and DR 93-234. Staff believes that the six month adjustment clauses send the proper price signals to the customers. Experience has shown that the longer period would result in larger variances. Staff referred to Connecticut Valley Electric Company's annual adjustment clauses as evidence that an annual fuel and purchased power factor causes larger over and under collections.

III. COMMISSION ANALYSIS

[1, 2] We will accept the December 23, 1994 revised filings of the Companies that were submitted to the Commission. The revised filings adjust the data for actual November data. Although we believe there is merit in rate continuity, as stated in DR 93-234 and DR 93-235, Order No. 21,091, in our opinion the beneficial effects of a change to an annual FAC and PPAC do not outweigh the benefits of the present semi-annual adjustment process. The Companies' proposals to provide for a semi-annual update accomplishes the same effect as our current policy. We believe that other ratemaking policies, such as, matching costs with the time of usage and the more accurate forecast of the shorter time periods justify our current practice of semi-annual filings. We find, therefore, that the just and reasonable rates to use for the Companies' FAC and PPAC shall be those based on a January through June, 1995 period. The FAC will be a credit of \$0.00476 per kwh for Concord and a credit of \$0.00523 per kwh for Exeter & Hampton. For the same period, the PPAC rate for Concord will be a charge of \$0.00049 per kwh and a credit of \$0.00113 per kwh for Exeter & Hampton. For a typical Concord residential customer using 500 kwh per month, the net result of the PPAC and FAC changes is a \$1.76, or 3.35%, decrease to a monthly 500 kwh bill. A typical 500 kwh per month residential bill for Exeter & Hampton

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customers will decrease by \$3.80 or 7.41%. These have been adjusted for the franchise tax effect.

We also find the proposed short-term avoided energy rates to be just and reasonable, and calculated in accordance with the methodologies outlined in previous Commission orders. The Companies may reflect a \$0.00 per kw-year capacity payment to QFs on short-term rates for the January through June, 1995 period. The rates for on-peak will be \$0.0312 per kwh; for off-peak, \$0.0255 per kwh; and for all hours, \$0.0272 per kwh.

Based upon the foregoing, it is hereby

ORDERED, that the semi-annual fuel and purchased power adjustment clauses will remain in effect; and it is

FURTHER ORDERED, that Concord Electric Company Fuel Adjustment Charge rate for the period January through June, 1995, shall be a credit of \$0.00476 per kwh for bills rendered on meter readings on or after January 1, 1995; and it is

FURTHER ORDERED, that for the period January through June, 1995, the Concord Electric Company Purchased Power Adjustment Clause rate shall be \$0.00049 per kwh for bills rendered on meter readings on or after January 1, 1995; and it is

FURTHER ORDERED, the for the period January through June, 1995, the Exeter & Hampton Electric Company Fuel Adjustment Charge rate shall be a credit of \$0.00523 per kwh for bills rendered on meter readings on or after January 1, 1995; and it is

FURTHER ORDERED, that for the period January through June, 1995, the Exeter & Hampton Electric Company Purchased Power Adjustment Clause credit of shall be \$0.00113 per kwh for bills rendered on meter readings on or after January 1, 1995; and it is

FURTHER ORDERED, that for the same period, Concord Electric Company's and Exeter & Hampton Electric Company's short-term power purchase (short-term avoided capacity and energy) rates for Qualifying Facilities (QFs) shall be as follows:

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

Energy Rates

On Peak	3.12 cents per kwh
Off Peak	2.55 cents per kwh
All Hours	2.72 cents per kwh

Capacity Rate\$0.00 per kw-year;

and it is

FURTHER ORDERED, the Concord Electric Company and Exeter & Hampton Electric Company file revised tariff pages in compliance with this order no later than 15 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1994.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Exeter & Hampton Electric Co., DR 93-234, Order No. 21,091, 79 NH PUC 9, Jan. 3, 1994.

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Endnotes

1 (Popup)

¹NHEC emerged from bankruptcy on December 1, 1993. On December 6, 1993, the Commission directed the Treasurer of New Hampshire to disburse the Escrow Fund, approximately \$88,947, to NHEC for inclusion in income and use by NHEC. At the same time, the Commission ordered the portion of the Escrow Fund representing interest earnings to be applied by NHEC to reduce the present Power Cost Adjustment factor. See Report and Order No. 21,050 in DR 92-009.

2 (Popup)

²The currently effective credit of \$0.00496 per kWh occurred when NHEC rolled the base wholesale portion of its PCA factor into base rates as part of the temporary base rate changes approved in DR 93-124, NHEC's petition for a base retail rate change. Prior to the October 1, 1993 temporary base rate change, the PCA factor was a charge of \$0.00119 per kWh. See Commission Order No. 20,886, June 28, 1993 in docket DR 93-110.

3 (Popup)

²The currently effective credit of \$0.00496 per kWh occurred when NHEC rolled the base wholesale portion of its PCA factor into base rates as part of the temporary base rate changes approved in DR 93-124, NHEC's petition for a base retail rate change. Prior to the October 1, 1993 temporary base rate change, the PCA factor was a charge of \$0.00119 per kWh. See Commission Order No. 20,886, June 28, 1993 in docket DR 93-110.

4 (Popup)

¹Hereinafter, to avoid repetition, we will delete the word proposed from each reference to the proposed rules.

5 (Popup)

² Because this is a new rate making procedure we will monitor its effects to ensure that it addresses these concerns, and does not unduly disturb that delicate balance between the rights of ratepayers and regulated utilities. RSA 363:17-a.

6 (Popup)

³We are also making some revisions to the proposed rules in response to certain objections raised by the Staff of the Joint Legislative Committee on Administrative Rules (JLCAR).

7 (Popup)

⁴Please note that this action will result in the renumbering of the rules in Appendix A.

8 (Popup)

¹Compared to the projection submitted in Connecticut Valley's 1992 LCIP (Old avoided costs).

9 (Popup)

²That is, the C&LMPA 1 time period October 1, 1991 through December 31, 1992.

10 (Popup)

³Connecticut Valley and Staff agree that the allocated D&I expenditures will be reconciled after the end of the program year once actual program-specific C&LM costs become available.

11 (Popup)

¹The five residential programs include 1) Electric Space Heat, which installs weatherization and other conservation measures in 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; 4) Energy-Crafted Homes, which promotes efficiency in the design and construction of new homes; and 5) Multi-Family Retrofit, which install a variety of conservation measures in electrically heated multi-family buildings of five or more units.

The proposed C&I programs include 1) Design 2000, which encourages efficiency in new construction, renovation, remodelling 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").

12 (Popup)

²The Parties to DR 92-161 included Staff, the CLF and the Company; the OCA was not a party.

13 (Popup)

³As discussed below, the proposed 1994 budget amounts have been subsequently revised to \$2.7 million and \$3.1 million, respectively, which reflects the elimination of the \$216,200 HEM program budget.

14 (Popup)

⁴Through this transfer, the HEM Program will be handled in a manner consistent with the two other dispatchable C&LM programs already administered by NEP — standby generation and interruptible rates.

15 (Popup)

⁵As originally filed, it appeared that the Company spent \$4,200 per dwelling served under this program in 1993. Upon further review of the 1993 program, it was subsequently determined that the per dwelling spending amount was \$2,800, an amount acceptable to the

OCA.

16 (Popup)

⁶Reflects the elimination of the HEM Program budget.

17 (Popup)

⁷Reflects carryover from 1993 C&I budgets.

18 (Popup)

⁷Reflects carryover from 1993 C&I budgets.

19 (Popup)

¹Granite State Electric's affiliates, Massachusetts Electric Company and The Narragansett Electric Company, simultaneously filed the same seven contracts with their respective state commissions in Massachusetts and Rhode Island. As of this date, these other state commissions have not rendered a decision on the proposed contracts.

20 (Popup)

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21 (Popup)

¹Paragraph 4(ii) of the Joint Recommendation states that:

The FPPAC shall be interpreted ... so that the term "actual prudent energy and purchased power costs" as used in the first paragraph of Exhibit C of the Rate Agreement would be deemed not to include ... the incremental cost of energy required to replace energy from resources sold pursuant to capacity sales contracts entered into after the First Effective Date.

22 (Popup)

¹Paragraph 4(ii) of the Joint Recommendation states that:

The FPPAC shall be interpreted ... so that the term "actual prudent energy and purchased power costs" as used in the first paragraph of Exhibit C of the Rate Agreement would be deemed not to include ... the incremental cost of energy required to replace energy from resources sold pursuant to capacity sales contracts entered into after the First Effective Date.

23 (Popup)

²We need not address the appropriate interest rate to be applied to FPPAC over and under recoveries at this time because the issue is moot.

24 (Popup)

²We need not address the appropriate interest rate to be applied to FPPAC over and under recoveries at this time because the issue is moot.

25 (Popup)

¹See Commission Order Nos. 17,229, 17,474, 17,668, 17,875 and 18,086.

26 (Popup)

¹See Commission Order Nos. 17,229, 17,474, 17,668, 17,875 and 18,086.

27 (Popup)

¹The length of time is "indeterminate" because there is no absolute method for computing the Company's actual operation and maintenance expenses, or revenues in the future.

28 (Popup)

²At the March 30, 1994, hearing a ratepayer questioned whether the costs of installing the community water system had been recovered from the sale of the homes which are serviced by the system. The Commission's initial investigation in this proceeding conducted in 1990 established that over \$600,000 was expended to install the water distribution system and of that amount, \$120,000 was not expensed against the revenues from the sale of homes for tax purposes. Thus, the Commission used the 120,000 figure to establish the Company's ratebase. *See, Appeal of Eastman Sewer*, 137 N.H. — (January 27, 1994).

29 (Popup)

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30 (Popup)

¹This figure includes the levelized eighteen month amortization of the costs of the Seabrook refueling outage, approved by the Commission in DR 93-149, and all of the direct savings that resulted from the renegotiation of certain hydroelectric rate orders in DR 94-002.

31 (Popup)

¹A third company, Fitchburg Electric Company in Massachusetts, is affiliated with the UNITIL Companies.

32 (Popup)

¹A third company, Fitchburg Electric Company in Massachusetts, is affiliated with the UNITIL Companies.

33 (Popup)

¹*Health Effects of Low-Frequency Electric and Magnetic Fields*. Report to the Committee on Interagency Radiation Research and Policy Coordination by the Oak Ridge

Associated Universities Panel. ORAU 92/F-8 and NTIS Publication #029-000-00443-9. (June 1992. 368 pp.) p. ES-11.

34 (Popup)

¹*Health Effects of Low-Frequency Electric and Magnetic Fields*. Report to the Committee on Interagency Radiation Research and Policy Coordination by the Oak Ridge Associated Universities Panel. ORAU 92/F-8 and NTIS Publication #029-000-00443-9. (June 1992. 368 pp.) p. ES-11.

35 (Popup)

¹On June 8, 1994 the Conservation Law Foundation (CLF) filed a letter in response to the Stipulation. In its letter CLF, a full intervenor to this proceeding and many other proceedings before this Commission, stated that it had reviewed drafts of the Stipulation but "has no comments on the agreement at this time." Pursuant to N.H. Admin. R., Puc 203.04 (c) any party has ten days to file an objection to any motion filed with the Commission. Thus, CLF was obligated to put forward its position on the agreement within ten (10) days of the agreement, and may not come forward at some later time, as can be inferred from its letter, to oppose the agreement. We take this position based on the sophistication of the party and its representation by competent counsel.

36 (Popup)

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37 (Popup)

¹NHEC's initial proposal of the treatment of reduced revenues associated with certain load management programs was originally filed in DR 93-212. In its filing on November 1, 1993, NHEC proposed that "Lost Revenues" be included as a surcharge recoverable over a twelve month period. The parties and Staff later agreed to address the issue in the Power Cost Adjustment docket.

38 (Popup)

¹In Docket DR 93-195 the UNITIL Companies, Concord Electric Company and Exeter and Hampton Electric Company, also changed their dates for filing C&LM programs.

39 (Popup)

²We note that these monetary values are based on the static costs of the programs. That is, if in fact the programs are effective in reducing overall load and peak load, they should reduce NHEC's overall power costs and in the long run reduce customer (member) power costs.

40 (Popup)

¹The direct testimony of Robert F. Egan, Staff Utility Analyst, in DR 92-020 (Permanent Rate Case) further illuminates Staff's position here; however, we deem it unnecessary to consider the question of management difficulties because the Settlement Agreement can be independently justified on the grounds already stated.

41 (Popup)

¹The direct testimony of Robert F. Egan, Staff Utility Analyst, in DR 92-020 (Permanent Rate Case) further illuminates Staff's position here; however, we deem it unnecessary to consider the question of management difficulties because the Settlement Agreement can be independently justified on the grounds already stated.

42 (Popup)

¹This project was terminated due to the lack of an available demonstration facility.

43 (Popup)

²We note that Staff's calculations with regard to the unspent C&LM balance (before interest) which was available for the period ending December 31, 1993 is virtually identical to that of PSNH which is reflected in Exhibit 2. As such, we accept Staff's calculation reflected in Exhibit 3.

44 (Popup)

³We do not accept PSNH's contention that it needed the entire time period in question to establish infrastructure. PSNH's own witness in DE 92-028 testified that PSNH's affiliation with NU would result in PSNH "taking full advantage of the experience and the resources that NUSCO now brings to the C&LM activity."

DE 92-028, Transcript p. 53. Thus, the record does not support PSNH's contention regarding the need for time to spend its C&LM budget.

45 (Popup)

⁴Vulnerable customers are defined in the Settlement Agreement to DE 92-080 as those for whom PSNH petitions the Commission for approval of special contracts.

46 (Popup)

⁵See Report and Order No. 21,030.

47 (Popup)

⁵See Report and Order No. 21,030.

48 (Popup)

¹The September 16th letter enclosing the executed Fifth Amendment did not indicate whether it had been approved by the creditors.

49 (Popup)

²See Exhibit #5.

50 (Popup)

³Mr. Talbot's inability to set a price certain for the profitable operation of the plants, and his inability to assess the benefits of buydowns versus buyouts was due in major part to a lack of access to any financial information relative to the wood-burning plants.

51 (Popup)

⁴Because there appears to be no representation for those individuals and companies that actually chip wood, as compared to those individuals that own the timberland from which the chips are derived, we are concerned that all affected parties receive equal access to and consideration from those individuals and organizations controlling the mitigation funds. Our concerns relative to the mitigation funds are highlighted in a letter received by the Commission from Crowley Land Clearing, Inc. (Crowley) on August 22, 1994. In the letter Crowley indicates that it is, among other things, a wood chipping company with a short term contract with Bristol. Crowley indicates that the economic effect on Bristol's closure would be devastating to it and its 34 employees. Crowley's letter further indicates some frustration in contacting those parties in control of the mitigation funds, and in obtaining the terms and conditions relative to access to the fund.

52 (Popup)

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53 (Popup)

¹The Alliance to Save Energy is a nonprofit coalition of business, government, environmental and consumer leaders dedicated to increasing the efficiency of energy use, which receives its financial support from corporations, foundations, individuals and government agencies.

54 (Popup)

²Mr. Maltzie stated that such waivers had been requested and granted for ten years.

55 (Popup)

*This schedule excludes connection fees and refunds pursuant to Southern's Tariff for Water Service main pipe extension provisions.

56 (Popup)

*This schedule excludes connection fees and refunds pursuant to Southern's Tariff for Water Service main pipe extension provisions.

57 (Popup)

¹Under PURPA and the implementing regulation of the Federal Energy Regulatory Commission (FERC), a QF may request a contract for a "specified term". 18 C.F.R. section 292.304(d). If a specified term contract is requested, QFs may request rates which are based on an estimate of the utility's avoided costs. *Id.*

58 (Popup)

²As noted in Mr. Eicher's pre-filed testimony, Public Service Company of New Hampshire (PSNH) supplies approximately 90% of NHEC's total energy requirements under the Amended Partial Requirements Agreement. Eicher at 15. Thus, although the QF location would determine which supplier's delivery would be displaced, the PSNH wholesale rate would virtually always be determinative of NHEC's avoided costs under this methodology.

59 (Popup)

³According to NHEC, the real economic value of energy produced by a QF is determined by examining the cost associated with developing alternative production resources; these are the "real costs" avoided by the installation and production of a QF. Thus, "the real economic value to society has to do with fuel not burned, concrete not poured, steel not erected ... *not* the savings in a wholesale customer's purchased power bill." Eicher at 29.

60 (Popup)

⁴NHEC did not elaborate on this point, but it seems to be making the point that a competitive bidding approach would track fluctuations in the future independent generation market, and by so doing, its avoided costs would reflect the supply resources which are available at the time of each QF capacity purchase.

61 (Popup)

⁵Mr. Eicher testified that if the Commission determined that NHEC's wholesale rate dictated its PURPA long-term avoided costs, then presumably QFs could approach NHEC and demand that wholesale rate, even though NHEC was engaged in a

Page 594

competitive bidding process. The other danger according to Mr. Eicher is one of timing; if the Commission rules in this proceeding that avoided costs shall be determined based upon the wholesale rate, but also orders NHEC to engage in competitive bidding, the lag time before bidding procedures could be implemented would provide QFs with a window to request the wholesale rate. Transcript at 15-16.

62 (Popup)

⁶Staff contends that if NHEC uses an artificially low avoided cost to screen QF purchases or demand-side management investments, NHEC will not be able to attract least cost alternatives

to the higher cost wholesale power. This, according to Staff, would place the interests of NHEC's wholesale suppliers above those of its customers. McCluskey at 10-11.

63 (Popup)

⁷Staff also contends that New Hampshire's Limited Electric Energy Producers Act, RSA Chapter 362-A (LEEPA), conclusively eliminates any ambiguity with regard to the suitability of this approach. That statute expressly provides that QF rates will be based on a "purchasing utility's avoided costs". RSA 362-A:4.

64 (Popup)

⁸The term "avoided costs" is a legislative invention which is undefined under historical economic theory. PURPA and FERC regulations establish general guidelines for establishing a purchasing utility's short and long-term avoided costs which are analogous to traditional marginal cost concepts.

65 (Popup)

⁹Likewise, we decline Staff's suggestion that we resolve what could be a contractual limitation on NHEC's right to solicit QF purchases. See, McCluskey at p.13. The issue of whether NHEC's wholesale contract with PSNH prohibits QF solicitations is one which should be resolved by the parties to that agreement. Presumably, NHEC would not advocate the competitive bidding approach if it believed that soliciting QF bids would violate its wholesale contract with PSNH.

66 (Popup)

¹⁰FERC defined "avoided costs" as the "the incremental costs to an electric utility of electric energy or capacity or both, which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 CFR 292.304(a)(2) (1987).

67 (Popup)

¹¹We note that in its Proposed Regulations relative to this issue, FERC "tentatively" concluded that purchases from other QFs fall within the meaning of "another source" referenced in PURPA's definition of incremental cost of alternative electric energy. See, *Regulations Governing Bidding Programs*, 53 Fed. Reg. 9324 (March 22, 1994).

68 (Popup)

¹²We believe that a bidding system which pays all QFs the offer of the highest winning bidder best reflects market realities because in a competitive market the highest bidder is a suitable proxy for the "best losing bidder". Under these circumstances, we also believe that competitive bidding provides the theoretical equivalent to an administrative determination of the utility's incremental cost.

69 (Popup)

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70 (Popup)

¹For a complete procedural history, please see Report and Order No. 21,145.

71 (Popup)

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72 (Popup)

¹EnerDev alleges that much of the information it seeks "is readily available to EnerDev through normal commercial contacts". Based upon this assertion and the potential for delay, we decline to reconsider our September 19, 1994 order which affords protective treatment to the unredacted CUO study (Order No. 21,353).

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74 (Popup)

¹The two issues to be briefed are the proper capacity factor assumption used in calculating replacement power costs and whether PSNH should be allowed to implement its coal inventory experimental program. The issues to be deferred into the next FPPAC period are: extraordinary measures; the extension of the Third Refueling Outage at Seabrook due to reactor cooling pump cap screws; the Connecticut Yankee outage beginning July 11, 1994; and the Maine Yankee outage beginning July 16, 1994. The Stipulation, Exhibit 31, will be described more fully in the Commission's final Report and Order.

75 (Popup)

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76 (Popup)

¹The Load Controlled Service Rate addresses a number of services including hot water heating, thermal storage heating, certain "grandfathered" hot water heating programs, and radio-controlled non-thermal storage heating. This memorandum addresses only the latter

service and PSNH's determination of those customers which qualify for the reduced rate under this service offering.

77 (Popup)

²During the hearing PSNH agreed to offer Mr. Behrens a special contract that would provide him with benefits similar to those he would have received under Rate LCS. Mr. Behrens agreed in principle to

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the offer and on October 31, 1994, PSNH filed Special Contract No. NHPUC-100. On November 11, 1994, the Commission approved Special Contract No. NHPUC-100 effective November 15, 1994 (Order *Nisi* 21,417).

78 (Popup)

³The non-electric source of power is a measure to ensure customer safety during periods of forced interruptions.

79 (Popup)

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80 (Popup)

¹I admit that the opening language in RSA 38:3 (the "... municipality may ... maintain and operate ... plants for the ... distribution of ... electricity ... as may be permitted, authorized, or directed by the commission ...") may suggest that the Commission must have initially approved Ashland's engaging in business, but in fact the Commission's historical records do not indicate that it has approved initial franchises to municipal utilities. This, however, has not been advanced as a reason why Ashland should not continue to operate as a municipal utility and, therefore, the interpretation of this section need not be pursued here.